

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

**ALABAMA CEMETERY LAWS  
As pertains to  
ALABAMA PRENEED FUNERAL AND CEMETERY ACT  
CODE OF ALABAMA – Section 27-17A**

Table of Contents

Article 1 General Provisions..... 2  
    Section 27-17A-2 Definitions. .... 2  
    Section 27-17A-3 Funding with insurance contract..... 7  
    Section 27-17A-4 Sale of funeral merchandise, etc..... 7  
Article 2 Certificate of Authority..... 7  
    Section 27-17A-10 Certificate required ..... 7  
    Section 27-17A-11 Application for certificate; statements; issuance; expiration; transfer..... 7  
    Section 27-17A-12 Preneed contract forms; disclosure; approval..... 7  
    Section 27-17A-13 Moneys to be placed in trust; compliance by preexisting preneed contracts ..... 7  
    Section 27-17A-14 Surety bond. .... 7  
    Section 27-17A-15 Examination by commissioner ..... 7  
    Section 27-17A-16 Inactive certificate holder; surrender of license. .... 8  
    Section 27-17A-17 Dissolution or liquidation of certificate holder ..... 8  
    Section 27-17A-18 Preneed sales agent..... 8  
    Section 27-17A-19 Prohibited activities ..... 8  
    Section 27-17A-20 Hearing; procedures; penalties ..... 8  
    Section 27-17A-21 Fine in lieu of suspension or revocation of certificate ..... 8  
    Section 27-17A-22 Violations..... 8  
    Section 27-17A-23 Civil actions; liability..... 8  
    Section 27-17A-24 Construction of chapter..... 8  
    Section 27-17A-25 Disposition of funds..... 8  
Article 3 Funeral Merchandise and Services Trust Fund ..... 8  
    Section 27-17A-30 Applicability of article ..... 8  
    Section 27-17A-31 Deposits into trust; trustee responsibilities; interests in funds ..... 8  
    Section 27-17A-32 Rights of sellers; powers and duties of trustee ..... 8  
    Section 27-17A-33 Rights of purchaser; cancellation of contract; revocability ..... 8  
    Section 27-17A-34 Disbursement of funds ..... 8  
Article 4 Cemetery Merchandise and Services Trust Fund ..... 8  
    Section 27-17A-40 Applicability of article ..... 8  
    Section 27-17A-41 Trust fund; trustee; interests of purchaser; seller ..... 8  
    Section 27-17A-42 Trust contributions; trustee responsibilities; withdrawals; analysis and certification by seller . 9  
    Section 27-17A-43 Cancellation of contract; withdrawal from trust fund ..... 10  
    Section 27-17A-44 Rights of seller ..... 11  
    Section 27-17A-45 Endowment care fund ..... 11  
    Section 27-17A-46 Endowment care cemeteries..... 11  
    Section 27-17A-47 Establishment and management of endowment care fund..... 11  
    Section 27-17A-48 Maintenance of records..... 12  
    Section 27-17A-49 Endowment care fund deposits; qualification as endowment care cemetery..... 12  
    Section 27-17A-50 Financial interest in asset or business in which endowment care trust invests, etc.; use of income ..... 13  
    Section 27-17A-51 Propriety of expenditures; income payments to cemetery authority ..... 14  
    Section 27-17A-52 Disclosure of activities and statement of investments..... 14  
    Section 27-17A-53 Disposal of assets or investments ..... 14  
    Section 27-17A-54 Annual report ..... 14  
    Section 27-17A-55 Construction of mausoleum, etc ..... 14  
    Section 27-17A-56 Rules and regulations..... 15

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

**ALABAMA PRENEED FUNERAL AND CEMETERY ACT  
CODE OF ALABAMA – Section 27-17A**

**The Code of Alabama 1975** has several sections of particular interest to those who wish to restore, preserve and maintain a cemetery – particularly the small, oft-times neglected rural family cemetery. This paper provides a synopsis of that portion of the Code of Alabama dealing with the preneed sales and services of the funeral and cemetery industry, all conveniently contained in Section 27-17A, to serve as a reference to those who are working with cemetery preservation projects. While all section titles are included below, the full text of only selected sections are provided; missing text as well as looking for additional background can be found by going to the Alabama Legislature website cited below. One great feature of Section 27-17A is the list of definitions found under Section 27-17A-2.

