



Ohio Revised Code

Section 1721.21 Establishment of endowment care trust.

Effective: August 17, 2021

Legislation: House Bill 7

(A) As used in this section:

(1) "Person" means any corporation, company, partnership, individual, or other entity owning or operating a cemetery for the disposition of human remains.

(2) "Cemetery" means any one or a combination of more than one of the following:

(a) A burial ground for earth interments;

(b) A mausoleum for crypt entombments;

(c) A columbarium for the deposit of cremated remains;

(d) A scattering ground for the spreading of cremated remains.

(3) "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.

(4) "Burial right" means the right of earth interment.

(5) "Entombment right" means the right of entombment in a mausoleum.

(6) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.

(7) "Human remains" means any part of the body of a deceased human being, in any stage of decomposition or state of preservation, or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition.

(B) No person shall operate or continue to operate any cemetery in this state unless an endowment



care trust is established and maintained as required by this section.

(C) Any person desiring to operate any cemetery that is organized or developed after July 1, 1970, before offering to sell or selling any burial lot, burial right, entombment right, or columbarium right in that cemetery, shall first establish an endowment care trust, segregated from other assets, and place in that fund a minimum of fifty thousand dollars in cash or in bonds of the United States, this state, or any county or municipal corporation of this state.

Whenever any person described in this division has placed another fifty thousand dollars in the endowment care trust out of gross sales proceeds, in addition to the deposit required by this division, that person, after submitting proof of this fact to the trustees of the endowment care trust, may be paid a distribution in the sum of fifty thousand dollars from the endowment care trust.

(D) Any person desiring to operate or to continue to operate any cemetery after July 1, 1970, shall place into the endowment care trust as required by this section not less than ten per cent of the gross sales proceeds received from the sale of any burial lot, burial right, entombment right, or columbarium right. This percentage shall be placed in the endowment care trust no later than thirty days following the month in which the entire gross sales are received.

(E) The trustees of the endowment care trust shall consist of at least three individuals who have been residents of the county in which the cemetery is located for at least one year, or a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that has securities pledged in accordance with section 1111.04 of the Revised Code. If the trustees are not a financial institution or trust company, the trustees shall be bonded by a fidelity bond, or insured under an insurance policy less any deductible, in an aggregate amount of not less than one hundred per cent of the funds held by the trustees. The trustees or their agent shall, on a continuous basis, keep exact records as to the amount of funds under any joint account or trust instrument being held for the individual beneficiaries showing the amount paid, the amount deposited and invested, and accruals and income.

The funds of the endowment care trust shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to sections 2109.37 and 2109.371 of the Revised Code or, if provided for in the instrument creating the trust, pursuant to the Ohio Uniform Prudent Investor



Act.

(F) Any person offering to sell or selling any burial lot, burial right, entombment right, or columbarium right shall give to the purchaser of the lot or right, at the time of sale, a written agreement that identifies and unconditionally guarantees to the purchaser the specific location of the lot or the specific location to which the right applies.

(G) No person shall open or close any grave, crypt, or niche for the interment of human remains in a cemetery without the permission of the cemetery association or other entity having control and management of the cemetery.

(H) Except as provided in division (G) of this section, this section does not apply to a family cemetery as defined in section 4767.02 of the Revised Code, to any cemetery that is owned and operated entirely and exclusively by churches, religious societies, established fraternal organizations, municipal corporations, or other political subdivisions of the state, or to a national cemetery.

(I) The distribution from the endowment care trust shall be used only to pay for both of the following:

(1) The cost and expenses incurred to establish, manage, invest, and administer the records and the trust;

(2) The maintenance, supervision, improvement, and preservation of the grounds, lots, buildings, equipment, statuary, and other real and personal property of the cemetery.

(J)(1) Annual reports of all the assets and investments of the endowment care trust shall be prepared and maintained, and shall be available for inspection at reasonable times by any owner of interment rights in the cemetery.

(2) Every cemetery required to establish and maintain an endowment care trust shall ensure each of the following:

(a) That the cemetery has deposited, at the time specified in division (D) of this section, the amounts



required by that division in the cemetery's endowment care trust;

(b) That the cemetery used the amounts withdrawn only for the purposes specified in division (I) of this section;

(c) Subject to division (K)(5) of this section, that all principal and capital gains, less any payment of taxes associated with such gains, have remained in the endowment care trust;

(d) That the endowment care trust has not been used to collateralize or guarantee loans and has not otherwise been subjected to any consensual lien;

(e) That the endowment care trust is invested in compliance with the investing standards set forth in sections 2109.37 and 2109.371 of the Revised Code, or, if provided for in the instrument creating the trust, the Ohio Uniform Prudent Investor Act.

(3) Every cemetery required to establish and maintain an endowment care trust shall do both of the following:

(a) File an affidavit annually with the division of real estate of the department of commerce, in a form prescribed by the division, certifying under oath the cemetery satisfied division (J)(2) of this section;

(b) Notify the division of real estate of the department of commerce, in a form prescribed by the division, of the percentage of the unitrust distribution from the endowment care trust, as described in divisions (K)(2)(a)(ii) and (b) of this section.

(K)(1) Every cemetery shall choose the distribution of either of the following from the endowment care trust:

(a) All net ordinary income, which includes collected dividends, interest, and other income earned by the trust, reduced by any expenses, including, but not limited to, taxes on income, fees, commissions, and costs;



(b) A unitrust disbursement not exceeding five per cent of the fair market value of the endowment care fund. "Fair market value," for the purpose of division (K)(1)(b) of this section, means the average of the net fair market value of the assets of the endowment care trust as of the last trading day for each of the three preceding fiscal year ends.

(2)(a) A cemetery that selects the unitrust disbursement distribution method, as provided in division (K)(1)(b) of this section, shall do both of the following:

(i) Deliver to the trustees of the endowment care trust written instructions, including the disbursement percentage selected, not later than sixty days prior to the beginning of a calendar year;

(ii) Deliver to the division of real estate of the department of commerce notification that the cemetery selected the unitrust disbursement method and the percentage selected, in compliance with division (J)(3)(b) of this section.

(b) The distribution method and, if a unitrust disbursement, the disbursement percentage selected shall remain in effect unless the cemetery notifies the trustees and the division of real estate of the department of commerce of its desire to effect a change. The trustees shall ensure that an investment policy is in place whose goals and objectives are supportive of the growth of the endowment care trust.

(3) Distributions from the endowment care trust shall be made on a monthly, quarterly, semiannual, or annual basis, as agreed upon by the cemetery and the trustees. If the trustees do not receive written instructions from the cemetery informing the trustees of the method of calculation and distribution chosen, the trustees shall calculate and distribute the net income, as earned, on a monthly basis.

(4) In order to withdraw a unitrust disbursement, the fair market value of the endowment care trust after the disbursement shall be greater than eighty per cent of the aggregate fair market value of the endowment care trust as of the end of the immediately preceding calendar year. Should this not be the case, disbursement shall be limited for that year to net ordinary income.

(5) The trustees shall pay reasonable operating expenses and taxes of the endowment care trust itself. If the operating expenses and taxes paid are greater than two and one-half per cent of the fair market



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value for the preceding calendar year end and the cemetery has selected a unitrust disbursement, the trustees shall reduce the unitrust disbursement by the amount exceeding two and one-half per cent.