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TO: Ohio Cemetery Association, Inc.  
FROM: Timothy C. Long  
RE: Legislative Update  
DATE: August 3, 2021

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134<sup>th</sup> General Assembly- 2021-2022 Legislative Session (Republicans control).

A. 593 Bills introduced in the current Session. See [www.legislature.ohio.gov](http://www.legislature.ohio.gov)

B. Recently Passed Legislation.

1. House Bill 444 (133<sup>rd</sup> GA): OTA's update to various township laws. Effective April 12, 2021 and included revisions to 517.27 which, in certain circumstances, prohibits "splitting off" unprofitable or undesirable portions of a cemetery and conveying them to the township. Section 517.27 was not revised by, the "ceased operations statute", 4767.11 (effective on October 29, 2018 and is being tested in current litigation in Ross County, Ohio).

2. Senate Bill 27 (133<sup>rd</sup> GA): Disposition of Fetal Remains from Surgical Abortion. Included new 4717.271 which requires crematory to do the impossible (dispose of cremated fetal remains only by interment, scattering or "any other legal means")? Are crematory operators having any problems?

3. House Bill 7 (134<sup>th</sup> GA):

- Contained "Total Return Bill" and is effective August 17, 2021 and allows cemeteries to select a stated distribution from Endowment Care Trust of up to 5% (average of net fair market value from last three years) annually. There are safeguards: 2.5% and 80% rules.
- Department of Commerce Guide and Distribution Selection Forms.
- Total Return v. Ohio Uniform Prudent Investor Standard.

C. Pending Bills of Interest.

1. House Bill 108: Right of Disposition of Deceased Adult Child. OCA clarifications.

(2) A resolution adopted under this section is subject to the same restrictions specified in division (A) of section 505.173 of the Revised Code for resolutions adopted under that section.

Sec. 517.27. (A) When a public cemetery in a township is not under the control of a municipal corporation, and the title or control ~~thereof~~ is vested in an association or ~~the~~ its board of trustees ~~thereof~~, or is vested in a religious society, whether incorporated or not, or in ~~the~~ its board of trustees ~~thereof~~, and such cemetery is used exclusively for cemetery purposes, such association, society, or ~~the board of trustees thereof~~ may convey such grounds to the board of township trustees and its successors in office. ~~Subject~~ Except as provided in division (B) of this section, and subject to the rights of the original grantor, his the original grantor's heirs or assigns, the board of township trustees shall accept and take possession of such the grounds, and take care of, keep in repair, hold, treat, and manage them in all respects as required by sections 517.01 to 517.32, inclusive, of the Revised Code.

(B) A board of township trustees is not required to accept and take possession of the grounds of a public cemetery, or to take care of, keep in repair, hold, treat, or manage the grounds as described in division (A) of this section, if, as a result of the conveyance, any parcel abutting the cemetery grounds or from which the grounds were partitioned or subdivided satisfies any of the following conditions:

(1) The parcel is owned by the association or its trustees or the religious society that conveyed the cemetery grounds or by an association, its trustees, or a religious society that is a successor to the association, trustees, or religious society that conveyed the cemetery grounds.

(2) Any part of the parcel, including any building or structure situated on the parcel, is used for social, educational, recreational, or religious activities of the association or religious society or of an association or religious society that is a successor to the association, trustees, or religious society that conveyed the cemetery grounds.

(3) Any part of the parcel, including any building or structure situated on the parcel, is exempted from property taxation under section 5709.07 or 5709.14 of the Revised Code, or under division (B) of section 5709.12 of the Revised Code on the basis of being used exclusively for charitable purposes by the association or religious society that conveyed the cemetery grounds.

(C) When a cemetery association or religious society conveys a cemetery under this section, all cemetery records and funds shall be transferred to the township. Transferred funds shall be used exclusively for cemetery purposes as set forth in section 1721.06 of the Revised Code and any other similar provisions of the Revised Code that require funds to be held in trust for cemetery purposes.

Sec. 715.82. A municipal corporation may issue bonds and exercise all other powers under Chapter 165, of the Revised Code for one or more projects or parts thereof located in a joint economic development district created pursuant to a contract entered into under section 715.70, 715.71, or 715.72 of the Revised Code to which the municipal corporation is a party, or in a township adjacent to that municipal corporation, if the legislative authority of the municipal corporation determines that the project is in furtherance of the public purposes of the state to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the municipal corporation and the township. As used in this section, "project" has the same meaning as in ~~division (H) of section 165.01 of the Revised Code, except that a project described in this section is not required to be located within the territorial boundaries of the municipal corporation.~~



division (C)(1) of section 3726.14 of the Revised Code:

(C) Acts in furtherance of the final disposition of the fetal remains.

