

"PERPETUAL CARE"

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a misused and
misunderstood term.

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The term "perpetual care" has been much abused in its application to the maintenance of a grave or plot. The implication in the phrase is that the cemetery will care for the burial place in perpetuity. Even many lawyers are under this impression. It is erroneous.

Plot owners may receive communications from a cemetery requesting additional funds to supplement monies already on deposit for perpetual care. They rush to the cemetery filled with outrage and consternation, loudly proclaiming that they or their ancestors many years ago deposited a sum of money for which the cemetery promised to furnish perpetual care. Patiently the plot owner is informed that the contract provides for the cemetery to give such maintenance as the income from the perpetual care fund will permit. The cemetery representative further points out that a sum of money placed with the cemetery a long time ago cannot keep pace with the inflationary spiral and that the cost of labor, material, overhead, etc., has more than preempted the limited income yield of the sum on deposit, and that such sum must be brought up to date in order to meet current costs.

Some cemeteries as far back as 25 or 50 years received sums not exceeding \$100.00 for the care of plots containing eight graves or more. Under present day yields, allowing as much as 5% return, it is apparent that an income of \$5.00 per annum will hardly suffice for care purposes. Several times dur-

ing the year the plot must be cleaned, the grass must be cut, weeded or sodded as the occasion requires and gravestones must be cleaned or repaired. If there are flowers, they must be attended to.

A reading of the statute under New York State Law will show the following (Sec. 91 Membership Corporations Law):

"Perpetual care of lots. Upon the application of a prospective purchaser of any lot, plot or part thereof and upon payment of the purchase price and the amount fixed as a reasonable charge for the perpetual care of any lot, plot or part thereof, every cemetery corporation shall include with the deed of conveyance an agreement perpetually to care for such lot, plot, or part thereof, to the extent that the income derived by the corporation from such amount will permit * * *"

Note that the cemetery corporation agrees to care for the plot "perpetually" *to the extent that the income derived by the corporation from such amount (the care fund) will permit.* It follows, therefore, that if at some future date the income from the care fund should prove insufficient, the cemetery would be **justified** in asking for additional funds.

A cemetery corporation rarely grants a contract by which it undertakes unequivocally and unconditionally to render perpetual care. The agreement will invariably follow the language of the statute

and will bind the cemetery to administer such care as the income it receives will allow.

The statute further provides that moneys received by a cemetery corporation for the perpetual care and maintenance of any plot shall be kept separate and apart from its other funds, and that all such monies are declared to be trust funds, and shall be invested in accordance with the requirements for the investment of trust property held by a cemetery (Sec. 92 MCL). The income arising therefrom must be used solely for the perpetual care and maintenance of the lot for which such income has been provided. Under no circumstances may a cemetery invade the principal. This safeguards the principal fund to the extent that the same is possible under the law.

The writer, as well as cemetery operators in general, deplore the use of the term "perpetual care" As we have shown, *a sum of money deposited today with a cemetery under a perpetual care arrangement does not insure that a plot will be cared for forever.* The writer has advocated that the term "perpetual care" should be changed to "endowment fund." This title most nearly describes the purpose and objective of a fund for continuous care. It is accurate, and not misleading.

We sincerely hope that nothing said herein will discourage the practice of depositing care funds for long term maintenance of cemetery plots.

The advantage of a perpetual care fund is two-fold. First, the plot owner is freed of the payment of special or annual care charges imposed by the cemetery. The distinction between the perpetual care arrangement and special care is that the latter charge is assessed annually for those who wish to maintain plots under care from year to year, rather than provide for constant care under the perpetual care basis. Special care stops upon the failure to pay the annual charge. Moreover, the annual charge is subject to increase from time to time depending upon the needs of the cemetery. Secondly, in placing a lump sum with the cemetery, the plot owner is relieved of the concern that his last resting place may fall into disrepair after his death. However well intentioned they may be, the next of kin of the deceased sooner or later fail to pay care charges, and the plot will then become neglected.

True it is that the cemetery is under a duty to furnish a degree of care, even when no care charges are paid; nevertheless, there is no comparison between this type of care and the attention given to a plot that is under annual or perpetual care. In the case of perpetual care, if in time the principal fund becomes inadequate, a cemetery will still continue to furnish the degree of care that the income will permit. Thus, the plot will be assured of continuous attention, even though limited in form.