# STATE OF MISSOURI

Division of Professional Registration

# OFFICE OF ENDOWED CARE CEMETERIES

Chapters 214, 193, 194, 469

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# OFFICE OF ENDOWED CARE CEMETERIES

**STATE OF MISSOURI**
Division of Professional Registration

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# DIRECTORY FOR STATUTES AND REGULATIONS


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# Endowed Care Act

# Endowed Care Act

**214.270. Definitions. — As used in sections 214.270 to 214.410, the following terms mean:**

(1) "Agent" or "authorized agent", any person empowered by the cemetery operator to represent the operator in dealing with the general public, including owners of the burial space in the cemetery;

(2) "Burial merchandise", a monument, marker, memorial, tombstone, headstone, urn, outer burial container, or similar article which may contain specific lettering, shape, color, or design as specified by the purchaser;

(3) "Burial space", one or more than one plot, grave, mausoleum, crypt, lawn, surface lawn crypt, niche or space used or intended for the interment of the human dead;

(4) "Cemetery", property restricted in use for the interment of the human dead by formal dedication or reservation by deed but shall not include any of the foregoing held or operated by the state or federal government or any political subdivision thereof, any incorporated city or town, any county or any religious organization, cemetery association or fraternal society holding the same for sale solely to members and their immediate families;

(5) "Cemetery association", any number of persons who shall have associated themselves by articles of agreement in writing as a not-for-profit association or organization, whether incorporated or unincorporated, formed for the purpose of ownership, preservation, care, maintenance, adornment and administration of a cemetery. Cemetery associations shall be governed by a board of directors. Directors shall serve without compensation;

(6) "Cemetery operator" or "operator", any person who owns, controls, operates or manages a cemetery;

(7) "Cemetery prearranged contract", any contract with a cemetery or cemetery operator for burial merchandise or burial services covered by sections 214.270 to 214.410 which is entered into before the death of the individual for whom the burial merchandise or burial services are intended;

(8) "Cemetery service" or "burial service", those services performed by a cemetery owner or operator licensed as an endowed care or nonendowed cemetery including setting a monument or marker, setting a tent, excavating a grave, interment, entombment, inurnment, setting a vault, or other related services within the cemetery;

(9) "Columbarium", a building or structure for the inurnment of cremated human remains;

(10) "Community mausoleum", a mausoleum containing a substantial area of enclosed space and having either a heating, ventilating or air conditioning system;

(11) "Department", department of commerce and insurance;

(12) "Developed acreage", the area which has been platted into grave spaces and has been developed with roads, paths, features, or ornamentations and in which burials can be made;

(13) "Director", director of the division of professional registration;

(14) "Division", division of professional registration;

(15) "Endowed care", the maintenance, repair and care of all burial space subject to the endowment within a cemetery, including any improvements made for the benefit of such burial space. Endowed care shall include the general overhead expenses needed to accomplish such maintenance, repair, care and improvements. Endowed care shall include the terms perpetual care, permanent care, continual care, eternal care, care of duration, or any like term;

(16) "Endowed care cemetery", a cemetery, or a section of a cemetery, which represents itself as offering endowed care and which complies with the provisions of sections 214.270 to 214.410;

(17) "Endowed care fund", "endowed care trust", or "trust", any cash or cash equivalent, to include any income therefrom, impressed with a trust by the terms of any gift, grant, contribution, payment, devise or bequest to an endowed care cemetery, or its endowed care trust, or funds to be delivered to an endowed care cemetery's trust received pursuant to a contract and accepted by any endowed care cemetery operator or his agent. This definition includes the terms endowed care funds, maintenance funds, memorial care funds, perpetual care funds, or any like term;

(18) "Escrow account", an account established in lieu of an endowed care fund as provided under section 214.330 or an account used to hold deposits under section 214.387;

(19) "Escrow agent", an attorney, title company, certified public accountant or other person authorized by the division to exercise escrow powers under the laws of this state;

(20) "Escrow agreement", an agreement subject to approval by the office between an escrow agent and a cemetery operator or its agent or related party with common ownership, to receive and administer payments under cemetery prearranged contracts sold by the cemetery operator;

(21) "Family burial ground", a cemetery in which no burial space is sold to the public and in which interments are restricted to persons related by blood or marriage;

(22) "Fraternal cemetery", a cemetery owned, operated, controlled or managed by any fraternal organization or auxiliary organizations thereof, in which the sale of burial space is restricted solely to its members and their immediate families;

(23) "Garden mausoleum", a mausoleum without a substantial area of enclosed space and having its crypt and niche fronts open to the atmosphere. Ventilation of the crypts by forced air or otherwise does not constitute a garden mausoleum as a community mausoleum;

(24) "Government cemetery", or "municipal cemetery", a cemetery owned, operated, controlled or managed by the federal government, the state or a political subdivision of the state, including a county or municipality or instrumentality thereof;

(25) "Grave" or "plot", a place of ground in a cemetery, used or intended to be used for burial of human remains;

(26) "Human remains", the body of a deceased person in any state of decomposition, as well as cremated remains;

(27) "Inurnment", placing an urn containing cremated remains in a burial space;

(28) "Lawn crypt", a burial vault or other permanent container for a casket which is permanently installed below ground prior to the time of the actual interment. A lawn crypt may permit single or multiple interments in a grave space;

(29) "Mausoleum", a structure or building for the entombment of human remains in crypts;

(30) "Niche", a space in a columbarium used or intended to be used for inurnment of cremated remains;

(31) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or a section of a cemetery for which no endowed care trust fund has been established in accordance with sections 214.270 to 214.410;

(32) "Office", the office of endowed care cemeteries within the division of professional registration;

(33) "Owner of burial space", a person to whom the cemetery operator or his authorized agent has transferred the right of use of burial space;

(34) "Person", an individual, corporation, partnership, joint venture, association, trust or any other legal entity;

(35) "Registry", the list of cemeteries maintained in the division office for public review. The division may charge a fee for copies of the registry;

(36) "Religious cemetery", a cemetery owned, operated, controlled or managed by any church, convention of churches, religious order or affiliated auxiliary thereof in which the sale of burial space is restricted solely to its members and their immediate families;

(37) "Surface lawn crypt", a sealed burial chamber whose lid protrudes above the land surface;

(38) "Total acreage", the entire tract which is dedicated to or reserved for cemetery purposes;

(39) "Trustee of an endowed care fund", the separate legal entity qualified under section 214.330 appointed as trustee of an endowed care fund.

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(L. 1961 p. 538 § 2, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496, A.L. 1996 S.B. 494, A.L. 2002 S.B. 892, A.L. 2008 S.B. 788, A.L. 2009 S.B. 296, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.275. License, cemeteries — division's powers and duties — limitations.**

1. No endowed care or nonendowed care cemetery shall be operated in this state unless the owner or operator thereof has a license issued by the division and complies with all applicable state, county or municipal ordinances and regulations.

2. It shall not be unlawful for a person who does not have a license to care for or maintain the cemetery premises, or to fulfill prior contractual obligations for the interment of human remains in burial spaces.

3. Applications for a license shall be in writing, submitted to the division on forms prescribed by the division. The application shall contain such information as the division deems necessary and be accompanied by the required fee.

4. Each license issued pursuant to sections 214.270 to 214.516 shall be renewed prior to the license renewal date established by the division. The division shall issue a new license upon receipt of a proper renewal application, trust fund report as required by section 214.340, and the required renewal fee. The required renewal fee shall be fifty dollars, plus an assessment for each interment, inurnment or other disposition of human remains at a cemetery for which a charge is made, as the division shall by rule determine, not to exceed ten dollars per such disposition in the case of an endowed care cemetery, and six dollars for such disposition in the case of a nonendowed care cemetery. The division shall mail a renewal notice to the last known address of the holder of the license prior to the renewal date. The holder of a license shall keep the division advised of the holder's current address. The license issued to the owner or operator of a cemetery which is not renewed within three months after the license renewal date shall be suspended automatically, subject to the right of the holder to have the suspended license reinstated within nine months of the date of suspension if the person pays the required reinstatement fee. Any license suspended and not reinstated within nine months of the suspension shall expire and be void and the holder of such license shall have no rights or privileges provided to holders of valid licenses. Any person whose license has expired may, upon demonstration of current qualifications and payment of required fees, be reregistered or reauthorized under the person's original license number.

5. The division shall grant or deny each application for a license pursuant to this section within ninety days after it is filed, and no prosecution of any person who has filed an application for such license shall be initiated unless it is shown that such application was denied by the division and the owner was notified thereof.

6. Upon the filing of a completed application, as defined by rule, the applicant may operate the business until the application is acted upon by the division.

7. Within thirty days after the sale or transfer of ownership or control of a cemetery, the transferor shall return his or her license to the division. A prospective purchaser or transferee of a cemetery shall file an application for a license at least thirty days prior to the sale or transfer of ownership or control of a cemetery and shall be in compliance with sections 214.270 to 214.516.

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(L. 1999 H.B. 343, A.L. 2001 H.B. 567, A.L. 2007 S.B. 272)

**214.276. Refusal to issue license, grounds — complaint, procedure.**

1. The division may refuse to issue or renew any license, required pursuant to sections 214.270 to 214.516 for one or any combination of causes stated in subsection 2 of this section. The division shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The division may cause a complaint to be filed with the administrative hearing commission as provided in chapter 621 against any holder of any license, required by sections 214.270 to 214.516 or any person who has failed to surrender his or her license, for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 214.270 to 214.516;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state, of the United States, or of any country, for any offense directly related to the duties and responsibilities of the occupation, as set forth in section 324.012, regardless of whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any license, issued pursuant to sections 214.270 to 214.516 or in obtaining permission to take any examination given or required pursuant to sections 214.270 to 214.516;

(4) Obtaining or attempting to obtain any fee, charge or other compensation by fraud, deception or misrepresentation;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession regulated by sections 214.270 to 214.516;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 214.270 to 214.516, or any lawful rule or regulation adopted pursuant to sections 214.270 to 214.516;

(7) Impersonation of any person holding a license or allowing any person to use his or her license;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by sections 214.270 to 214.516 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by sections 214.270 to 214.516 who is not registered and currently eligible to practice pursuant to sections 214.270 to 214.516;

(11) Issuance of a license based upon a material mistake of fact;

(12) Failure to display a valid license;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(15) Willfully and through undue influence selling a burial space, cemetery services or merchandise.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the division may singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the division deems appropriate for a period not to exceed five years, or may suspend, or revoke the license or permit or may impose a penalty allowed by subsection 4 of section 214.410. No new license shall be issued to the owner or operator of a cemetery or to any corporation controlled by such owner for three years after the revocation of the certificate of the owner or of a corporation controlled by the owner.

4. The division may settle disputes arising under subsections 2 and 3 of this section by consent agreement or settlement agreement between the division and the holder of a license. Within such a settlement agreement, the division may singly or in combination impose any discipline or penalties allowed by this section or subsection 4 of section 214.410. Settlement of such disputes shall be entered into pursuant to the procedures set forth in section 621.045.

5. Use of the procedures set out in this section shall not preclude the application of any other remedy provided by this chapter.

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(L. 1999 H.B. 343, A.L. 2001 H.B. 567, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754, A.L. 2020 H.B. 2046)

**214.277. Injunctions, restraining orders, other court remedies available — venue.**

1. Upon application by the division, and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a certificate of registration or authority, permit or license is required upon a showing that such acts or practices were performed or offered to be performed without a certificate of registration or authority, permit or license; or

(2) Engaging in any practice or business authorized by a certificate of registration or authority, permit or license issued pursuant to this chapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or patient of the licensee.

2. Any action brought pursuant to this section shall be in addition to and not in lieu of any penalty provided by this chapter and may be brought concurrently with other actions to enforce this chapter.

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(L. 1999 H.B. 343, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.280. Election to operate as endowed care cemetery filing with division of registration, form — fee — deposit of fee — division's powers and duties — rules authorized.**

1. Operators of all existing cemeteries shall, prior to August twenty-eighth following August 28, 1994, elect to operate each cemetery as an endowed care cemetery as defined in subdivision (16) of section 214.270 and shall register such intention with the division and remit the required registration fee or, failing such election, shall operate each cemetery for which such election is not made as a nonendowed cemetery without regard to registration fees or penalties. Operators of all cemeteries hereafter established shall, within ninety days from the establishment thereof, elect to operate each cemetery as an endowed care cemetery, or as a nonendowed cemetery. Such election for newly established cemeteries shall be filed with the division, on a form provided by the division. Any such election made subsequent to August 28, 1994, shall be accompanied by a filing fee set by the division, and such fee shall be deposited in the endowed care cemetery audit fund as defined in section 193.265. The fee authorized in this subsection shall not be required from an existing nonendowed cemetery.

2. The division may adopt rules establishing the conditions and procedures governing the circumstances where an endowed care cemetery elects to operate as a nonendowed care cemetery. In the event an endowed care cemetery elects to operate as a nonendowed care cemetery, the division shall make every effort to require such cemetery to meet all contractual obligations for the delivery of services entered into prior to it reverting to the status of a nonendowed cemetery.

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(L. 1961 p. 538 § 4, A.L. 1994 S.B. 496 § 214.280 subsecs. 1, 2, A.L. 2009 S.B. 296)

**214.282. Voidability of contracts, exceptions.**

1. Each contract sold by a cemetery operator for cemetery services or for grave lots, grave spaces, markers, monuments, memorials, tombstones, crypts, niches, mausoleums, or other receptacles shall be voidable by the purchaser and deemed unenforceable unless:

(1) It is in writing;

(2) It is executed by a cemetery operator who is in compliance with the licensing provisions of this chapter;

(3) It identifies the contract purchaser and identifies the cemetery services or other items to be provided;

(4) It identifies the name and address of any trustee or escrow agent that will receive payments made pursuant to the contract under the provisions of section* 214.320, 214.330, or 214.387, if applicable;

(5) It contains the name and address of the cemetery operator; and

(6) It identifies any grounds for cancellation by the purchaser or by the cemetery operator on default of payment.

2. If a cemetery prearranged contract does not substantially comply with the provisions of this section, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller or other payee thereof, together with interest at the rate of ten percent per annum and all reasonable costs of collection, including attorneys' fees.

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(L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

*Word "sections" appears in original rolls.

