

# HOUSE BILL 13

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(PRE-FILED)

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By: **Chair, Health and Government Operations Committee (By Request – Departmental – Labor, Licensing and Regulation)**

Requested: November 6, 2013

Introduced and read first time: January 8, 2014

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Office of Cemetery Oversight – Perpetual Care Trust Funds and Preneed**  
3 **Trust Accounts – Regulation**

4 FOR the purpose of clarifying that realized capital gains are not income of a perpetual  
5 care trust fund and shall be deposited in the trust fund as principal; providing  
6 that a certain restriction on the use of perpetual care trust funds to make loans  
7 or investments in the real property of a cemetery applies to certain buildings  
8 and structures; clarifying that realized capital gains are income of a preneed  
9 trust account; prohibiting a trustee from using certain preneed trust funds to  
10 purchase an interest in certain contracts or agreements or to make certain loans  
11 or investments; providing that certain distributions of preneed trust funds by  
12 the trustee shall include a certain share of certain realized capital gains; and  
13 generally relating to perpetual care trust funds and preneed trust accounts.

14 BY repealing and reenacting, with amendments,  
15 Article – Business Regulation  
16 Section 5–603, 5–604, 5–707, 5–708, and 5–709  
17 Annotated Code of Maryland  
18 (2010 Replacement Volume and 2013 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Business Regulation**

22 5–603.

23 (a) In this section, “developed land area” means land in a cemetery:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) that is available for burial;

2 (2) where roads, paths, or buildings have been laid out or built; or

3 (3) where burial lots have been outlined on a plat or in a record or  
4 sales brochure.

5 (b) (1) Each sole proprietor registered cemeterian, permit holder, or any  
6 other person subject to the registration or permit provisions of this title who sells or  
7 offers to sell to the public a burial lot or burial right in a cemetery as to which  
8 perpetual care is stated or implied shall have a perpetual care trust fund.

9 (2) A separate perpetual care trust fund shall be established for each  
10 cemetery to which this section applies.

11 (3) On the general price list, contract of sale of burial space, and any  
12 conveyance documents, all cemeteries subject to the provisions of this subtitle shall  
13 state in writing the following using 12 point or larger type font:

14 (i) "The cemetery is a perpetual care cemetery."; or

15 (ii) "The cemetery is not a perpetual care cemetery."

16 (4) A cemetery created in the State after October 1, 2001, that is not  
17 exempt under § 5-602 of this subtitle shall be required to establish a perpetual care  
18 trust fund.

19 (c) Each sole proprietor registered cemeterian, permit holder, or any other  
20 person subject to the trust requirements of this subtitle initially shall deposit in the  
21 perpetual care trust fund at least:

22 (1) \$10,000, if the developed land area of the cemetery is 10 acres or  
23 less and the cemetery is a nonprofit cemetery which does not sell burial goods;

24 (2) \$25,000, if the developed land area of the cemetery is more than 10  
25 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

26 (3) \$25,000, if the developed land area of the cemetery is 10 acres or  
27 less and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells  
28 burial goods; or

29 (4) \$50,000, if the developed land area of the cemetery is more than 10  
30 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells  
31 burial goods.

32 (d) (1) The deposits required by this subsection are in addition to the  
33 deposits required by subsection (c) of this section.

1           (2) Except as provided in paragraph (4) of this subsection, within 30  
2 days after the end of the month when the buyer of a right of interment in a burial lot,  
3 above-ground crypt, or niche makes a final payment, the registered cemeterian,  
4 permit holder, or any other person subject to the trust requirements of this subtitle  
5 shall pay in cash to the trustee for deposit in the perpetual care trust fund:

6                   (i) at least 10% of the actual selling price of each right of  
7 interment in a burial lot, above-ground crypt, or niche; or

8                   (ii) if the burial space is sold at a discount or at no cost, at least  
9 10% of the imputed cost of the fair retail value.

10           (3) The amount of deposit to the perpetual care trust fund shall be  
11 deducted from the proceeds of the listed selling price of the right of interment in a  
12 burial lot, above-ground crypt, or niche, and may not be charged as an add-on to the  
13 purchaser.

14           (4) This subsection does not apply to the sale of a second right of  
15 interment or the resale of a right of interment in a burial lot, above-ground crypt, or  
16 niche for which the cemetery already has paid into the perpetual care trust fund the  
17 deposit required by this subsection.

18           (e) The income from the perpetual care trust fund:

19                   (1) shall be used only for the perpetual care of the cemetery, including:

20                           (i) the maintenance, including the cutting of grass abutting  
21 memorials or monuments, administration, supervision, and embellishment of the  
22 cemetery and its grounds, roads, and paths; and

23                           (ii) the repair and renewal of buildings, including columbaria  
24 and mausoleums, and the property of the cemetery; and

25                   (2) may not be used to care for memorials or monuments.

