

WAC 98-12-030 ((~~"Gross sales price" defined.~~) **Definitions.** For the purposes of this chapter, the following terms will be construed as follows:

(1) **"Average fair market value"** means the average of the fair market values of assets held by the endowment care fund on the first day of the current fiscal year and the first day of each of the two preceding fiscal years, or the average of the fair market value for the entire term of the fund if there are less than two preceding years.

(2) **"Board"** means the funeral and cemetery board.

(3) **"Cemetery authority"** means an entity that has obtained a certificate of authority to operate a cemetery from the funeral and cemetery board.

(4) **"Endowment care cemetery"** means a cemetery required to establish an endowment care fund in accordance with chapter 68.40 RCW.

(5) **"Extraordinary distributions"** means distributions from the endowment care fund pursuant to written consent of the board.

(6) **"Fair market value"** means the fair market value of the assets held by the fund, reduced by all known noncontingent liabilities.

(a) The fair market value of real estate will be established by the county assessor's valuation on the first day of the current fiscal year.

(b) The fair market value of fractional ownership interests in real estate will be determined by generally accepted valuation methods.

(c) The fair market value of the endowment care fund assets that are not publicly traded on a stock or other regulated securities exchange shall be determined by written valuation certified by a qualified independent public appraiser or qualified independent certified public accountant not affiliated with the cemetery authority or its principals within twelve months of the first day of the fiscal year. If the valuation is not provided, the asset(s) will be assigned a zero value for the purpose of determining fair market value.

(7) **"Fiduciary responsibility"** means the trustee(s) will manage the endowment care fund in accordance with RCW 11.100.020.

(8) **"Gross sales price,"** in determining "ten percent of the gross sales price" pursuant to RCW 68.40.010, gross sales price shall not include the endowment care fund portion. Endowment care shall be added to the gross sales price and separately identified as endowment care on any contract. For example: Grave gross sales price - \$100.00. Endowment care requirement - \$10.00. Total contract price - \$110.00.

(9) **"Income"** means:

(a) Ordinary income, that is, interest, dividends, rents and other amounts received by the fund as current returns on investments, but excludes realized or unrealized capital gains or losses; or

(b) The amount available for distribution using the total return distribution method.

(10) **"Net ordinary income"** means the ordinary income of the fund reduced by the expenses of operating the fund.

(11) **"Total return distribution"** means the distributions of the endowment care fund based on the average fair market value of the endowment care fund assets, determined under WAC 98-12-052 multiplied by the total return percentage.

(12) "Total return distribution method" means an alternative distribution method intended to encourage the utilization of endowment care fund investments that will ultimately result in higher endowment care fund income levels through growth in the endowment care fund principal over time.

(13) "Total return percentage" means the annual percentage selected by the endowment care trustee or cemetery authority in accordance with WAC 98-12-051. The total return percentage shall not be less than three percent and not exceed five percent of the average fair market value of the endowment care fund.

(14) "Trustee(s)" means the bank, trust company or persons appointed by the cemetery authority or association of lot owners to hold fiduciary responsibility in managing the endowment care fund in accordance with chapter 68.44 RCW and subject to the direction of the cemetery authority.

#### NEW SECTION

**WAC 98-12-051 Application for total return distribution.** (1) An application for implementation of the total return distribution method shall be submitted at least sixty days prior to the effective date of the election to use total return. The cemetery authority shall provide the board with the following:

(a) A written investment and distribution policy in which future distributions from the endowment care fund will be total return distribution amounts rather than net ordinary income distribution amounts. The investment goals shall be to achieve principal growth through investments including, but not limited to, equity investments, as well as achieve current income through investments including, but not limited to, income investments.

(b) An amended endowment care trust agreement to clearly show intent to use the total return distribution method.

(c) A written document establishing the average fair market value signed by the cemetery authority and/or trustee(s), and supporting documents.

(d) Completed application form indicating the total return percentage and signed by the cemetery authority.

(2) The application shall be considered approved unless the cemetery authority or trustee is notified otherwise by the board within thirty days of receipt. Such notification shall contain details of the information needed to remedy any deficiencies in the application.

