

STATE OF IDAHO
ENDOWMENT CARE CEMETERY ACT



(UNOFFICIAL COPY)

DEPARTMENT OF FINANCE

(As Amended 2020)

ENDOWMENT CARE CEMETERY ACT

CHAPTER 4, TITLE 27, IDAHO CODE

27-401. DECLARATION OF POLICY. It is hereby declared to be in the public interest that cemeteries, as hereinafter in this act defined, advertising and/or selling "endowment care" or "perpetual care" cemetery lots, burial spaces, or interment facilities of any type or kind, be subject to regulation by the state of Idaho in order to insure the sound business practices essential to the continued furnishing of the endowment or perpetual care guaranteed. The provisions of this act shall be liberally construed to carry out this purpose.

27-402. SHORT TITLE. This act may be cited as the "Endowment Care Cemetery Act of 1963."

27-403. DEFINITIONS. When used herein, unless the context or subject matter requires otherwise, the terms hereinafter set forth shall have the following respective meanings:

(a) Cemetery. The term "cemetery" shall mean a place dedicated to, used and intended to be used for the permanent interment of the human dead, and shall include a burial plot for earth interments, a mausoleum for vault or crypt interments, a crematory, or a crematory and columbarium for cinerary interments, or any combination of one or more of the above.

(b) Endowed or Perpetual Care. The terms "endowed care" or "perpetual care" mean the maintenance and care of all places where interments have been made, of the trees, shrubs, roads, streets and other improvements contained within and/or forming a part of the cemetery. The term shall not include the maintenance or repair of monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

(c) Perpetual or Endowed Care Cemetery. The term "perpetual or endowed care cemetery" means a cemetery wherein lots or other burial spaces are sold or transferred under the representation that said cemetery will receive perpetual or endowed care as herein defined, free of further cost to the purchaser after payment of the original purchase price for said lot or burial space.

(d) Trustee. The term "trustee" means the financial institution, or the board of directors of a cemetery authority designated as trustee of the cemetery care fund.

(e) Cemetery Authority. The term "cemetery authority" means any person, firm, corporation, trustee, partnership, association or joint venture, including any family, religious, or fraternal cemetery owning, operating, controlling or managing the cemetery or holding lands for burial purposes.

(f) Burial Space. The term "burial space" means a space in the ground in a burial park for the interment of the remains of a deceased person, and/or a crypt or vault in a mausoleum for the uncremated remains of a deceased person, and/or a niche in a columbarium, other structure or in the ground for the interment of the cremated remains of a deceased person.

(g) Administrator. The term "administrator" means the director of the department of finance.

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27-404. CORPORATE FORM REQUIRED HEREAFTER FOR PERPETUAL OR ENDOWED CARE CEMETERY. From and after the effective date of this act it shall be unlawful to operate a perpetual or endowed care cemetery in this state except by means of a corporation organized under the laws of this state; provided, however, that this section shall not apply to any person, firm, corporation or association which, prior to the effective date of this act, was engaged in the business of operating a cemetery or cemeteries and had sold or contracted to sell burial space with a provision for perpetual or endowed care, if such person, firm or corporation has otherwise complied with the provisions of this act.

27-405. ARTICLES OF INCORPORATION -- TRUST FUND. After the effective date of this act, no charter shall be issued to a corporation organized for the purpose of maintaining and operating a perpetual or endowed care cemetery unless the articles of incorporation thereof certify to the establishment of an endowment or perpetual care trust fund for such care in accordance with the further provisions of this act, and that there is attached to said articles of incorporation the written instrument establishing said trust fund accompanied by the receipt of the trustee therein designated for the minimum care fund hereinafter provided.

27-406. DUTY OF OWNER OF CEMETERY IN EXISTENCE AT DATE OF ACT. After the effective date of this act no owner of a cemetery in existence at the effective date of this act, who, previous to such date, has not sold or contracted to sell lots in said cemetery with a provision for perpetual or endowed care, shall thereafter advertise or otherwise hold out to the public that said cemetery or any individual lot therein is entitled to perpetual or endowed care unless and until said owner shall have established a trust fund for the care of said cemetery as provided by this act.

27-407. TRUST FUND REQUIRED BEFORE SALE OF LOTS. After the effective date of this act, no corporation hereafter organized for the operation of a perpetual or endowed care cemetery nor any owner of a cemetery not previously operating as a perpetual or endowed care cemetery shall advertise or sell lots in said cemetery under the representation that said cemetery or individual space therein is entitled to perpetual or endowed care until there shall have been established a trust fund to provide for such care in accordance with the following requirements:

(a) That the cemetery authority deposit in an irrevocable trust fund with a trustee, as hereinafter qualified, the sum of fifty thousand dollars (\$50,000) in cash.

(b) That from the final proceeds of any sale made by the cemetery authority of an adult ground burial space there be deposited in said trust fund a sum equal to ten percent (10%) of the selling price of each space, or the sum of ten dollars (\$10.00), whichever is greater; the deposit for an infant burial space shall be ten percent (10%) of the selling price received therefor.