**214.283. Notification of burial lands — registry of cemeteries to be kept by division — fee may be charged for copies — surveyor locating unregistered cemetery to file with division, form.**

1. Any person, entity, association, city, town, village, county or political subdivision that purchases, receives or holds any real estate used for the burial of dead human bodies, excluding a family burial ground, shall notify the office of the endowed care cemeteries of the name, location and address of such real estate on a form approved by the office, before October 1, 2010, or within thirty days of purchasing, receiving or holding such land or of being notified by the office of the requirements of this provision. No fee shall be charged for such notification nor shall any penalty be assessed for failure to register. This section shall not be deemed to

exempt any operator of an endowed care cemetery or nonendowed care cemetery from being duly licensed as required by this chapter.

2. The division shall establish and maintain a registry of cemeteries and the registry shall be available to the public for review at the division office or copied upon request. The division may charge a fee for copies of the register.

(1) If, in the course of a land survey of property located in this state, a surveyor licensed pursuant to chapter 327 locates any cemetery which has not been previously registered, the surveyor shall file a statement with the division regarding the location of the cemetery. The statement shall be filed on a form as defined by division rule. No fee shall be charged to the surveyor for such filing.

(2) Any person, family, group, association, society or county surveyor may submit to the division, on forms provided by the division, the names and locations of any cemetery located in this state for inclusion in the registry. No fee shall be charged for such submissions.

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(L. 1961 p. 538 § 4, A.L. 1994 S.B. 496 § 214.280 subsec. 3, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.300. Nonendowed cemetery may qualify as endowed, when — minimum care and maintenance fund to be established.**

Any cemetery operator may, after October 13, 1961, qualify to operate a cemetery which has been operated as a nonendowed cemetery for a minimum of two years, as an endowed care cemetery by:

(1) So electing in compliance with section 214.280;

(2) Establishing an endowed care trust fund in cash of one thousand dollars for each acre in said cemetery with a minimum of five thousand dollars and a maximum of twenty-five thousand dollars;

(3) Filing the report required by section 214.340.

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(L. 1961 p. 538 § 12, A.L. 1994 S.B. 496, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.310. Endowed care and maintenance fund, minimum amount — bond — posting of sign, when, information required.**

1. Any cemetery operator who elects to operate a new cemetery as an endowed care cemetery or who represents to the public that perpetual, permanent, endowed, continual, eternal care, care of duration or similar care will be furnished cemetery property sold shall create an endowed care trust fund and shall deposit a minimum of twenty-five thousand dollars for cemeteries that have in excess of one hundred burials annually or a minimum of five thousand dollars for cemeteries that have one hundred or less burials annually in such fund before selling or disposing of any burial space in said cemetery, or in lieu thereof such cemetery owner may furnish a surety bond issued by a bonding company or insurance company authorized to do business in this state in the face amount of thirty thousand dollars, and such bond shall run to the office of endowed care cemeteries for the benefit of the care trust funds held by such cemetery. This bond shall be for the purpose of guaranteeing an accumulation of twenty-five thousand dollars in such care trust fund and also for the further purpose of assuring that the cemetery owner shall provide annual perpetual or endowment care in an amount equal to the annual reasonable return on a secured cash investment of twenty-five thousand dollars until twenty-five thousand dollars is accumulated in said endowed care trust funds, and these shall be the conditions of such surety bond; provided, however, the liability of the principal and surety on the bond shall in no event exceed thirty thousand dollars. Provided further, that whenever a cemetery owner which has made an initial deposit to the endowed care trust fund demonstrates to the satisfaction of the administrator of the office of endowed care cemeteries that more than twenty-five thousand dollars has been accumulated in the endowed care trust fund, the cemetery owner may petition the administrator of the office of endowed care cemeteries for an order to dissolve the surety bond requirement, so long as at least twenty-five thousand dollars always remains in the endowed care trust fund.

2. Construction of a mausoleum, lawn crypt, columbarium or crematorium as part of a cemetery then oper-

ated as an endowed care cemetery shall not be considered the establishment of a new cemetery for purposes of this section.

3. Any endowed care cemetery which does not maintain an* adequately staffed office in the county in which the cemetery is located shall have prominently displayed on the premises a sign clearly stating the operator's name, address and telephone number. If the operator does not reside in the county in which the cemetery is located, the sign shall also state the name, address and telephone number of a resident of the county who is the authorized agent of the operator or the location of an office of the cemetery which is within ten miles of such cemetery. In jurisdictions where ordinances require signs to meet certain specifications, a weatherproof notice containing the information required by this subsection shall be sufficient.

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(L. 1961 p. 538 § 5, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496, A.L. 1999 H.B. 343, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

*Word "a" appears in original rolls.

**214.320. Deposits in fund required, amount — annual report, form furnished by division — audits may be conducted, when — exemption from chapter 436 requirements, when.**

1. An operator of an endowed care cemetery shall establish and deposit in an endowed care trust fund not less than the following amounts for burial space sold or disposed of, with such deposits to the endowed care trust fund to be made monthly on all burial space that has been fully paid for to the date of deposit:

(1) A minimum of fifteen percent of the gross sales price, or twenty dollars, whichever is greater, for each grave space sold;

(2) A minimum of ten percent of the gross sales price of each crypt or niche sold in a community mausoleum, or a minimum of one hundred dollars for each crypt or fifty dollars for each niche sold in a community mausoleum, whichever is greater;

(3) A minimum of ten percent of the gross sales price of each crypt or niche sold in a garden mausoleum, or a minimum of one hundred dollars for each crypt or twenty-five dollars for each niche sold in a garden mausoleum, whichever is greater;

(4) A minimum of ten percent of the gross sales price of each lawn crypt sold or a minimum of seventy-five dollars, whichever is greater.

2. Notwithstanding the provisions of subdivision (2) of subsection 1 of this section, a cemetery operator who has made the initial deposit in trust as required by sections 214.270 to 214.410 from his own funds, and not from funds deposited with respect to sales of burial space, may deposit only one-half the minimum amounts set forth in subdivisions (1) and (2) of subsection 1 of this section, until he shall have recouped his entire initial deposit. Thereafter, he shall make the minimum deposits required under subdivisions (1), (2), (3), and (4) of subsection 1 of this section.

3. As required by section 214.340, each operator of an endowed care cemetery shall file with the division of professional registration, on a form provided by the division, an annual endowed care trust fund report. The operator of any cemetery representing the cemetery, or any portion of the cemetery, as an endowed care cemetery shall make available to the division for inspection or audit at any reasonable time only those cemetery records and trust fund records necessary to determine whether the cemetery's endowed care trust fund is in compliance with sections 214.270 to 214.410. Each cemetery operator who has established an* escrow account pursuant to section 214.387 shall make available to the division for inspection or audit at any reasonable time those cemetery records and financial institution records necessary to determine whether the cemetery operator is in compliance with the provisions of section 214.387.

4. No cemetery operator shall operate or represent to the public by any title, description, or similar terms that a cemetery provides endowed care unless the cemetery is in compliance with the provisions of sections 214.270 to 214.410.

5. A cemetery operator shall be exempt from the provisions of chapter 436 for the sale of cemetery services or for grave lots, grave spaces, markers, monuments, memorials, tombstones, crypts, niches or mausoleums, outer burial containers or other receptacle. A cemetery operator shall be prohibited from adjusting or establishing the sales price of items with the intent of evading the trusting or escrow provisions of this chapter.

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(L. 1961 p. 538 § 7, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)
*Word "a" appears in original rolls.
(1984) A district court erred in allowing cemetery owners to require third party memorial installers to contribute a percentage of amounts charged for monument installation to endowed care cemetery funds. Rosebrough Monument Co. v. Memorial Park Cemetery (8th Cir.), 736 F.2d 441.

**214.325. Required deposits — deficiency — effect — penalty.**

If the deposits to any endowed care trust fund are less than the total sum required to be set aside and deposited since the effective date of such sections, the cemetery operator shall correct such deficiency by depositing not less than twenty percent of such deficiency each year for five years and shall file, on the form provided by the division, a statement outlining the date and amount such deposits were made. If the cemetery operator fails to correct the deficiency with respect to funds maintained under section 214.330, the cemetery operator shall thereafter not represent the cemetery as an endowed care cemetery. Any funds held in the cemetery's endowed care trust shall continue to be used for endowed care for that cemetery. The cemetery operator shall remain subject to the provisions of sections 214.270 to 214.410 for any cemetery or any section of the cemetery for which endowed care payments have been collected, subject to the penalties contained in section 214.410, and civil actions as well as subject to any regulations promulgated by the division. For purposes of this section, the term "deficiency" shall mean a deficiency in the amount required to be deposited pursuant to section 214.320, or a deficiency created by disbursements in excess of what is permitted under section 214.330 and shall not include or be affected by deficiencies or shortages caused by the fluctuating value of investments.

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(L. 1990 H.B. 1079, A.L. 1994 S.B. 496, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.330. Endowed care fund held in trust or segregated account — requirements — duties of trustee or independent investment advisor — operator's duties — endowed care fund agreement.**

1. (1) The endowed care trust fund required by sections 214.270 to 214.410 shall be permanently set aside in trust or in accordance with the provisions of subsection 2 of this section. The trustee of the endowed care trust shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri. The contact information for a trust officer or duly appointed representative of the trustee with knowledge and access to the trust fund accounting and trust fund records must be disclosed to the office or its duly authorized representative upon request.

(2) The trust fund records, including all trust fund accounting records, shall be maintained in the state of Missouri at all times or shall be electronically stored so that the records may be made available in the state of Missouri within fifteen business days of receipt of a written request. The operator of an endowed care cemetery shall maintain a current name and address of the trustee and the records custodian for the endowed care trust fund and shall supply such information to the office, or its representative, upon request.

(3) Missouri law shall control all endowed care trust funds and the Missouri courts shall have jurisdiction over endowed care trusts regardless of where records may be kept or various administrative tasks may be performed.

2. An endowed care trust fund shall be administered in accordance with Missouri law governing trusts, including but not limited to the applicable provisions of chapters 456 and 469, except as specifically provided in this subsection or where the provisions of sections 214.270 to 214.410 provide differently, provided that a cemetery operator shall not in any circumstances be authorized to restrict, enlarge, change, or modify the requirements of this section or the provisions of chapters 456 and 469 by agreement or otherwise.

(1) Income and principal of an endowed care trust fund shall be determined under the provisions of law applicable to trusts, except that the provisions of section 469.405 shall not apply.

(2) No principal shall be distributed from an endowed care trust fund except to the extent that a unitrust election is in effect with respect to such trust under the provisions of section 469.411.

(3) No right to transfer jurisdiction from Missouri under section 456.1-108 shall exist for endowed care trusts.

(4) All endowed care trusts shall be irrevocable.

(5) No trustee shall have the power to terminate an endowed care trust fund under the provisions of section 456.4-414.

(6) A unitrust election made in accordance with the provisions of chapter 469 shall be made by the cemetery operator in the terms of the endowed care trust fund agreement itself, not by the trustee.

(7) No contract of insurance shall be deemed a suitable investment for an endowed care trust fund.

(8) The income from the endowed care fund may be distributed to the cemetery operator at least annually on a date designated by the cemetery operator, but no later than sixty days following the end of the trust fund year. Any income not distributed within sixty days following the end of the trust's fiscal year shall be added to and held as part of the principal of the trust fund.

3. The cemetery operator shall have the duty and responsibility to apply the income distributed to provide care and maintenance only for that part of the cemetery designated as an endowed care section and not for any other purpose.

4. In addition to any other duty, obligation, or requirement imposed by sections 214.270 to 214.410 or the endowed care trust agreement, the trustee's duties shall be the maintenance of records related to the trust and the accounting for and investment of moneys deposited by the operator to the endowed care trust fund.

(1) For the purposes of sections 214.270 to 214.410, the trustee shall not be deemed responsible for the care, the maintenance, or the operation of the cemetery, or for any other matter relating to the cemetery, or the proper expenditure of funds distributed by the trustee to the cemetery operator, including, but not limited to, compliance with environmental laws and regulations.

(2) With respect to cemetery property maintained by endowed care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property.

5. If the endowed care cemetery fund is not permanently set aside in a trust fund as required by subsection 1 of this section, then the funds shall be permanently set aside in an escrow account in the state of Missouri. Funds in an escrow account shall be placed in an endowed care trust fund under subsection 1 if the funds in the escrow account exceed three hundred fifty thousand dollars, unless otherwise approved by the division for good cause. The account shall be insured by the Federal Deposit Insurance Corporation or comparable deposit insurance and held in a state or federally chartered financial institution authorized to do business in Missouri and located in this state.

(1) The interest from the escrow account may be distributed to the cemetery operator at least in annual or semiannual installments, but not later than six months following the calendar year. Any interest not distributed within six months following the end of the calendar year shall be added to and held as part of the principal of the account.

(2) The cemetery operator shall have the duty and responsibility to apply the interest to provide care and maintenance only for that part of the cemetery in which burial space shall have been sold and with respect to which sales the escrow account shall have been established and not for any other purpose. The principal of such funds shall be kept intact. The cemetery operator's duties shall be the maintenance of records and the accounting for an investment of moneys deposited by the operator to the escrow account. For purposes of sections 214.270 to 214.410, the administrator of the office of endowed care cemeteries shall not be deemed to be responsible for the care, maintenance, or operation of the cemetery. With respect to cemetery property maintained by cemetery care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property owned by the cemetery operator.

(3) The division may approve an escrow agent if the escrow agent demonstrates the knowledge, skill, and ability to handle escrow funds and financial transactions and is of good moral character.

6. The cemetery operator shall be accountable to the owners of burial space in the cemetery for compliance with sections 214.270 to 214.410.

7. Excluding funds held in an escrow account, all endowed care trust funds shall be administered in accordance with an endowed care trust fund agreement, which shall be submitted to the office by the cemetery operator for review and approval. The endowed care cemetery shall be notified in writing by the office of en-

dowed care cemeteries regarding the approval or disapproval of the endowed care trust fund agreement and regarding any changes required to be made for compliance with sections 214.270 to 214.410 and the rules and regulations promulgated thereunder.

8. All endowed care cemeteries shall be under a continuing duty to file with the office of endowed care cemeteries and to submit for prior approval any and all changes, amendments, or revisions of the endowed care trust fund agreement at least thirty days before the effective date of such change, amendment, or revision.

9. If the endowed care trust fund agreement, or any changes, amendments, or revisions filed with the office, are not disapproved by the office within thirty days after submission by the cemetery operator, the endowed care trust fund agreement, or the related change, amendment, or revision, shall be deemed approved and may be used by the cemetery operator and the trustee. Notwithstanding any other provision of this section, the office may review and disapprove an endowed care trust fund agreement, or any submitted change, amendment, or revision, after the thirty days provided herein or at any other time if the agreement is not in compliance with sections 214.270 to 214.410 or the rules promulgated thereunder. Notice of disapproval by the office shall be in writing and delivered to the cemetery operator and the trustee within ten days of disapproval.