The entire Code of Alabama 1975 can be viewed and searched at the Official Website of the Alabama Legislature at: <http://alisondb.legislature.state.al.us/alison/CoA.aspx>. The individual sections cited below can be reached from this website by selecting the desired Title in the left margin menu on the web site and then selecting from the resulting links that appear in the main part of the page.

*Article 1 General Provisions.*

**Section 27-17A-1 Short title.**

This chapter shall be cited as the Alabama Preneed Funeral and Cemetery Act.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-2 Definitions.**

As used in this chapter, the following terms shall have the following meanings:

- (1) **ALTERNATIVE CONTAINER.** A nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering), or pouches of canvas or other materials.
- (2) **ARRANGEMENT CONFERENCE.** The meeting occurring either at need or preneed between the seller and the purchaser during which funeral or cemetery merchandise and services are discussed.
- (3) **ARRANGEMENT CONFERENCE FEE.** The charge to the purchaser in conjunction with the arrangement conference.
- (4) **AT NEED.** At the time of death, or immediately following death.
- (5) **AUTHORIZING AGENT.** One who is lawfully authorized to control the final disposition of human remains.

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

(6) **BELOW-GROUND CRYPT.** A preplaced enclosed chamber, which is usually constructed of reinforced concrete, poured in place or a precast unit installed in quantity, either side-by-side or multiple depth, and covered by earth or sod and known also as a lawn crypt or turf-top crypt.

(7) **BENEFICIARY.** One who benefits from an act, such as one for whom a preneed contract is entered into or the successor-in-interest of a life insurance policy.

(8) **BURIAL.** The placement of human remains in a grave space or lawn crypt.

(9) **CASH ADVANCE.** Any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the seller on the purchaser's behalf. Cash advance items may include, but are not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

(10) **CASKET.** A rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

(11) **CEMETERY.** A place that is established, maintained, managed, operated, or improved and which is dedicated to and used or intended to be used for the final disposition of human remains and their memorialization.

(12) **CEMETERY AUTHORITY.** Any person who owns or controls a cemetery or conducts cemetery business.

(13) **CEMETERY MERCHANDISE.** Any personal property offered for sale, contracted for sale, or sold for use in connection with the burial of, final disposition, memorialization, interment, entombment, or inurnment of human remains. Cemetery merchandise specifically includes, but is not limited to, the outer burial container and the memorial.

(14) **CEMETERY SERVICES.** Services provided by a cemetery authority for interment, entombment, inurnment, and installation of cemetery merchandise.

(15) **CERTIFICATE HOLDER.** A funeral establishment, cemetery authority, third-party seller, or any other person to whom a valid certificate of authority to sell preneed contracts has been granted by the commissioner.

(16) **COLUMBARIUM.** A structure or room or space in a building or structure used or intended to be used for the inurnment of cremated remains.

(17) **COMMISSIONER.** The Alabama Commissioner of Insurance.

(18) **CREMATED REMAINS.** The bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

(19) **CREMATED REMAINS CONTAINER.** A receptacle in which cremated remains are placed.

