

Cemetery Total Return Distribution Method

General Information

Total Return Distribution (TRD) is a method of trust distribution that allows the trustee to distribute an amount not to exceed five percent of the fair market value of the perpetual care trust fund at the close of its fiscal year preceding the distribution year, pursuant to § 54.1-2322.

To convert from a net income distribution to a total return distribution method, notifications must be submitted to the cemetery trustee. Additional notification must be provided to the Cemetery Board at least ninety days prior to the implementation and must include the required documentation pursuant to § 54.1-2322(C).

Documentation Required

1: Submit the following applications to the Board for review for compliance per § 54.1-2322(F):

- Perpetual Care Trust Fund - Notice of Conversion Form (No Fee Required)
- Total Return Distribution Schedules –
 - Schedule A: Statement of Receipts and Expenses
 - Schedule B: Statement of Required Deposits
 - Schedule C: Statement of Expenses Incurred
 - Schedule D: Statement of Investment Securities
 - Schedule E: Covered Cemeteries - if there's more than 1 cemetery park

2: Submit the following additional attachments.

- Copy of trust instrument
- Election of distribution method
- Written investment and distribution policy pursuant to § 54.1-2322(D)(1)

Appendix A. Distribution Method Requirements

§ 54.1-2322. Use of income from perpetual care trust fund; distributions.

A. The income from the perpetual care trust fund shall be used solely and exclusively for the general care, maintenance, administration, and embellishment of the cemetery. Unless prior approval has been obtained from the Board or a court of competent jurisdiction, the principal of the perpetual care trust fund shall only be used for investment purposes.

B. A cemetery company may request the trustee of a perpetual care trust fund to elect the distribution of either of the following from the perpetual care trust fund:

1. All net income, which for purposes of this section means the collected dividends, interest, and other income of the perpetual care trust fund less any taxes on income, fees, commissions, and costs. A distribution made under this subdivision shall be referred to as a "net income distribution method"; or
2. An amount not to exceed five percent of the fair market value of the perpetual care trust fund at the close of its fiscal year preceding the distribution year. A distribution made under this subdivision shall be referred to as a "total return distribution method."

C. A cemetery company may request the trustee of a perpetual care trust fund to convert from a net income distribution method to a total return distribution method by delivering written or electronic notice to the trustee. Notice of such conversions shall be provided to the Board at least 90 days prior to implementation of the total return distribution method. Such notices may be written or electronic and shall include a copy of the trust instrument, election of distribution method, and an investment and distribution policy pursuant to subdivision D 1. In the event that a distribution method is not elected, distributions shall be limited to the net income distribution method.

D. The trustee of a perpetual care trust fund may reject a cemetery company's request to elect a total return distribution method. If a trustee determines that election of a total return distribution method is proper, he shall:

1. Prior to implementation of the total return distribution method, adopt a written investment and distribution policy under which the amounts of future distributions from the perpetual care trust fund will be calculated under the total return distribution method rather than net income distribution method. The investment goals and objectives of such policy shall be tailored to achieve (i) principal growth through equity investment; (ii) current income through income investment, as necessary; and (iii) an appropriate balance between (a) maintaining purchasing power through principal appreciation and (b) generating income to support the cemetery company's care and maintenance. A copy of such policy shall be sent to the Board with the notice required in subsection C.
2. Ensure that asset allocation under the perpetual care trust fund includes a diversified portfolio and that investment decisions are made in accordance with all other applicable laws of the Commonwealth.

3. Determine the fair market value of the perpetual care trust fund at least annually using generally accepted valuation methods and such valuation dates or dates or averages of valuation dates as are readily ascertainable.
4. Make distributions from the perpetual care trust fund on a monthly, quarterly, semi-annual, or annual basis, as agreed upon by the cemetery company and the trustee.
5. Require that both of the following tests be met each fiscal year prior to allowing any distribution from the perpetual care trust fund to the cemetery company: (i) the fair market value of the perpetual care trust fund after the distribution will be greater than the aggregate of 80 percent of the fair market value of the perpetual care trust fund at the close of the preceding fiscal year plus the total contributions made to the trust principal from such date to the date that the method of distribution is elected and (ii) beginning with the third year of using a total return distribution method, a three-year analysis of investment returns and distribution practices indicates that such practices will result in sufficient protection of the trust principal. If either test is not met, distributions for that fiscal year shall be limited to the net income distribution method.
6. In the event that the taxes and fees paid by the perpetual care trust fund are greater than two and one-half percent of the fair market value of the trust at the close of the preceding fiscal year, reduce the distribution by the amount exceeding two and one-half percent; and
7. Maintain records documenting the fair market value of the assets held in the perpetual care trust fund at the end of the accounting period immediately prior to conversion to the total return distribution method.