(c) That there be deposited in said trust fund, from the final proceeds of any sale, the sum of five dollars (\$5.00) for each niche sold.

(d) That there be deposited in said trust fund, from the final proceeds of any sale, the sum of twenty-five dollars (\$25.00) for each crypt sold.

(e) All moneys herein required to be paid said trust fund shall be deposited therein not later than thirty (30) days from receipt of the final payment by the purchaser of the burial space.

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(f) That the income from the trust or endowment care fund shall be used solely for the general care, maintenance, and embellishment of the cemetery and shall be applied in such manner as the cemetery authority may from time to time determine be for the best interests of the cemetery.

27-408. INSTRUMENT IN WRITING. The trust fund so created shall be evidenced by an instrument in writing, and shall contain in addition to the requirements of section 27-407, Idaho Code, the following provisions:

(a) That there shall be designated a trustee under this act, which shall be any federally insured financial institution located within the state of Idaho, duly authorized to transact a trust business, or the board of directors of the cemetery authority. When the trust fund is in the care of such board of directors as a board of trustees, the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings.

(b) Where the trust is vested in such board of directors as a board of trustees, each of said trustees shall file with the administrator a surety bond in the amount of five thousand dollars (\$5,000), conditioned upon his full and faithful performance of his trust obligations.

(c) As compensation, the trustee, whether it be a financial institution acting in such capacity or the board of directors of a cemetery authority acting as the trustee, shall be entitled to compensation in an amount not exceeding twenty-five dollars (\$25.00) quarterly, or a sum equal to one and one-half percent (1 1/2%) per annum of the principal of the trust fund, whichever is the greater.

(d) In connection with its investment of the trust fund, the trustee shall be governed by the terms of the uniform prudent investor act, chapter 5, title 68, Idaho Code, as presently enacted or as may be from time to time amended.

(e) The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. The income shall be used exclusively for the care of those portions of the cemetery in which lots have been sold with the provision for perpetual or endowed care. It is the intent of this section that the income of said fund shall be used solely for the care of lots or other burial spaces sold to third persons with the provision for perpetual or endowed care, and the care and embellishment of such other portions of the cemetery as may be desirable to preserve the beauty and dignity of the lots sold.

(f) The initial endowment care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached the sum of one hundred thousand dollars (\$100,000), when it may be withdrawn at the rate of two thousand dollars (\$2,000) from the original fifty thousand dollars (\$50,000) for each additional six thousand dollars (\$6,000) added to the fund, this to continue until the entire original fifty thousand dollars (\$50,000) has been withdrawn by the cemetery authority.

27-409. EXISTING CEMETERIES -- APPLICATION OF LAW. Any cemetery authority in existence prior to the effective date of this act, which has in fact sold burial spaces under the representation that perpetual care shall be afforded to such lot, shall not be required to make the initial deposit of fifty thousand dollars (\$50,000) in said irrevocable trust fund, but said cemetery authority, in order to comply with the provisions hereof, must meet each and every other requirement henceforth as are prescribed and set forth and required by the provisions of this statute.

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27-410. FUNDS DEEMED FOR CHARITABLE PURPOSE -- TAX EXEMPT -- FUTURE INTERESTS. The endowed care funds authorized herein and all sums paid therein or contributed thereto are, and each thereof are, hereby expressly permitted and shall be deemed to be for charitable purposes. Such endowed care shall be deemed to be provisioned for the discharge of the duty due from the person or persons contributing thereto to the persons interred and to be interred in the cemetery, and likewise a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming places of disrepair, reproach and desolation in the communities in which they are situated. The trust funds authorized herein, the income therefrom, and the moneys received under any contract providing for care of a burial space, and deposited in the trust fund shall be exempt from taxation. No payment, gift, grant, bequest or other contribution for such general endowed care shall be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating such trust, nor shall said fund or any contribution thereto be deemed to be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

27-411. ANNUAL REGISTRATION STATEMENT WITH ADMINISTRATOR. Every cemetery authority owning, operating, controlling or managing an endowed care cemetery shall register with the administrator, by filing an annual registration statement on forms furnished by said administrator, which shall show, as of the end of the preceding calendar year or fiscal year, whichever is more convenient to the cemetery authority, the following:

(a) The amount of the principal of the care funds held by the trustee of said funds of such cemetery authority, at the beginning of such year, and in addition thereto all moneys or property received during such year, from the following sources:

- (1) Under and by virtue of the sale of a lot, grave, crypt or niche.
- (2) Under and by virtue of any gift, grant, devise, bequest, payment or other contribution made subsequent to the effective date of the endowed care cemetery act of 1963.