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

- (20) **CREMATION.** The irreversible process of reducing human remains to bone fragments through intense heat and evaporation, performed in a specifically designed furnace or retort, which may include any other mechanical or thermal process whereby the bone fragments are pulverized, or otherwise further reduced in size or quantity. Cremation is a process and is a method of final disposition.
- (21) **CREMATORY AUTHORITY.** Any person who owns or controls a crematory.
- (22) **DEATH CERTIFICATE.** A legal document containing vital statistics pertaining to the life and death of the deceased.
- (23) **DECEASED or DECEDENT.** One who is no longer living.
- (24) **EMBALMER.** One authorized by law to engage in embalming.
- (25) **EMBALMING.** A procedure whereby human remains are chemically treated by injection for temporary preservation including, but not limited to, the act of disinfecting, preserving, and restoring human remains to a natural life-like appearance.
- (26) **ENCASEMENT.** The placement of human remains in a rigid container, including, but not limited to, a casket or urn.
- (27) **ENDOWMENT CARE.** The maintenance and repair of all places in the cemetery, subject to the rules and regulations of the cemetery authority; may be known also as endowed care, perpetual care, improvement care, or permanent care.
- (28) **ENDOWMENT CARE TRUST FUND.** An irrevocable trust fund set aside by law with a trustee, along with the income therefrom, to provide for the endowment care of the cemetery.
- (29) **ENTOMBMENT.** The act of placing human remains in a mausoleum crypt.
- (30) **FINAL DISPOSITION.** The lawful disposal of human remains whether by interment, entombment, burial at sea, cremation, or other method.
- (31) **FUNERAL.** The rites held commemorating the deceased with human remains present.
- (32) **FUNERAL DIRECTING.** The act or service of conducting funerals and counseling with survivors and preparing human remains, other than by embalming, for the interment or other means of disposition, and may include the management and supervision of all operations in a funeral establishment, which may or may not include the practice of embalming.
- (33) **FUNERAL DIRECTOR.** One authorized by law to engage in funeral directing.
- (34) **FUNERAL ESTABLISHMENT.** A place of business used in the care, planning, and preparation for final disposition or transportation of human remains, or any place where one or more are engaged and represent themselves to be engaged in the business of embalming or funeral directing.
- (35) **FUNERAL MERCHANDISE.** Any personal property offered for sale, contracted for sale, or sold for use in connection with funeral directing. Funeral merchandise specifically includes, but is not limited to, the following:

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

a. Alternative container.

b. Casket.

c. Outer burial container.

d. Urn.

(36) FUNERAL SERVICE. Services provided by a funeral establishment in connection with funeral directing.

(37) GRAVE SPACE. A space of ground in a cemetery that is used or intended to be used for in-ground burial.

(38) HUMAN REMAINS. The body of a decedent and includes the body in any stage of decomposition and cremated remains.

(39) INTERMENT. The final disposition of human remains by burial, entombment, or inurnment.

(40) INTERMENT RIGHT. The right to inter human remains in a particular interment space in the cemetery.

(41) INTERMENT SPACE. A space intended for the final disposition of human remains including, but not limited to, a grave space, mausoleum crypt, niche, and below-ground crypt.

(42) INURNMENT. The act of placing cremated remains in a receptacle including, but not limited to, an urn and depositing it in a niche.

(43) MAUSOLEUM. A chamber or structure used or intended to be used for entombment.

(44) MAUSOLEUM CRYPT. A chamber of a mausoleum of sufficient size for entombment of human remains.

(45) MEMORIAL. Any product, other than a mausoleum or columbarium, used for identifying an interment space or for commemoration of the life, deeds, or career of some decedent including, but not limited to, a monument, marker, niche plate, urn garden plaque, crypt plate, cenotaph, marker bench, and vase.

(46) MEMORIAL RETAILER. Any person offering or selling memorials at retail to the public.

(47) MEMORIALIZATION. Any permanent system designed to mark or record the names and other data pertaining to a decedent.

(48) NICHE. A space usually within a columbarium used or intended to be used for inurnment of cremated remains.

(49) OUTER BURIAL CONTAINER. A container which is designed for placement in the grave space around the casket or the urn including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

(50) **PERSON.** Any individual, firm, corporation, partnership, joint venture, limited liability company, association, trustee, government or governmental subdivision, agency, or other entity, or any combination thereof.

(51) **PREARRANGEMENT.** The term applied to completing the details for selection of merchandise or services on a preneed basis, which may or may not include provisions for prefunding or prepayment.

(52) **PREDEVELOPED.** Designated areas or buildings within a cemetery that have been mapped and planned for future construction but are not yet completed.

(53) **PREDEVELOPED INTERMENT SPACE.** An interment space that is planned for future construction but is not yet completed.

(54) **PREFUND.** The term applied to completing the financial details of a prearrangement, which include provisions for funding or prepayment.

(55) **PRENEED.** Any time prior to death.

(56) **PRENEED CONTRACT.** A written contract to purchase funeral merchandise, funeral services, cemetery merchandise, or cemetery services from the seller on a preneed basis.

