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Chair Pendergrass  
Vice Chair Peña-Melnyk  
Health and Government Operations Committee  
House Office Building, Room 241  
Annapolis, Maryland 21401

**RE: HB 243 – (Cemeteries – Perpetual Care – Distribution from Perpetual Care Trust Fund)**

Dear Chair Pendergrass, Vice Chair Peña-Melnyk, and members of the Health and Government Operations Committee:

I was recently made aware that Maryland was considering the implementation of a Total Return Distribution Method for perpetual care cemeteries in the state pursuant to proposed House Bill 243. Our institution has reviewed this proposed legislation and would like to provide some additional insights, from the perspective of an independent trustee, as to why such a change would be in the interest of Maryland cemeteries and its citizens.

### **I. Argent Trust Company – (About Us)**

Argent Trust Company ("Argent") is a Tennessee state-chartered trust company that administers over \$23 billion in trust assets for our various personal and institutional trust clients. Argent also maintains a dedicated funeral and cemetery trust division (the "Cemetery Trust Division") that administers over \$2 billion in funeral and cemetery trust assets for 160 clients across 35 states (excluding Maryland). The Cemetery Trust Division is composed of 12 trust professionals, which include:

- Dedicated legal team that reviews state regulations for the administration of funeral and cemetery trust assets in compliance with state law;
- Dedicated trust administration personnel to oversee any required annual reporting and the timely deposit, investment and withdrawal of funds in accordance with state regulations; and
- Dedicated investment management with an experienced team of portfolio managers that are familiar with the various state-specific investment requirements.

Argent's Cemetery Trust Division has over 150 years of combined experience in the administration and investment funeral and cemetery trust accounts. For more information about Argent or its Cemetery Trust Division, please visit our website at <https://argentfinancial.com>.

### **II. Trustee's Fiduciary Duty to a Perpetual Care Cemetery Trust**

Perpetual care cemeteries have a profound responsibility to their clients and their communities to provide a well-maintained final resting place, in perpetuity, for the departed. To accomplish this, states have tasked third-party fiduciaries with the responsibility, as trustee, for the oversight and administration of the perpetual care trust fund. The trustee's fiduciary obligations are ongoing duties that begin at the fund's inception and continue into perpetuity.

As you know, the perpetual care cemetery trust fund is the funding vehicle that covers the costs of lawn maintenance and the general upkeep of the cemetery grounds. As such, the trustee owes a fiduciary

duty to ensure that the perpetual care cemetery trust fund is invested in a prudent manner and that distributions that are permitted under state law are made to the cemetery company in a timely manner. For the reasons mentioned below, Argent has taken the position that a Total Return Distribution Method is not only preferable for providing increased distributions to the cemetery company, but it also grows the corpus of the trust fund over time.

### **III. Benefits of Total Return Method vs. Net Income Method**

#### **A. Net Income Distribution Method**

For generations, perpetual care cemetery trust funds have been limited to only distributions of net income, that is, the interest and dividend yielded after the payment of fees, expenses and taxes. As a result, the typical investment portfolio for Net Income Distribution Method trusts is heavily weighted toward income-producing investments. The cemetery company is entitled to receive all available net income, which generally varies from month to month. Over the past decade, low interest rates have meant that these investments have dramatically underperformed. Accordingly, cemeteries are receiving far less from their trusts' investments than in previous years, hampering their ability to pay for the upkeep and maintenance required in a perpetual care cemetery.

While the Net Income Distribution Method approach may have been satisfactory for many newer cemeteries, there has been a growing concern for older cemeteries that have either sold out or are close to selling out of their available lots and/or grave spaces. Perpetual care cemetery trusts are funded with a portion of the sale of each lot and/or grave space in accordance with state law. Such deposits are the main source of corpus appreciation for a Net Income Distribution Method trust fund, since the investment of the fund is weighted toward income producing investments. If trust corpus has not grown adequately over time, then there may not be enough income generated in later years to care for the cemetery in perpetuity.

Furthermore, once a cemetery sells out of its available lots and/or graves, then there is less incentive for the cemetery company to cover the costs themselves for any required maintenance if the net income from the trust is inadequate. Argent continues to see various instances across the nation where a cemetery that is at full capacity becomes a public nuisance due to lack of proper upkeep and maintenance. In such instances, the city or township where the cemetery is located is then tasked with taking over the maintenance of the cemetery grounds. In such a scenario, the city or township must supplement, at the expense of the taxpayers, the difference between available trust income and actual cost of the cemetery maintenance.

#### **B. Total Return Distribution Method**

Under a Total Return Distribution approach, the cemetery elects a fixed percentage of income, capital gains, and/or principal based on the average annual fair market value of the trust. Accordingly, the investment portfolio under such an approach will be a balanced portfolio that focuses on a combination of stocks and interest-bearing investments with the main objective of maximizing the growth of the entire trust.

The main benefits for the Total Return Method are as follows:

- Diversified portfolio under a Prudent Investor Standard encourages both growth of corpus and income generation;
- Trust investment portfolio not completely dependent on interest rates;
- Consistent amount distributed each period to the cemetery, which allows for ease of managing and budgeting;
- Typically, the Total Return Distribution amount exceeds the amount of net-income generated under the Net Income Method; and
- The cremation rate is dramatically increasing nationwide, which correlates to fewer sales of lots

and/or grave spaces per year. However, under a Total Return approach, the cemetery is no longer completely reliant on growing the trust corpus via deposits from sales of new lots and/or grave spaces.

In our experience, issues with utilizing the Total Return Distribution Method only appear to occur when:

- The trustee and/or investment manager are not familiar with the Total Return calculation and/or the associated diversified growth investment strategy; or
- During periods of a prolonged market downturn, this method could result in the possible overpayment of trust corpus.

After reviewing HB 243, it is our belief that this proposed bill contains the necessary provisions for the Office of Cemetery Oversight to review these trust funds on a regular basis and intervene if either issue noted above is found for a particular perpetual care trust fund. Specifically, HB 243 permits the Director of the Office of Cemetery Oversight to limit or prohibit any distribution after a review of the trust fund found either deficiency noted above.

#### **IV. Conclusion**

It is Argent's position that a Total Return Distribution Method is the preferable choice for providing consistent, increased returns to the cemetery company, while at the same time enhancing the fund's long-term viability by growing the corpus of the trust fund over time. After reviewing HB 243, Argent believes that it is similar in nature to Total Return/Unitrust laws that have been passed in other states for which we currently act as a cemetery trustee. At this time, Argent would recommend that HB 243 be passed since it would increase the monthly/quarterly distributions to cemetery companies, it would grow the corpus of the perpetual care cemetery trust fund, and it contains adequate regulatory safeguards to prohibit the excess invasion of principal during periods of lower investment returns.

If you should have any questions, please feel free to contact me at [jwilson@argenttrust.com](mailto:jwilson@argenttrust.com) or (910) 550-0542.

Respectfully submitted,



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