



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BURIAL SERVICES SECTION**

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Language for Improvement Care Trust Agreement

Title 46, Chapter 1, Part 2 has specific requirements for Improvement Care Trust Accounts. This includes required language in the trust agreement and that the Trust Agreement must be on file with the Department of Commerce and Insurance. The following is language that Burial Services suggests be included in all cemetery improvement care trust agreements. It is highly recommended, however, that each cemetery consult with a private attorney when drafting or revisiting its trust agreement to ensure compliance with the Code.

DEPOSITS

The Cemetery Company agrees to deposit in this trust fund not less than the following minimum amounts:

1. For land, but not including lawn crypts or land donated without charge for the purpose of interring the remains of a deceased person who was under eighteen (18) years of age at the time of death, one dollar (\$1.00) per square foot of the land sold or twenty percent (20%) of the total transaction amount for the land, whichever is greater;
2. For a lawn crypt, twenty percent (20%) of the total sales price of the land excluding the lawn crypt, or fifty dollars (\$50), whichever is greater;
3. For a mausoleum, crypt or niche, not less than ten percent (10%) of the total sales price;
4. For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial marker or monument, the full amount received;
5. For a commodity, the full amount received for memorial care;
6. For the sale of land for non-cemetery purposes, the Commissioner of the Department of Commerce and Insurance may order the Cemetery Company disposing of the land to deposit up to one hundred percent (100%) of the net proceeds of the disposition in the cemetery's improvement care trust fund or the cemetery's pre-need merchandise and services trust fund, or both, within thirty (30) days after the disposition, if there is a deficiency in either trust fund. The order may not exceed the actual amount of the deficiency in the improvement care trust fund or the pre-need merchandise and services trust fund, or both.

The Cemetery Company shall be permitted to make deposits in excess of the foregoing minimum amounts; deliberate excess deposits shall not be credited toward any future liability. The Trustee

shall not be required to see that such minimum amounts are paid in. The minimum amounts set out are required under Tennessee Code Annotated Section 46-1-204. It is agreed and understood that should this statute be amended to change the minimum deposit amounts, then the Cemetery Company shall be bound by any statutory amendment upon its effective date.

Deposits shall be made by the Cemetery Company not later than thirty (30) days after the close of the month in which the final payment was received on the purchase price of each lot, grave space, crypt or niche, family mausoleum or memorial care. The Trustee shall not be required to see to the timeliness of any such deposits.

PAYMENT OF INCOME

In accordance with the Code, in order to receive net income from the trust, Cemetery Company shall certify to Trustee, on forms provided by the Commissioner of the Department of Commerce and Insurance of the State of Tennessee (Commissioner), that the cemetery is registered with the Department of Commerce and Insurance and that it is current on all required deposits to the trust. This does not prohibit the Cemetery Company from making payments on arrearages through special arrangements with the Commissioner, provided that those arrangements are included as part of the certification to Trustee.

If a cemetery for which an improvement care trust has been funded is not being operated by its owner, then the Trustee, in the trust officer's discretion, may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement of the cemetery as authorized by Tennessee Code Annotated Section 46-1-204(e)(3).

TRUST RECORDS & ACCOUNTING

Trustee shall maintain records to evidence the amounts received for deposit, the amounts disbursed and withdrawn, the total amount of funds held and the location, description, and character of the investments of the trust.

The Trustee shall render each year to the Cemetery Company a written account of the administration of the trust, and its books shall at all reasonable times be open for inspection by the Cemetery Company. The Trustee shall also furnish to the Commissioner any reports or information as may be required under the Code or otherwise requested.

RESIGNATION OR REMOVAL OF TRUSTEE

The Trustee reserves the right to resign as Trustee upon thirty (30) days written notice to Cemetery Company and the Commissioner. Cemetery Company shall have the right to remove Trustee as trustee of its trust fund upon thirty (30) days written notice to Trustee and the Commissioner. The parties shall appoint a successor trustee, subject to compliance with all related requirements of the Code, including Commissioner approval. Trustee shall transfer and convey to the successor trustee all trust assets held by Trustee. When the transfer and conveyance are completed, Trustee shall be released and discharged from all liability relating to further administration and investment of Trustor's trust.

CONSTRUCTION

This Trust Agreement shall be governed by the laws of the State of Tennessee. It is agreed and understood that should the State of Tennessee statutes or regulations concerning cemetery improvement care trust accounts be amended, then the parties shall be bound by any statutory amendment upon its effective date.