(57) **PRENEED CONTRACT TRUST FUND.** The funds received pursuant to a preneed contract which are required by law to be held in trust until the merchandise or services purchased pursuant to the contract are delivered or provided or until otherwise lawfully withdrawn.

(58) **PROVIDER.** A person who may or may not be the seller, who will actually provide the merchandise and services under the terms of a preneed contract.

(59) **PURCHASE PRICE.** The amount paid by the purchaser for merchandise and services purchased under a preneed contract, exclusive of finance charges, sales tax, charges relating to interment rights, arrangement conference fees, or charges for credit life insurance.

(60) **PURCHASER.** The person who purchases a preneed contract either on his or her behalf or on behalf of a third party beneficiary.

(61) **RELIGIOUS INSTITUTION.** An organization formed primarily for religious purposes which has qualified for exemption from federal income tax as an exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(62) **SCATTERING.** The lawful dispersion of cremated remains.

(63) **SELLER.** Any person offering or selling merchandise or services on a preneed basis including, but not limited to, funeral establishments, cemetery authorities, crematory authorities, memorial retailers, direct disposers, etc.

(64) **SPECIAL CARE.** Any care provided, or to be provided, that is supplemental to, or in excess of, endowment care, in accordance with the specific directions of any donor of funds for such purposes.

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

(65) SUCCESSOR-IN-INTEREST. A person who lawfully follows another in ownership or control of property or rights.

(66) THIRD-PARTY SELLER. Any person, who is not a funeral establishment or a cemetery authority, engaged in the sale of preneed funeral merchandise or cemetery merchandise.

(67) TRUSTEE. Any person, state or national bank, trust company, or federally insured savings and loan association lawfully appointed as fiduciary over funds deposited by one or more purchasers of a preneed contract or deposited pursuant to an endowment care trust fund; not to be confused with a board of trustees.

(68) URN. A receptacle for the encasement of cremated remains.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-3 Funding with insurance contract.**

Nothing in this chapter shall be construed to prohibit the funding of preneed contracts with insurance contracts. Life insurance contracts used to fund preneed contracts shall conform with the provisions of this title as they relate to life insurance and shall cover at a minimum the retail amount of the preneed contract at the time of purchase.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-4 Sale of funeral merchandise, etc.**

Nothing in this chapter shall be construed to prohibit cemetery authorities from selling funeral merchandise, funeral establishments from selling cemetery merchandise, or third-party sellers from selling either funeral merchandise or cemetery merchandise, or both. Provided, the required amount of the purchase price to be placed into trust shall be governed by the appropriate section of this chapter.

*(Act 2002-74, p. 221, §1.)*

*Article 2 Certificate of Authority.*

**Section 27-17A-10 Certificate required.**

**Section 27-17A-11 Application for certificate; statements; issuance; expiration; transfer.**

**Section 27-17A-12 Preneed contract forms; disclosure; approval.**

**Section 27-17A-13 Moneys to be placed in trust; compliance by preexisting preneed contracts.**

**Section 27-17A-14 Surety bond.**

**Section 27-17A-15 Examination by commissioner.**

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

**Section 27-17A-16 Inactive certificate holder; surrender of license.**

**Section 27-17A-17 Dissolution or liquidation of certificate holder.**

**Section 27-17A-18 Preneed sales agent.**

**Section 27-17A-19 Prohibited activities.**

**Section 27-17A-20 Hearing; procedures; penalties.**

**Section 27-17A-21 Fine in lieu of suspension or revocation of certificate.**

**Section 27-17A-22 Violations.**

**Section 27-17A-23 Civil actions; liability.**

**Section 27-17A-24 Construction of chapter.**

**Section 27-17A-25 Disposition of funds.**

*Article 3 Funeral Merchandise and Services Trust Fund.*

**Section 27-17A-30 Applicability of article.**

**Section 27-17A-31 Deposits into trust; trustee responsibilities; interests in funds.**

**Section 27-17A-32 Rights of sellers; powers and duties of trustee.**

**Section 27-17A-33 Rights of purchaser; cancellation of contract; revocability.**

**Section 27-17A-34 Disbursement of funds.**

*Article 4 Cemetery Merchandise and Services Trust Fund.*

**Section 27-17A-40 Applicability of article.**

To comply with the trust requirement of subsection (a) of Section 27-17A-13, all certificate holders providing preneed contracts for cemetery services or cemetery merchandise shall be subject to this article.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-41 Trust fund; trustee; interests of purchaser; seller.**

(a) Any person who receives or collects any funds on account of a preneed contract in this state for cemetery services or cemetery merchandise, or both, entered into after May 1, 2002, shall have the obligation to pay over and contribute into a trust fund as hereinafter described, those amounts or proportions of the funds as hereinafter provided.

