

## SUBCHAPTER 07D - TRUST FUNDS

### SECTION .0100 - MAINTENANCE AND CARE FUNDS (PERPETUAL CARE FUNDS)

#### 21 NCAC 07D .0101 REPORT

- (a) Each licensed cemetery shall make a report of deposits to the perpetual care fund by the last day of each month.
- (b) The report of deposits shall be made on a form provided by the Commission, the Report of Grave Spaces for the Month of \_\_\_\_\_, that shall include:
- (1) the deed numbers, listed in numerical order;
  - (2) the date of deed;
  - (3) the date of contract;
  - (4) the purchaser;
  - (5) the sale price;
  - (6) the lot number;
  - (7) the section; and
  - (8) the number of spaces deeded and amount due trust fund.
- (c) This form may be obtained from and shall be returned to:  
North Carolina Cemetery Commission  
1001 Navaho Drive, Suite 100  
Raleigh, North Carolina 27609.

*History Note: Authority G.S. 65-49; 65-64;  
Eff. February 1, 1976;  
Readopted Eff. January 16, 1978;  
Amended Eff. September 1, 2017; September 1, 2007; May 3, 1993; September 1, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

#### 21 NCAC 07D .0102 LOCATION OF FUND

No person will be allowed to withdraw or transfer all or any portion of the corpus of the care and maintenance trust funds of any cemetery to any depository outside the State of North Carolina. Also the Commission will not approve the creation of a new perpetual care trust fund as called for under Chapter 65-55 of the General Statutes unless same is deposited with a trustee in the State of North Carolina.

*History Note: Authority G.S. 65-49; 65-55; 65-61;  
Eff. February 1, 1976;  
Readopted Eff. January 16, 1978;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

#### 21 NCAC 07D .0103 TRANSFER OF FUNDS

- Any cemetery which desires to transfer their trust agreement must provide:
- (1) copy of new proposed perpetual care trust fund agreement,
  - (2) a financial statement of the depository where the funds will be held, and
  - (3) as much information as possible about proposed new trustee.

*History Note: Authority G.S. 65-61;  
Eff. February 1, 1976;  
Readopted Eff. January 16, 1978;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

#### 21 NCAC 07D .0104 FINE FOR LATE DEPOSITS

Any fine levied under G.S. 65-64(a) shall be one dollar (\$1.00) a day for each grave space, niche, and mausoleum crypt a deposit is delinquent on subject to a maximum fine of one hundred per cent of the amount that was or is late to the care and maintenance trust fund.

- (1) The first time a delinquency is found the cemetery will receive a 20 day notice in writing to cure the violation regardless of whether or not the delinquency was corrected before an examination by this Commission. The fine will start on the 21st day after notice of the violation if the money has not been deposited.
- (2) Once a cemetery has received one 20 day notice, the fine for any later delinquency will begin running on the first day of delinquency. No notice of delinquency need be sent before a fine is incurred, and the fine may reach the maximum amount of one hundred percent of the amount that was or is owed or deposited late to the care and maintenance trust fund before the delinquency is discovered.
- (3) A cemetery which has not been notified of or fined for a delinquency within the last five years will receive a new 20 day notice in the event of any delinquency.
- (4) In the event a delinquency is found in a cemetery's care and maintenance trust fund and the cemetery does not make up the deposit, if still owed, and/or the fine within 20 days after notice from the Commission that a fine is due, then the Commission will take immediate steps to revoke the cemetery's license.
- (5) It is the intent and policy of this Commission to levy a fine only for substantial, flagrant, or repeated late or delinquent deposits.

*History Note:* Authority G.S. 65-49; 65-54(a);  
Eff. December 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

#### **21 NCAC 07D .0105 DEPOSIT FOR MULTIPLE BURIALS**

Each interment, entombment or inurnment right shall require a deposit to the care and maintenance trust fund.

*History Note:* Authority G.S. 65-49; 65-63;  
Eff. September 1, 1983;  
Amended Eff. June 1, 2014;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

#### **21 NCAC 07D .0106 CONTRACT DISCLAIMER**

Each contract for the sale of a grave space, mausoleum niche or crypt shall state that the amount deposited in a perpetual care trust fund from the proceeds of the sale are for the perpetual care of the grave space, mausoleum niche or crypt only and does not include deposits which may be subsequently required for perpetual care of monuments, markers or other merchandise.

*History Note:* Authority G.S. 65-49;  
Eff. April 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

#### **21 NCAC 07D .0107 EXCESS FUNDS**

If a cemetery collects Care and Maintenance Trust Funds in excess of the mandatory trust fund amount, the excess must be deposited into the trust fund by the last day of the following month. Excess funds may not be withdrawn from the trust fund or used to offset past or future deposits.