Sec. 3726.16. Except for the requirements of section 3705.20 of the Revised Code, no conflicting provision of the Revised Code or conflicting procedure of an agency or board shall apply regarding a person who buries or cremates fetal remains in accordance with section 3726.15 of the Revised Code.

Sec. 3726.95. A pregnant woman who has a surgical abortion, the fetal remains from which are not disposed of in compliance with this chapter, is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of section 3726.99 of the Revised Code.

Sec. 3726.99. (A) No person shall fail to comply with section 3726.02, 3726.05, 3726.10, or 3726.11 of the Revised Code.

(B) Whoever knowingly violates division (A) of this section is guilty of failure to dispose of fetal remains humanely, a misdemeanor of the first degree.

Sec. 4717.271. The following applies to a crematory operator that cremates fetal remains for an abortion facility under Chapter 3726. of the Revised Code.

(A) A crematory operator shall not do any of the following:

(1) Cremate fetal remains without receiving a copy of a properly executed detachable supplemental form described in division (C)(1) of section 3726.14 of the Revised Code;

(2) Dispose of the cremated fetal remains by a means other than one of the following:

(a) Placing them in a grave, crypt, or niche;

(b) Scattering them in any dignified manner, including in a memorial garden, at sea, by air, or at a scattering ground described in section 1721.21 of the Revised Code;

(c) Any other lawful manner.

(3) Arrange for the disposal of the cremated fetal remains by a means other than one described in division (A)(2) of this section;

(4) Arrange for the transfer of the cremated fetal remains for disposal by a means other than one described in division (A)(2) of this section.

(B) A crematory operator is not required to secure a death certificate, a burial or burial-transit permit, or a cremation authorization form to cremate fetal remains.

SECTION 2. That existing sections 2317.56, 3701.341, and 3701.79 of the Revised Code are hereby repealed.

SECTION 3. Neither of the following shall apply until rules are adopted under section 3726.14 of the Revised Code:

(A) The prohibition under section 3726.99 of the Revised Code;

(B) The prohibitions under division (A) of section 4717.271 of the Revised Code.

## AN ACT

To amend sections 1721.21, 2101.15, 2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 2108.34, 2111.10, 2111.50, 2133.07, 2701.10, 2717.01, 5122.15, 5804.11, 5805.06, 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5816.14; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 2717.01 (2717.02); to enact new section 2717.01 and sections 2717.03, 2717.04, 2717.05, 2717.06, 2717.07, 2717.08, 2717.09, 2717.10, 2717.11, 2717.13, 2717.14, 2717.16, 2717.18, and 2717.19; and to repeal section 2133.16 of the Revised Code to make changes in the Probate Law, the Guardianship Law, the Ohio Trust Code, the Ohio Legacy Trust Act, the laws regarding cemetery endowment care trusts, referral of actions to a retired judge, involuntary mental health placements, and change of name procedures.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 1721.21, 2101.15, 2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 2108.34, 2111.10, 2111.50, 2133.07, 2701.10, 5122.15, 5804.11, 5805.06, 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5816.14 be amended; section 2717.01 (2717.02) be amended for the purpose of adopting a new section number as indicated in parentheses; and new section 2717.01 and sections 2717.03, 2717.04, 2717.05, 2717.06, 2717.07, 2717.08, 2717.09, 2717.10, 2717.11, 2717.13, 2717.14, 2717.16, 2717.18, and 2717.19 of the Revised Code be enacted to read as follows:

Sec. 1721.21. (A) As used in this section:

(1) "Person" means any corporation, company, partnership, individual, or other entity owning or operating a cemetery for the disposition of human remains.

(2) "Cemetery" means any one or a combination of more than one of the following:

(a) A burial ground for earth interments;

(b) A mausoleum for crypt entombments;

(c) A columbarium for the deposit of cremated remains;

(d) A scattering ground for the spreading of cremated remains.

(3) "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.

(4) "Burial right" means the right of earth interment.

(5) "Entombment right" means the right of entombment in a mausoleum.

(6) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.

(7) "Human remains" means any part of the body of a deceased human being, in any stage of



decomposition or state of preservation, or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition.

(B) No person shall operate or continue to operate any cemetery in this state unless an endowment care trust is established and maintained as required by this section.

(C) Any person desiring to operate any cemetery that is organized or developed after July 1, 1970, before offering to sell or selling any burial lot, burial right, entombment right, or columbarium right in that cemetery, shall first establish an endowment care trust, segregated from other assets, and place in that fund a minimum of fifty thousand dollars in cash or in bonds of the United States, this state, or any county or municipal corporation of this state.

