

## **Chapter 81**

### **(House Bill 13)**

AN ACT concerning

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

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

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

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

#### **Article – Business Regulation**

5–603.

- (a) In this section, “developed land area” means land in a cemetery:
- (1) that is available for burial;
  - (2) where roads, paths, or buildings have been laid out or built; or
  - (3) where burial lots have been outlined on a plat or in a record or sales brochure.
- (b) (1) Each sole proprietor registered cemeterian, permit holder, or any other person subject to the registration or permit provisions of this title who sells or

offers to sell to the public a burial lot or burial right in a cemetery as to which perpetual care is stated or implied shall have a perpetual care trust fund.

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

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

(i) “The cemetery is a perpetual care cemetery.”; or

(ii) “The cemetery is not a perpetual care cemetery.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) In the event of the bankruptcy or insolvency of, or assignment for the benefit of creditors by, or an adverse judgment against the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle, the perpetual care trust funds may not be made available to any creditor as assets of the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle or as payment for any expenses of any bankruptcy or similar proceedings, but shall be retained intact to provide for the future maintenance of the cemetery.

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

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

5–604.

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

- (1) a national banking association;
- (2) a bank, as defined in the Maryland Uniform Fiduciaries Act;
- (3) a savings bank insured by a unit of the federal government;
- (4) a savings and loan association insured by a unit of the federal government; or
- (5) a person who annually provides, with the trust report, the proof of a fidelity bond that meets the requirements of subsection (b) of this section from a recognized bonding institution authorized to do business in the State in an amount equal to the trust fund.

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

- (1) for the benefit of the trust account of the cemetery or its burial space owners or both;
- (2) conditioned such that the applicant shall comply with all Maryland laws and regulations relating to trust accounts; and
- (3) subject to the approval of the Director.

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

- (1) purchase an interest in any contract or agreement to which the registrant, permit holder, or any other person subject to the trust requirements of this subtitle, or any entity owned or under the control of a registrant, permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child,

parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle is a party; or

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

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

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

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

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

5-707.

(a) In this section, "seller's account" means:

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

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

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

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

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

(d) A trustee:

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

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

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

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

(i) remain in the trust account;

(ii) be reinvested and compounded; and

(iii) be disbursed only for payment of appropriate trustee's fees, commissions, **PRORATED PROPORTIONAL SHARES OF TOTAL REALIZED CAPITAL GAINS ATTRIBUTABLE TO SPECIFIC FUNDS**, and other costs of the trust account.

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

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

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

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

**(II) TO OR IN ANY ENTITY OR BUSINESS OPERATIONS OWNED OR UNDER THE CONTROL OF A REGISTRANT, A PERMIT HOLDER, OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE, OR A SPOUSE, CHILD, PARENT, OR SIBLING OF A REGISTRANT OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE;**

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

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

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

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

5-708.

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

(b) On performance of a preneed burial contract:

(1) the seller shall certify to the trustee:

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

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

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

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

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

(i) the seller shall certify to the trustee:

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

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

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

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

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

(i) the seller shall certify to the trustee:

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

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

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

5-709.

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

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

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

(2) In that event:

(i) the seller shall certify to the trustee:

1. the cancellation of the preneed burial contract;
2. the amount of the remaining specific funds applicable to the preneed burial contract; and
3. the name and address of the buyer; and

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

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

(2) In that event:

(i) the seller shall certify to the trustee:

1. the cancellation of the purchase of the casket or casket vault under the preneed burial contract;
2. the amount of the specific funds applicable to the casket or casket vault under the preneed burial contract; and
3. the name and address of the buyer;

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

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

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

(1) the seller shall certify to the trustee:

- (i) the default and termination of the preneed burial contract;
- (ii) the amount of the specific funds; and
- (iii) the reasonable expenses of the seller; and

(2) the trustee shall then pay:

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

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

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

(1) the seller shall certify to the trustee:

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

(ii) the amount of the specific funds; and

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

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

**Approved by the Governor, April 8, 2014.**