

Introduction

Background

The Cemetery and Funeral Bureau

The Cemetery and Funeral Bureau (Bureau) is one of 39 regulatory entities administered by the California Department of Consumer Affairs. The Bureau licenses approximately 13,000 businesses and professionals in the following licensing categories, including private, nonreligious cemeteries; cemetery managers; cemetery brokers; cemetery salespersons; funeral establishments; funeral directors; embalmers; apprentice embalmers; crematories; crematory managers; and cremated remains disposers. In addition to its licensing responsibilities, the Bureau regulates many aspects of the cemetery and funeral profession. Among other duties, its field staff investigate complaints lodged by consumers, and perform on-going site visits to ensure cemeteries, funeral establishments and crematories follow regulatory requirements. The Bureau's auditors review financial records, and perform on-site examinations to ensure funeral establishments and cemeteries properly administer trust funds, including funds consumers prepay for goods and services, and the endowment trust funds cemeteries deposit when consumers purchase graves and other interment spaces. The Bureau also has enforcement staff who initiate disciplinary actions and work with the California Attorney General's Office to pursue necessary legal actions for violations of law.

Endowment Care Cemeteries

California law requires each privately-owned cemetery established on or after September 7, 1955 to be an endowment care cemetery. These cemeteries must create an endowment care trust fund through a written trust agreement executed by their boards of directors, and are required to deposit funds to the trust for each interment space they sell.¹ As **Table 1** shows, there are various types of interments cemeteries sell, and each has a minimum required deposit. The deposits cemeteries make to endowment care forms what is known as the principal of the trust. The law prohibits the expenditure of this principal. Rather, it must be invested with the intent to earn income for the general care and maintenance of the cemetery.

¹ Most cemeteries pass these required deposits on to their customers in the form of fees added to the price of the interment spaces the cemeteries sell.

Table 1: Required Minimum Deposits for Endowment Care

Type of Interment Space	Minimum Deposit
Graves ¹	\$117
Crypts ²	
Single	\$220
Each Additional Companion Crypt	\$110
Niches ³	\$70
Scattering of Cremated Remains ⁴	\$70

Source: Health and Safety Code, Section 8738.

¹ A "Grave" is a space of earth, used, or intended to be used, for the disposition of human remains. State law requires cemeteries to deposit a minimum of \$4.50 per square foot for each grave they sell. The amount shown above assumes a grave size of 26 square feet ($\$4.50 \times 26 = \117).

² A "Crypt" is a space, used or intended to be used, to entomb uncremated human remains.

³ A "Niche" is a space used, or intended to be used, for the placement of cremated human remains.

⁴ A "Scattering," for this report, is defined as the authorized dispersal of cremated remains in a defined area within a licensed cemetery.

State law further requires cemetery endowment care trust funds to be kept entirely separate from other cemetery funds, and requires each cemetery to appoint trustees to manage the trusts. These trustees are subject to various requirements, including the following duties:

- Administer the trust with reasonable care, skill, and caution.
- Adhere to investment requirements, including the duty to preserve trust property and make it productive.
- Take reasonable steps to defend actions that may result in a loss to the trust, including setting aside a reasonable percentage of the income from the trust to replace principal investment losses.

Ultimately, the intent of endowment care is to ensure privately-owned cemeteries are properly maintained, even after they have sold all of their interment spaces. State law defines endowment care as the following:

Endowment care is a provision for the discharge of a duty due from the persons contributing to the persons interred and to be interred in the cemetery and a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkept and places of reproach and desolation in the communities in which they are situated.

- Source: California Health and Safety Code, Section 8736.

At essence, endowment care is like a retirement account for each privately-owned cemetery, with the beneficiaries being those interred in the cemetery and the general public. The core deposits added to the trust over a cemetery's economic lifetime form the principal from which

income is earned to pay for long-term maintenance and repair.² Without sufficient endowment care, privately-owned cemeteries are likely to fall into disrepair. As each cemetery fills up, sales decline and revenues fall, leaving diminishing funds available for maintenance and repair. As sales decline, there is also less funding available for security, which increases the risk of vandalism.

As stated by one of the leaders in the industry, “while present-day success depends upon currently generating sales and controlling expenses, the long-term success of a cemetery – what it looks like and how it is maintained when it is sold out – is directly related to the size of the endowment care fund. This is because the size of the endowment care fund is the principal determinant of how much income can be produced”.³

Scope and Methodology

Assembly Bill 180 (Bonilla, Chapter 395, Statutes of 2015) directed the Bureau to conduct a study to obtain information to determine if the endowment care levels of each cemetery the Bureau licenses are sufficient to cover the cost of future maintenance. It has required the Bureau to review the levels of endowment care that have previously been reported by the cemeteries, and report its findings and recommendations to the appropriate policy committees of the Legislature by January 1, 2018.