(3) The maximum total return percentage for the first year will be four percent. The cemetery authority or trustee may submit a written request to the board to modify the total return percentage twelve months after implementation of the total return distribution method.

(4) If the cemetery authority or trustee alters the total return percentage, the cemetery authority or trustee shall send written notice to the board. This notification shall be made before the first distribution is taken based on the new total return percentage and shall contain the revised total return percentage and the reason for the revision.

(5) The trustee shall distribute income to the cemetery authority at least annually or in more frequent installments agreed to by the trustee and the cemetery authority.

(6) A cemetery authority that converts the endowment care fund to a total return fund may elect to reconvert the fund to a net ordinary income fund by submitting written documentation to the board in support of the reconversion at least sixty days before the proposed effective date of the reconversion, including a copy of the trust agreement, notification on the proposed effective date of the reconversion, and any additional information required by the board.

(7) Unless an application and required documents for conversion to the total return distribution method have been received and approved by the board, a cemetery authority or trustee(s) may distribute only the net ordinary income from the endowment care fund for the general care, maintenance and embellishment of the cemetery.

#### NEW SECTION

**WAC 98-12-052 Calculation of the average fair market value.** The cemetery authority or trustee shall calculate the average fair market value of the fund at the beginning of each fiscal year. Appraisal methods and or sources utilized to determine fair market value to establish the initial value must remain the same in each reporting year.

(1) When calculating the average fair market value, if assets have been added to the fund during the years used to determine the average, the amount of each addition is added to all years in which such addition was not included. If extraordinary distributions were taken during any of the years used to determine the average, the amount of each distribution is subtracted from all years in which the distribution was not included.

(2) The cemetery authority or trustee shall exclude from the fair market value calculations any asset for which the fair market value cannot be established.

(3) The cemetery authority or trustee shall use the fair market value to calculate the average fair market value.

#### NEW SECTION

**WAC 98-12-053 Limitation of total return distribution.** (1) The board may take corrective measures including reducing the total return percentage under one or more of the following circumstances:

(a) If the average fair market value of the endowment care fund declines by ten percent or more over a two-year period; or

(b) The fair market value of the fund at the beginning of a fiscal year is less than eighty percent of the fair market value of the fund the first day of the fiscal year when the endowment care fund started making distributions based on the total return distribution method; or

(c) There is an uncorrected endowment care deficiency as determined by the board's audit of the endowment care funds.

(2) The board may evaluate the endowment care fund conditions and choose not to impose corrective measures if it finds that:

(a) The reasons are due to unusual or temporary factors not within the control of the cemetery authority or the trustee and which could not have been reasonably anticipated;

(b) The current investment policy of the fund is reasonably designed to protect the fund from further declines in fair market value; or

(c) The exception appears to be both necessary and appropriate for the continued protection of the endowment care fund.

(3) The cemetery authority or trustee(s) shall not utilize the total return distribution method for part of the endowment care assets and concurrently distribute net income for part of the endowment care assets. Endowment care distributions may only be taken as net ordinary income or the total return distribution method.

#### NEW SECTION

**WAC 98-12-054 Fees and taxes.** (1) In the event that the fees paid by the endowment care fund exceed one percent of the average fair market value, the amount in excess of one percent shall be paid from the distribution.

(2) Taxes may be paid from the corpus.

#### NEW SECTION

**WAC 98-12-055 Annual reporting requirements for total return distribution method.** The cemetery authority will provide the board with a report that includes the average fair market value used to determine distribution for the following year and maintain a record of the fair market value each year while using the total return distribution method.

As part of the cemetery endowment care annual report required by RCW 68.05.180 and 68.05.235, cemetery authorities approved to use the total return distribution method must file an addendum to the annual report which details the following:

(1) The asset allocation.

(2) The annual distribution to the cemetery authority.

(3) Any changes to the investment and distribution policy.

(4) Calculation of the average fair market value to determine the current year's distribution, and supporting documents.

(5) Any other information the board deems pertinent.