

The Marlow Cemetery Trustees would like to switch to a common Perpetual Care account for all newly created accounts, instead of individual Perpetual Care accounts, and would like clarity as to how extra income from funds marked as Residual Rest of Cemetery should be treated.

Question – Was the switch to a Common Perpetual Care account for all new funds already done, and if so, is it still in effect today even though funds have been treated as individual Perpetual Care Accounts?

There are also a number of Perpetual Care accounts that are tagged as “Residual Rest of Cemetery”, and the Cemetery Trustees are seeking to understand how the income / interest from the funds, that is more than needed for the care of the assigned plot, should be used.

Question - Should Perpetual Care accounts that were identified as “Residual Rest of Cemetery”, and that have interest that exceeds what is needed for the care of those designated plots, have those excess funds used to pay for care of remainder of the cemetery?

Question - Did this Residual Rest of Cemetery designation end with a change of the rules?

History –

The Cemetery Rules were created in 1975 by Town Meeting Vote (Article 14)

**14 - ... Funds derived from the sale of plots shall be credited to a Common Perpetual Care Trust Fund and shall be considered as payment in full by the purchaser for care of the lot by the Town in perpetuity.**

**15 – All monies earned from the Common Perpetual Care Trust Fund during the Current Year and not expended for the care of these said lots shall be paid over to a Permanent Improvement Fund and the income only, derived from said fund shall be used for improvements and enlargements of the cemeteries of the Town.**

**16 – Appropriations approved and voted by the Town may be made from the principle account of said Permanent Improvement Fund for improvements and enlargements of the cemeteries of the Town**

*Comments – It appears that this created a common trust fund for all future created Perpetual Care accounts to be put into instead of creating individual Perpetual Care accounts for each purchase of cemetery plots. And, the excess account income was to be used in other cemetery needs. Only 8 Perpetual Care accounts that were created prior to 1975 are tagged as Residual Rest of Cemetery. Most, but not all, accounts created from 1976 to 1988 are tagged Residual Rest of Cemetery. After 1988 no accounts were tagged as Residual Rest of Cemetery.*

The Cemetery Rules were changed in 1987 by Town Meeting Vote (Article 16)

*Comments – The cost of plots was increased on Art. 14 of the rules, and other changes were made to Art. 3 and Art. 11 of the rules, and Duties of Sexton. A full copy of the rules following the 1987 vote has not been found, but it appears that no changes were made to Art. 14 and Art. 15 of the rules as stated from the 1975 rules above. However, accounts were no longer tagged as Residual Rest of Cemetery after 1988.*

The Cemetery Rules were again changed in 1994 by Town Meeting Vote (Article 2)

**Article 14. ... Funds derived from the sale of plots shall be credited to a Common Perpetual Care Trust Fund with no fee being charged for the plot itself. This fee shall be considered as payment in full by the purchaser for care of the lot by the Town in perpetuity.**

**Article 15. Except where specifically stated, annual interest derived from funds credited to the Perpetual Care Trust prior to 1975 shall be used initially for the care of the plot originally designated. Any remaining interest may be used for the general upkeep of the cemetery.**

**Article 16. Owners or their heirs, of existing plots without perpetual care and purchased prior to 1975 are required to obtain a Perpetual Care Trust Fund for said plot in an amount not less than \$150.00.**

*Comments – There are changes to the cost of cremation plots and a wording change in Article 14 of the rules, but this does not seem to change that new account funds were to be placed in a Common Perpetual Care Fund instead of Individual Perpetual Care Funds.*

*Article 15 in the rules replaces rule 15 from 1975. It appears to no longer address the residual interest from funds created after 1975, and instead it appears to imply that the residual interest from accounts created prior to 1975 were to be used for other parts of the cemetery. However, unless the funds were created to have the residual used in the rest of the cemetery, it is not believed to be allowable. It is not clear from this if residual interest from the Common Perpetual Care fund, is still to be used for other Cemetery needs.*

*Article 16 of the rules replaces rule 16 from 1975. Although it appears that a few plot owners from prior to 1975 complied, it is not believed to be enforceable by law. What became of the Permanent Improvement Fund has not been researched, however a similar Cemetery Development fund was created in 2018.*

The Cemetery Rules were again changed in 2006 by Town Meeting Vote (Article 21, and 22)

*Comments – Article 21 modified Article 3 of the Cemetery rules. Article 22 modified Article 14 of the Cemetery rules, which shortened the Common Perpetual Care Trust Fund description, but did not remove it. Instead adding to what was covered by Perpetual Care. -*

**Article 14. .... Funds derived from the sale of plots shall be credited to a Common Perpetual Care Trust Fund. Perpetual Care includes the seeding and fertilization of grass, the cutting of grass upon the plots, the raking and cleaning of the plots, grading of the plot, as needed, and the occasional pruning and trimming of ornamental vegetation. The Town will only be responsible for repairing monuments damaged by employees of the Town.**

The Cemetery Rules were again changed in 2007 by Town Meeting Vote (Articles 18, 19,20, 21, 22, and 23)

*Comments – Article 19 address Article 14 of the rules and the sale of plots and Perpetual Care, with paragraph D. alone address Perpetual Care and stating –*

**Article 14 Paragraph D. .... Funds derived from the sale of plots shall be credited to a Common Trust Fund.**

*Article 15 and 16 of the rules remain unchanged.*

During 2010, the Cemetery Trustees rescinded Article 16 of the Cemetery rules. The Cemetery Trustees voted unanimously to rescind it, following a public hearing, and obtaining a legal opinion that they had the authority to rescind the article without the benefit of a Town meeting vote. Citing that collection of the \$150 for Perpetual Care for plots sold prior to 1975 had been sporadic.

