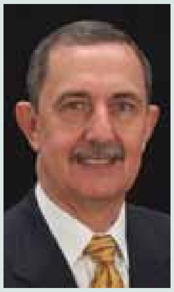
by Jim Atwood

## ICCFA Magazine author spotlight



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➤He was a member of the Tennessee Bar Association study committee that adapted language for the Uniform Trust Code in Tennessee and was involved in modeling policies for SunTrust Bank that allowed conversion to the unitrust option. He has also served as senior vice president of SunTrust Bank's cemetery and funeral trust services group.

➤He serves as a member of the board of directors of Funeral Services Inc. (FSI). FSI, headquartered in Tallahassee, Florida, is a preneed administration and contract record-keeping company that provides trust solutions to funeral homes, cemeteries, industry associations and financial institutions.

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**FINANCES**

Some cemeteries are using unitrusts to increase endowment fund income and make it more predictable. But right now, only three states allow them.

# The case for unitrusts as a solution for perpetual care

Perpetual care cemeteries, as implied by their very name, have a profound responsibility to their clients and their communities. Many consider it a sacred trust, the promise to provide a well-maintained final resting place for the departed as far into the future as we can conceive.

Even when fully "sold out," a cemetery must be able to meet upkeep and maintenance expenses into perpetuity. When you consider, for example, that Grove Street Cemetery in Connecticut has been in existence since 1797, you begin to fully appreciate the time span over which a perpetual care cemetery must ensure its economical viability and uphold its promise.

For generations, endowment care trusts have provided the funding for perpetual care cemeteries. In most states, laws and regulations restrict distributions from these trusts to net income, that is, the interest and dividends yielded after the payment of fees, expenses and taxes.

Because nearly all states restrict cemeteries to the distribution of only net income from their endowment trusts, the typical trust fund portfolio is weighted heavily toward income-producing investments. Over roughly the past decade, low interest rates have meant that these investments have performed poorly.

In short, perpetual care cemeteries are receiving far less from their trusts' investments than in previous years, hampering the ability of many to pay for the upkeep and maintenance required in a perpetual care cemetery.

"Our perpetual care income actually peaked in 2001, and it's been going down since then," Ron Kreassig, chief financial officer of Cedar Memorial Park Cemetery Association in Cedar Rapids, Iowa, said in describing the problem. "We told our regulators that if this continues, we're going to have problems. Our perpetual care income today is 35 percent less than it was in 2001, and we're probably doing a lot better than other cemeteries in Iowa."

In states that do not currently permit unitrusts, it may be helpful for cemeterians to consider how they can effectively work with regulators to amend regulations to offer a unitrust option for perpetual care trusts.

### Developing a solution

Over several years, Kreassig and other cemeterians worked with state regulators to identify a solution that would foster the wellbeing of perpetual care cemeteries in Iowa. Through an administrative rule change, the state adopted the use of unitrusts for perpetual care cemeteries.

A unitrust determines a fixed percentage distribution based on the annual fair market value of funds within a trust, accounting for both income and capital gains. With this total-return approach, fixed-percentage trust distributions to cemeteries are derived from a combination of stocks and interest-bearing securities such as commercial bonds, government agencies and U.S. Treasury bonds.

The legislation that gives Iowa, and other states, the authority to implement unitrusts is called the Uniform Trust Code, a state law based on a national model designed to standardize trust regulations across states.

Nearly two-thirds of all states have adopted the Uniform Trust Code, but these provisions are typically used in estate planning. Tennessee, Missouri and Iowa are the only states that have applied the Uniform Trust Code to perpetual care trusts.

"The Iowa Insurance Division is widely known for being an early adopter of strong but innovative approaches," said Nick Gerhart, Iowa insurance commissioner. "Our position at the vanguard of this model for the oversight of perpetual care trust funds is consistent with that vision.

"Through the use of this administrative rule model, withdrawals can be based on

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capital gains. This permits the growth of the trust in order to, at a minimum, keep pace with inflationary cost increases. We see this as a tool to make it possible for trusts to be viable and healthy into the distant future."

## What has changed

To better understand why states are looking at unitrust elections as a solution for the financial health of cemeteries, let's take a closer look at the math.