E. In addition to filing an annual perpetual care trust fund financial report with the Board pursuant to § [54.1-2324](#), a cemetery company that has elected a total return distribution method shall also file a copy of such financial report at the close of each fiscal year with the commissioner of accounts in a jurisdiction in the Commonwealth in which the cemetery company owns a cemetery. The commissioner of accounts shall review the financial report and forward his finalized accounting to the Board, with all reasonable fees and costs for such filing and review borne by the cemetery company. A trustee shall not make any distribution from a perpetual care trust fund under a total return distribution method until the review by the commissioner of accounts has been finalized. A review shall be deemed finalized if the commissioner of accounts has not responded or communicated any deficiencies within 60 days of the submission of the financial report.

F. The Board shall review all notices of conversion or reversion of perpetual care trust fund distribution method for compliance with this section. The Board may engage the services of a professional to review notices of conversion or reversion to a total return distribution method, with all reasonable costs of such review borne by the cemetery company that submitted such notice.

The Board may limit or prohibit conversion from a net income distribution method to a total return distribution method if the trustee or any investment manager is not able to demonstrate sufficient knowledge and expertise regarding effective implementation of the total return distribution method. The Board may prohibit a reversion from the total return distribution method to the net income distribution method if the trust principal is less than it was at the time the cemetery company converted to the total return distribution method, as adjusted for inflation.

If a conversion to the total return distribution method has already been made, the Board may limit or prohibit distributions from the perpetual care trust fund if the trustee or any investment manager

is not able to demonstrate sufficient knowledge and expertise regarding the distribution of trust income for the maintenance of the cemetery using the total return distribution method. In deciding whether a distribution should be limited or prohibited, the Board shall consider the presence and stated value of trust assets that do not have an active market and are not traded on a regular basis, the frequency of appraisals and evaluations of such assets, the asset allocation of the trust, and whether trust principal, as adjusted for inflation, is less than it was at the time the cemetery company converted to the total return distribution method.

The Board may require a cemetery company to restore a distribution to the perpetual care trust fund if (i) the distribution and all other aspects of the trust were not in compliance with the requirements of this section at the time such distribution was made or (ii) the cemetery company has committed fraud against the trust.

G. If a total return distribution method has been elected, the perpetual care trust fund may not be reverted to a net income distribution method absent approval by the Board. A failure by a cemetery company to file a perpetual care trust fund financial report annually with the Board as required by § [54.1-2324](#) shall automatically prohibit a conversion to or continuation of a total return distribution method pending further action by the Board.

H. No portion of the perpetual care trust fund shall be used to pay any personal obligation or debt of any officer or owner of the cemetery or any tax obligation incurred by the cemetery or for any purpose other than that expressly described in this section. Nothing in this section shall be construed to limit the ability of the perpetual care trust fund trustee from paying normal operating expenses and income taxes of the trust itself, the trust being a separate legal entity.

Appendix B. Related Regulations for Perpetual Care Trust Fund Requirements

18VAC47-20-200. Perpetual care trust fund and bonding requirement.

- A. Each licensed cemetery company must establish a perpetual care trust fund in accordance with § 54.1-2316 of the Code of Virginia.
- B. If the trustee for the perpetual care trust fund not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee must be approved by the board and must deposit a fidelity bond in accordance with § 54.1-2317 of the Code of Virginia.
- C. Deposits into the fund must be made in accordance with §§ 54.1-2319 through 54.1-2321 of the Code of Virginia.
- D. The income from the perpetual care trust fund must be used in accordance with § 54.1-2322 of the Code of Virginia.
- E. Each licensed cemetery company must submit written financial reports regarding perpetual care trust funds to the board as prescribed by §§ 54.1-2323 and 54.1-2324 of the Code of Virginia.
- F. Transfer of funds to another trustee must be done in accordance with § 54.1-2337 of the Code of Virginia.