The most recent Cemetery Rule change was in 2018 by Town Meeting Vote (Article 18)

**Article 14 Paragraph D. - Costs shall be \$200 for a single full burial plot, \$400.00 for a two grave plot; and \$800.00 for a four grave plot. Each full burial plot may contain up to six cremations. Cremation plots (4' by 5') shall be \$125.00 and may contain up to four cremations. Funds derived from the sale of plots shall be credited as follows: \$125.00 for a single full burial plot, \$250.00 for a two grave plot; \$500.00 for a four grave plot, and \$80 for cremation plots to a Common Trust Fund (Perpetual Care) for lot care. And, \$75.00 for a single full burial plot, \$150.00 for a two grave plot; \$300.00 for a four grave plot, and \$45 for cremation plots to a Trust Fund for future cemetery development, layout, or purchase. Rates in effect July 1, 2018.**

*Comment - This change left the amount used to create a Perpetual Care Common Trust Fund unchanged, and increased the total rates for the purchase of plots by adding an amount that would be added to a Trust Fund for future cemetery development. Article 16 of the rules remains the same as follows. –*

**Article 15. Except where specifically stated, annual interest derived from funds credited to the Common Trust prior to 1975 shall be used initially for the care of the plot originally designated. Any remaining interest may then be used for the general upkeep of the cemetery.**

Questions to be answered –

Should all Perpetual Care Accounts created after 1975 all be combined together in a Common Perpetual Care Trust Fund? Or, did this end following a change of the rules?

Should Perpetual Care Accounts tagged Residual Rest of Cemetery prior to 1975, and those accounts created after 1975, have the extra income from the accounts used for maintenance or expansion in other parts of the Cemetery. And / or did this end with a rule change?

Dan Reed  
Marlow Cemetery Trustee Chairman  
January, 2020.

**NH RSA -**

**31:20 For Cemeteries.** – Towns shall take and hold in trust gifts, legacies and devises made to them for the care of cemeteries and burial lots when the terms of the gift, legacy or devise do not impose any liability upon the town beyond the amount of the gift, legacy or devise and the income thereof.

**Source.** GL 49:7; 50:3. PS 40:5. 1901, 83:1. 1907, 70:1. PL 42:19. RL 51:20.

**31:27 Collective Investments.** – Notwithstanding any statute or rule of law to the contrary, town and city trustees of trust funds may establish, maintain and operate one or more common trust funds, in which may be combined money and property belonging to the various trusts in their care, for the purpose of facilitating investments, providing diversification and obtaining reasonable income; provided however, that said common trust funds shall be limited to the investments authorized in RSA 31:25; provided further, that not more than \$10,000, or more than 10 percent of the fund whichever is greater, of any town or city common trust funds shall be invested under RSA 31:25 in the obligations of any one corporation or organization, excepting deposits in any federally or state-chartered bank or association authorized to engage in a banking

business in this state, in credit unions in this state, or in obligations of the United States and of the state of New Hampshire and its subdivisions; or in participation units in the public deposit investment pool established pursuant to RSA 383:22, or in shares of open ended mutual funds selected by the trustees for investment under RSA 31:25, and provided further, that the participating contributory interests of said trusts are properly evidenced by appropriate bookkeeping entries showing on an annual basis the capital contribution of and the profits and income allocable to each trust.

**Source.** 1951, 227:1, par. 31-a. RSA 31:27. 1959, 253:1. 1969, 447:3. 1992, 24:2, IV, eff. April 3, 1992. 1997, 181:3, eff. Aug. 16, 1997. 2001, 54:4, eff. Jan. 1, 2002.

### **289:7 Powers and Duties. –**

I. Except in those municipalities in which other provisions have been made by a general or special act of the legislature, all cemetery trustees in the state shall:

(a) Adopt bylaws and regulations for their transaction of business and for the establishment and management of all municipal cemeteries within their responsibility.

(b) Prepare an annual budget indicating what support and maintenance of the municipal public cemeteries will be required out of public funds for submission to the appropriate agency of the municipality. A separate budget request shall be submitted for planning and establishment of a new public cemetery and for capital improvements or expansion of an existing public cemetery.

(c) Expend all moneys raised and appropriated by the municipality for cemetery purposes. Such funds shall be maintained in the general fund and paid in the same manner that funds of other municipal departments are paid.

(d) Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds. The trust income shall be transferred to the cemetery trustees by the trustees of trust funds in response to vouchers executed by the cemetery trustees, if the requested funds are available. Such trust fund income shall not be commingled with the moneys raised and appropriated by the municipality.

(e) Prepare deeds of cemetery lots for the governing body to sign.

II. Cemetery trustees may appoint a cemetery custodian or sexton who shall not be a trustee and who shall be responsible to the cemetery trustees for supervising work done in the cemeteries.

**Source.** 1994, 318:2. 1995, 62:3, eff. July 8, 1995.