(b) The income received from such care funds during the preceding calendar or fiscal year as the case may be. Where any of the care funds of a cemetery authority are held by a trustee, other than the board of directors of the cemetery authority, the annual registration statement filed by any cemetery authority shall also contain a certificate signed by the trustee of the care funds of such cemetery authority certifying to the truthfulness of the statements in the report as to:

- (1) The total amount of principal of the care funds held by the trustee.
- (2) The securities in which such care funds are invested and the cash on hand as of the day of the report; and
- (3) The income received from such care funds during the preceding calendar year or fiscal year as the case may be.

Such statement shall be filed by the cemetery authority on or before December 31 of each calendar year with the administrator. If the fiscal year of such cemetery authority is other than on a calendar year basis, then such statement shall be filed within thirty (30) days of the end of its fiscal year. A filing fee in the amount of one hundred fifty dollars (\$150) shall be payable at the time of the filing of the annual statement. All reports shall be prepared by an independent certified public accountant or by a member of the Canadian institute of chartered accountants.

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27-412. SUITS TO ENFORCE STATUTE. (1) Should the cemetery authority fail to remit to the trustee or trustees, in accordance with the law, the funds herein provided for endowment care, or fail to expend all such funds and reasonable care for and maintain any portion of a cemetery entitled to endowment care, or should the trustee or trustees fail to perform the trust obligations in accordance with the law, any three (3) separate lot owners whose lots or other burial spaces are entitled to endowment care, or the next of kin, heirs at law or personal representatives of such lot owners, shall have the right, or the prosecuting attorney of any county where such lots are situated, shall have the power, by suit for injunction or for appointment of a receiver, to sue for, to take charge of, and to expend such net income for the purposes set out in sections 27-407 and 27-408, Idaho Code. Such suit may be filed in the district court of the county in which said cemetery is located.

(2) Whenever it appears to the administrator that any cemetery authority or trustee has engaged or is about to engage in any act or practice constituting a violation of any provisions of this act or any rule or order hereunder or when an endowment care cemetery fails after thirty (30) days' notice of delinquency to make any report to the administrator required by section 27-411, Idaho Code, the administrator shall give notice of the foregoing to the trustee or trustees of the cemetery endowment care fund, the cemetery authority and the attorney general of Idaho. It shall be the duty of the attorney general within ninety (90) days after the receipt of such notice to institute suit in the district court of any county of this state in which such cemetery is located, for an injunction against further sales of graves, plots, crypts, niches, burial vaults, markers or other cemetery merchandise by such cemetery or for the appointment of a receiver to take charge of the cemetery or trust fund, unless he shall prior to that time be notified by the administrator that such failure to conform to the requirements of the law or to report has been corrected.

(3) In addition to the administrator's notice to the trustee or trustees of the cemetery endowment care fund, the cemetery authority and the attorney general of the state of Idaho, the administrator may order the trustee or the cemetery authority, or both, to freeze the endowment care funds and to not expend or transfer them for any purpose other than directly for the reasonable care and maintenance of the cemetery. This order must be issued within thirty (30) days of the notice and will expire ninety (90) days after the order is issued or when the attorney general files suit, whichever is earlier. Failure to comply with the order shall be a violation of this act.

27-413. RECORDS SUBJECT TO EXAMINATION. All records of a cemetery authority are subject at any time or from time to time to such reasonable periodic, special or other examinations, within or without this state, by representatives of the administrator, as the administrator deems necessary or appropriate in the public interest.

27-416. RULES AND REGULATIONS. The administrator may establish, adopt and promulgate necessary rules and regulations for the administration and enforcement of this chapter, and the laws subject to his jurisdiction, and prescribe the form of statements and reports provided for in this chapter.

27-420. CEMETERY EXAMINATION FEES. All regulatory fees or other moneys to be paid under this chapter, unless provision be made otherwise, shall be paid at least once a

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month to the state treasurer to be credited to the finance administrative account in the state dedicated fund.

27-421. CONTRIBUTIONS. A cemetery authority which has established an endowment care fund may take and hold, as part of or incident to the fund, any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund.

27-422. EXEMPTION FROM TAXATION. A perpetual or endowed care cemetery shall be exempt from any and all property taxes on any burial space or spaces, as herein defined, sold by it for the purpose of interment. The cemetery authority shall report annually in writing to the assessor of the county in which the cemetery is located, such burial spaces sold during said year, and the same shall be removed from the tax rolls, effective from and after the year in which the space was sold.

27-423. VIOLATIONS -- MISDEMEANORS. Violations of this act shall constitute a misdemeanor and each violation shall constitute a separate offense. Any cemetery authority, person, firm or corporation violating any of the provisions of this act shall, upon conviction, be punishable by a fine of not less than \$100 nor more than \$300, or if a person, by a fine or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

27-423A. INJUNCTIVE POWER. The attorney general of the state of Idaho is authorized to institute appropriate legal proceedings to enjoin violations of this act.

27-424. ACT INAPPLICABLE TO CERTAIN CEMETERIES. The provisions of this act shall not apply to any municipal cemetery district, state or federal cemetery.