

IC 23-14-48

Chapter 48. Cemetery Perpetual Care Fund

IC 23-14-48-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 9 of this chapter by P.L.113-2007 apply only to acts committed after June 30, 2007.

As added by P.L.220-2011, SEC.380.

IC 23-14-48-1

Application of chapter

Sec. 1. (a) Except as provided in subsection (b), this chapter does not apply to:

- (1) a cemetery owned by a municipal corporation or other governmental unit;
- (2) a religious cemetery; or
- (3) a cemetery:
 - (A) that is ten (10) acres or less in size;
 - (B) that is owned and operated entirely and exclusively by a nonprofit mutual association in existence on June 14, 1939; and
 - (C) in which burials have taken place before June 14, 1939.

(b) If a cemetery described in subsection (a)(3) directly or indirectly:

- (1) constructs or permits to be constructed any structure, above or below ground, and offers interment rights in the structure for sale to the general public; or
- (2) acquires:
 - (A) additional land; or
 - (B) an interest in additional land;causing the cemetery to exceed ten (10) acres in size;

this chapter applies to the whole of the cemetery.

As added by P.L.52-1997, SEC.22.

IC 23-14-48-2

Duties of owner

Sec. 2. (a) The owner of each cemetery shall provide for the creation and establishment of an irrevocable perpetual care fund.

(b) The principal of a perpetual care fund established under this section shall permanently remain intact, except as provided in this chapter. The principal shall be known as the "perpetual care fund" or "endowment care fund" of the cemetery.

(c) Fifty percent (50%) of any appreciation of the principal of the fund may be withdrawn annually not more than forty-five (45) days after the end of the fund's fiscal year.

(d) Any income earned by the fund during the fiscal year may be withdrawn quarterly during the fund's fiscal year.

(e) The income from a fund established under this section and any withdrawal of the appreciation of the principal under subsection (c) shall be devoted to the perpetual care of the cemetery.

(f) The fund established by this chapter is not subject to attachment by a creditor unless the underlying debt was incurred for the perpetual care or endowment care (as defined in IC 23-14-33-30) of the cemetery for which the fund was established.

As added by P.L.52-1997, SEC.22. Amended by P.L.66-1999, SEC.1.

IC 23-14-48-3

Establishment; payment; fund segregated

Sec. 3. (a) A perpetual care fund shall be established under this chapter as follows:

(1) In the case of a cemetery for earth burials, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) fifteen percent (15%) of the sale price; or

(B) eighty cents (\$0.80) per square foot of area;

of each burial plot sold or transferred, whichever is greater.

(2) In the case of a community or public mausoleum, or community or public garden crypt, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) eight percent (8%) of the sale price; or

(B) one hundred dollars (\$100) per crypt sold or transferred; whichever is greater.

(3) In the case of a community columbarium, by the application and payment to the perpetual care fund of an amount at least equal to twenty dollars (\$20) per niche sold or transferred.

(b) From the sale price, any payment on the sale price, or in a nonmonetary transfer, the owner shall pay an amount in proportion to the requirements of subsection (a)(1) through (a)(3) to the care fund. The payment must be in cash and shall be deposited with the trustee of the fund:

(1) not more than thirty (30) days after the end of the month in which payments on the sale are received; or

(2) not more than thirty (30) days after the end of the month in which there was a transfer which did not involve a sale.

(c) The payments required by this section are required to be paid only on the original sale or transfer and not again for any subsequent resale or transfer of the same ground interment rights, crypt, or niche.

(d) The trustee of a fund established under this chapter must keep the fund segregated from any other fund or account belonging to the owner of the cemetery.

As added by P.L.52-1997, SEC.22. Amended by P.L.66-1999, SEC.2; P.L.65-2007, SEC.1; P.L.61-2008, SEC.1.

IC 23-14-48-4

Duties of cemetery organized after March 6, 1953, and before July 1, 1997

Sec. 4. (a) In addition to meeting the requirements of sections 1 through 3 of this chapter, a cemetery that:

(1) is organized after March 6, 1953, and before July 1, 1997,

by incorporation, association, individually, or any other means;
or

(2) has its first burial after March 6, 1953, and before July 1, 1997;

shall, before disposing of a burial lot or right, making a sale of a burial lot or right, or making its first burial, cause to be deposited in a financial institution the sum of twenty-five thousand dollars (\$25,000) in cash in the perpetual care fund or endowment care fund established under this chapter for the maintenance of the cemetery.

(b) The cemetery owner shall designate the financial institution as trustee of the fund. The financial institution must execute an affidavit stating that it has accepted the trusteeship of the fund and that the twenty-five thousand dollars (\$25,000) has been deposited in the fund. The cemetery shall:

- (1) exhibit the affidavit in the principal office of the cemetery;
- (2) keep the affidavit available at all times for examination; and
- (3) record the affidavit in the miscellaneous records in the office of the recorder in the county in which the cemetery is located.

(c) When the cemetery has deposited in the perpetual care fund or endowment care fund, as required by this section, fifty thousand dollars (\$50,000):

- (1) the cemetery shall submit proof of this fact to its trustee; and
- (2) the trustee shall pay over to the cemetery the amount of twenty-five thousand dollars (\$25,000) that the cemetery deposited in the fund under subsection (a).

As added by P.L.52-1997, SEC.22. Amended by P.L.66-1999, SEC.3; P.L.3-2008, SEC.168.