26           **(F) REALIZED CAPITAL GAINS OF A PERPETUAL CARE TRUST FUND ARE**  
27 **NOT INCOME OF THE PERPETUAL CARE TRUST FUND AND SHALL BE DEPOSITED**  
28 **IN THE PERPETUAL CARE TRUST FUND AS PRINCIPAL OF THE PERPETUAL CARE**  
29 **TRUST FUND.**

30           **[(f)] (G)** (1) The perpetual care trust fund authorized by this subsection  
31 shall be a single purpose trust fund.

32                   (2) In the event of the bankruptcy or insolvency of, or assignment for  
33 the benefit of creditors by, or an adverse judgment against the sole proprietor

1 registered cemeterian, permit holder, or any other person subject to the trust  
2 requirements of this subtitle, the perpetual care trust funds may not be made  
3 available to any creditor as assets of the sole proprietor registered cemeterian, permit  
4 holder, or any other person subject to the trust requirements of this subtitle or as  
5 payment for any expenses of any bankruptcy or similar proceedings, but shall be  
6 retained intact to provide for the future maintenance of the cemetery.

7 (3) The perpetual care trust fund is not subject to judgment, execution,  
8 garnishment, attachment, or other seizure by process in bankruptcy or otherwise, or to  
9 sale, pledge, mortgage, or other alienation and is not assignable.

10 **[(g)] (H)** A sole proprietor registered cemeterian, permit holder, or any  
11 other person subject to the trust requirements of this subtitle shall maintain in the  
12 office of the cemetery a copy of the most recent trust report filed with the Office under  
13 § 5–606 of this subtitle and shall make the report available for inspection by an owner  
14 or a prospective purchaser of a right of interment in a burial lot, above-ground crypt,  
15 or niche.

16 5–604.

17 (a) A trustee appointed under this subtitle must be:

18 (1) a national banking association;

19 (2) a bank, as defined in the Maryland Uniform Fiduciaries Act;

20 (3) a savings bank insured by a unit of the federal government;

21 (4) a savings and loan association insured by a unit of the federal  
22 government; or

23 (5) a person who annually provides, with the trust report, the proof of  
24 a fidelity bond that meets the requirements of subsection (b) of this section from a  
25 recognized bonding institution authorized to do business in the State in an amount  
26 equal to the trust fund.

27 (b) The fidelity bond provided under subsection (a)(5) of this section shall be:

28 (1) for the benefit of the trust account of the cemetery or its burial  
29 space owners or both;

30 (2) conditioned such that the applicant shall comply with all Maryland  
31 laws and regulations relating to trust accounts; and

32 (3) subject to the approval of the Director.

1 (c) A trustee may not use any perpetual care trust funds required to be held  
2 in trust in accordance with this subtitle to:

3 (1) purchase an interest in any contract or agreement to which the  
4 registrant, permit holder, or any other person subject to the trust requirements of this  
5 subtitle, or any entity owned or under the control of a registrant, permit holder, or any  
6 other person subject to the trust requirements of this subtitle, or a spouse, child,  
7 parent, or sibling of a registrant or any other person subject to the trust requirements  
8 of this subtitle is a party; or

9 (2) make any loan or direct or indirect investment of any kind:

10 (i) to any registrant, permit holder, or any other person subject  
11 to the trust requirements of this subtitle or to any spouse, child, parent, or sibling of a  
12 registrant or any other person subject to the trust requirements of this subtitle;

13 (ii) to or in any entity or business operations owned or under the  
14 control of a registrant, permit holder, or any other person subject to the trust  
15 requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or  
16 any other person subject to the trust requirements of this subtitle;

17 (iii) on or in any real [estate] **PROPERTY** of a cemetery, **OR THE**  
18 **BUILDINGS OR STRUCTURES APPURTENANT TO THE PROPERTY;** or

19 (iv) in any permanent improvements of a cemetery or its  
20 facilities.

21 5-707.

22 (a) In this section, “seller’s account” means:

23 (1) the total of specific funds deposited from all preneed burial  
24 contracts of a seller commingled in a single fund; and

25 (2) any income derived from investing the money in the fund.

26 (b) Trust accounts shall be administered as this subtitle provides.

27 (c) (1) Except as otherwise provided in this subtitle, a trustee appointed  
28 under this subtitle is subject to the law that is generally applicable to trustees.

29 (2) If a trustee appointed under this subtitle is not located in the  
30 State, the agreement between the seller and the trustee expressly shall incorporate  
31 this subtitle.

