

## 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, then 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 not, 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.



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#### **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.***