IC 23-14-48-5

Duties of cemetery organized after June 30, 1997

Sec. 5. (a) In addition to meeting the requirements of sections 1 through 3 of this chapter, a cemetery that:

- (1) is organized after June 30, 1997, by incorporation, or any other means; or
- (2) has its first burial, entombment, or inurnment after June 30, 1997;

shall, before disposing of a burial lot or right, making a sale of a burial lot or right, or making its first burial, entombment, or inurnment cause to be deposited in a financial institution one hundred thousand dollars (\$100,000) in cash in the perpetual care fund or endowment care fund established under this chapter for the maintenance of the cemetery.

(b) The cemetery owner shall designate the financial institution as trustee of the fund. The financial institution must execute an affidavit stating that it has accepted the trusteeship of the fund and that the one hundred thousand dollars (\$100,000) has been deposited in the fund. The cemetery shall:

- (1) exhibit the affidavit in the principal office of the cemetery;
- (2) keep the affidavit available at all times for examination; and

(3) record the affidavit in the miscellaneous records in the office of the recorder of the county in which the cemetery is located.

(c) When the cemetery has deposited in the perpetual care fund or endowment care fund, as required by this section, two hundred thousand dollars (\$200,000):

- (1) the cemetery shall submit proof of this fact to its trustee; and
- (2) the trustee shall pay over to the cemetery one hundred thousand dollars (\$100,000) that the cemetery deposited in the fund under subsection (a).

As added by P.L.52-1997, SEC.22. Amended by P.L.66-1999, SEC.4; P.L.3-2008, SEC.169.

IC 23-14-48-6

Increases

Sec. 6. A perpetual care or endowment care fund may be increased by adding to the fund surplus money or property that the cemetery receives by will, deed, gift, or otherwise.

As added by P.L.52-1997, SEC.22.

IC 23-14-48-7

Accounting and report; audit

Sec. 7. (a) Not more than ninety (90) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian or trustee of the perpetual care fund of the cemetery shall prepare and file with the owner of the cemetery a detailed accounting and report of the perpetual care fund for the preceding fiscal year. The report:

- (1) must include, among other things, a properly itemized listing of the securities in which the funds are invested; and
- (2) shall be available for inspection and copying at all times by any owner of or holder of a burial right in the cemetery at the usual place at which the regular business of the cemetery is transacted.

(b) Not more than one hundred five (105) days after the end of the fiscal year of a cemetery to which this chapter applies, the trustee of the perpetual care fund of the cemetery shall file the report required under subsection (a) with the state board of funeral and cemetery service.

(c) The state board of funeral and cemetery service may audit or order an audit of the perpetual care fund of a cemetery if the state board of funeral and cemetery service determines that the trustee of the perpetual care fund is not complying with the requirements set forth in subsections (a) and (b). The cemetery that is the subject of the audit shall pay all costs associated with the audit.

(d) The owner of a cemetery shall maintain a report required by this section for the longer of:

- (1) ten (10) years; or
- (2) three (3) years after the date the owner sells or otherwise transfers the cemetery.

As added by P.L.52-1997, SEC.22. Amended by P.L.65-2007, SEC.2;

P.L.61-2008, SEC.2.

IC 23-14-48-8

Separate and distinct cemeteries

Sec. 8. Each geographic location used as a cemetery constitutes a separate and distinct cemetery for the purpose of this chapter.

As added by P.L.52-1997, SEC.22.

IC 23-14-48-9

Violation of chapter

Sec. 9. (a) Except as provided in subsections (b) and (c), a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who makes a false or fraudulent representation as to the existence, amount, investment, control, or condition of a perpetual care fund of a cemetery for the purpose of inducing another to purchase any burial right commits a Class C infraction.

(c) A person who knowingly or intentionally uses funds in a perpetual care fund or an endowment care fund established under this chapter for purposes other than the perpetual care of the cemetery for which the perpetual care fund or endowment fund was established commits a Class C felony.

As added by P.L.52-1997, SEC.22. Amended by P.L.113-2007, SEC.4.

IC 23-14-48-10

Formation of association for management, care, and supervision of cemetery

Sec. 10. (a) This section applies to a corporation that:

- (1) is organized under Indiana law for the purpose of establishing and maintaining a cemetery; or
- (2) is organized for another purpose but has established and maintains a cemetery.

(b) If:

- (1) a corporation described in subsection (a) has not provided a general perpetual care fund after having sold all of the lots in a cemetery; and
- (2) at least twenty-five (25) owners of lots in the cemetery or next of kin of owners of lots in the cemetery:
 - (A) form an association for the purpose of taking over the management, care, and general supervision of the cemetery; and
 - (B) sign and submit to the corporation a petition seeking authority for the management, care, and general supervision of the cemetery;

the corporation shall turn over to the association the complete authority for the management, care, and supervision of the cemetery.

(c) An association to which subsection (b) applies shall assume all responsibility and liability for the proper care and management of the cemetery, subject to the following:

(1) If a cemetery has been under the control of a certain religious denomination, sect, or creed that has observed certain religious customs or rules with reference to the burying of the dead in the cemetery, the association shall observe those religious customs or rules.

(2) The transfer of authority under this section does not affect the reversion of the title to the lands occupied by the cemetery if the land ever ceases to be used as a cemetery or burial place for the dead.

As added by P.L.52-1997, SEC.22.