10. Funds in an endowed care trust fund or escrow account may be commingled with endowed care funds for other endowed care cemeteries, provided that the cemetery operator and the trustee shall maintain adequate accounting records of the disbursements, contributions, and income allocated for each cemetery.

11. By accepting the trusteeship of an endowed care trust or accepting funds as an escrow agent pursuant to sections 214.270 to 214.410, the trustee or escrow agent submits personally to the jurisdiction of the courts of this state and the office of endowed care cemeteries regarding the administration of the trust or escrow account. A trustee or escrow agent shall consent in writing to the jurisdiction of the state of Missouri and the office in regards to the trusteeship or the operation of the escrow account and to the appointment of the office of secretary of state as its agent for service of process regarding any administrative or legal actions relating to the trust or the escrow account, if it has no designated agent for service of process located in this state. Such consent shall be filed with the office prior to accepting funds pursuant to sections 214.270 to 214.410 as trustee or as an escrow agent on a form provided by the office by rule.

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(L. 1961 p. 538 § 8, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701, A.L. 1999 H.B. 343, A.L. 2002 H.B. 1537, A.L. 2009 S.B. 296, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.335. Contributions to endowed care fund for memorial or monument — deficiency, effect of.**

1. Any endowed care cemetery may require a contribution to the endowed care fund or to a separate memorial care fund for each memorial or monument installed on a grave in the cemetery. Such contribution, if required by a cemetery, shall not exceed twenty cents per square inch of base area, and shall be charged on every installation regardless of the person performing the installation. Each contribution made pursuant to a contract or agreement entered into after August 28, 1990, shall be entrusted and administered pursuant to sections 214.270 to 214.410 for the endowed care fund. Each contribution made pursuant to a contract or agreement entered into before August 28, 1990, shall be governed by the law in effect at the time the contract or agreement was entered into.

2. If the deposits to any endowed care trust fund are less than the total sum required to be set aside and deposited since the effective date of such sections, the cemetery operator shall correct such deficiency by depositing not less than twenty percent of such deficiency each year for five years and shall file, on the form provided by the division, a statement outlining the date and amount such deposits were made. If the cemetery operator fails to correct the deficiency with respect to funds maintained under section 214.330, the cemetery operator shall thereafter not represent the cemetery as an endowed care cemetery. Any funds held in the cemetery's endowed care trust shall continue to be used for endowed care for that cemetery. The cemetery operator shall remain subject to the provisions of sections 214.270 to 214.410 for any cemetery or any section of the cemetery for which endowed care payments have been collected, subject to the penalties contained

in section 214.410, and civil actions, as well as subject to any regulations promulgated by the division. For purposes of this section, the term "deficiency" shall mean a deficiency in the amount required to be deposited pursuant to subsection 1 of this section, or a deficiency created by disbursements in excess of what is permitted under section 214.330 and shall not include or be affected by deficiencies or shortages caused by the fluctuating value of investments.

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(L. 1990 H.B. 1079, A.L. 1994 S.B. 496, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.340. Report required — content — oath — filing required.**

1. Each operator of an endowed care cemetery shall maintain at an office in the cemetery or, if the cemetery has no office in the cemetery, at an office within a reasonable distance of the cemetery, the reports of the endowed care trust fund's operation for the preceding seven years. Each report shall contain, at least, the following information:

(1) Name and address of the trustee of the endowed care trust fund and the depository, if different from the trustee;

(2) Balance per previous year's report;

(3) Principal contributions received since previous report;

(4) Total earnings since previous report;

(5) Total distribution to the cemetery operator since the previous report;

(6) Current balance;

(7) A statement of all assets listing cash, real or personal property, stocks, bonds, and other assets, showing cost, acquisition date and current market value of each asset;

(8) Total expenses, excluding distributions to cemetery operator, since previous report; and

(9) A statement of the cemetery's total acreage and of its developed acreage.

2. Subdivisions (1) through (7) of the report described in subsection 1 above shall be certified to under oath as complete and correct by a corporate officer of the trustee. Subdivision (8) of such report shall be certified under oath as complete and correct by an officer of the cemetery operator. Both the trustee and cemetery operator or officer shall be subject to the penalty of making a false affidavit or declaration.

3. The report shall be placed in the cemetery's office within ninety days of the close of the trust's fiscal year. A copy of this report shall be filed by the cemetery operator with the division of professional registration as condition of license renewal as required by subsection 4 of section 214.275.

4. Each cemetery operator who establishes an escrow or trust account pursuant to section 214.387 shall file with the report required under subsection 1 of this section an escrow or trust account report that shall provide the following information:

(1) The total face value of all contracts for burial merchandise and services that have been deferred for delivery by purchase designation; and

(2) The amount on deposit in the escrow or trust account established pursuant to section 214.387, and the account number in the case of an escrow account.

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(L. 1961 p. 538 § 9, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701, A.L. 2007 S.B. 272, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.345. Sale of cemetery plot — written statement to be given to purchaser — copy of annual report to be available to public.**

1. Any cemetery operator who negotiates the sale of burial space in any cemetery located in this state shall provide each prospective owner of burial space a written statement, which may be a separate form or a part of the sales contract, which states and explains in plain language that the burial space is part of an endowed care cemetery; that the cemetery has established and maintains the endowed care trust fund required by law; and that the information regarding the fund described in section 214.340 is available to the prospective purchaser. If the burial space is in a nonendowed cemetery, or in a nonendowed section of an endowed care cemetery,

the cemetery operator shall state he has elected not to establish an endowed care trust fund.

2. The operator of each endowed care cemetery shall, upon request, give to the public for retention a copy of the endowed care trust fund annual report prepared pursuant to the provisions of subsection 1 of section 214.340.

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(L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.360. Private use of trust funds prohibited.**

No cemetery operator, nor any director, officer or shareholder of any cemetery may borrow or in any other way make use of the endowed care trust funds for his own use, directly or indirectly, or for furthering or developing his or any other cemetery, nor may any trustee lend or make such funds available for said purpose or for the use of any operator or any director, officer or shareholder of any cemetery.

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(L. 1961 p. 538 § 14, A.L. 1994 S.B. 496 § 214.360 subsec. 1, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.363. Bankruptcy, assignment for benefit of creditors, endowed care fund exempt.**

In the event of a cemetery's bankruptcy, insolvency, or assignment for the benefit of creditors, the endowed care trust funds shall not be available to any creditor as assets of the cemetery's owner or to pay any expenses of any bankruptcy or similar proceeding, but shall be retained intact to provide for the future maintenance of the cemetery.

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(L. 1961 p. 538 § 14, A.L. 1994 S.B. 496 § 214.360 subsec. 2, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.365. Cemetery failing to provide maintenance — abandonment or ceasing to operate, division's duties.**

Prior to any action as provided in subsection 2 of section 214.205, and when the division has information that a cemetery is not providing maintenance and care, has been abandoned, or has ceased operation, the division may investigate the cemetery to determine the cemetery's current status. If the division finds evidence that the cemetery is abandoned, is not conducting business, or is not providing maintenance and care, the division may apply to the circuit court for appointment as receiver, trustee, or successor in trust.

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(L. 1961 p. 538 § 14, A.L. 1994 S.B. 496 § 214.360 subsec. 3, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.367. Sale of assets, notice required — prospective purchaser of endowed care cemetery, right to recent audit — right to continue operation, notification by division.**

1. Prior to selling or otherwise disposing of a majority of the business assets of a cemetery, or a majority of its stock or other ownership interest, if a corporation or other organized business entity, the cemetery operator shall provide written notification to the division of its intent at least thirty days prior to the date set for the transfer, or the closing of the sale, or the date set for termination of its business. Such notice is confidential and shall not be considered a public record subject to the provisions of chapter 610 until the sale of the cemetery has been effectuated. Upon receipt of the written notification, the division may take reasonable and necessary action to determine that the cemetery operator has made proper plans to assure that trust funds or funds held in an escrow account for or on behalf of the cemetery will be set aside and used as provided in sections 214.270 to 214.410, including, but not limited to, an audit or examination of books and records. The division may waive the requirements of this subsection or may shorten the period of notification for good cause or if the division determines in its discretion that compliance with its provisions are not necessary.

2. A cemetery operator may complete the sale, transfer, or cessation if the division does not disapprove the transaction within thirty days after receiving notice. Nothing in this section shall be construed to restrict any other right or remedy vested in the division or the attorney general.

3. A prospective purchaser or transferee of endowed or unendowed cemetery, with the written consent of the cemetery operator, may obtain a copy of the cemetery's most recent audit or inspection report from the division. The division shall inform the prospective purchaser or transferee, within thirty days, whether the cemetery may continue to operate and be represented as a cemetery.

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(L. 1994 S.B. 496 § 214.360 subsec. 4, A.L. 2001 H.B. 567, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.370. Nonendowed cemetery to post signs and give notice of its character.**

1. Every operator of a nonendowed cemetery shall comply with the provisions of this section.

2. Every person subject to this section shall post in a conspicuous place in every office where sales of burial space in a nonendowed cemetery are conducted, a legible sign stating, "This is a nonendowed cemetery." The lettering of this sign shall be of suitable size so it is easily read at a distance of fifty feet.

3. Every person subject to this section shall also have printed or stamped at the head of all contracts, deeds, statements, letterheads, and advertising material, used in any connection with the sale of burial space in a nonendowed cemetery, the statement: "This is a nonendowed cemetery." in lettering equivalent to a minimum of ten point number two black type, and shall not sell any lot or interment space therein unless and until the purchaser thereof is informed that the cemetery is a nonendowed cemetery.

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(L. 1961 p. 538 § 10)

**214.380. Nonendowed section of endowed care cemetery — signs and notice.**

An endowed care cemetery may have within its confines a section which may be sold without endowed care; provided, that such section shall be separately set off from the remainder of the cemetery and provided that signs are kept prominently placed around such section stating, "This is a nonendowed section." in lettering of suitable size so it is easily read at a distance of fifty feet. There shall be printed or stamped at the head of all contracts, deeds, statements, letterheads and advertising material used in any connection with the sale of burial space in said section, the statement, "This is a nonendowed section." in lettering equivalent to a minimum of ten point number two black type. No operator shall sell any lot or interment space in a nonendowed section unless and until he shall have informed the purchaser thereof that the section is not endowed.

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(L. 1961 p. 538 § 11)

**214.385. Moving of grave marker, replacement — delivery of item of burial merchandise.**

1. If the operator of any cemetery or another authorized person moves a grave marker, memorial or monument in the cemetery for any reason, the operator or other authorized person shall replace the grave marker, memorial or monument to its original position within a reasonable time.

2. When the purchase price of an item of burial merchandise sold by a cemetery operator or its agent is paid in full, the cemetery operator shall make delivery of such property within a reasonable time. A cemetery operator may comply with this section by delivering to the purchaser of such property a valid warehouse receipt which may be presented to the cemetery operator at a later date for actual delivery.

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(L. 1990 H.B. 1079, A.L. 1994 S.B. 496 § 214.385 subsecs. 1, 2(a) merged with S.B. 701, A.L. 2009 S.B. 296)

**214.387. Burial merchandise or services, deferral of delivery, when — escrow arrangement — distribution of moneys — cancellation.**

1. With the exception of sales made pursuant to section 214.385, all sales of prearranged burial merchandise and services shall be made pursuant to this section.

2. Upon written instructions from the purchaser of burial merchandise or burial services set forth in a cemetery prearranged contract, a cemetery may defer delivery of such burial merchandise or a warehouse receipt for the same under section 214.385, or performance of services, to a date designated by the purchaser, provided the cemetery operator, after deducting sales and administrative costs associated with the sale, not to exceed twenty percent of the purchase price, deposits the remaining portion of the purchase price into an escrow or trust account as herein provided, within sixty days following receipt of payment from the purchaser. Funds so deposited pursuant to this section shall be maintained in such account until delivery of the property or the performance of services is made or the contract for the purchase of such property or services is cancelled, and fees and costs associated with the maintenance of the trust or escrow arrangement shall be charged to these funds. The account is subject to inspection, examination or audit by the division. No withdrawals may be made from the escrow or trust account established pursuant to this section except as herein provided.

3. Each escrow arrangement must comply with the following:

(1) The escrow agent shall be located in Missouri, authorized to exercise escrow powers, and shall maintain the escrow records so that they may be accessed and produced for inspection within five business days of the agent's receipt of a written request made by the office or its duly authorized representative. A cemetery operator shall not serve as an escrow agent for the cemetery operator's account nor shall the escrow agent be employed by or under common ownership with the cemetery operator. The cemetery operator shall maintain a current name and address for the escrow agent with the office, and shall obtain written approval from the office before making any change in the name or address of the escrow agent. Notwithstanding any other provision of law, information regarding the escrow agent shall be deemed an open record;

(2) The escrow account funds shall be maintained in depository accounts at a Missouri financial institution that provides Federal Deposit Insurance Corporation or comparable deposit insurance;

(3) The escrow arrangement shall be administered by the escrow agent pursuant to an agreement approved by the office under the same filing and approval procedure as that set forth for endowed care trust fund agreements in section 214.330;

(4) The operator shall establish a separate depository account for each cemetery prearranged contract administered pursuant to this subsection;

(5) The division may promulgate by rule a form escrow agreement to be used by a cemetery operator operating pursuant to this section.

4. Each trust must comply with the following:

(1) The trustee shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri, provided that a foreign financial institution must be approved by the office;

(2) The trust fund records, including all trust fund accounting records, shall either be maintained in the state of Missouri or shall be electronically stored so that the records may be made available within fifteen business days of the trustee's receipt of a written request made by the office or its duly authorized representative. The cemetery operator shall maintain a current name and address of the trustee and the records custodian and shall supply such information to the office or its representative upon request;

(3) The principal of such funds shall be appropriately invested pursuant to the prudent investor rule under chapter 469, provided that no trust funds shall be invested in any term insurance product;

(4) Payments regarding two or more cemetery prearranged contracts may be deposited into and commingled in the same trust, so long as adequate records are made available to the trustee to account for cemetery prearranged contracts on an individual basis with regard to deposits, earnings, distributions, and any taxes;

(5) Trust instruments shall be subject to the same filing and approval procedure as that set forth for endowed care trust fund agreements under section 214.330;

(6) A trustee may commingle the funds from trusts of unrelated cemetery operators for investment purposes if the trustee has adequate accounting for the allocations, disbursements, payments, and income among the participating trusts.