Whenever any person described in this division has placed another fifty thousand dollars in the endowment care trust out of gross sales proceeds, in addition to the deposit required by this division, that person, after submitting proof of this fact to the trustees of the endowment care trust, may be paid a distribution in the sum of fifty thousand dollars from the endowment care trust.

(D) Any person desiring to operate or to continue to operate any cemetery after July 1, 1970, shall place into the endowment care trust as required by this section not less than ten per cent of the gross sales proceeds received from the sale of any burial lot, burial right, entombment right, or columbarium right. This percentage shall be placed in the endowment care trust no later than thirty days following the month in which the entire gross sales are received.

(E) The trustees of the endowment care trust shall consist of at least three individuals who have been residents of the county in which the cemetery is located for at least one year, or a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that has securities pledged in accordance with section 1111.04 of the Revised Code. If the trustees are not a financial institution or trust company, the trustees shall be bonded by a fidelity bond, or insured under an insurance policy less any deductible, in an aggregate amount of not less than one hundred per cent of the funds held by the trustees. The trustees or their agent shall, on a continuous basis, keep exact records as to the amount of funds under any joint account or trust instrument being held for the individual beneficiaries showing the amount paid, the amount deposited and invested, and accruals and income.

The funds of the endowment care trust shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to sections 2109.37 and 2109.371 of the Revised Code or, if provided for in the instrument creating the trust, pursuant to the Ohio Uniform Prudent Investor Act.

(F) Any person offering to sell or selling any burial lot, burial right, entombment right, or columbarium right shall give to the purchaser of the lot or right, at the time of sale, a written agreement that identifies and unconditionally guarantees to the purchaser the specific location of the lot or the specific location to which the right applies.

(G) No person shall open or close any grave, crypt, or niche for the interment of human remains in a cemetery without the permission of the cemetery association or other entity having control and management of the cemetery.

(H) Except as provided in division (G) of this section, this section does not apply to a family cemetery as defined in section 4767.02 of the Revised Code, to any cemetery that is owned and operated entirely and exclusively by churches, religious societies, established fraternal organizations,



municipal corporations, or other political subdivisions of the state, or to a national cemetery.

(I) ~~The dividend and interest income distribution~~ from the endowment care trust shall be used only to pay for ~~the both of the following:~~

~~(1) The cost and expenses incurred to establish, manage, invest, and administer the records and the trust and for the:~~

~~(2) The maintenance, supervision, improvement, and preservation of the grounds, lots, buildings, equipment, statuary, and other real and personal property of the cemetery.~~

(J)(1) Annual reports of all the assets and investments of the endowment care trust shall be prepared and maintained, and shall be available for inspection at reasonable times by any owner of interment rights in the cemetery.

(2) Every cemetery required to establish and maintain an endowment care trust shall ensure each of the following:

(a) That the cemetery has deposited, at the time specified in division (D) of this section, the amounts required by that division in the cemetery's endowment care trust;

~~(b) That only dividend and interest income have been paid from the endowment care trust, and the cemetery used the amounts withdrawn only for the purposes specified in division (I) of this section;~~

~~(c) That Subject to division (K)(5) of this section, that all principal and capital gains, less any payment of taxes associated with such gains, have remained in the endowment care trust;~~

(d) That the endowment care trust has not been used to collateralize or guarantee loans and has not otherwise been subjected to any consensual lien;

(e) That the endowment care trust is invested in compliance with the investing standards set forth in sections 2109.37 and 2109.371 of the Revised Code, or, if provided for in the instrument creating the trust, the Ohio Uniform Prudent Investor Act.

(3) Every cemetery required to establish and maintain an endowment care trust shall ~~file do~~ both of the following:

~~(a) File an affidavit annually with the division of real estate of the department of commerce, in a form prescribed by the division, certifying under oath the cemetery satisfied division (J)(2) of this section;~~

~~(b) Notify the division of real estate of the department of commerce, in a form prescribed by the division, of the percentage of the unitrust distribution from the endowment care trust, as described in divisions (K)(2)(a)(ii) and (b) of this section.~~

(K)(1) Every cemetery shall choose the distribution of either of the following from the endowment care trust:

(a) All net ordinary income, which includes collected dividends, interest, and other income earned by the trust, reduced by any expenses, including, but not limited to, taxes on income, fees, commissions, and costs;

(b) A unitrust disbursement not exceeding five per cent of the fair market value of the endowment care fund. "Fair market value," for the purpose of division (K)(1)(b) of this section, means the average of the net fair market value of the assets of the endowment care trust as of the last trading day for each of the three preceding fiscal year ends.

