



Funeral Consumers Alliance of Maryland and Environs

Protecting a consumer's right to a meaningful, dignified, and affordable funeral.

House Health & Government Operations Committee of the Maryland General Assembly
Testimony on: HB 243 "Cemeteries – Perpetual Care – Distributions From Perpetual Care Trust Fund"

Position: Oppose

Hearing Date: February 4, 2020

The Funeral Consumers Alliance of Maryland and Environs strongly opposes HB 243 that would remove protections of cemetery perpetual care trust funds in current law and expose cemeteries to greater risk of depleting their perpetual care trust fund's assets.

The bill would eliminate the requirement that realized capital gains of perpetual care trust funds be deposited in that fund as principal, and instead would allow those gains to be considered net income of the perpetual care trust fund. And even more problematic is that the bill would allow a cemetery owner to take an annual distribution of up to 5% of the principal of the perpetual care trust fund for years with the amount not reduced by any taxes or fees. Currently, a cemetery can only take an annual distribution of the net income of a perpetual care trust fund to be used for current and future repair and maintenance of cemetery grounds and buildings, and the principal of the fund cannot be touched.

The cemetery business is different from others in that it receives money from consumers often many years, if not decades, before the products and services paid for in advance will need to be provided to the purchaser. At least 10% of the price of each right to interment in a burial plot goes into the principal of a cemetery's perpetual care fund, as do any capital gains earned from investments of the principal, so the principal can continue to grow over time.

Currently there is almost \$90 million total in the perpetual care trust funds of the 85 licensed cemeteries in the state. While HB 243 says the Director of the Office of Cemetery Oversight may limit or prohibit a cemetery's proposed distribution based on a review of the prior 5 to 7 years of performance of a perpetual care trust fund, in reality the Director would be unable to do that because the OCO has a very small staff that lacks the requisite time or expertise to make the financial calculations necessary to determine the health of up to 85 cemetery's perpetual care trust funds and whether further distributions from the fund's principal should be allowed.

Maryland law clearly indicates that a cemetery perpetual care trust fund "shall be a single purpose trust fund", not be subject to judgment, garnishment or other seizure for use in bankruptcy or similar proceeding, and "shall be retained intact to provide for the future maintenance of the cemetery." A perpetual care trust fund needs to be able to generate enough income now as well as in the future when most all the burial plots have been sold and there is little or no earnings being generated for the cemetery owners. The perpetual care trust fund needs to be large enough so the cemetery may continue as a beautiful, self-maintaining park in perpetuity and doesn't become neglected or abandoned, and a burden on taxpayers.

In summary, HB 243 is a bad idea as it could cause cemetery perpetual care trust funds to be very depleted and unable to function as intended. We urge an unfavorable report on this bill.

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FCAME is the volunteer-run, regional chapter of the non-profit Funeral Consumers Alliance (FCA), the oldest and largest consumer protection organization focused solely on guarding the rights (and wallets) of grieving consumers. FCA's many chapters across the country are dedicated to: helping consumers be more informed about death care options, and protecting the public from fraud and abuse in cremation, funeral and burial transactions. FCA and its chapters take no money from the death care industry or government.

Funeral Consumers Alliance of Maryland & Environs (FCAME)

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