(b) Whether or not the preneed contract provides for cemetery merchandise or cemetery services, or any combination thereof, the trust fund shall be referred to in this section as the Cemetery Merchandise and Services Trust Fund.

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

(c) The trustee of the Cemetery Merchandise and Services Trust Fund shall be qualified as such within the definition of the trustee.

(d) The trustee shall take title to the property conveyed to the Cemetery Merchandise and Services Trust Fund subject to this section.

(e) The contract purchaser shall have no interest whatsoever in, or power whatsoever over, the funds deposited in the Cemetery Merchandise and Services Trust Fund.

(f) The party contracting to deliver the cemetery merchandise or cemetery services or cash advances, whether or not a preneed provider, shall be referred to in this section as the "seller."

(g) The seller shall be the beneficiary of the Cemetery Merchandise and Services Trust Fund.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-42 Trust contributions; trustee responsibilities; withdrawals; analysis and certification by seller.**

(a) The obligation of the seller under a preneed contract shall be to make contributions into the Cemetery Merchandise and Services Trust Fund in accordance with the following formulae:

(1) With respect to all cemetery merchandise, 110 percent of wholesale cost.

(2) With respect to outer burial containers, 60 percent of the purchase price specified in the preneed contract.

(3) With respect to cemetery services, 60 percent of the purchase price specified in the preneed contract.

(4) With respect to all cash advance items sold, 100 percent of the purchase price specified for the same in the preneed contract.

(b) All contributions shall be made within 30 days after the end of the calendar month in which the preneed contract is paid in full, unless, prior to that time, all liabilities of the seller under the preneed contract to deliver the specific cemetery merchandise or cemetery services, or both, or the specific cash advances, identified by the preneed provider as properly allocated to the payment, have been satisfied, or the preneed contract is validly cancelled.

(c) The trustee shall invest and reinvest the Cemetery Merchandise and Services Trust Fund.

(d) The trustee shall make regular evaluations of the fair market value of assets held in and liabilities, if any, of the Cemetery Merchandise and Services Trust Fund and provide a report of the evaluations to the seller at least quarterly. Upon receipt of each quarterly report, the seller may submit to the trustee a written and detailed analysis concerning the balance of funds in the Cemetery Merchandise and Services Trust Fund, certified under oath as being true and correct upon information and belief by a responsible officer of the seller.

(e) While the obligation of the seller to make contributions to the Cemetery Merchandise and Services Trust Fund is set forth in this section, the obligation of the seller at the time of making certain withdrawals from the Cemetery Merchandise and Services Trust Fund as herein provided

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

for shall be calculated with respect to the current wholesale cost of cemetery merchandise and current retail price of cemetery services and cash advances at the time of withdrawal. If the fair market value as reported by the trustee exceeds 110 percent of the total of the following, the seller shall be entitled to withdraw and retain from the merchandise trust fund, the excess funds therein:

One hundred and ten percent of the current wholesale cost of the liability to deliver all cemetery merchandise, 60 percent of the current retail price for all cemetery services, and 100 percent of the current retail price of all cash advances, for the total of all preneed contracts for which the purchasers have paid in full, all calculated as of the time of withdrawal; and concerning the total of all preneed contracts for which the purchasers have not paid in full, 25 percent of the total of the following: 110 percent of the current wholesale cost of the liability to deliver all cemetery merchandise, 60 percent of the current retail price for all cemetery services, and 100 percent of the current retail price of all cash advances, all calculated as of the time of withdrawal.