5. The income from escrow accounts, after payment of expenses associated with the arrangement, shall be distributed to the cemetery operator. All other distributions from trusts and escrow accounts shall be made pursuant to forms approved by the office. For performance of a cemetery prearranged contract, a certificate of performance form signed by the cemetery operator shall be required for distribution. For cancellation of

a cemetery prearranged contract, a certificate of cancellation form signed by the cemetery operator and the purchaser shall be required for distribution.

6. A cemetery prearranged contract is subject to cancellation as follows:

(1) At any time before the final disposition of the deceased, or before the services or merchandise described in this section are provided, the purchaser may cancel the contract without cause by delivering written notice thereof to the operator. Within fifteen days after its receipt of such notice, the cemetery operator shall pay to the purchaser a net amount equal to eighty percent of all payments made under the contract. The cemetery operator shall be entitled to keep one-half of the interest earned on trust funds. Upon delivery of the purchaser's receipt for such payment to the escrow agent or trustee, the escrow agent or trustee shall distribute to the cemetery operator from the escrow account or trust an amount equal to all deposits made into the escrow account or trust for the contract;

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if a purchaser is eligible, becomes eligible, or desires to become eligible, to receive public assistance under chapter 208 or any other applicable state or federal law, the purchaser may irrevocably waive and renounce his right to cancel the contract pursuant to the provisions of subdivision (1) of this section, which waiver and renunciation shall be made in writing and delivered to the cemetery operator;

(3) Notwithstanding the provisions of subdivision (1) of this subsection, any purchaser, within thirty days of receipt of the executed contract, may cancel the contract without cause by delivering written notice thereof to the cemetery operator, and receive a full refund of all payments made on the contract;

(4) Notwithstanding the provisions of subdivision (1) of this subsection, once any purchase order is entered for the production or manufacture of burial merchandise, per the purchaser's written request, the purchaser's obligation to pay for said burial merchandise shall be noncancellable;

(5) No funds subject to a purchaser's right of cancellation hereunder shall be subject to the claims of the cemetery operator's creditors.

7. Burial merchandise sold through a contract with a cemetery or cemetery operator which is entered into after the death of the individual for whom the burial merchandise is intended shall not be subject to any trusting or escrow requirement of this section.

8. This section shall apply to all agreements entered into after August 28, 2010.

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(L. 1994 S.B. 496 § 214.385 subsec. 2 subdivs. (b), (c), (d) merged with S.B. 701, A.L. 2002 S.B. 892 , A.L. 2009 S.B. 296, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.389. Suspension of distribution, when, procedure.**

1. The division may direct a trustee, financial institution, or escrow agent to suspend distribution from an endowed care trust fund or escrow account if the cemetery operator does not have a current and active cemetery operator license, has failed to file an annual report, or if, after an audit or examination, the division determines there is a deficiency in an endowed care trust fund or escrow account maintained under section 214.330 and the cemetery operator has failed to file a corrective action plan detailing how the deficiency shall be remedied. For purposes of this section, a deficiency shall only be deemed to exist if, after an audit or examination, the division determines a cemetery operator has failed to deposit the total aggregate of funds required to be deposited in trust or an escrow account pursuant to section 214.320 or subsection 1 of section 214.335, or has received disbursements from the trust or escrow account in excess of what is permitted under section 214.330. No deficiency shall be deemed to be created by fluctuations in the value of investments held in trust or escrow.

2. The division shall provide written notification to the cemetery operator and the trustee, financial institution, or escrow agent within fourteen days of discovering a potential violation as described in this section. Upon receipt of written notification from the division, the cemetery operator shall have sixty days to cure any alleged violations or deficiencies cited in the notification without a suspension of distribution. If, after the sixty-day time period, the division feels the cemetery has not cured the alleged violations or deficiencies cited in the notification, the division may send a notice of suspension to the cemetery operator that the division is ordering a suspension of distribution as described in this section. In the event of a suspension of distribution,

the amount of any distribution suspended shall become principal, with credit against the deficiency, unless the cemetery operator files an appeal with a court of competent jurisdiction or with the administrative hearing commission, as provided herein. In the event of an appeal, a cemetery operator may request the court or administrative hearing commission stay the suspension of distribution after a showing of necessity and good cause or authorize payment from the endowed care trust fund or escrow account for necessary expenses from any amount subject to distribution.

3. Upon receipt of an order from the division suspending distribution pursuant to this section, a trustee, financial institution, or escrow agent shall immediately suspend distribution as required by the order. A trustee, financial institution, or escrow agent shall be exempt from liability for failure to distribute funds as ordered by the division.

4. A cemetery operator may appeal an order suspending distribution pursuant to this section to the administrative hearing commission. The administrative hearing commission shall receive notice of such appeal within thirty days from the date the notice of suspension was mailed by certified mail. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to chapter 621.

5. A cemetery operator may apply for reinstatement of distributions upon demonstration that the deficiencies or other problems have been cured or that the operator has otherwise come into compliance.

6. The division may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2010, shall be invalid and void.

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(L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.390. Existing cemeteries to operate under law — local law applicable.**

Cemeteries existing at the time of the adoption of sections 214.270 to 214.410 shall hereafter be operated subject to the provisions of sections 214.270 to 214.410. Where an ordinance or order is established by a county, city, town or village which relates to the maintenance of cemetery property, including the control of weeds and other debris, all cemeteries, including nonperpetual cemeteries, shall be maintained consistent with the provisions of the ordinance or order.

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(L. 1961 p. 538 § 3, A.L. 1990 H.B. 1079)

**214.392. Division of professional registration, duties and powers in regulation of cemeteries — rulemaking authority.**

1. The division shall:

(1) Recommend prosecution for violations of the provisions of sections 214.270 to 214.410 to the appropriate prosecuting, circuit attorney or to the attorney general;

(2) Employ, within limits of the funds appropriated, such employees as are necessary to carry out the provisions of sections 214.270 to 214.410;

(3) Be allowed to convey full authority to each city or county governing body the use of inmates controlled by the department of corrections and the division of probation and parole to care for abandoned cemeteries located within the boundaries of each city or county;

(4) Exercise all budgeting, purchasing, reporting and other related management functions;

(5) Be authorized, within the limits of the funds appropriated, to conduct investigations, examinations, or audits to determine compliance with sections 214.270 to 214.410;

(6) The division may promulgate rules necessary to implement the provisions of sections 214.270 to 214.516, including but not limited to:

(a) Rules setting the amount of fees authorized pursuant to sections 214.270 to 214.516. The fees shall be set at a level to produce revenue that shall not substantially exceed the cost and expense of administering sections 214.270 to 214.516. All moneys received by the division pursuant to sections 214.270 to 214.516 shall be collected by the director who shall transmit such moneys to the department of revenue for deposit in the state treasury to the credit of the endowed care cemetery audit fund created in section 193.265;

(b) Rules to administer the inspection and audit provisions of the endowed care cemetery law;

(c) Rules for the establishment and maintenance of the cemetery registry pursuant to section 214.283.

2. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

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(L. 1994 S.B. 496, A.L. 2001 H.B. 567, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754, A.L. 2021 S.B. 26 merged with S.B. 53 & 60)

**214.400. Citation of law.**

Sections 214.270 to 214.410 shall be known as the “Cemetery Endowed Care Trust Fund Law”.

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(L. 1961 p. 538 § 1, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

**214.410. Violation of law, penalty.**

1. Any cemetery operator who shall willfully violate any provisions of sections 214.270 to 214.410 for which no penalty is otherwise prescribed shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed five hundred dollars or shall be confined not more than six months or both.

2. Any cemetery operator who shall willfully violate any provision of section 214.320, 214.330, 214.335, 214.340, 214.360, 214.385, or 214.387 shall be deemed guilty of a class E felony and upon conviction thereof shall be fined a sum not to exceed ten thousand dollars or shall be confined not more than five years or both. This section shall not apply to cemeteries or cemetery associations which do not sell lots in the cemetery.

3. Any trustee who shall willfully violate any applicable provisions of sections 214.270 to 214.410 shall have committed an unsafe and unsound banking practice and shall be penalized as authorized by chapters 361 and 362. This subsection shall be enforced exclusively by the Missouri division of finance for state chartered institutions and the Missouri attorney general for federally chartered institutions.

4. Any person who shall willfully violate any provision of section 214.320, 214.330, 214.335, 214.340, 214.360 or 214.385 or violates any rule, regulation or order of the division may, in accordance with the regulations issued by the division, be assessed an administrative penalty by the division. The penalty shall not exceed five thousand dollars for each violation and each day of the continuing violation shall be deemed a separate violation for purposes of administrative penalty assessment. However, no administrative penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation. Penalty assessments received shall be deposited in the endowed care cemetery audit fund created in section 193.265.

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(L. 1961 p. 538 § 15, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754, A.L. 2014 S.B. 491)
Effective 1-01-17

# STATUTES
# 214.010 – 214.260

**214.010. Local government may acquire and dispose of cemeteries within boundaries — authority to regulate — penalties.**

Any town, city, village or county in the state of Missouri may purchase, receive and hold real estate within such city, town, village or county for the burial of the dead, and may lease, sell or otherwise dispose of the same. The council of such cities, towns and villages or county commissioners may make rules and pass ordinances or orders imposing penalties and fines not exceeding one thousand dollars, regulating, protecting and governing cemeteries within such cities, towns, villages, and counties, the owners of lots therein, visitors thereto, and punishing trespassers thereon.

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(RSMo 1939 § 15277, A.L. 1990 H.B. 1079)
Prior revisions: 1929 § 14068; 1919 § 1092; 1909 § 1314

**214.020. City may establish perpetual care cemetery fund — receive gifts — limitation on use of income from fund.**

Any town, city or village in the state of Missouri which now owns or may hereafter acquire any cemetery, may by ordinance establish a fund for the preservation, care, upkeep and adornment of such cemetery, such fund to be known as "Perpetual Care Cemetery Fund", and may accept and acquire by gift or donation, money or funds to be placed to the credit of such perpetual care cemetery fund. Such town, city or village may also deposit in such fund a portion of the income derived from the sale of lots in such cemetery as shall be determined by ordinance of such town, city or village. Such moneys and funds so placed in such perpetual care cemetery fund shall be invested from time to time in bonds of the United States government or of the state of Missouri, or may be placed in any bank or savings and loan association which is authorized to do business in this state so long as the funds so deposited are* protected by federal deposit insurance. The income therefrom shall be expended by such town, city or village for the preservation, care, upkeep and adornment of such cemetery, for the repurchasing of cemetery lots previously sold, and for no other purpose whatsoever. The principal of said perpetual care cemetery fund shall not be encroached upon for any purpose whatsoever and no money shall be transferred out of such perpetual care cemetery fund except for the purposes of being invested as provided for in this section and for the repurchasing of cemetery lots previously sold. The city council of the various towns, cities or villages which shall establish such perpetual care cemetery fund shall by ordinance accept any gift or donation to such fund, and shall by said ordinance direct the treasurer of said town, city or village to place such money or funds to the credit of such perpetual care cemetery fund. Such city council shall have all the necessary authority by ordinance to invest such funds as provided for in this section.

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(L. 1949 p. 234 § 15277a, A.L. 1965 p. 364, A.L. 1988 H.B. 1550)
*Word "or" appears in original rolls.

**214.030. Cemetery lots, conveyed by deed.**

The cemetery lots owned by such county, city, town or village shall be conveyed by deed signed by the mayor or presiding commissioner of said county, city, town or village, duly attested by the clerk of such county, city, town or village, or other officer performing the duties of clerk, and shall vest in the purchaser, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment pursuant to the regulations of the council or commission, except that such fee simple right may be revested in the county, city, town or village pursuant to section 214.035.

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(RSMo 1939 § 15278, A.L. 2001 H.B. 408)
Prior revisions: 1929 § 14069; 1919 § 1093; 1909 § 1315

**214.035. Conveyance of cemetery property to political subdivision, when — notice of transfer.**

1. For purposes of this section, the term "lot owner" means the purchaser of the cemetery lot or such purchaser's heirs, administrators, trustees, legatees, devisees, or assigns.

