

2012 Kansas Statutes

17-1312. Same; trustee, when; trust instruments, provisions; reporting requirements. (a) If the market value of the permanent maintenance fund is less than \$100,000, the permanent maintenance fund may be held in a Kansas financial institution, in either certificates of deposit or a business savings account which is insured by the federal deposit insurance corporation, provided that the fund assets are maintained in a segregated account. If the cemetery's permanent maintenance fund has a market value of less than \$100,000, the cemetery corporation shall comply with the reporting requirements of this act.

(b) (1) Unless otherwise authorized by subsection (a), each cemetery corporation shall establish and maintain a permanent maintenance fund. If the market value of the permanent maintenance fund is \$100,000 or more, the cemetery corporation shall establish and maintain the permanent maintenance fund in an irrevocable trust with a trustee. The trustee may appoint one or more agents to provide administrative or investment advisory services, provided the trustee shall not assign or delegate the liability and fiduciary responsibilities owed to the permanent maintenance fund to another financial institution or agent. The trustee may invest, reinvest, exchange, retain, sell, and manage the moneys within such fund, pursuant to subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto. Such trustee may be reasonably compensated for its services out of the income of the fund. It shall be a provision of any such trust agreement that no moneys, other than income from the trust, shall be paid over to the cemetery corporation by the trustee, except upon the written permission of the secretary of state. Nothing in this act shall prohibit a trustee, as defined in K.S.A. 16-320, and amendments thereto, from entering into a co-trustee relationship with another trustee, who would not independently satisfy the requirements of that section provided the co-trustee: (A) Is authorized to do business in Kansas; and (B) submits personally to the jurisdiction of the courts of this state. Under no circumstances shall any trustee assign or delegate their liability or fiduciary responsibilities under the provisions of this act. Both trustees and co-trustees are jointly and severally liable for the actions of the trustee. All contractual agreements shall be subject to, governed by, and construed according to the laws of the state of Kansas.

(2) The trustee may recover from the earnings of the permanent maintenance fund for all reasonable costs incurred in serving as trustee, including a reasonable fee for its services. The taxes and costs may be paid from earnings of the fund prior to the distribution of the income. If all income is exhausted, any remaining capital gains tax liability may be paid out of the realized capital gains before the balance reverts to principal.

(3) The trustee shall be solely responsible for the investment of the moneys held under a cemetery permanent maintenance fund. The trust instrument must state that control of the trust funds by the trustor is prohibited.

(c) The trust instrument shall be effective upon written approval by the secretary of state and compliance with this section, unless it is determined by a court of law that the underlying trust instrument is in conflict with Kansas statutes, then that portion of the underlying trust instrument becomes null and void and shall be of no further force or effect. The trust instrument is in compliance with this section if the following is provided to the secretary of state:

(1) The names of the trustee, the cemetery corporation as trustor and the date the trust instrument shall become effective.

(2) The trustee shall submit a quarterly report to the secretary of state. The report shall be in a form and manner approved by the secretary of state and shall contain the following:

- (A) Deposits to principal;
- (B) any withdrawals from principal;
- (C) all interest, dividends, and income earned;
- (D) interest withdrawn;
- (E) capital gains or capital losses; and
- (F) capital gains taxes paid from capital gains.

(3) The trustee shall use deposit and withdrawal forms approved by the secretary of state.

(4) The trustee shall invest the trust funds subject to the requirements of subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto. Control of the trust funds by the trustor is prohibited.

(5) By accepting the trusteeship of the permanent maintenance fund, the trustee submits personally to the jurisdiction of the courts of this state. All contractual agreements shall be subject to, governed by, and construed according to the laws of the state of Kansas.

(6) The trustee acknowledges the primary purpose of the permanent maintenance fund is to maintain the corpus of the trust.

(7) The trustee shall retain all liability and fiduciary responsibility for managing and administering the permanent maintenance fund.

(8) The trustee shall sign an affirmation under penalty of perjury, declaring the trustee has read, understands and agrees to comply with the requirements of K.S.A. 17-1308 et seq., and amendments thereto.

History: L. 1901, ch. 102, § 6; R.S. 1923, 17-1312; L. 1968, ch. 330, § 4; L. 1978, ch. 76, § 2; L. 1985, ch. 91, § 2; L. 1989, ch. 48, § 78; L. 1994, ch. 229, § 5; L. 2011, ch. 78, § 18; Jan. 1, 2012.