18VAC47-20-260. Protection of perpetual care and preneed trust funds.

In the event that preneed or perpetual care funds are held in trust and the board or any of its agents have reason to believe that (i) the licensee or any agent of the licensee has diverted or misused any funds held in trust; (ii) the licensee is not able to adequately protect the interest of the person involved; (iii) the licensee's conduct or the operation of the cemetery company threatens the interests of the public; or (iv) the licensee has had its license suspended, revoked or surrendered, the board may initiate legal proceedings in accordance with § 54.1-2313.1 of the Code of Virginia.

Appendix C. Perpetual Care Trust Fund Annual Reporting Documents

Application Review Checklist:

Perpetual Care Trust Fund - Notice of Conversion Form (No Fee Required)

The Virginia Cemetery Board Perpetual Care Trust Fund - Notice of Conversion Form is used by cemetery operators in Virginia to notify the Virginia Cemetery Board when they are converting or transferring their perpetual care trust fund to another trust fund or financial institution.

The perpetual care trust fund is a special fund set aside by cemetery operators to ensure that funds are available for long-term maintenance and upkeep of the cemetery. This form is typically filed by a cemetery to inform the Board of any changes in how the trust fund is managed or converted, ensuring that the funds are properly handled according to Virginia laws and regulations.

The purpose of the form is to ensure transparency and regulatory compliance in the management of the cemetery's perpetual care funds, helping to maintain the cemetery's upkeep and protect the interests of lot owners.

Perpetual Care Trust Fund Financial Report – Schedule A – Total Return Distribution (Statement of Receipts and Expenses)

Schedule A is a form used by cemetery operators in Virginia to report the financial status of their perpetual care trust fund. This report is part of the required documentation for compliance with Virginia's laws and regulations.

Schedule A is specifically used to provide a detailed account of the assets, income, and expenditures of the trust fund. It includes information such as:

- The total balance in the perpetual care trust fund.
- Contributions made to the fund.
- Earnings generated from the fund (e.g., interest, dividends).
- Any withdrawals or expenditures made from the fund.

The purpose of the Schedule A report is to ensure that the cemetery is properly managing the funds that are designated for the care and maintenance of the cemetery. This helps the Virginia Cemetery Board verify that cemetery operators are fulfilling their obligations to maintain the cemetery in the long term, as required by law.

By submitting this financial report, cemetery operators ensure transparency and compliance with state regulations governing the perpetual care trust fund.

Perpetual Care Trust Fund Financial Report – Schedule B – Total Return Distribution (Statement of Required Deposits)

Schedule B is used by cemetery operators in Virginia to provide additional financial information about the funds required to be deposited into perpetual care funds.

The primary purpose of Schedule B is to ensure that cemetery operators have deposited the required 10% of monthly receipts into their perpetual care fund. It helps the Virginia Cemetery Board verify that the funds are being deposited appropriately.

This form also serves to maintain transparency in the management of perpetual care funds, ensuring compliance with regulations designed to protect the interests of lot owners and ensure cemetery upkeep for the future.

Perpetual Care Trust Fund Financial Report – Schedule C – Total Return Distribution (Statement of Expenses Incurred)

Schedule C is used by cemetery operators in Virginia to provide additional information about the disbursements or withdrawals made from the perpetual care trust fund during a specified reporting period.

The purpose of Schedule C is to ensure that the funds withdrawn from the perpetual care trust fund are being used properly and in compliance with Virginia's laws and regulations. These funds are typically used for the maintenance and upkeep of the cemetery, such as landscaping, repairs, and general care of the cemetery grounds.

By completing Schedule C, cemetery operators help the Virginia Cemetery Board verify that the perpetual care funds are being spent for their intended purpose — to provide long-term care for the cemetery — and that they are managing the trust fund responsibly and in accordance with state regulations.

Perpetual Care Trust Fund Financial Report – Schedule D – Total Return Distribution (Statement of Investment Securities)

Schedule D is used by cemetery operators in Virginia to report the valuation and status of their perpetual care trust fund's investments. It provides a detailed breakdown of the assets held in the fund, including the types of investments (e.g., stocks, bonds, real estate), and their current value.