2. Whenever a county, city, town or village has acquired real estate for the purpose of maintaining a cemetery or has acquired a cemetery from a cemetery association, and such county, city, town or village or its predecessor in title has conveyed any platted lot or designated piece of ground within the area of such cemetery, and the governing body of such county, city, town or village is the governing body of such cemetery pursuant to section 214.010, the title to any conveyed platted lots or designated pieces of ground, other than ground in which dead human remains are actually buried and all ground within two feet thereof, may be revested in the county, city, town or village in the following manner and subject to the following conditions:

(1) No interment shall have been made in the lot and the title to such lot shall have been vested in the present owner for a period of at least fifty years prior to the commencement of any proceedings pursuant to this section;

(2) If the lot owner of any cemetery lot is a resident of the county where the cemetery is located, the governing body shall cause to be served upon such lot owner a notice that proceedings have been initiated to revest the title of such lot in the county, city, town or village and that such lot owner may within the time provided by the notice file with the clerk or other officer performing the duties of clerk of such county, city, town or village, as applicable, a statement in writing explaining how rights in the cemetery lot were acquired and such person's desire to claim such rights in the lot. The notice shall be served in the manner provided for service of summons in a civil case and shall provide a period of not less than thirty days in which the statement can be filed. If the governing body ascertains that the statement filed by the lot owner is correct and the statement contains a claim asserting the rights of the lot owner in the lot, all proceedings by the governing body to revest title of the lot in the county, city, town or village shall be null and void and such proceedings shall be summarily terminated by the governing body as to the lots identified in the statement;

(3) If it is determined by the return of the sheriff of the county in which the cemetery is located that the lot owner is not a resident of the county and cannot be found in the county, the governing body may cause the notice required by subdivision (2) of this subsection to be published once each week for two consecutive weeks in a newspaper of general circulation within the county, city, town or village. Such notice shall contain a general description of the title revestment proceedings to be undertaken by the governing body pursuant to this section, lot numbers and descriptions and lot owners' names. In addition, the notice shall notify the lot owner that such lot owner may, within the time provided, file with the clerk or other officer performing the duties of a clerk a statement setting forth how such lot owner acquired rights in the cemetery lot and that such lot owner desires to assert such rights. If the governing body ascertains that the statement filed by the lot owner is correct and the statement contains a claim asserting the rights of the lot owner in the lot, all proceedings by the governing body to revest title to the lot in the county, city, town or village shall be null and void and such proceedings shall be summarily terminated by the governing body as to the lots identified in the statement;

(4) All notices, with proofs of service, mailing and publication of such notices, and all ordinances or other resolutions adopted by the governing body relative to these revestment proceedings shall be made a part of the records of such governing body;

(5) Upon expiration of the period of time allowed for the filing of statements by lot owners as contained in the notice served personally, by mail or published, all parties who fail to file with the clerk, or other officer performing the duties of clerk in such county, city, town or village, their statement asserting their rights in the cemetery lots shall be deemed to have abandoned their rights and claims in the lot, and the governing body may bring an action in the circuit court of the county in which the cemetery is located against all lot owners in default, joining as many parties so in default as it may desire in one action, to have the rights of the parties in such lots or parcels terminated and the property restored to the governing body of such cemetery free of any right, title or interest of all such defaulting parties or their heirs, administrators, trustees, legatees, devisees or assigns. Such action in all other respects shall be brought and determined in the same manner as ordinary actions to determine title to real estate;

(6) In all such cases the fact that the grantee, holder or lot owner has not, for a term of more than fifty successive years, had occasion to make an interment in the cemetery lot and the fact that such grantee, holder or lot owner did not upon notification assert a claim in such lot, pursuant to this section, shall be prima facie evidence that the party has abandoned any rights such party may have had in such lot;

(7) A certified copy of the judgments in such actions quieting title may be filed in the office of the recorder

of deeds in and for the county in which the cemetery is situated;

(8) All notices and all proceedings pursuant to this section shall distinctly describe the portion of such cemetery lot unused for burial purposes and the county, city, town or village shall leave sufficient ingress to, and egress from, any grave upon the lot, either by duly dedicated streets or alleys in the cemetery, or by leaving sufficient amounts of the unused portions of the cemetery for such purposes;

(9) This section shall not apply to any lot in any cemetery where a perpetual care contract has been entered into between such cemetery, the county, city, town or village and the owner of such lot;

(10) Compliance with the terms of this section shall * fully revest the county, city, town or village with, and divest the lot owner of record of, the title to such portions of such cemetery lot unused for burial purposes as though the lot had never been conveyed to any person, and such county, city, town or village shall have, hold and enjoy such unclaimed portions of such lots for its own uses and purposes, subject to the laws of this state, and to the charter, ordinances and rules of such cemetery and the county, city, town or village.

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(L. 2001 H.B. 408)

*Word “as” appears in original rolls.

**214.040. Plots and records of cemeteries to be maintained, where — requirements.**

1. Every person or association which owns any cemetery in which dead human remains are or may be buried or otherwise interred, except a private or family cemetery, shall cause to be maintained in an office in the cemetery, or in an office within a reasonable distance of the cemetery, a plat of such cemetery showing the entire area and location of the cemetery, the portion thereof which is formally dedicated for the burial of dead human remains, all burial lots or interment spaces, and all walks, roads, improvements and features. The cemetery operator shall cause the plat to be updated from time to time as is necessary to cause the plat to remain current.

2. The cemetery operator shall also cause to be maintained at such office a record of the owner of each burial lot or interment space described in the current plat of the cemetery and a record of all dead human remains buried or interred at the cemetery, which record shall include the name of each deceased person buried or interred at the cemetery, the date of burial or interment, the location of burial or interment and, if known, the name and address of the funeral director who provided the memorial service or other final arrangements for the deceased person. The cemetery operator shall cause reasonable assistance to be provided to burial lot or interment space owners in locating their lots or spaces and to the family or other interested persons in locating the place of burial or interment of deceased persons whose remains are buried or interred in the cemetery.

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(RSMo 1939 § 15261, A.L. 1990 H.B. 1079)

Prior revisions: 1929 § 14052; 1919 § 1080; 1909 § 1302

(1959) The fact that the purchaser’s name was not placed upon the plat of the cemetery lot as required by this section does not cause the purchaser to lose title to the lot. The burden of placing the name on the plat was upon the owner of the cemetery and not upon the purchaser. Billings v. Paine (Mo.), 319 S.W.2d 653.

**214.041. Construction of roads prohibited in cemetery — exceptions.**

No road shall be constructed in any cemetery over a burial lot in which dead human remains are buried. Temporary access routes over burial lots may be used in the operation or maintenance of the cemetery or used in the construction of cemetery improvements or features. This section shall not apply to private or family cemeteries, as described in section 214.090.

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(L. 1990 H.B. 1079)

**214.050. Power to vacate streets vested in county commissions.**

The county commissions of the several counties of this state are hereby vested with power to vacate any streets, avenues, thoroughfares or places heretofore dedicated, or which may hereafter be dedicated to public

use in any cemeteries located within the respective borders of such counties.

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(RSMo 1939 § 15272)
Prior revision: 1929 § 14063

**214.060. Petition to be presented to county commission — remonstrance may be filed.**

Whenever it is desired to have any street, avenue, thoroughfare or place in any cemetery vacated, the corporation, association or person owning or controlling such cemetery shall present to the county commission of the county within which such cemetery is located, at a regular or adjourned term of such commission, a petition praying for such vacation, particularly describing the street, avenue, thoroughfare or place sought to be vacated, and shall file with such petition proof that notice of the filing of such petition has been given for at least twenty days by at least three printed or written notices posted in public places in such cemetery, at least one of which shall be posted in each street, avenue, thoroughfare or place sought to be vacated, and published in some newspaper, if such there be, published in the town or city in which or adjacent or approximate to which such cemetery is located. If a remonstrance signed by any three lot owners of such cemetery remonstrating against granting the prayer of such petition be filed on or before the first day of the term at which such petition is filed, then the county commission shall inform itself as to the propriety of granting such petition, and if the commission be of the opinion that the petition should be granted, or if no remonstrance be so filed, the county commission shall make an order vacating the streets, avenues, thoroughfares and places as prayed for in the petition, and the title to the lands so vacated shall revert to the corporation, association or person by whom the cemetery was platted or to the successors of such corporation, association or person.

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(RSMo 1939 § 15273)
Prior revision: 1929 § 14064

**214.070. Terms defined.**

Wherever in sections 214.050 and 214.060 the term “street”, “avenue”, “thoroughfare” or “place” is used, the same shall be construed to mean any tract of land or part thereof in any cemetery set aside by plat or otherwise for the general use of the public, and shall include the plural of such term.

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(RSMo 1939 § 15274)
Prior revision: 1929 § 14065

**214.080. Proceedings to enlarge.**

Whenever it shall become absolutely necessary to enlarge any public burial ground or cemetery, and when the public, to the number of five or more persons, interested in the enlargement of said burial grounds or cemetery, and the owner or owners of the adjoining land, cannot agree as to the price to be paid for the same, or for any other cause cannot secure a title thereto, the public, to the number of five or more persons, may proceed to condemn the same, in the same manner as provided by law for condemnation, appropriation and valuation, in cases of lands taken for telegraph and railroad purposes; and on such condemnation, and the payment of the appraisement as therein provided, the title of such land shall vest in the public for the purposes and uses only for which it was taken.

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(RSMo 1939 § 15275)
Prior revisions: 1929 § 14066; 1919 § 1088; 1909 § 1310

**214.090. Family burying grounds, how secured.**

Any person desirous of securing family burying ground or cemetery on his or her lands, may convey to the county commission of the county in which the land lies any quantity of land not exceeding one acre, in trust for the purpose above mentioned, the deed for which to be recorded within sixty days after the conveyance; and such grounds, when so conveyed, shall be held in perpetuity as burying grounds or cemeteries for the use and

benefit of the family and descendants of the person making such conveyance.

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(RSMo 1939 § 15262)
Prior revisions: 1929 § 14053; 1919 § 1081; 1909 § 1303

**214.120. Costs, who liable for.**

The cost of the prosecution under the provisions of this chapter, and all other costs necessarily incurred in superintending and protecting such burying grounds or cemeteries, shall be a charge upon the owners, for the time being, of the tracts of land of which such grounds were formerly a part, and shall be collected as other costs in actions for trespass.

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(RSMo 1939 § 15265)
Prior revisions: 1929 § 14056; 1919 § 1084; 1909 § 1306

**214.130. County commission and incorporated cemetery company to receive grants and bequests in trust.**

It shall be lawful for the county commission of any county in which any family burying ground or cemetery, conveyed as aforesaid to said commission, is situated, to take and hold any grant or bequest of money or bonds of the United States, or of this state, or of such county, in trust, and to apply the same or the income thereof for the improvement of any such family burying ground or cemetery, or any portion thereof, or in the erection, extension, adornment or preservation of any tomb, monument, vault or grave, within such burial ground or cemetery, according to the terms of any such grant or bequest, but for no other use, trust or purpose whatever; and every incorporated cemetery company is also hereby authorized and empowered to take and hold any like grant or bequest in trust, and to apply the same, or the income thereof, under the direction of the board of trustees or directors of such cemetery company, for the improvement of such cemetery, or any portion thereof, or in the erection, extension, adornment or preservation of any tomb, monument, vault or grave within such cemetery, according to the terms of any such grant or bequest, but for no other use, trust or purpose whatever. Any court having equity jurisdiction within the county in which such family burying ground or cemetery is situated, shall have power and it shall be its duty to compel the performance of any such trust upon the application of any person whatever.

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(RSMo 1939 § 15267)
Prior revisions: 1929 § 14058; 1919 § 1087; 1909 § 1309

**214.131. Tombstones, fences, destroying or mutilating in abandoned family or private cemetery, penalty — abandoned or private burying ground, defined.**

Every person who shall knowingly destroy, mutilate, disfigure, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any abandoned family cemetery or private burying ground, or any fence, railing, or other work for the protection or ornamentation of any such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, or memorial, or other structure aforesaid, or of any lot within such cemetery is guilty of a class A misdemeanor. For the purposes of this section and subsection 1 of section 214.132, an “abandoned family cemetery” or “private burying ground” shall include those cemeteries or burying grounds which have not been deeded to the public as provided in chapter 214, and in which no body has been interred for at least twenty-five years.

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(L. 1987 H.B. 60 § 1)

**214.132. Visiting abandoned family or private burying ground surrounded by private property, right of access, when, enforcement by sheriff — court’s power to disinter.**

1. Any person who wishes to visit an abandoned family cemetery or private burying ground which is completely surrounded by privately owned land, for which no public ingress or egress is available, shall have the

right to reasonable ingress or egress for the purpose of visiting such cemetery. This right of access to such cemeteries extends only to visitation during reasonable hours and only for purposes usually associated with cemetery visits.

2. The sheriff or chief law enforcement officer of the county in which the abandoned family cemetery or private burying ground is located shall enforce the provisions of subsection 1 of this section.

3. Nothing in section 214.131 and this section shall be construed to limit or modify the power or authority of a court in any action of law or equity to order the disinterment and removal of the remains from a cemetery and interment in a suitable location.

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(L. 1987 H.B. 60 §§ 2, 3, A.L. 1997 S.B. 58)

**214.140. Property placed in trust for benefit of cemeteries.**

It shall be lawful for any grantor, devisor, donor or trustee to give, grant, devise, bequeath or place in trust any real or personal property, or the income therefrom, for the use and benefit of any public or private cemetery in this state or for the grading, seeding, sodding, mowing, or otherwise maintaining, improving or beautifying of any grave, lot, stone, monument or mausoleum in any such cemetery, and any person, association or corporation duly authorized and capable of qualifying as trustee is hereby authorized and empowered to receive and hold any such real or personal property, or the income therefrom, and expend the same for any or all such uses and purposes, under the terms and conditions of any such gifts, grant, devise, bequest or trust.

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(RSMo 1939 § 15279)
Prior revisions: 1929 § 14070; 1919 § 1094

**214.150. County commissions shall become trustees and custodians.**

The county commissions of the respective counties of this state shall become trustees and custodians of any fund or funds which may be created by any person or persons, firm or corporation, for the purpose of maintaining in part or in whole any public or private cemetery in their respective county. When a gift or bequest is made to said county commission they shall accept the same upon the terms and conditions of said gift or bequest and administer said trust fund as herein provided and make report to the circuit court annually showing in detail the manner in which said trust fund or funds have been managed.

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(RSMo 1939 § 15268)
Prior revision: 1929 § 14059
(1957) Sections 214.150 to 214.180 authorize but do not compel county courts to act as trustees and custodians of trust funds for maintenance of cemeteries and such courts are required to administer such funds only when so designated by the trustor. Powers v. Johnson (A.), 306 S.W.2d 616.

**214.160. Investment or lending of trust funds — investment manager, duties — definitions.**

1. Under sections 214.140 to 214.180, and as otherwise not prohibited under Article VI, Section 23 of the Constitution of Missouri, the county commission may invest or loan said trust fund or funds in United States government, state, county or municipal bonds, certificates of deposit, first real estate mortgages, or deeds of trust and may utilize investment managers to invest, reinvest, and manage assets, subject to the terms, conditions, and limitations provided in this section and Article IV, Section 15 of the Constitution of Missouri. They shall use the net income from said trust fund or funds or such investments or so much thereof as is necessary to support and maintain and beautify any public or private cemetery or any particular part thereof which may be designated by the person, persons or firm or association making said gift or bequest. In maintaining or supporting the cemetery or any particular part or portion thereof the commission shall as nearly as possible follow the expressed wishes of the creator of said trust fund.

2. An investment manager shall discharge his or her duties in the interest of the public or private cemetery and the interest of the person, persons, or firm making the gift or bequest and shall:

(1) Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a

prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims;

(2) Act with due regard for the management, reputation, and stability of the issuer and the character of the particular investments being considered;

(3) Make investments for the purpose of supporting, maintaining, and beautifying any public or private cemetery or any particular part thereof, which may be designated by the person, persons, or firm or association making said gift or bequest, and of defraying reasonable expenses of investing the assets;

(4) Give appropriate consideration to those facts and circumstances that the investment fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the investments for which the investment fiduciary has responsibility. For purposes of this subdivision, "appropriate consideration" shall include, but is not limited to, a determination by the investment fiduciary that a particular investment or investment course of action is reasonably designed to further the purposes of supporting, maintaining, and beautifying any public or private cemetery or any particular part thereof, which may be designated by the person, persons, or firm or association making said gift or bequest, while considering the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action and considering the following factors as they relate to the investment or investment course of action:

(a) The diversification of the investments;

(b) The liquidity and current return of the investments relative to the anticipated cash flow requirements; and

(c) The projected return of the investments relative to the funding objectives; and

(5) Give appropriate consideration to investments that would enhance the general welfare of this state and its citizens if those investments offer the safety and rate of return comparable to other investments available to the investment fiduciary at the time the investment decision is made.