(f) At least annually the seller shall make the aforesaid analysis and certification and provide the same to the trustee. If the certification discloses that the fair market value of the Cemetery Merchandise and Services Trust Fund is less than 100 percent of the aggregate calculated amount the seller shall from its own funds contribute to the Cemetery Merchandise and Services Trust Fund within the 12 months succeeding the annual computation the amount necessary to restore the trust fund to an amount equal to not less than 100 percent of the aggregate amount so calculated.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-43 Cancellation of contract; withdrawal from trust fund.**

(a) Upon cancellation of a preneed contract by mutual agreement between the seller and purchaser, or upon unilateral cancellation of a preneed contract by the seller by reason of default on the part of the purchaser, or other valid cancellation by reason of transfers to another seller or otherwise, the seller may, upon submission of a certification under oath by a responsible officer of the seller to the trustee, withdraw from the Cemetery Merchandise and Services Trust Fund and retain an amount equal to the amount of all funds contributed to the trust fund with respect to the preneed contract. Any trustee accepting preneed contract proceeds under this article may rely on the seller's certification under oath as required herein to be made, and shall not be liable to anyone for such reliance.

(b) At such time as the seller undertakes to perform its obligations under a preneed contract by delivery or installation, or both, of cemetery merchandise and the provision of cemetery services and disbursement on account of cash advances, or otherwise, upon certification to the trustee under oath by a responsible officer of the seller that the obligations of the seller under the contract have been completely fulfilled, the seller may withdraw from the Cemetery Merchandise and Services Trust Fund and retain an amount equal to the current wholesale cost to the fund with respect to the preneed contract.

(c) At such time as the seller has fulfilled all of its obligations under all preneed contracts with respect to which funds have been contributed to the trust fund, and certification under oath to the trustee by a responsible officer of the seller of those facts, the seller may withdraw from the trust fund and retain all of the remaining assets thereof.

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-44 Rights of seller.**

(a) Without limiting in any way the liability of the seller under a preneed contract to perform its obligations thereunder, including, without limitation, the obligation to deliver the cemetery merchandise, and for installation thereof if it is to be included in the preneed contract, the seller shall not be required to place in trust proceeds paid under the contract for cemetery merchandise.

(b) If the trust proceeds have previously been paid the seller may withdraw the principal amount there, at such time as the cemetery merchandise, if comprised of materials designed to withstand prolonged, protected storage without deterioration, is placed in storage with a responsible third party bonded and insured for the wholesale value thereof and evidenced by a receipt specifically identifying the item, the specific preneed contract, the location of the item, and the identity and address of the bonding and insuring parties.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-45 Endowment care fund.**

An endowment care fund and all payments or contributions to it are expressly permitted as and for charitable and eleemosynary purposes. No payment, gift, grant, bequest, or other contribution for endowment care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contributions to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-46 Endowment care cemeteries.**

Any cemetery now existing or hereafter established, excluding those operated by governmental agencies or religious institutions, shall be an endowment care cemetery, except those which do not charge fees.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-47 Establishment and management of endowment care fund.**

(a) Every cemetery authority operating an endowment care cemetery shall establish an endowment care fund which shall be placed with and held by a bank, trust company, savings and loan association, or other financial institution authorized to provide trust services under Title 5, as amended, or under the applicable laws of the United States or any other state, or a board of trustees, consisting of at least three members, who shall reside in the State of Alabama, one of whom is engaged in outside cemetery management, and each of whom shall be bonded to honestly perform the duties of trustee under a formal trust agreement.

(b) The amount of each bond shall be a minimum of twenty-five thousand dollars (\$25,000). The corporate trustee or board of trustees shall be referred to as a "qualified trustee." Unless otherwise specified in this article or in the terms of the trust instrument, the trustee of any trust established under or pursuant to this article shall have all powers granted to trustees under

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

Article 14 of Chapter 3 of Title 19. The incorporation herein of such powers shall not be deemed to imply any duties of trustees of trusts established under or pursuant to this article not expressly delineated in this article.

(c) The cemetery authority may employ a person to advise the trustee in the management of the fund.

(d) The cemetery authority may enter into a contract with the qualified trustee for the management and investment of the endowment care fund, which contract may provide for the payment of income from the fund of reasonable fees or commissions to the trustee, and its reasonable expenses for administering the trust.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-48 Maintenance of records.**

(a) Each cemetery authority shall maintain at each place of business a list of the names and addresses of its owners and directors, which shall be available to the public.