(2)(a) A cemetery that selects the unitrust disbursement distribution method, as provided in



division (K)(1)(b) of this section, shall do both of the following:

(i) Deliver to the trustees of the endowment care trust written instructions, including the disbursement percentage selected, not later than sixty days prior to the beginning of a calendar year:

(ii) Deliver to the division of real estate of the department of commerce notification that the cemetery selected the unitrust disbursement method and the percentage selected, in compliance with division (J)(3)(b) of this section.

(b) The distribution method and, if a unitrust disbursement, the disbursement percentage selected shall remain in effect unless the cemetery notifies the trustees and the division of real estate of the department of commerce of its desire to effect a change. The trustees shall ensure that an investment policy is in place whose goals and objectives are supportive of the growth of the endowment care trust.

(3) Distributions from the endowment care trust shall be made on a monthly, quarterly, semiannual, or annual basis, as agreed upon by the cemetery and the trustees. If the trustees do not receive written instructions from the cemetery informing the trustees of the method of calculation and distribution chosen, the trustees shall calculate and distribute the net income, as earned, on a monthly basis.

(4) In order to withdraw a unitrust disbursement, the fair market value of the endowment care trust after the disbursement shall be greater than eighty per cent of the aggregate fair market value of the endowment care trust as of the end of the immediately preceding calendar year. Should this not be the case, disbursement shall be limited for that year to net ordinary income.

(5) The trustees shall pay reasonable operating expenses and taxes of the endowment care trust itself. If the operating expenses and taxes paid are greater than two and one-half per cent of the fair market value for the preceding calendar year end and the cemetery has selected a unitrust disbursement, the trustees shall reduce the unitrust disbursement by the amount exceeding two and one-half per cent.

Sec. 2101.15. In each case, examination, or proceeding, the probate judge shall file an itemized account of fees received or charged by the judge. ~~On the first~~ Not later than the fifteenth day of January, in each year, the judge shall file with the county auditor an account, certified by the judge, of all fees received by the judge during the preceding year. No judge shall fail to perform the duties imposed in this section. At the instance of any person, the prosecuting attorney shall institute and prosecute an action against the defaulting judge.

Sec. 2106.13. (A) If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive, subject to division (B) of this section, in money or property the sum of forty thousand dollars as an allowance for support. If the surviving spouse selected ~~one or more automobiles~~ more than one automobile under section 2106.18 of the Revised Code, the allowance for support prescribed by this section shall be reduced by the value of the automobile having the lowest value ~~if more than one automobile is of the automobiles~~ so selected. The money or property set off as an allowance for support shall be considered estate assets.

(B) The probate court shall order the distribution of the allowance for support described in division (A) of this section as follows:

(1) If the person died leaving a surviving spouse and no minor children, one hundred per cent



## Division of Real Estate & Professional Licensing

### *Endowment Care Trust – Unitrust Distribution Guide*

Effective August 17, 2021, a cemetery association or company will have the option of choosing from two different methods of disbursing funds from its endowment care trust. The full language of R.C. section 1721.21 can be found at <https://codes.ohio.gov>.

#### **What are the two distribution methods?**

- (1) All net ordinary income – this includes dividends, interest and other income minus any expenses (such as taxes on income, fees, commissions, costs); or
- (2) Unitrust – an amount not to exceed 5% of the fair market value of the trust. “Fair market value” means the average of the net fair market value of the assets of the trust as of the last trading day for each of the three preceding fiscal year ends.

Once a distribution method is selected, including the selection of the unitrust withdrawal percentage, the selection remains in effect unless, in writing, the cemetery notifies the trustee(s) and the Division of a change.

All principal and capital gains less any payment of taxes associated with such gains must remain in the trust, except to the extent that any funds from the trust would be made under a unitrust withdrawal. For a unitrust, if reasonable operating expenses and taxes are greater than 2.5% of the fair market value of the preceding calendar year, than the unitrust distribution percentage is reduced by the amount exceeding 2.5%.

#### **How do I select the unitrust distribution?**

Prior to withdrawing a unitrust distribution during the upcoming calendar year, a cemetery is required to:

- (1) Provide the Division written notification on the Division’s “Endowment Care Trust Distribution Selection Form” AND
- (2) Provide the trustee(s) of the trust written instructions, including the percentage of distribution no later than 60 days prior to the beginning of the calendar year you wish to begin your distribution selection.

The trustee(s) shall ensure the investment policy being used supports the growth of the trust.