3. As used in this section, "invest" or "investment" means utilization of moneys in the expectation of future returns in the form of income or capital gain.

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(RSMo 1939 § 15269, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 753 merged with S.B. 754, A.L. 2017 H.B.51)
Prior revision: 1929 § 14060

**214.170. May designate responsible organization or individual to administer the income.**

Any responsible organization or individual, who is directly interested in a particular cemetery, who is willing to undertake the administration of the income from all trusts and gifts to this particular cemetery shall be designated by the commission to administer the said income and shall make an annual report to the commission. Any time the organization or individual so appointed fails to maintain and beautify said cemetery in keeping with the income, the commission shall appoint some other organization or individual to administer the aforesaid income. Where there is no responsible organization or individual, that is willing to undertake the administration of the said income from the trusts or gifts to any particular cemetery, the commission shall administer same, or appoint some organization or individual, who is responsible to administer the same, making the said annual report to the commission. The commission shall retain five percent of the incomes from all trusts and gifts to create a fund to reimburse any trust or gift which has a loss. The commission shall have authority to increase or decrease the said five percent as may be necessary to keep all trusts and gifts intact.

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(RSMo 1939 § 15270)
Prior revision: 1929 § 14061

**214.180. Shall keep record of receipts and disbursements.**

The clerk of the commission shall keep in a separate record book all receipts and disbursements of each and every trust fund or funds and a detailed account of the management of the same.

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(RSMo 1939 § 15271)
Prior revision: 1929 § 14062

**214.190. Cemetery not subject to execution, dower or partition — exception.**

Lands or property, set apart as burial grounds, either for public or private use, and so recorded in the recorder's office of the county where such lands are situated, or any burial ground that may have been used as such for ten years shall not be subject to sale on execution, to dower, nor to compulsory partition; provided, that the lands so appropriated and set apart as a private burial ground shall not exceed one acre in area or one hundred dollars in value; and provided further, that nothing contained in this section shall be so construed as to exempt any such burial ground or cemetery property from being liable for special assessments for street improvements, when such assessment is levied by an incorporated city in this state.

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(RSMo 1939 § 15266)
Prior revisions: 1929 § 14057; 1919 § 1086; 1909 § 1308

**214.200. Title, how obtained to lands used for burial purposes.**

When lands shall have been continuously used as a public or private burial ground for a period of ten years or more and such land has not been deeded to the public for the purpose of a burial ground, a title may be obtained to such lands in the way and manner as is provided for the enlargement of burial grounds in section 214.080.

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(RSMo 1939 § 15276)
Prior revisions: 1929 § 14067; 1919 § 1089; 1909 § 1311

**214.205. Violation of nuisance ordinance — abandonment — action authorized — costs — eminent domain.**

1. If any cemetery not described in section 214.090 is found to be in violation of a city, town, village or county nuisance ordinance for failure to cut grass or weeds, or care for graves, grave markers, walls, fences, driveways or buildings, the governing body of such city, town, village or county shall be authorized to take those actions necessary to restore and maintain the cemetery, and the governing body shall be authorized to charge the expenses of such actions against the cemetery. If actions are taken by a city, town, village or county pursuant to this subsection, the city, town, village or county may assess all true costs of restoration, maintenance and operation against any responsible person, partnership or corporation whether such person, partnership or corporation is a lessee, lessor, equitable title holder or legal title holder to the unmaintained cemetery. Any city, town, village or county which assesses costs pursuant to this section reserves the right to pursue any and all legal, equitable or criminal remedies to collect such assessed costs. Any city, town, village or county which pursues a civil remedy pursuant to this section may employ independent attorneys and law firms to collect the costs of restoration, maintenance and operation of any unmaintained cemetery.

2. As used in this section, the term "abandoned cemetery" means any cemetery, except one described in section 214.090, in which, for a period of at least one year, there has been a substantial failure to cut grass or weeds or care for graves, grave markers, walls, fences, driveways and buildings or for which proper records have not been maintained pursuant to section 214.340. Whenever the attorney general determines the existence of an abandoned cemetery in this state, the attorney general shall immediately proceed to dissolve the cemetery corporation owning the same. Upon the dissolution of such corporation, title to all property owned by the cemetery corporation shall vest in the municipality or county in which the cemetery is located, and the endowed care fund, together with all investments then outstanding, and all books, records and papers of such corporation shall be transferred to the treasurer of such municipality or county and shall become the property thereof. Upon the transfer of such property and funds, the governing body of such municipality or county shall care for and maintain such cemetery with any moneys of the cemetery corporation, including the principal of and income from the endowed care funds, and, if such moneys are insufficient to properly maintain such cemetery, then it may use funds of the municipality or county.

3. In addition to those powers granted the attorney general in subsection 2 of this section, every municipality or county in which any abandoned cemetery is located may acquire through its power of eminent domain such cemetery, together with all endowed care funds, maintenance equipment, books and records, accounts receivable and other personal property used or created in the operation of the cemetery and owned or controlled by the person or association which owns the cemetery. The municipality or county shall acquire the cemetery and related property subject to the rights of owners of burial lots or other interment spaces. Upon so acquiring the cemetery and related property, the acquiring municipality or county shall operate and maintain the cemetery as a public cemetery. The municipality or county which so acquires an abandoned cemetery shall not be liable for any act or transaction which occurred prior to such acquisition, including, without limitation, any obligation to third parties or incorrect lot ownership or burial records.

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(L. 1990 H.B. 1079)

CROSS REFERENCE:

Cemeteries acquired by St. Louis City pursuant to this section may be sold, to whom, 214.500

(2001) County's acquisition of abandoned cemetery free and clear of existing liens constituted an uncompensated taking of the lienholder's property. State ex rel. Nixon v. Jewell, 70 S.W.3d 465 (Mo.App.E.D.).

***214.208. Disinterment authorized, when — consent required, when — cemetery owner not liable, when.**

1. Every person or association which owns any cemetery in which dead human remains are buried or otherwise interred is authorized, at the cemetery owner's expense, to disinter individual remains and reinter or rebury the remains at another location within the cemetery in order to correct an error made in the original burial or interment of the remains.

2. Every person or association which owns any cemetery in which dead human remains are buried or otherwise interred is authorized to disinter individual remains and either to reinter or rebury the remains at another location within the cemetery or to deliver the remains to a carrier for transportation out of the cemetery, all pursuant to written instructions signed and acknowledged by the next-of-kin at the time of death of the deceased person as set out in section 194.119. If the next-of-kin at the time of death as set out in section 194.119 is no longer living, then a majority of the following adult members of the deceased person's family who are then known and living: surviving spouse, children, and parents may authorize the disinterment. If none of the above family members survive the deceased, then the majority of the grandchildren, brothers and sisters of whole and half blood may authorize the disinterment, relocation or delivery of the remains of the deceased. The costs of such disinterment, relocation or delivery shall be paid by the deceased person's family.

3. Every person or association which owns any cemetery in which dead human remains are buried or otherwise interred is authorized to disinter individual remains and either to reinter or rebury the remains at another location within the cemetery or to deliver the remains to a carrier for transportation out of the cemetery, all pursuant to a final order issued by the circuit court for the county in which the cemetery is located. The court may issue the order, in the court's discretion and upon such notice and hearing as the court shall deem appropriate, for good cause shown, including without limitation, the best interests of public health or safety, the best interests of the deceased person's family, or the reasonable requirements of the cemetery to facilitate the operation, maintenance, improvement or enlargement of the cemetery. The costs of such disinterment, relocation and delivery, and the related court proceedings, shall be paid by the persons so ordered by the court.

4. The cemetery owner, cemetery operator, funeral director, funeral establishment, or any other person or entity involved in the process shall not be liable to the deceased person's family or to any third party for a disinterment, relocation or delivery of deceased human remains made pursuant to this section.

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(L. 1990 H.B. 1079, A.L. 2015 H.B. 618)

*Effective 10-16-15, see § 21.250. H.B. 618 was vetoed on July 10, 2015. The veto was overridden September 16, 2015.

**214.209. Abandonment of burial site, rights revert to cemetery.**

1. After a period of seventy-five years since the last recorded activity on a burial site and after a reasonable search for heirs and beneficiaries, the burial site shall be abandoned and the right of ownership in the burial site shall revert to the private or public cemetery, after the cemetery has met the requirements of this section.

2. A reasonable search for heirs and beneficiaries pursuant to this section shall include sending a letter of notice to the last known address of the record property owner; and publishing a copy of the description of the abandoned burial site in a newspaper qualified to publish public notices as provided in chapter 493, published in the county of the record property owner's last known address, for three weeks; and if no person proves ownership of the burial site within one year after such publication, the burial site shall be deemed abandoned.

3. If persons with a legitimate claim to the abandoned burial site present themselves after the abandoned burial site has been used or sold by the private or public cemetery, the person's claim shall be settled by providing an equal burial site in an equivalent location to the burial site that reverted to the private or public cemetery.

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(L. 2001 H.B. 567)

**214.210. Certain cities may accept or acquire cemetery lands.**

Any city in this state now or hereafter containing a population of three hundred thousand or more, and less than six hundred thousand inhabitants according to the now or then last preceding United States census may, for the purpose of sections 214.210 to 214.230 by ordinance accept or take over by gift or donation any land within said city used for cemetery purposes, with or without adjoining or connected land, of any cemetery corporation or of any unincorporated cemetery association; or may likewise acquire, accept and take over by gift or donation a majority of the shares of the members of any said cemetery corporation or association holding, or having lands so used, sufficient and in manner to give such city a majority control of such corporation or association and, through it, control of management of its such lands; or under its power of eminent domain, to be exercised in the method and manner of procedure as provided by statutes or by the charter of the city for acquiring land for park purposes, any such city may acquire any such lands, in whole or in part, for the purposes expressed in sections 214.210 to 214.230.

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(RSMo 1939 § 15282)

**214.220. Lands or shares subject to all vested rights.**

Any such acquisition of lands or shares shall be subject to all vested rights of individual owners of the lots or allotted burial spaces in any such cemetery to continue lawful use thereof for burial purposes and to have the graves, burial vaults, gravestones and markers and monuments therein remain inviolate, subject to the right and power of the city to preserve, care for and reasonably keep the same without disturbing the remains of the dead therein interred; provided, that when and after the continuing or making of new or additional interments in any such cemetery may become detrimental or a menace to the health and safety of the inhabitants of said city residing or carrying on business or industry at places adjoining or near to such cemetery, the city may, by ordinance, declare further interments in any such cemetery to be a public nuisance and prohibit further interments therein; provided further, that upon and after any such acquisition no further or additional grants, sales or gifts of lots or burial spaces or burial rights or privileges in any such cemetery or adjoining or connected lands of such cemetery corporation or association shall be made; and new or additional burials therein shall neither be promoted or encouraged.

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(RSMo 1939 § 15283)

**214.230. City may acquire money or funds, how.**

Every such city, so acquiring any such cemetery lands or shares and control of such cemetery corporation or association, may likewise at the same time, or at any other time, accept and acquire by gift or donation money or funds, the income thereof, and so much of the principal as the donor may by express terms of the gift

provide or permit shall be expended for the preservation, care, upkeep and adornment of such lands. Such moneys and funds for income purposes shall be invested from time to time in interest-bearing bonds of the same classes or kinds, and by the same city officials, as such city's bond sinking funds are or may be directed by law to be invested; and the principal sums thereof, except as permitted by the donor as aforesaid, shall be preserved and kept for income purposes. If such income revenue should prove insufficient to provide for the reasonable care and upkeep of the land which, or the control of which, may be so acquired, the city shall have power to provide therefor from its general revenue.

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(RSMo 1939 § 15284)

**214.240. City may provide and enforce rules and regulations.**

Such cemetery lands and premises so acquired or the majority control of which may be acquired, shall by the city be kept and used for park purposes as a park for rest and contemplation and as may be reasonably consistent with reverent respect for the last resting places of the dead. The city may by ordinance provide and enforce rules, regulations and reasonable restrictions upon the uses thereof for such park purposes.

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(RSMo 1939 § 15285)

**214.250. Proceedings to establish cemetery in first class counties — petition by taxpayers.**

Before any new burial ground, cemetery or graveyard can be opened up, established, started or operated in any town, village, city, county, township, school district or any other political subdivision of the state, in any county of class one, it shall be necessary first to obtain a written petition, addressed to the county commission of the county having jurisdiction thereof, signed by a majority of the assessed taxpaying citizens and conservators of minors owning property in the township in which it is proposed to locate such burial ground, cemetery or graveyard, giving their consent to the opening up of a burial ground, cemetery or graveyard, which petition shall be filed in the office of the clerk of the county commission, not less than ten days before the first day of the term of the commission to which it is to be presented, and remain on file for public inspection, and the petition by the clerk shall be laid before the commission at the first term thereafter and in order to secure a permit it must appear affirmatively that a majority of the taxpaying citizens and conservators of minors owning property in such township in which it is proposed to locate the burial grounds, cemetery or graveyard, have signed the petition, then and in that event only shall the county commission issue its permission to the person or persons, association or corporation desiring to establish a burial ground, cemetery or graveyard; provided, no minor shall be counted on such petition and that no person or persons to whom any real estate has been deeded, transferred, conveyed or donated for the purpose of making him, or her or them, eligible for signing such petition shall be counted for or against such petition; without first securing permission from the county commission, it shall be unlawful to open up, establish, start or operate a new burial ground, cemetery or graveyard; provided further, that the provisions of this section shall be of no force and effect as to lots, tracts or parcels of land which have been or may be made available for use as a cemetery or graveyard by any zoning order.

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(RSMo 1939 § 15280, A.L. 1945 p. 622, A.L. 1983 S.B. 44 & 45)
Prior revision: 1929 § 14071

**214.260. Penalty for violation.**

Any person, persons, association or corporation who shall violate the provisions of section 214.250 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars or more than five hundred dollars and each day said burial ground, cemetery or graveyard shall remain open in violation of section 214.250, shall constitute a distinct and separate offense, and upon conviction shall be subject to a separate fine for each day he, she or they continue to operate and maintain said burial ground, cemetery or graveyard.

