

16-322. Same; trust fund; requirements; disbursements; trust instruments, validity; trustee duties.

(a) The cemetery merchandise trust fund must be maintained with a trustee as defined in K.S.A. 16-320, and amendments thereto. 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 cemetery merchandise trust fund to another financial institution or agent. 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: (1) Is authorized to do business in Kansas; and (2) 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 cemetery merchandise trust 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. Deposits to such fund shall be carried in the name of the cemetery corporation and the amounts deposited therein may be commingled, provided that the accounting records establish a separate account for each item of preneed merchandise. Subject to the requirements of subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto, the trustee shall invest the trust funds. The trustee may recover from the earnings of the cemetery merchandise trust 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 allocation of earnings to the preneed cemetery merchandise or preneed burial products or services.

(b) No part of the moneys required by K.S.A. 16-321, and amendments thereto, to be held under a preneed merchandise contract shall ever be used for any purpose other than investment until delivery of the merchandise is made. With respect to any cemetery merchandise which is not affixed to real property, delivery shall occur when physical possession is tendered to the purchaser, and a bill of sale, storage or similar instrument of title is delivered to the purchaser. With respect to cemetery merchandise which is affixed to realty, delivery shall occur when construction or permanent installation of the merchandise has been completed. Upon delivery of the preneed cemetery merchandise or preneed burial products or services, the cemetery corporation shall present the trustee with a verified statement, in a form and manner approved by the secretary of state under subsection (e) of K.S.A. 16-321, and amendments thereto, that delivery has been made. Upon such presentation the trustee shall pay the cemetery corporation an amount equal to the market value allocated to preneed cemetery merchandise or preneed burial products or services delivered.

(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 and the cemetery corporation as trustor.
- (2) The trustee shall submit a quarterly report to the secretary of state. The report shall be in a form and manner prescribed by the secretary of state and shall contain the following:
 - (A) Deposits;
 - (B) withdrawals;
 - (C) all interest, dividends, and income earned; and
 - (D) capital gains or capital losses.
- (3) Within 60 days following December 31 of each year, the trustee shall report the allocation of distributable earnings to the secretary of state in a form and manner prescribed by the secretary of state.
- (4) The trustee shall use deposit and withdrawal forms approved by the secretary of state.
- (5) 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.
- (6) By accepting the trusteeship of the cemetery merchandise trust 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.
- (7) 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. 16-320 et seq., and amendments thereto.

History: L. 1982, ch. 96, § 3; L. 1989, ch. 48, § 75; L. 1994, ch. 34, § 1; L. 2011, ch. 78, § 7; Jan. 1, 2012.