(b) Each cemetery authority shall maintain a record of all property owners by name and last known address with a description of merchandise and location of burial lots, crypts, or niches. A plat map shall be maintained for each cemetery location at the cemetery business office. A book or file shall be kept as to the date, location by lot, and space number of each person interred or entombed in the cemetery. A written copy of the cemetery rules and regulations shall be maintained at each location and made available to the public upon request.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-49 Endowment care fund deposits; qualification as endowment care cemetery.**

(a) From the sale price of each plot, crypt, or niche sold by the cemetery authority, of an endowment care cemetery, it shall pay an amount, not less than as determined in accordance with the following schedule, to the trustee of the endowment care fund, which payment shall be paid over to the trustee not more than four months after the close of the month in which the total or final payment on the sale has been received:

(1) Fifteen percent of the sale price of each grave or lawn crypt space.

(2) Five percent of the sale price of each mausoleum crypt or niche.

(3) The amount received for special care funds, gifts, grants, contribution devises, or bequests made with respect to the separate or special care of a particular lot, grave, crypt, niche, mausoleum, monument, or marker or that of a particular family, as distinguished from the general endowed care of a cemetery or of a garden.

(b) In addition to subsection (a), a cemetery authority may receive, and transfer to the trustee, as a part of or incident to the endowment care fund, any property, real, personal, or mixed, bequeathed, devised, given, or otherwise contributed to it for endowment care purposes. Any contractual endowment care deposits shall fall under this article.

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

(c) Any cemetery authority which is organized and engaged in business prior to May 1, 2002, shall qualify as an endowment care cemetery if the following occur:

(1) Not already placed, it shall within 90 days of May 1, 2002, have placed the entire principal of any endowment care fund in its possession, custody, or control, into the hands of a qualified trustee designated by it, to be administered as set forth in this article; and principal of its endowment care fund, or the aggregate principal of its endowment care funds, if more than one, shall have a fair market value on either May 1, 2002, or on the date of transfer to the trustee of not less than twenty-five thousand dollars (\$25,000); or it shall substitute 25 percent for each percentage of each sale for the next five years or five thousand dollars (\$5,000) per year, whichever is greater, until the balance of twenty-five thousand dollars (\$25,000) is reached. In such case, the entire amount of twenty-five thousand dollars (\$25,000) shall be paid into the fund before the end of the fifth year, and no interest may be removed from the fund until the twenty-five thousand dollars (\$25,000) minimum has been reached.

(2) It shall at all times after May 1, 2002, comply with the minimum requirements for payments to the trustee for endowment care.

(d) Any cemetery authority organizing a cemetery after May 1, 2002, whether it be by incorporation, association, individually, or by any other means, or having its first burial after May 1, 2002, before disposing of any burial lot or right or making any sale thereof or making its first burial, or both, shall cause to be deposited with a qualified trustee, in cash, the sum of twenty-five thousand dollars (\$25,000) in the endowment care fund.

(e) When a cemetery authority has placed with a trustee, pursuant to this article, a sum of money in excess of the aggregate which would be required only under subsection (a), the cemetery authority shall not be required under this article to make further payments to the trustee until such time thereafter as, taking into account all sales of plots, crypts, and niches in the cemetery property since the first of the sales, the aggregate of payments to the trustee if made in accordance with subsection (a) would equal the applicable minimum amount paid to the trustee under subdivision (1) of subsection (c), or subsection (d) of this section.

(f) Any deposit previously made, or represented to be made to an existing endowment care fund which exceeds 10 percent of the gross selling price of all plots, crypts, and niches sold since representation of endowment care shall be made a permanent part of the endowment care fund and transferred to the qualified trustee under this article.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-50 Financial interest in asset or business in which endowment care trust invests, etc.; use of income.**

(a) No cemetery authority may directly or indirectly require or direct the investment, reinvestment, or retention by a qualified trustee of any part of an endowment care trust in any asset or business in which the cemetery authority or any officer, director, owner, partner, or employee of the cemetery authority has a financial interest. Nothing contained in this subsection shall prevent the trustee, subject to the provisions regarding investment and reinvestment of the trust estate as are contained in the governing instrument creating the trust, from investing, reinvesting, or retaining any asset or business in which the cemetery authority or any officer,

## **ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

director, owner, partner, or employee of the cemetery authority has an insubstantial or nonmaterial financial interest, provided that the trustee, in the exercise of the trustee's discretion, deems the investment, reinvestment, or retention to be for the best interest of the trust estate.