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(RSMo 1939 § 15281)
Prior revision: 1929 § 14072

# RULES

## Title 20—DEPARTMENT OF COMMERCE AND INSURANCE
## Division 2065—Endowed Care Cemeteries
## Chapter 1—Organization and Description

### 20 CSR 2065-1.010 Application for Cemetery Registration

This rule originally filed as 4 CSR 65-1.010. Emergency rule filed Aug. 3, 1995, effective Aug. 13, 1995, expired Dec. 10, 1995. Moved to 20 CSR 2065-1.010, effective Aug. 28, 2006.

### 20 CSR 2065-1.020 Cemetery Advisory Committee (Rescinded November 30, 2018)

Authority: sections 214.280, RSMo Supp. 1999 and 214.392, RSMo 1994. This rule originally filed as 4 CSR 65-1.020. Original rule filed Sept. 11, 1997, effective March 30, 1998. Amended: Filed April 14, 2000, effective Oct. 30, 2000. Moved to 20 CSR 2065-1.020, effective Aug. 28, 2006. Rescinded: Filed May 11, 2018, effective Nov. 30, 2018.

### 20 CSR 2065-1.030 Definitions

PURPOSE: This rule defines terms used in 20 CSR 2065.

(1) Applicant—an individual submitting an application for a certificate of authority.
(2) Division—the Division of Professional Registration.
(3) FDIC—Federal Deposit Insurance Corporation.
(4) Office—Office of Endowed Care Cemeteries.

*AUTHORITY: sections 214.270 and 214.392, RSMo 2016.* This rule originally filed as 4 CSR 65-1.030. Original rule filed April 14, 2000, effective Oct. 30, 2000. Moved to 20 CSR 2065-1.030, effective Aug. 28, 2006. Amended: Filed June 16, 2008, effective Dec. 30, 2008. Amended: Filed May 11, 2018, effective Nov. 30, 2018.*
**Original authority: 214.270, RSMo 1961, amended 1990, 1994, 1996, 2002, 2008, 2009, 2010 and 214.392, RSMo 1994, amended 2001, 2010.*

### 20 CSR 2065-1.040 Name and Address Changes

PURPOSE: This rule outlines the requirements and procedures for notifying the Office of Endowed Care Cemeteries of an owner/operator, trustee, cemetery, name and/or address change.

(1) The holder of the certificate of authority to own or operate a cemetery, endowed or nonendowed, shall ensure the office has the current legal name and address of the cemetery, the owner of the cemetery and the operator of the cemetery. If the new owner is a corporation, partnership or limited liability company, the holder shall also submit the names of the shareholders, partners or members.
(2) The holder of the certificate of authority to own or operate a cemetery shall notify the office in writing of a change of trustee within thirty (30) days of the change. The notice shall include evidence that the trustee is a state or federally chartered financial institution authorized to exercise trust powers within this state and located in this state.
(3) The office shall be informed in writing thirty (30) days prior to a change in ownership. Notice of all other changes shall be made within thirty (30) days after the change.
(4) If the endowed care cemetery funds are not permanently set aside in a trust fund, but instead held in a segregated bank account, the holder of the certificate of authority shall notify the office if the funds are transferred from one account to another, or if signatories are changed. Notice shall include evidence that the funds are insured by the Federal Deposit Insurance Corporation (FDIC) or comparable deposit insurance and held in a state or federally chartered financial institution authorized to do business in Missouri and located in this state. If a new signatory is an attorney currently licensed in the state of Missouri, notice shall include the attorney's bar number.
(5) Except as specifically stated otherwise, notice of all changes in information shall be provided within thirty (30) days after the change.

*AUTHORITY: sections 214.392.1(5), RSMo 1994 and 620.010.14(2), RSMo Supp. 1999.* This rule originally filed as 4 CSR 65-1.040. Original rule filed April 14, 2000, effective Oct. 30, 2000. Moved to 20 CSR 2065-1.040, effective Aug. 28, 2006.*

**Original authority: 214.392, RSMo 1994; 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999.*

**20 CSR 2065-1.050 Complaint Handling and Disposition**

PURPOSE: This rule establishes a procedure for the receipt, handling and disposition of public complaints pursuant to the mandate of section 620.010.15(6), RSMo.

(1) The Division of Professional Registration, in coordination with the office, will receive and process each complaint made against any holder of a certificate of authority in which the complaint alleges certain acts or practices that may constitute one (1) or more violations of provisions of sections 214.270–214.516, RSMo, or administrative rules. Any division staff member may file a complaint pursuant to this rule in the same manner as any member of the public.
(2) Complaints shall be mailed or delivered to the following address: Office of Endowed Care Cemeteries, 3605 Missouri Boulevard, PO Box 1335, Jefferson City, MO 65102.
(3) All complaints shall be made in writing on a form provided by the division and shall fully identify the complainant by name and address. Verbal or telephone communication will not be considered or processed as complaints, however, the person making such communication will be asked to supplement the communication with a written complaint. Complaints may be based upon personal knowledge, or upon information and belief, reciting information received from other sources. Individuals with special needs, as addressed by the Americans with Disabilities Act, may notify the office at (573) 751-0849 for assistance. The text for the hearing impaired is (800) 735-2966.
(4) Each complaint received under this rule will be logged and maintained by the division. The log will contain a record of each complainant's name, the name and address of the subject(s) of the complaint, the date each complaint was received by the division/office, a brief statement concerning the alleged acts or practices, and the ultimate disposition of the complaint. This log shall be a closed record of the committee.
(5) Each complaint received under this rule shall be acknowledged in writing. The complainant and licensee shall be notified of the ultimate disposition of the complaint.
(6) This rule shall not be deemed to limit the authority to file a complaint with the Administrative Hearing Commission charging the licensee with any actionable conduct or violation, whether or not such a complaint exceeds the scope of the acts charged in a preliminary public complaint filed with the office.
(7) The division interprets this rule, which is required by law, to exist for the benefit of those members of the public who submit complaints to the office. This rule is not deemed to protect or inure the benefit of those licensees or other persons against whom the office has instituted or may institute administrative or judicial proceedings concerning possible violations of the provisions of sections 214.270–214.516, RSMo.

*AUTHORITY: section 214.392, RSMo 2016.* This rule originally filed as 4 CSR 65-1.050. Original rule filed April 14, 2000, effective Oct. 30, 2000. Moved to 20 CSR 2065-1.050, effective Aug. 28, 2006. Amended: Filed May 11, 2018, effective Nov. 30, 2018.*

**Original authority: 214.392, RSMo 1994, amended 2001, 2010.*

**20 CSR 2065-1.060 Fees**

PURPOSE: This rule establishes fees for the Division of Professional Registration and the Office of Endowed Care Cemeteries.

(1) The division establishes the following fees which are nonrefundable:

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| (A) Election to Operate Fee | $ 25.00 |
| (B) Original Licensing Fee (Endowed Care Cemetery) | $250.00 |
| (C) Original Licensing Fee (Nonendowed Care Cemetery) | $100.00 |
| (D) Copy of Register Fee (plus $.25 per page) | $ 5.00 |
| (E) Insufficient Funds Check Fee Charge | $ 25.00 |
| (F) Annual Renewal Fee (Endowed Care Cemetery and Nonendowed Care Cemetery) (plus $1.00 for each internment, inurnment, or other disposition of human remains) | $ 50.00 |
| (G) Reinstatement Fee | $200.00 |

(2) All fees are nonrefundable.
(3) The provisions of this rule hereby are declared severable. If any fee fixed by this rule is held invalid

by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions of the rule shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: sections 214.275, 214.280, 214.283, and 610.026, RSMo 2016.* This rule originally filed as 4 CSR 65-1.060. Original rule filed April 14, 2000, effective Oct. 30, 2000. Amended: Filed Sept. 28, 2001, effective March 30, 2002. Moved to 20 CSR 2065-1.060, effective Aug. 28, 2006. Amended: Filed May 11, 2018, effective Nov. 30, 2018.*

**Original authority: 214.275, RSMo 1999, amended 2001; 214.280, RSMo 1961, amended 1994; 214.283, RSMo 1994; and 610.026, RSMo 1987, amended 1998.*

## Title 20—DEPARTMENT OF COMMERCE AND INSURANCE
## Division 2065—Endowed Care Cemeteries
## Chapter 2—General Rules

### 20 CSR 2065-2.010 Application for a License

PURPOSE: This rule outlines the procedure for application for a license.

(1) License application forms may be obtained by contacting the Office of Endowed Care Cemeteries at 3605 Missouri Boulevard, Jefferson City, MO 65102 or by calling (573) 751-0849. The number for the hearing impaired is (800) 735-2966.
(2) An application is not considered officially filed with the committee until it has been determined by the division that a fully completed application has been submitted to the division. Application forms provided by the division must be completed, signed, notarized, and accompanied by adequate documentation, as requested by the division to establish compliance with all state laws, rules and regulations, and county or municipal ordinances and regulations.
(3) Applicants approved for a license will receive one (1) license. Duplicate licenses may be provided upon written request to the division.
(4) An application for a license to operate a cemetery does not constitute an election to operate a cemetery as an endowed care cemetery. If an election pursuant to section 214.280, RSMo has not been made for a cemetery, it must accompany the application for a license.

*AUTHORITY: section 214.275, RSMo 2016.* This rule originally filed as 4 CSR 65-2.010. Original rule filed Sept. 28, 2001, effective March 30, 2002. Moved to 20 CSR 2065-2.010, effective Aug. 28, 2006. Amended: Filed May 11, 2018, effective Nov. 30, 2018.*

**Original authority: 214.275, RSMo 1999, amended 2001.*

### 20 CSR 2065-2.020 Endowed Care Cemetery Converting to Nonendowed

PURPOSE: This rule establishes procedures for endowed care cemeteries to become a nonendowed cemetery.

(1) Any endowed care cemetery that wishes to become a nonendowed cemetery shall submit a letter of intent to the office which shall include a detailed plan regarding how the cemetery will meet contractual obligations for the delivery of services entered into prior to converting to the status of a nonendowed cemetery, including but not limited to:
(A) Plot map showing any section that contains an endowed care plot;
(B) Affidavit ensuring that the endowed care funds will remain intact for the care and maintenance of the sections containing plots sold as endowed care;
(C) A statement regarding how the funds will be held consistent with section 214.330, RSMo; and
(D) Any other information requested by the office.

*AUTHORITY: sections 214.280.2 and 214.392, RSMo 2016.* This rule originally filed as 4 CSR 65-2.020. Original rule filed April 14, 2000, effective Oct. 30, 2000. Moved to 20 CSR 2065-2.020, effective Aug. 28, 2006. Amended: Filed May 11, 2018, effective Nov. 30, 2018.*

**Original authority: 214.280, RSMo 1961, amended 1994 and 214.392, RSMo 1994.*

### 20 CSR 2065-2.030 Election to Operate as Endowed or Nonendowed

PURPOSE: This rule outlines the procedure for electing to operate as an endowed or nonendowed care cemetery.

(1) Election to operate shall be submitted on the form provided by the division. Forms may be obtained by contacting the Office
of Endowed Care Cemeteries, P.O. Box
1335, Jefferson City, MO 65102, by
calling (573) 751-0849 or by E-mail at
endocare@mail.state.mo.us.
(2) An election to operate form is not considered officially filed with the division until it has been determined by the division that a fully completed form and the required fee has been submitted. Forms provided by the division must be completed, signed, notarized and accompanied by adequate documentation, as requested by the division to establish compliance with all state laws, rules and regulations, and county or municipal ordinances and regulations.
(3) An election to operate does not constitute an application for a certificate of authority. If an application, pursuant to section 214.275, RSMo, has not been made for a cemetery, it must accompany the election to operate form.

*AUTHORITY: sections 214.280, RSMo Supp. 1999 and 214.392, RSMo 1994.* This rule originally filed as 4 CSR 65-2.030. Original rule filed April 14, 2000, effective Oct. 30, 2000. Moved to 20 CSR 2065-2.030, effective Aug. 28, 2006.*

**Original authority: 214.280, RSMo 1961, amended 1994; 214.392, RSMo 1994.*

**20 CSR 2065-2.040 Land Surveyor's Statement, Location of Cemetery**

PURPOSE: This rule is to define the form and manner for land surveyors to submit statements to the Office of Endowed Care Cemeteries of the Division of Professional Registration of the location of cemeteries found during land surveys of property located in the state.

(1) For purposes of section 214.283(1), RSMo, the office shall create the form for land surveyors to report the location of cemeteries. The form shall request the following information:
(A) Location of the property, including address, legal description and the city and/or county within which the cemetery is located;
(B) Name of the cemetery;
(C) County assessor's parcel number for the property;
(D) Owner of the cemetery;
(E) Name, telephone number and professional license number of the land surveyor; and
(F) Any other information deemed appropriate by the office.
(2) The land surveyor is required in all cases to provide his/her name, license number and telephone number and an adequate description of the location of the cemetery so it can be found by another person.
(3) The land surveyor shall also provide all other information requested in the form that is known or easily obtained by the land surveyor.
(4) The form shall be submitted to the Office of Endowed Care Cemeteries, P.O. Box 1335, Jefferson City, MO 65102-1335.

*AUTHORITY: sections 214.283(1) and 214.392, RSMo 1994.* This rule originally filed as 4 CSR 65-2.040. Original rule filed April 14, 2000, effective Oct. 30, 2000. Moved to 20 CSR 2065-2.040, effective Aug. 28, 2006.*

**Original authority: 214.283, RSMo 1994; 214.392, RSMo 1994.*

**20 CSR 2065-2.050 License Renewal**

PURPOSE: This rule outlines the process of renewing a license.
(1) All licenses shall be renewed annually and shall expire on August 31.
(A) Each holder of a license to own or operate a cemetery shall provide the division with a completed renewal application issued by the division and the required annual renewal fee. The renewal application shall contain updated information since the preceding application/renewal period.
(B) The division will mail a renewal application to the last known address of each current holder of a license to own or operate a cemetery prior to the renewal date.
(C) Failure to receive a renewal notice shall not relieve the holder of a license to own or operate a cemetery of the obligation to renew the license and pay the required fee prior to the expiration date of the license.
(D) Deposit of the renewal fee by the division shall not indicate acceptance of the renewal application or that any licensing requirements have been fulfilled.
(E) Renewals shall be postmarked no later than the expiration date of the license, or if the expiration date is a Sunday or a federal holiday, the next day.
(2) Applicants that are approved for renewal will re-

ceive one (1) license. Duplicate licenses may be provided upon payment of the appropriate fee pursuant to rules promulgated by the division.