*History Note:* Authority G.S. 65-49; 65-64;  
Eff. May 3, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

#### **21 NCAC 07D .0108 WITHDRAWALS FROM PERPETUAL CARE TRUST FUNDS**

(a) For purposes of this Rule, the following definitions shall apply:

- (1) "corpus amount" means the sum of:

- (A) the amount of all deposits made to a trust fund at the inception of the trust fund; and
  - (B) the aggregate amount of all deposits made to the trust fund after the inception of the trust fund.
  - (2) "deposits" means the deposits to trust funds required by G.S. 65-64.
  - (3) "income" means interest income, dividend income, or any amount of capital gain income to the extent allowed to be withdrawn by the Commission pursuant to this Rule.
  - (4) "total market value" means the total market value of the assets in the trust fund, as reflected in the records of the trustee.
  - (5) "trust fund" means a care and maintenance trust fund required by G.S. 65-61 or perpetual care trust fund required by G.S. 65-63.
- (b) Without the prior written approval of the Commission pursuant to G.S. 65-61, no amounts from a trust fund may be withdrawn from the trust fund if either:
- (1) at the time of the withdrawal, the total market value of the trust fund is less than the corpus amount; or
  - (2) immediately after the withdrawal is made, the total market value of the trust fund would be less than the corpus amount.

*History Note:* Authority G.S. 65-49; 65-61;  
Eff. April 1, 2020.

## **SECTION .0200 - PRE-NEED CEMETERY MERCHANDISE: PRE-CONSTRUCTED MAUSOLEUMS AND BELOW GROUND CRYPTS TRUST FUNDS**

### **21 NCAC 07D .0201 REPORT**

Each licensed cemetery shall make a report of deposits to the pre-need cemetery merchandise and pre-constructed mausoleum and below ground crypt trust fund to be completed and mailed to the office in Raleigh by the last day of each month. The form to be used is the "Monthly Report and Deposit Record for Pre-need Cemetery Merchandise, Pre-Constructed Mausoleums and Services Not Delivered." This form provides space for trustee's name, fund account number and the name of the savings institution used. It also provides space for the name of the purchaser, date of the contract, number of the contract, the full sales price, the total amount required, the amount deposited, and the total amount deposited to date. Copies of this form may be obtained from and must be returned to:

North Carolina Cemetery Commission  
1001 Navaho Drive, Suite 100  
Raleigh, North Carolina 27609.

*History Note:* Authority G.S. 65-49;  
Eff. February 1, 1976;  
Readopted Eff. January 16, 1978;  
Amended Eff. September 1, 2007; May 3, 1993; September 1, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

### **21 NCAC 07D .0202 DELIVERY**

(a) The Commission shall not consider vaults and crypts delivered unless installed or stored on the cemetery premises or stored off premises by a supplier.

(b) The Commission shall not consider markers, bases and vases delivered unless installed or stored at the cemetery or, if stored off premises by a supplier, there shall be no additional charge for delivery or freight, unless specified in bold print in the contract. If vaults, crypts or other merchandise are stored off premises, the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified public accountant of each item which has been purchased through a licensed North Carolina cemetery company that, as of the date of the report, is in storage and thus, the property of the customer and not the supplier. If vaults, crypts or other merchandise are stored at the cemetery, the cemetery company must submit to the Cemetery Commission not less than annually a report by an accountant of each item that, as of the date of the report, is in storage and thus, the property of the customer and not the supplier.

*History Note:* Authority G.S. 65-49; 65-60.1(c); 65-66;

*Eff. February 1, 1976;*  
*Readopted Eff. January 16, 1978;*  
*Amended Eff. June 1, 2014; December 1, 2008; May 3, 1993; July 1, 1988; April 1, 1987;*  
*September 1, 1979;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18,*  
*2018.*

**21 NCAC 07D .0203 TRUST ACCOUNTS**

- (a) Withdrawal requests made pursuant to G.S. 65-66(b)(4) shall be made no more than once per month.
- (b) The corporate trustee or financial institution shall make full disclosure of the amount in the trust account available to the Commission within two business days upon request.
- (c) Interest earned on trust accounts may be used to fund future deposits or, with written prior approval of the Commission, withdrawn.

*History Note: Authority G.S. 65-49; 65-66(b)(4);*  
*Eff. September 1, 1979;*  
*Amended Eff. June 1, 2014; May 3, 1993;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18,*  
*2018.*

**21 NCAC 07D .0204 EXCESS FUNDS**

*History Note: Authority G.S. 65-49;*  
*Eff. June 23, 1980;*  
*Amended Eff. April 1, 1987;*  
*Repealed Eff. May 3, 1993.*