(b) The net income from the endowment care fund, to the extent that the same is distributed from the fund, shall be used exclusively for covering the costs of endowment care of the cemetery.

*(Act 2002-74, p. 221, §1.)*

### **Section 27-17A-51 Propriety of expenditures; income payments to cemetery authority.**

The trustee shall not be required to inquire into the propriety of the expenditures made by the cemetery authority in connection with endowment care of the cemetery, and it shall not be held responsible in any manner whatsoever for and on account of payments of the income from the endowment care fund made to the cemetery authority.

*(Act 2002-74, p. 221, §1.)*

### **Section 27-17A-52 Disclosure of activities and statement of investments.**

The trustee shall, not less than annually, file with the cemetery authority an account which shall include a complete disclosure of all activity since the previous account and a statement detailing fund investments.

*(Act 2002-74, p. 221, §1.)*

### **Section 27-17A-53 Disposal of assets or investments.**

To the extent that any endowment care trust existing on May 1, 2002, includes investments or assets, the retention of which the trustee in the free exercise of its discretion deems not in the best interest of the trust estate, the trustee shall dispose of the investments or assets as soon as practicable without undue sacrifice to the trust estate, and in any event within two years after May 1, 2002.

*(Act 2002-74, p. 221, §1.)*

### **Section 27-17A-54 Annual report.**

An annual report of the endowment care fund shall be made to the commissioner by each cemetery authority within 90 days of the close of each calendar year. This report shall include the qualified trustee's name or names, the bond numbers if individual trustees or the name and address of the financial institution in which the fund is maintained, and the affidavit of the cemetery authority affirming compliance with this article. Prior to the sale or transfer of a cemetery, the cemetery authority shall report and document to the commissioner that the endowment care fund is currently funded in accordance with this article.

*(Act 2002-74, p. 221, §1.)*

### **Section 27-17A-55 Construction of mausoleum, etc.**

A cemetery authority shall start construction of that section of a mausoleum or bank of below-ground crypts in which sales, contracts for sale, reservations for sale, or agreements for sale are

**ALABAMA CEMETERY PRESERVATION ALLIANCE**

Note: This paper is for reference purposes only and does not constitute legal advice.

being made, within five years after the date of the first sale or when 75 percent of the mausoleum or below-ground crypts have been sold and the purchase price has been received, whichever occurs first. The construction shall be completed within six years after the date of the first sale made. Extensions for completion, not to exceed one year, may be granted by the commissioner for good cause shown. If the units have not been completely constructed at the time of need or the time specified herein, unless otherwise specified in the preneed contract, all moneys paid shall be refunded upon request, plus interest earned thereon if deposited by the cemetery authority in an escrow or trust fund, and if not so deposited in an escrow or trust fund earning interest, then plus interest in an amount equal to the interest or discount which would have been earned thereon had the funds been invested in United States Treasury Bills having a 90-day maturity.

*(Act 2002-74, p. 221, §1.)*

**Section 27-17A-56 Rules and regulations.**

(a) Cemetery rules and regulations are adopted for the mutual protection of the cemetery owners and the owners of interment rights in the cemetery. All owners of interment rights and other persons within the cemetery shall be subject to these rules and regulations as they now exist and as they may be amended or altered by the cemetery. The cemetery authority has the right to enforce these rules and regulations. The cemetery authority expressly reserves the right, at any time and without prior notice to any owners, to adopt new rules and regulations or to amend, modify, or repeal any section, paragraph, or sentence of these rules and regulations.

(b) This section shall not apply to the officers, directors, shareholders, partners, employees, agents, or representatives of a cemetery authority who intentionally commit an act of vandalism or other illegal act.

*(Act 2002-74, p. 221, §1.)*

---

Compiled by: H. T. "Ted" Urquhart, Jr.  
Alabama Cemetery Preservation Alliance, Inc. (ACPA)  
July 2006, Updated Oct 2017