This schedule is important because it helps the Virginia Cemetery Board ensure that the perpetual care trust fund is being managed properly and is generating sufficient income to meet its long-term obligations for cemetery maintenance and upkeep.

The main purposes of Schedule D include:

1. Verification of Investment Compliance: Ensuring that the cemetery is investing the funds in a way that complies with state regulations.
2. Monitoring Fund Performance: Allowing the Virginia Cemetery Board to assess whether the trust fund's investments are performing adequately to cover future cemetery maintenance costs.
3. Ensuring Fund Integrity: Confirming that the investments are appropriate and sufficiently secure, supporting the long-term care and maintenance of the cemetery.

By providing this information, cemetery operators help maintain transparency and ensure that the perpetual care trust fund remains solvent and properly funded for the future care of the cemetery.

**Perpetual Care Trust Fund Financial Report – Schedule E – Total Return Distribution
(Covered Cemeteries)**

Schedule E is used by cemetery operators in Virginia to provide information regarding all cemeteries covered by the trust fund report.

Appendix D. Definitions

Trust Instrument

A **trust instrument** as it relates to cemetery perpetual care trust funds is a legal document that outlines the terms, conditions, and management rules governing the perpetual care trust fund. It essentially serves as the agreement that establishes how the funds will be handled, invested, and used to ensure the long-term maintenance and care of a cemetery.

Key aspects of a trust instrument for a cemetery's perpetual care trust fund include:

1. **Trustee Responsibilities:** It specifies who will manage the fund (the **trustee**) and their duties in managing the trust's assets, such as ensuring the proper investment of funds, making necessary disbursements, and keeping accurate records.
2. **Purpose of the Fund:** It defines the purpose of the fund, which is generally to provide for the upkeep, maintenance, and beautification of the cemetery in perpetuity (forever).
3. **Funding and Contributions:** The trust instrument outlines how the fund will be funded, including any initial contributions, ongoing deposits, and how the trust fund will grow over time.
4. **Income and Expenditures:** It specifies how income generated by the trust (such as interest or dividends) can be used and any limits on expenditures or withdrawals. The primary use of the fund is for cemetery maintenance, but the document may set parameters for how funds can be spent.
5. **Conditions for Modifications or Termination:** The trust instrument might also define the conditions under which the terms of the trust can be modified or even terminated, and what would happen to the funds in such an event.

Essentially, the trust instrument is the foundation document that governs how a cemetery's perpetual care trust fund operates, ensuring that the funds are used properly for their intended purpose of maintaining the cemetery for future generations.

Distribution Method

The distribution method as it relates to cemetery perpetual care trust funds refers to the approach or strategy used to determine how and when the funds from the trust are disbursed for the care and maintenance of the cemetery. It outlines how the income generated by the trust (such as interest, dividends, or capital gains) and, in some cases, the principal, will be used to fund the ongoing maintenance, upkeep, and beautification of the cemetery.

Two distribution methods for cemetery perpetual care trust funds are:

1. Net Income Distribution Method

Under this method, the trust fund's income (e.g., interest, dividends) is used to pay for cemetery maintenance. The principal (the original investment) remains untouched and continues to grow, with only the income generated from the trust being used for cemetery upkeep. This method aims

to ensure the long-term sustainability of the fund by preserving the principal while providing ongoing resources for maintenance.

2. Total Return Distribution Method

The total return distribution method allows the cemetery to distribute both the income and capital gains (or losses) generated by the trust fund. This method typically involves a percentage of the total return (including both income and appreciation) being used for the maintenance and upkeep of the cemetery.

- Total Return includes all forms of return on investments, such as:
 - Interest (income)
 - Dividends (income)
 - Capital gains (appreciation in value of investments)
- Under this method, the fund does not limit distributions to only the income generated; instead, the total growth of the fund, which includes both the income and appreciation, can be used for cemetery care.

The total return method provides greater flexibility because it allows the cemetery to access the growth of the fund in addition to the income, potentially providing more funds for cemetery maintenance, especially if the investments are performing well. However, it also means the principal can be reduced if the distributions exceed the income generated.