*AUTHORITY: sections 214.275.4 and 214.276, RSMo 2016.* This rule originally filed as 4 CSR 65-2.050. Original rule filed Sept. 28, 2001, effective March 30, 2002. Moved to 20 CSR 2065-2.050, effective Aug. 28, 2006. Amended: Filed May 11, 2018, effective Nov. 30, 2018.*

**Original authority: 214.275, RSMo 1999, amended 2001 and 214.276, RSMo 1999, amended 2001.*

# STATUTES
# 193, 194, 496

**193.265. Fees for certification and other services — distribution — services free, when.**

1. For the issuance of a certification or copy of a death record, the applicant shall pay a fee of fourteen dollars for the first certification or copy and a fee of eleven dollars for each additional copy ordered at that time. For the issuance of a certification or copy of a birth, marriage, divorce, or fetal death record, the applicant shall pay a fee of fifteen dollars. No fee shall be required or collected for a certification of birth, death, or marriage if the request for certification is made by the children's division, the division of youth services, a guardian ad litem, or a juvenile officer on behalf of a child or person under twenty-one years of age who has come under the jurisdiction of the juvenile court under section 211.031. All fees collected under this subsection shall be deposited to the state department of revenue. Beginning August 28, 2004, for each vital records fee collected, the director of revenue shall credit four dollars to the general revenue fund, five dollars to the children's trust fund, one dollar shall be credited to the endowed care cemetery audit fund, one dollar for each certification or copy of death records to the Missouri state coroners' training fund established in section 58.208, and three dollars for the first copy of death records and five dollars for birth, marriage, divorce, and fetal death records shall be credited to the Missouri public health services fund* established in section 192.900. Money in the endowed care cemetery audit fund shall be available by appropriation to the division of professional registration to pay its expenses in administering sections 214.270 to 214.410. All interest earned on money deposited in the endowed care cemetery audit fund shall be credited to the endowed care cemetery fund. Notwithstanding the provisions of section 33.080 to the contrary, money placed in the endowed care cemetery audit fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of the appropriation from the endowed care cemetery audit fund for the preceding fiscal year. The money deposited in the public health services fund under this section shall be deposited in a separate account in the fund, and moneys in such account, upon appropriation, shall be used to automate and improve the state vital records system, and develop and maintain an electronic birth and death registration system. For any search of the files and records, when no record is found, the state shall be entitled to a fee equal to the amount for a certification of a vital record for a five-year search to be paid by the applicant. For the processing of each legitimation, adoption, court order or recording after the registrant's twelfth birthday, the state shall be entitled to a fee equal to the amount for a certification of a vital record. Except whenever a certified copy or copies of a vital record is required to perfect any claim of any person on relief, or any dependent of any person who was on relief for any claim upon the government of the state or United States, the state registrar shall, upon request, furnish a certified copy or so many certified copies as are necessary, without any fee or compensation therefor.

2. For the issuance of a certification of a death record by the local registrar, the applicant shall pay a fee of fourteen dollars for the first certification or copy and a fee of eleven dollars for each additional copy ordered at that time. For each fee collected under this subsection, one dollar shall be deposited to the state department of revenue and the remainder shall be deposited to the official city or county health agency. The director of revenue shall credit all fees deposited to the state department of revenue under this subsection to the Missouri state coroners' training fund established in section 58.208.

3. For the issuance of a certification or copy of a birth, marriage, divorce, or fetal death record, the applicant shall pay a fee of fifteen dollars; except that, in any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, a donation of one dollar may be collected by the local registrar over and above any fees required by law when a certification or copy of any marriage license or birth certificate is provided, with such donations collected to be forwarded monthly by the local registrar to the county treasurer of such county and the donations so forwarded to be deposited by the county treasurer into the housing resource commission fund to assist homeless families and provide financial assistance to organizations addressing homelessness in such county. The local registrar shall include a check-off box on the application form for such copies. All fees collected under this subsection, other than the donations collected in any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants for marriage licenses and birth certificates, shall be deposited to the official city or county health agency.

4. A certified copy of a death record by the local registrar can only be issued within twenty-four hours of receipt of the record by the local registrar. Computer-generated certifications of death records may be issued

by the local registrar after twenty-four hours of receipt of the records. The fees paid to the official county health agency shall be retained by the local agency for local public health purposes.

5. No fee under this section shall be required or collected from a parent or guardian of a homeless child or homeless youth, as defined in subsection 1 of section 167.020, or an unaccompanied youth, as defined in 42 U.S.C. Section 11434a(6), for the issuance of a certification, or copy of such certification, of birth of such child or youth. An unaccompanied youth shall be eligible to receive a certification or copy of his or her own birth record without the consent or signature of his or her parent or guardian; provided, that only one certificate under this provision shall be provided without cost to the unaccompanied or homeless youth. For the issuance of any additional certificates, the statutory fee shall be paid.

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(L. 1984 S.B. 574, A.L. 1985 S.B. 263, A.L. 1990 H.B. 1079, A.L. 1992 H.B. 894, A.L. 1999 H.B. 343, A.L. 2004 H.B. 795, et al., A.L. 2010 H.B. 1643 merged with H.B. 1692, et al. merged with S.B. 754, A.L. 2018 S.B. 819, A.L. 2020 H.B. 1414 merged with H.B. 2046)

*Words "public services health fund" appear in original rolls of H.B. 1414 and H.B. 2046, 2020.

***194.119. Right of sepulcher, the right to choose and control final disposition of a dead human body.**

1. As used in this section, the term "right of sepulcher" means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

2. For purposes of this chapter and chapters 193, 333, and 436, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term "next-of-kin" means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(1) An attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact;

(2) For a decedent who was on active duty in the United States military at the time of death, the person designated by such decedent in the written instrument known as the United States Department of Defense Form 93, Record of Emergency Data, in accordance with P.L. 109-163, Section 564, 10 U.S.C. Section 1482;

(3) The surviving spouse;

(4) Any surviving child of the deceased. If a surviving child is less than eighteen years of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place of the child unless such child's legal or natural guardian was subject to an action in dissolution from the deceased. In such event the person or persons who may serve as next-of-kin shall serve in the order provided in subdivisions (5) to (9) of this subsection;

(5) (a) Any surviving parent of the deceased; or

(b) If the deceased is a minor, a surviving parent who has custody of the minor; or

(c) If the deceased is a minor and the deceased's parents have joint custody, the parent whose residence is the minor child's residence for purposes of mailing and education;

(6) Any surviving sibling of the deceased;

(7) The next nearest surviving relative of the deceased by consanguinity or affinity;

(8) Any person or friend who assumes financial responsibility for the disposition of the deceased's remains if no next-of-kin assumes such responsibility;

(9) The county coroner or medical examiner; provided however that such assumption of responsibility shall not make the coroner, medical examiner, the county, or the state financially responsible for the cost of disposition.

3. The next-of-kin of the deceased shall be entitled to control the final disposition of the remains of any dead human being consistent with all applicable laws, including all applicable health codes.

4. A funeral director or establishment is entitled to rely on and act according to the lawful instructions of any person claiming to be the next-of-kin of the deceased; provided however, in any civil cause of action against a funeral director or establishment licensed pursuant to this chapter for actions taken regarding the funeral arrangements for a deceased person in the director's or establishment's care, the relative fault, if any, of such

funeral director or establishment may be reduced if such actions are taken in reliance upon a person's claim to be the deceased person's next-of-kin.

5. Any person who desires to exercise the right of sepulcher and who has knowledge of an individual or individuals with a superior right to control disposition shall notify such individual or individuals prior to making final arrangements.

6. If an individual with a superior claim is personally served with written notice from a person with an inferior claim that such person desires to exercise the right of sepulcher and the individual so served does not object within forty-eight hours of receipt, such individual shall be deemed to have waived such right. An individual with a superior right may also waive such right at any time if such waiver is in writing and dated.

7. If there is more than one person in a class who are equal in priority and the funeral director has no knowledge of any objection by other members of such class, the funeral director or establishment shall be entitled to rely on and act according to the instructions of the first such person in the class to make arrangements; provided that such person assumes responsibility for the costs of disposition and no other person in such class provides written notice of his or her objection. If the funeral director has knowledge that there is more than one person in a class who are equal in priority and who do not agree on the disposition, the decision of the majority of the members of such class shall control the disposition.

8. For purposes of conducting a majority vote under subsection 7 of this section, the funeral director shall allow voting by proxy using a written authorization or instrument.

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(L. 2003 H.B. 394, A.L. 2008 S.B. 788 merged with S.B. 1139, A.L. 2010 H.B. 1524 & 2260, A.L. 2015 H.B. 618)

*Effective 10-16-15, see § 21.250. H.B. 618 was vetoed on July 10, 2015. The veto was overridden September 16, 2015.

**469.411. Determination of unitrust amount — definitions — exclusions to average net fair market value of assets — applicability of section to certain trusts — net income of trust to be unitrust amount, when.**

1. (1) If the provisions of this section apply to a trust, the unitrust amount determined for each accounting year of the trust shall be a percentage between three and five percent of the average net fair market value of the trust, as of the first day of the trust's current accounting year. The percentage applicable to a trust shall be that percentage specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section.

(2) The unitrust amount for the current accounting year computed pursuant to this section shall be proportionately reduced for any distributions, in whole or in part, other than distributions of the unitrust amount, and for any payments of expenses, including debts, disbursements and taxes, from the trust within a current accounting year that the trustee determines to be material and substantial, and shall be proportionately increased for the receipt, other than a receipt that represents a return on investment, of any additional property into the trust within a current accounting year.

(3) For purposes of this section, the net fair market values of the assets held in the trust on the first business day of a prior accounting quarter shall be adjusted to reflect any reduction, in the case of a distribution or payment, or increase, in the case of a receipt, for the prior accounting year pursuant to subdivision (1) of this subsection, as if the distribution, payment or receipt had occurred on the first day of the prior accounting year.

(4) In the case of a short accounting period, the trustee shall prorate the unitrust amount on a daily basis.

(5) In the case where the net fair market value of an asset held in the trust has been incorrectly determined in any quarter, the unitrust amount shall be increased in the case of an undervaluation, or be decreased in the case of an overvaluation, by an amount equal to the difference between the unitrust amount determined based on the correct valuation of the asset and the unitrust amount originally determined.

2. As used in this section, the following terms mean:

(1) "Average net fair market value", a rolling average of the fair market value of the assets held in the trust on the first business day of the lessor of the number of accounting quarters of the trust from the date of inception of the trust to the determination of the trust's average net fair market value, or twelve accounting quarters of the trust, regardless of whether this section applied to the ascertainment of net income for all valuation

quarters;

(2) "Current accounting year", the accounting period of the trust for which the unitrust amount is being determined.

3. In determining the average net fair market value of the assets held in the trust, there shall not be included the value of:

(1) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more income beneficiaries of the trust have or had the right to occupy, or have or had the right to possess or control, other than in a capacity as trustee, and instead the right of occupancy or the right to possession or control shall be deemed to be the unitrust amount with respect to the residential property or the tangible personal property; or

(2) Any asset specifically given to a beneficiary under the terms of the trust and the return on investment on that asset, which return on investment shall be distributable to the beneficiary.

4. In determining the average net fair market value of the assets held in the trust pursuant to subsection 1 of this section, the trustee shall, not less often than annually, determine the fair market value of each asset of the trust that consists primarily of real property or other property that is not traded on a regular basis in an active market by appraisal or other reasonable method or estimate, and that determination, if made reasonably and in good faith, shall be conclusive as to all persons interested in the trust. Any claim based on a determination made pursuant to this subsection shall be barred if not asserted in a judicial proceeding brought by any beneficiary with any interest whatsoever in the trust within two years after the trustee has sent a report to all qualified beneficiaries that adequately discloses the facts constituting the claim. The rules set forth in subsection 2 of section 469.409 shall apply to the barring of claims pursuant to this subsection.

5. This section shall apply to the following trusts:

(1) Any trust created after August 28, 2001, with respect to which the terms of the trust clearly manifest an intent that this section apply;

(2) Any trust created under an instrument that became irrevocable on, before, or after August 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply unless the instrument creating the trust specifically prohibits an election under this subdivision. The trustee shall deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she is then living, of the trustee's intent to make such an election at least sixty days before making that election. The trustee shall have sole authority to make the election. Section 469.402 shall apply for all purposes of this subdivision. An action or order by any court shall not be required. The election shall be made by a signed writing delivered to the settlor of the trust, if he or she is then living, and to all qualified beneficiaries. The election is irrevocable, unless revoked by order of the court having jurisdiction of the trust. The election may specify the percentage used to determine the unitrust amount pursuant to this section, provided that such percentage is between three and five percent, or if no percentage is specified, then that percentage shall be three percent. In making an election pursuant to this subsection, the trustee shall be subject to the same limitations and conditions as apply to an adjustment between income and principal pursuant to subsections 3 and 4 of section 469.405; and

(3) No action of any kind based on an election made by a trustee pursuant to subdivision (2) of this subsection shall be brought against the trustee by any beneficiary of that trust three years from the effective date of that election.

6. (1) Once the provisions of this section become applicable to a trust, the net income of the trust shall be the unitrust amount.

(2) Unless otherwise provided by the governing instrument, the unitrust amount distributed each year shall be paid from the following sources for that year up to the full value of the unitrust amount in the following order:

(a) Net income as determined if the trust were not a unitrust;

(b) Other ordinary income as determined for federal income tax purposes;

(c) Assets of the trust principal for which there is a readily available market value; and

(d) Other trust principal.

(3) Additionally, the trustee may allocate to trust income for each taxable year of the trust, or portion thereof:

(a) Net short-term capital gain described in the Internal Revenue Code, 26 U.S.C. Section 1222(5), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts to

trust income, as determined under the provisions of this chapter without regard to this section, for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof;

(b) Net long-term capital gain described in the Internal Revenue Code, 26 U.S.C. Section 1222(7), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in paragraph (a) of this subdivision, allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

7. A trust with respect to which this section applies on August 28, 2011, may calculate the unitrust amount in accordance with the provisions of this section, as it existed either before or after such date, as the trustee of such trust shall determine in a writing kept with the records of the trust in the trustee's discretion.

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(L. 2001 H.B. 241, A.L. 2002 H.B. 1151 merged with S.B. 742, A.L. 2004 H.B. 1511, A.L. 2009 H.B. 239, A.L. 2011 S.B. 59)