32 (d) A trustee:

1           (1)     may rely on all certifications made under or required by this  
2 subtitle; and

3           (2)     is not liable to any person for that reliance.

4           (e)     (1)     **[A] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A**  
5 trustee may invest money of a trust account in any security that is a lawful  
6 investment for a fiduciary, including a time deposit or certificate of deposit issued by  
7 the trustee.

8           (2)     Except as otherwise provided in this subtitle, to ensure that money  
9 in the trust account is adequate, the trust income, **INCLUDING ANY REALIZED**  
10 **CAPITAL GAINS**, shall:

11                   (i)     remain in the trust account;

12                   (ii)    be reinvested and compounded; and

13                   (iii)   be disbursed only for payment of appropriate trustee's fees,  
14 commissions, and other costs of the trust account.

15           **(F)    A TRUSTEE MAY NOT USE ANY PRENEED TRUST FUNDS REQUIRED**  
16 **TO BE HELD IN TRUST IN ACCORDANCE WITH THIS SUBTITLE TO:**

17                   **(1)    PURCHASE AN INTEREST IN ANY CONTRACT OR AGREEMENT**  
18 **TO WHICH THE REGISTRANT, THE PERMIT HOLDER, OR ANY OTHER PERSON**  
19 **SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE, OR ANY ENTITY**  
20 **OWNED OR UNDER THE CONTROL OF A REGISTRANT, A PERMIT HOLDER, OR ANY**  
21 **OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE, OR**  
22 **A SPOUSE, CHILD, PARENT, OR SIBLING OF A REGISTRANT OR ANY OTHER**  
23 **PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE IS A PARTY;**  
24 **OR**

25                   **(2)    MAKE ANY LOAN OR DIRECT OR INDIRECT INVESTMENT OF**  
26 **ANY KIND:**

27                           **(I)    TO ANY REGISTRANT, PERMIT HOLDER, OR ANY OTHER**  
28 **PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE OR TO ANY**  
29 **SPOUSE, CHILD, PARENT, OR SIBLING OF A REGISTRANT OR ANY OTHER PERSON**  
30 **SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE;**

31                           **(II)   TO OR IN ANY ENTITY OR BUSINESS OPERATIONS**  
32 **OWNED OR UNDER THE CONTROL OF A REGISTRANT, A PERMIT HOLDER, OR ANY**  
33 **OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE, OR**

1 A SPOUSE, CHILD, PARENT, OR SIBLING OF A REGISTRANT OR ANY OTHER  
2 PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE;

3 (III) ON OR IN ANY REAL PROPERTY OF A CEMETERY OR A  
4 CREMATORY OR THE BUILDINGS OR STRUCTURES APPURTENANT TO THE  
5 PROPERTY; OR

6 (IV) IN ANY PERMANENT IMPROVEMENTS OF A CEMETERY, A  
7 CREMATORY, THE FACILITIES OF A CEMETERY OR CREMATORY, OR THE  
8 BUILDINGS OR STRUCTURES APPURTENANT TO A CEMETERY OR CREMATORY.

9 [(f)] (G) (1) A seller, on written notice to the trustee and in accordance  
10 with the agreement between them, may transfer the seller's account to another  
11 trustee.

12 (2) A trustee, on written notice to the seller and in accordance with the  
13 agreement between them, may transfer the seller's account to another trustee.

14 5-708.

15 (a) The trustee may not disburse specific funds until preneed goods are  
16 delivered or preneed services are performed as provided in the preneed burial contract  
17 or in this subtitle.

18 (b) On performance of a preneed burial contract:

19 (1) the seller shall certify to the trustee:

20 (i) delivery of the preneed goods or performance of the preneed  
21 services; and

22 (ii) the amount of specific funds in the trust account; and

23 (2) the trustee shall then pay to the seller the specific funds [and],  
24 accrued interest **ON THE SPECIFIC FUNDS, AND A PROPORTIONAL SHARE OF**  
25 **TOTAL REALIZED CAPITAL GAINS ATTRIBUTABLE TO THE SPECIFIC FUNDS.**

26 (c) (1) In a seller's records, the seller may itemize preneed goods or  
27 preneed services to which the trust requirements of this subtitle apply and the  
28 consideration paid or to be paid for each item.

29 (2) If a seller itemizes in accordance with paragraph (1) of this  
30 subsection, on performance of that part of a preneed burial contract identified for  
31 itemized preneed goods or preneed services:

32 (i) the seller shall certify to the trustee:

1 1. delivery of the preneed goods or performance of the  
2 preneed services; and

3 2. the amount of the specific funds identified in the  
4 seller's records for those preneed goods or preneed services; and

5 (ii) the trustee shall then pay to the seller those specific funds  
6 [and], accrued interest **ON THE SPECIFIC FUNDS, AND A PROPORTIONAL SHARE**  
7 **OF TOTAL REALIZED CAPITAL GAINS ATTRIBUTABLE TO THE SPECIFIC FUNDS.**

8 (d) (1) If a preneed burial contract provides, for 2 or more individuals,  
9 preneed goods or preneed services to which the trust requirements of this subtitle  
10 apply, a seller may designate in the seller's records the consideration paid for each  
11 individual.