#### **What are the unitrust withdrawal requirements?**

In order to withdraw the percentage chosen, the fair market value of the endowment care trust after the distribution must be greater than 80% of the aggregate fair market value at the end of the immediately preceding calendar year. If it is now, then the distribution withdrawal is limited for that year to net ordinary income.

#### **How often should distributions be made?**

Distributions can be made monthly, quarterly, semi-annually or annually based on the written agreement between the cemetery and trustee(s). If there are no written instructions, the trustee(s) must calculate and distribute net income on a monthly basis.





Department  
of Commerce

## Division of Real Estate & Professional Licensing *Endowment Care Trust – Unitrust Distribution Guide*

### **What may I use the distribution amount towards?**

All distributions may be used for:

- (1) The cost and expenses of establishing, managing, investing and administering the records and the trust;  
AND
- (2) The maintenance, supervision, improvement and preservation of the cemetery grounds, lots, buildings, equipment, statuary and other real and personal property of the cemetery.

### **If I change the distribution method will our trust agreement need to be updated?**

Possibly. It is important for a cemetery association or company to consult with its legal counsel for a more complete understanding of R.C. 1721.21 and how choosing the unitrust method will affect the existing trust agreement and cemetery operations.

This flyer is intended for general, informational purposes only. It is not legal advice and does not include all requirements set out in R.C. section 1721.21.

***Consult with your legal and financial advisors to determine the appropriate disbursement method for your cemetery.***





Department  
of Commerce

Division of Real Estate  
& Professional Licensing

## CEMETERY

## ENDOWMENT CARE TRUST DISTRIBUTION SELECTION FORM

1. This form is for notification to the Division only. A separate, written notification should be provided to the trustee(s). ORC 1721.21(K)(2)(a)
2. This form is to be used by cemeteries selecting the distribution method for their endowment care trust pursuant to ORC 1721.21(J) & (K). This form must be typewritten or printed legibly in black ink.
3. If a cemetery has more than one Endowment Care Trust account a separate distribution selection form must be filed for each trust fund.
4. If the owner/operator has more than one cemetery, a separate distribution selection form must be filed for each cemetery.
5. This form is not effective unless properly completed. Once complete, your distribution selection will be valid beginning the next calendar year.

This selection shall remain in effect unless the cemetery notifies the trustees and Division of its desire to effect a change.

☐ **NET ORDINARY INCOME DISTRIBUTION**

OR

☐ **UNITRUST DISTRIBUTION**

Amount of distribution \_\_\_\_\_

Not to exceed 5% of the fair market value of the endowment care trust

**DISBURSEMENTS WILL BE MADE:** \_\_\_\_\_ (select one:  
monthly/quarterly/semiannual/annual).

1. OWNER/OPERATOR INFORMATION	FILE NUMBER	NAME	
	FILE NUMBER	NAME	
2. CEMETERY INFORMATION	ACCOUNT NUMBER	FINANCIAL INSTITUTION WHERE ACCOUNT IS HELD	
	FINANCIAL INSTITUTION'S FISCAL YEAR BEGINS DATE	FINANCIAL INSTITUTION'S FISCAL YEAR END DATE	
3. ACCOUNT INFORMATION	NAME(S) OF 3 INDIVIDUAL TRUSTEES	NAME OF TRUST COMPANY	PHONE NUMBER(S)
4. TRUSTEE(S) INFORMATION			

77 South High Street  
20<sup>th</sup> Floor  
REPL-21-0003  
Columbus, Ohio 43215

Anne M. Petit, Superintendent  
An Equal Opportunity Employer and Service Provider

614-466-4100  
Fax 614-644-0584  
TTY/TDD 800-750-0750  
com.ohio.gov/real



5. OPERATOR CONTACT INFORMATION	NAME		PHONE NUMBER		
	STREET ADDRESS				
6. CURRENT OPERATOR MAILING ADDRESS	CITY		COUNTY	STATE	ZIP CODE

- ☐ I CERTIFY THAT I AM AUTHORIZED TO MAKE AND FILE THIS ELECTION ON BEHALF OF THE CEMETERY ASSOCIATION.
- ☐ I CERTIFY THAT THE TRUSTEE(S) OF THE TRUST HAVE BEEN PROVIDED WRITTEN NOTICE IF A UNITRUST DISTRIBUTION HAS BEEN CHOSEN.

\_\_\_\_\_  
PRINT NAME OF AUTHORIZED AGENT

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED AGENT

\_\_\_\_\_  
DATE

NOTICE: Section 2921.13 of the Revised Code makes the providing of a false statement to a government official or public agency subject to criminal sanctions.

77 South High Street  
20<sup>th</sup> Floor  
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