Key Considerations:

- **Net income distribution** tends to be more conservative, ensuring the principal remains intact and is only used for income generation.
- **Total return distribution** allows for potentially higher distributions but involves more risk to the principal, depending on the performance of the investments.

Both methods aim to provide a sustainable means of funding cemetery maintenance in the long term while balancing the growth of the trust fund with the need for adequate resources for upkeep. The choice of method is typically governed by the trust instrument and local regulations, ensuring that the fund can maintain the cemetery in perpetuity.

Written Investment and Distribution Policy

A written investment and distribution policy for cemetery perpetual care trust funds is a formal, documented set of guidelines and principles that governs the investment strategy and distribution approach of the trust fund. This policy outlines how the funds will be invested to grow over time, as well as how and when distributions will be made for the maintenance and upkeep of the cemetery. The policy is crucial for ensuring that the trust fund is managed prudently, in compliance with legal requirements, and in a way that ensures the fund's longevity for the future care of the cemetery.

Key Components of a Written Investment and Distribution Policy:

1. Investment Guidelines:

- **Asset Allocation:** Specifies how the trust fund's assets should be allocated across different types of investments (e.g., stocks, bonds, real estate) to balance risk and return. It ensures the trust is diversified to minimize the risk of significant losses.
- **Investment Goals and Objectives:** Outlines the goals of the trust, such as growing the fund's principal over time, generating a stable income stream, and preserving capital.
- **Risk Tolerance:** Defines the level of risk the trust fund can take on. Since cemetery funds need to ensure long-term sustainability, the policy typically focuses on low- to moderate-risk investments to safeguard the principal.
- **Investment Restrictions:** May include any restrictions on specific types of investments (e.g., prohibiting certain high-risk or speculative investments).

2. **Distribution Guidelines:**

- **Distribution Method:** The policy specifies how distributions from the trust will be made. This can include the income distribution method (where only the income generated by the trust is used for cemetery maintenance) or the total return distribution method (where both income and capital gains from the trust's investments are used for distributions).
- **Percentage or Formula for Distribution:** If using the total return distribution method, the policy will outline the percentage of the trust's total return (including both income and capital gains) that can be used for cemetery maintenance, as well as the formula for determining how much can be distributed annually or on other intervals.
- **Purpose of Distributions:** The policy clarifies that distributions should be used for the care, maintenance, and beautification of the cemetery, including things like landscaping, repairs, and infrastructure.
- **Sustainability of Distributions:** Ensures that distributions are made in a way that does not deplete the fund's principal inappropriately, protecting the fund's long-term viability.

3. **Monitoring and Oversight:**

- The policy may include guidelines for regular reviews of the trust fund's performance, the appropriateness of the investment strategy, and whether the distributions are meeting the cemetery's needs while preserving the fund's long-term sustainability.
- It may designate a trustee or investment advisor to monitor the performance of the investments and ensure compliance with the policy.

Total Return Distribution in a Written Investment and Distribution Policy:

When the total return distribution method is included in the policy, it allows the cemetery trust fund to access the entire return on the fund—not just the income (e.g., interest and dividends)—but also any capital appreciation or gains the investments may have generated.

- **Policy Consideration for Total Return:** The policy typically sets a total return percentage (e.g., 4-5% of the fund's total return) that can be distributed for cemetery care. This allows for a broader range of potential funds for maintenance without being restricted to just income.

- This approach is flexible and can help fund maintenance even in years when income alone might not be sufficient, but it also carries a risk of depleting the principal if distributions exceed the growth of the fund.

Purpose of a Written Investment and Distribution Policy:

- **Consistency and Accountability:** Having a written policy ensures that the trust fund is managed in a consistent and transparent manner, with clear guidelines for how funds are invested and distributed.
- **Long-Term Sustainability:** The policy helps ensure that the perpetual care trust fund will continue to grow, generate income, and provide adequate resources for cemetery maintenance far into the future.
- **Legal and Regulatory Compliance:** A well-crafted policy helps ensure that the trust fund operates in compliance with state regulations and guidelines for cemetery perpetual care funds.

In summary, a written investment and distribution policy is a key tool for managing a cemetery's perpetual care trust fund, especially when using the total return distribution method, ensuring that the trust is effectively managed to provide long-term care for the cemetery while preserving the fund's principal for future generations.