12 (2) On performance of that part of the preneed burial contract  
13 identified to a particular individual:

14 (i) the seller shall certify to the trustee:

15 1. delivery of the preneed goods or performance of the  
16 preneed services; and

17 2. the amount of the specific funds applicable to that  
18 part of the preneed burial contract; and

19 (ii) the trustee shall then pay to the seller those specific funds  
20 [and], accrued interest **ON THE SPECIFIC FUNDS, AND A PROPORTIONAL SHARE**  
21 **OF TOTAL REALIZED CAPITAL GAINS ATTRIBUTABLE TO THE SPECIFIC FUNDS.**

22 5-709.

23 (a) (1) A buyer may cancel a preneed burial contract as to preneed goods  
24 not delivered or preneed services not performed if the buyer:

25 (i) permanently moves more than 75 miles from the cemetery  
26 specified in the preneed burial contract; and

27 (ii) gives to the seller written notice, under oath, of the move  
28 and includes the buyer's new permanent address.

29 (2) In that event:

30 (i) the seller shall certify to the trustee:

31 1. the cancellation of the preneed burial contract;



1                                   2.     the amount of the remaining specific funds applicable  
2 to the preneed burial contract; and

3                                   3.     the name and address of the buyer; and

4                                   (ii)   the trustee shall then pay to the buyer the remaining  
5 specific funds [and], accrued interest **ON THE SPECIFIC FUNDS, AND A**  
6 **PROPORTIONAL SHARE OF TOTAL REALIZED CAPITAL GAINS ATTRIBUTABLE TO**  
7 **THE SPECIFIC FUNDS.**

8           (b)   (1)   Notwithstanding subsection (a) of this section, by written notice, a  
9 buyer may cancel the purchase of a casket or casket vault under a preneed burial  
10 contract at any time prior to the time the buyer needs the casket or casket vault for  
11 burial.

12                               (2)   In that event:

13                               (i)   the seller shall certify to the trustee:

14                                   1.     the cancellation of the purchase of the casket or  
15 casket vault under the preneed burial contract;

16                                   2.     the amount of the specific funds applicable to the  
17 casket or casket vault under the preneed burial contract; and

18                                   3.     the name and address of the buyer;

19                               (ii)   the trustee shall pay to the buyer the specific funds [and],  
20 interest accrued on [those] **THE SPECIFIC funds, AND A PROPORTIONAL SHARE OF**  
21 **TOTAL REALIZED CAPITAL GAINS ATTRIBUTABLE TO THE SPECIFIC FUNDS;** and

22                               (iii)   in addition to the refund paid by the trustee, the seller shall  
23 pay to the buyer an amount of money necessary to provide the buyer with a refund of  
24 100% of the money paid for the casket or casket vault under the preneed burial  
25 contract.

26           (c)   If a buyer fails to provide written notice of cancellation and defaults on a  
27 preneed burial contract and, as a result, the seller terminates the preneed burial  
28 contract:

29                               (1)   the seller shall certify to the trustee:

30                                   (i)   the default and termination of the preneed burial contract;

31                                   (ii)   the amount of the specific funds; and

1 (iii) the reasonable expenses of the seller; and

2 (2) the trustee shall then pay:

3 (i) to the buyer, those specific funds [and], accrued interest **ON**  
4 **THE SPECIFIC FUNDS, AND A PROPORTIONAL SHARE OF TOTAL REALIZED**  
5 **CAPITAL GAINS ATTRIBUTABLE TO THE SPECIFIC FUNDS**, less the reasonable  
6 expenses of the seller; and

7 (ii) to the seller, the reasonable expenses of the seller.

8 (d) If specific funds on deposit in a trust account have been dormant for at  
9 least 50 years since the date of the last deposit or disbursement and the seller cannot  
10 locate the buyer:

11 (1) the seller shall certify to the trustee:

12 (i) that the trust account is dormant and the buyer cannot be  
13 located; and

14 (ii) the amount of the specific funds; and

15 (2) the trustee shall then pay to the seller those specific funds [and],  
16 accrued interest **ON THE SPECIFIC FUNDS, AND A PROPORTIONAL SHARE OF**  
17 **TOTAL REALIZED CAPITAL GAINS ATTRIBUTABLE TO THE SPECIFIC FUNDS.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 July 1, 2014.