

ENDOWMENT CARE CEMETERY AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Lorin V. Jones

AN ACT RELATING TO CEMETERIES; MODIFYING PROVISIONS FOR ESTABLISHING ENDOWMENT CARE CEMETERIES; AMENDING REQUIREMENTS FOR INITIAL DEPOSITS INTO AND WITHDRAWALS FROM ENDOWMENT CARE CEMETERY TRUST FUNDS; REPEALING CERTAIN PROHIBITIONS ON OWNING AND OPERATING AN ENDOWMENT CARE CEMETERY; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

8-4-2, as last amended by Chapter 3, Laws of Utah 1996

8-4-3, as last amended by Chapter 3, Laws of Utah 1996

REPEALS:

8-4-12, as enacted by Chapter 3, Laws of Utah 1996

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **8-4-2** is amended to read:

8-4-2. Endowment care cemetery trust funds -- Deposits in endowment fund -- Reports -- Penalties for failure to file -- Investment of trust fund monies -- Attestation.

(1) An endowment care cemetery shall establish an endowment care trust fund pursuant to Title 75, Chapter 7, Trust Administration.

(a) Any newly established endowment care cemetery or existing cemetery converting to an endowment care cemetery shall deposit a minimum of [~~\$50,000~~] \$25,000 in the endowment care trust fund.

(b) Each endowment care cemetery shall deposit in the endowment care trust fund for each plot space sold or disposed of a minimum of:

- (i) \$1.50 a square foot for each grave;
- (ii) \$15 for each niche; and
- (iii) \$60 for each crypt.

(2) (a) An endowment care cemetery shall collect endowment care funds only pursuant to a written contract of sale signed by the endowment care cemetery and the purchaser.

(b) The contract of sale shall specify the terms of the endowment care trust consistent with this section and the terms of payment.

~~(b)~~ (c) If requested by the purchaser, a copy of the endowment care trust shall be provided to the purchaser.

(3) (a) Each endowment care cemetery shall prepare an annual written report for the benefit of its trustor lot holders.

(b) The report shall contain:

(i) information determined to be reasonable and necessary to show compliance with the provisions of this chapter;

(ii) the number and square feet of grave space;

(iii) the number of crypts and niches sold or disposed of under endowment care during a specific period; and

(iv) the dollar amount of sales, amounts paid, amounts receivable, and amounts deposited in endowment care funds for crypts, niches, and grave space during a specific period, set forth on the accrual basis as determined by the cemetery authority.

(c) An officer of the endowment care cemetery authority shall verify the report.

(d) The report shall be on file in the principal office of the endowment care cemetery and shall be made available upon request.

(e) The report shall be completed by the 15th day of the third month following the end of the endowment care cemetery's fiscal year.

(4) An officer, director, partner, proprietor, or other person having control of the records of an endowment care cemetery shall provide the reports and records necessary to comply with the provisions of this chapter.

(5) A person is guilty of a class A misdemeanor who willfully and intentionally fails to:

(a) deposit funds collected as endowment care funds into the endowment care trust within 30 days of receipt of the funds; or

(b) prepare the report required by Subsection (3).

(6) Endowment care funds may be invested separately or together. The investment income shall be divided between the funds in the proportion that each contributed to the invested amount.

(7) Endowment care funds shall be invested in accordance with Section 31A-18-105 and Title 75, Chapter 7, Trust Administration.

(8) (a) An endowment care cemetery shall place endowment care funds with an independent trustee appointed by the endowment care cemetery.

(b) A trustee may be independent even if it has common ownership with the cemetery.

(c) The independent trustee shall be a depository institution, as defined by Section 7-1-103, or an insurer, as defined in Section 31A-1-301.

(9) (a) The trustee shall submit to the endowment care cemetery an annual independent attestation of the endowment care trust funds.

(b) The attestation shall state:

(i) the total amount of the general and special endowment care funds invested by law;

(ii) the amount of cash on hand not invested;

(iii) the location, description, and character of the investments in which the special endowment care funds are invested;

(iv) the value of any securities held in the endowment care fund; and

(v) the actual financial condition of the funds.

(10) (a) A trustee may not receive compensation for services and expenses, including audits, in excess of 5% of the income derived from an endowment care fund in any year.

(b) If there are insufficient funds from the income derived from the endowment care trust fund to pay for the attestation of the endowment care funds, the endowment care cemetery shall pay amounts due from funds other than the endowment care trust fund or income derived from that fund.

(11) The income from an endowment care fund shall be used for the care, maintenance, and embellishment of the cemetery as determined by the endowment care cemetery, and to pay for administering the fund.

Section 2. Section **8-4-3** is amended to read:

8-4-3. Withdrawals from endowment fund.

~~[(1) The endowment care fund established for any cemetery shall remain irrevocable until the fund balance is \$100,000.]~~ When the endowment care fund balance ~~[is]~~ reaches \$100,000, the ~~[initial]~~ cemetery authority may withdraw the initial deposit ~~[required in Subsection 8-4-2(1)(a) may be withdrawn]~~ of \$25,000 at the rate of \$1,000 for each additional \$3,000 added to the fund.

~~[(2) If an endowment care fund has been established before July 1, 1983, with an initial deposit of \$25,000, this deposit may be withdrawn by the cemetery authority after the fund balance has reached \$50,000 at the rate of \$1,000 for each additional \$3,000 added to the fund.]~~

Section 3. Repealer.

This act repeals:

Section **8-4-12, Endowment care cemetery prohibited.**