As mentioned earlier in this article, most states restrict distributions to net income, i.e. interest and dividends. Current 10-year U.S. Treasury notes are yielding approximately 2.5 percent. After fees, expenses and taxes, this is likely to result in a 1.5 percent distribution to the cemetery. With a trust fund worth $1 million, that amounts to only $15,000 annually, earned on a quarterly or semi-annual basis and distributed monthly to cemeteries.

Net income fluctuates with the rise and fall of interest rates. Therefore, distributions also fluctuate. These net-income-based distributions hinder the sustainability of a perpetual care trust in two ways. First, they discourage re-investment of funds and preservation of the trust fund's principle. Second, their inconsistent distribution complicates managing and budgeting for cemetery maintenance.

With a unitrust, distribution is a fixed percentage of funds from earnings that account for both income and capital gains—the trust's fair market value. Typically, distributions are made over the course of a year and range from three to five percent.

In application, it is probably best to limit the distribution to 4.5 percent. In most cases, this provides a reasonable distribution to the cemetery while also helping to preserve the trust fund's principal. In the long run, this will yield greater returns, due to the re-investment of remaining earnings.

In addition to preserving principal and long-term growth, unitrusts support the proper management of perpetual care cemeteries. The unitrust election helps cemeterians know when and how much to expect from trust fund distributions.

"The unitrust election has helped us budget more effectively, improving the way we operate," said Bill Baumgartner, superintendent of St. Peters Cemetery in St. Louis, Missouri.

St. Peters Cemetery was the first cemetery to make use of a unitrust after the Missouri state legislature amended cemetery laws to allow it. "We supported the change during the 2007 legislative session, and it's been a positive change," Baumgartner said. "As a smaller cemetery, a unitrust supports best practices as well as diversification of trust fund investments."

## Good for the cemetery; good for the public

Tennessee, Missouri and Iowa have adopted unitrust provisions for the benefits they offer to cemeteries and the protection they afford to consumers as well as the general public.

If cemeteries are not cared for, they become a public liability. After all, if cemeteries are unable to meet the expenses required for ongoing maintenance, it is likely taxpayers may incur the cost of keeping the grounds well groomed and safe.

Unitrusts' potential for increased growth and steady distributions mitigates the risk of a perpetual care cemetery becoming a public liability, a concern for many state regulators and legislators.

Tennessee, the first state to enact legislation allowing for a unitrust, addresses this intent, stating, "…the proper maintenance of a cemetery or burial grounds, whether private or public, is in the interest of the public health and safety serving a valid public purpose." (46-7-101)

Aside from wanting to mitigate risk, many state regulators who are familiar with this topic understand cemeteries' commitment to the families they serve and appreciate their role in the history, culture and natural beauty of a community.

## Into the future

Despite the benefits to cemeterians and the public alike, few states have implemented legislation allowing perpetual care cemeteries to use unitrusts. And in the three states that offer a unitrust election for perpetual care trusts, state regulators report slow adoption rates.

According to Tom Reichard, executive director of the Office of Endowed Care Cemeteries for the State of Missouri, "Roughly 10 percent of cemeteries are using the unitrust election. I don't understand why every cemetery is not doing this."

Looking forward, it is important for perpetual care cemeteries in states that allow unitrusts to investigate their advantages. While the topic can be a bit complex, the benefits can be ideal for many cemeteries.

In states that do not currently permit unitrusts, it may be helpful for cemeterians to consider how they can effectively work with regulators to amend regulations to offer a unitrust option for perpetual care trusts.

Effecting change, regulatory or otherwise, does not happen overnight, and each circumstance brings unique challenges.

Kreassig and C. John Linge, CCFE, president and CEO of The Cedar Group, met with regulators and sought support for their position for several years before unitrusts were adopted in Iowa. In this case, regulatory changes came from an administrative rule change and continued, active engagement in the process by both cemeterians and regulators.

"They understand what's taking place with these perpetual care funds," said Linge.

In Missouri, unitrust elections required legislative negotiations and changes. In Tennessee, changing the definition of "net earnings" in legislation allowed perpetual care cemeteries to adopt the unitrust approach.

While the states differ with regards to their respective political processes and legislation, they have one thing in common. Working together, legislators, regulators and cemeterians can understand unitrusts, find a consensus and strike a balance among the risks and benefits for both cemeterians and the public interest. ❐