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ICCFA Magazine author spotlight



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► **Funeral Services Inc.**, Tallahassee, Florida, is a trust administrator and record-keeping company with 35 years experience in the death-care industry, serving funeral homes, cemeteries, associations and financial institutions.



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► **Broad & Cassel LLP.**, Boca Raton, Florida, has 10 locations across the state. The company was founded in 1946 and offers full-service legal representation for individuals, public entities and private enterprises, from start-ups to Fortune 500 companies.

## MORE ABOUT THIS TOPIC

► A recording of the ICCFA 2017 Convention presentation, “Perpetual solutions for perpetual care cemeteries,” in which a panel moderated by Williams discusses unitrusts, can be purchased at [www.iccfa.com](http://www.iccfa.com).

## MANAGEMENT/FINANCIAL

The Total Return Distribution Method is already benefitting cemeteries in some states, but it's not available everywhere. What do you do if you want to take advantage of a unitrust but it's not yet allowed by your state's laws and/or regulations?

# How to enable your cemetery to use the unitrust method

**T**he Total Return Distribution Method, also known as “unitrust,” is, as its name indicates, a method of trust distribution that permits the trustee to distribute a percentage of the trust's total market value.

The unitrust method of distribution is used by trustees for institutions with very long-term needs, such as universities, foundations and hospitals. It can be argued that no institution has longer-term needs than cemeteries required to maintain interment rights in perpetuity.

The benefits of the unitrust method have been described and examples of those benefits were provided in an earlier article. (“The case for unitrusts as a solution for perpetual care,” by Jim Atwood, ICCFA Magazine, August-September 2014.)

Now that we've gotten your attention and you have seen how the unitrust method can offer your cemetery increased cash flow steadily throughout the calendar year, how can you ensure that your state adopts the Total Return Distribution Method in its laws, administrative rules or regulations?

## My state hasn't adopted the unitrust method, so how can I use it?

The Total Return Distribution Method is already part of the Uniform Trust Code, which has been adopted as law in roughly two-thirds of states. The states that have adopted the Uniform Trust Code currently allow trustees, generally, to use the unitrust method.

However, in many, if not most, states, cemetery laws restrict cemetery trustees to distributing only income from investments to the cemetery for its use in caring for and maintaining the cemetery.

Therefore, a change in cemetery law is

usually required for trustees to distribute a portion of the total return of the trust to the cemetery owner or operator.

In a small number of states, a change to a state rule or regulation could be sufficient to allow for total return distribution.

## Whom should I talk to about unitrust?

It is important to identify the stakeholders in any issue about which you want to effectuate change. The enactment of the Total Return Distribution Method either by amendment of state law or adoption of state rule or regulation starts with the cemetery owner or operator: YOU.

Once you are educated on the topic, you must engage your colleagues on it. Explain the benefits to them, suggest that they engage their colleagues on it, and so on.

Then, reach out to industry associations. Industry associations exist to support their members. When industry members and associations have been mobilized, it will be time to approach regulators to ensure they understand the method.

Remind cemetery regulators that when cemeteries receive more funds for care and maintenance, they are more likely to thrive, and thriving cemeteries are often the pride of a community. And, maybe most importantly, remind them that the opposite is true, too.

If your state can allow unitrust simply by a rule or regulation change, you might have been successful at this point. But, if you are in a state where legislation will be necessary, go to the legislature with regulators and explain to legislators the benefits of empowering cemeteries to better care for themselves.

## What difficulties should I expect?

The total return distribution method sells

Regulators and legislators can ask technical questions that you may not be able to answer. Industry lobbyists and unitrust experts are available to answer those tough questions.

itself—it really does! Therefore, the difficulties you can expect often revolve around the “it’s too good to be true” factor.

When regulators and legislators review examples of the higher cash flow enjoyed by cemeteries using the unitrust method, they often say, “How can that type of distribution flow hold up?”

It will be your job to explain that the method generally uses a three-year average of annual trust returns to calculate a yearly return that protects against the highs and lows of the market, thus allowing cemeteries to plan for their care and maintenance throughout the year.

One more important note: Make sure you encourage cemetery owners to review their trust agreements and cemetery contracts before electing to use the unitrust method.

Some documents may contain language that restricts a cemetery from using endowment care principal for general care and maintenance of the cemetery. If your document contains such a restriction, you should consult your attorney before electing the total return distribution method.

### **Anything else I should know?**

The unitrust method is easy to understand in general terms once you have studied it at a basic level. But regulators and legislators can ask technical questions that you may not be able to answer.

If that occurs, industry lobbyists and unitrust experts are available to answer those tough questions and help you adopt the unitrust method in your state.

The popularity of unitrust has grown tremendously over recent years, and it is only going to keep gaining momentum, providing cemeteries with a dependable and healthy distribution.

If the Total Return Distribution Method is not permitted in your state, take the steps needed to determine how you can get it adopted and therefore protect the long-term sustainability of cemeteries and their trusts. 