To formulate its methods, the Bureau invited the endowment care cemeteries it licenses to attend a November 2015 workshop to discuss potential approaches. From this workshop, a smaller focus group of industry experts was subsequently formed, which included representatives of 55 licensed cemeteries and the Executive Director of the Cemetery and Mortuary Association of California (CMAC), a non-profit organization that serves 104 cemeteries licensed by the Bureau.

In August 2016, the Bureau met with the focus group to discuss its plan of approach. At this meeting, and over the following weeks, the focus group assisted the Bureau to formulate its study methods, which included the following activities:

- Developing a questionnaire to obtain information from each cemetery.
- Identifying key financial information necessary for the study.
- Discussing the mathematical formulas and assumptions necessary to evaluate endowment care sufficiency, and identifying the future actions necessary to help ensure an adequate level of endowment care income for long-run cemetery maintenance.

² State law allows cemeteries to expend endowment care fund income on cemetery maintenance and other administrative activities regardless of where they are in their economic lifecycles; a cemetery does not have to be full to start expending endowment care income. Historically, most of California’s endowment care cemeteries expend all of the income generated by their endowment care funds each year.

³ Llewellyn, John F. A Cemetery Should Be Forever: The challenge to managers and directors, page 135. Tropico Press, Glendale, California, 1998.

Working with the focus group, the Bureau finalized its questionnaire in October 2016 and mailed it to the endowment care cemeteries. While working with the cemeteries to obtain responses to the questionnaire, the Bureau reviewed key financial information contained in endowment care trust reports and financial statements it receives from the cemeteries each year. This key financial information included trust assets, liabilities, cemetery maintenance costs, and income earned on investments over the 2012 through 2016 period. The Bureau subsequently met with the focus group during July and August 2017 to discuss the data and finalize its study methods. These methods are further detailed in Appendix A to this report.

The model presented in this study does not involve a detailed actuarial analysis of each endowment care cemetery the Bureau licenses. Such a study would require detailed information about cemetery property inventories; pricing; financial practices; operations and maintenance expenses; the timing and necessity of future capital projects; investment practices; and evaluating likely economic and investment cycles to project each cemetery’s future financial picture under multiple economic scenarios, including market fluctuations, inflation, deflation, and future prices. Rather, this study, by necessity given the number of cemeteries it includes, uses a general model meant to provide an indicator of whether endowment care trust fund levels of the cemeteries the Bureau licenses will likely be sufficient to cover the cost of future maintenance and, working with experts from the cemetery industry, suggest recommendations that will help move the State forward to better ensure its privately-owned cemeteries do not become unkept places of reproach and desolation in the communities in which they are situated.

Results

Although Nearly All of the Cemeteries the Bureau Licenses Established Endowment Care Trusts, Most Were Not Required To

Of the 195 privately-owned cemeteries the Bureau licenses, 142 (73 percent) were established before the law requiring endowment care was enacted. Based on the language in the statute, these 142 cemeteries did not need to create endowment care trusts. Specifically, with a few exceptions, the law required any cemetery established on or after September 7, 1955 to be an endowment care cemetery, but did not grandfather-in cemeteries established before that date. As **Table 2** shows, 68 of the cemeteries the Bureau licenses were established before 1900, and 74 were established between 1900 and September 7, 1955, when the law began requiring endowment care.

Table 2: Licensed Cemeteries - By Year Established	
Year Established	Number of Cemeteries
Before 1900	68
1900 to September 7, 1955	74
Subtotal	142
On or After September 7, 1955	53
Total	195

Source: Cemeteries' responses to the Bureau's endowment care sufficiency questionnaire.

Four of the 142 cemeteries established prior to September 7, 1955 have never created endowment care trusts. The cemeteries were established before the law requiring endowment care was enacted, so they were not required to be endowment care cemeteries. Although these four cemeteries opted out, the other 138 cemeteries established prior to September 7, 1955 opted-in. As the law requires, once these cemeteries opted-in, they became endowment care cemeteries subject to all of the legal and regulatory requirements.

In evaluating the sufficiency of endowment care, a consideration of the age of cemeteries, and when they started to deposit funds to their trusts provides a partial explanation for endowment care shortfalls. As defined in this study, an endowment care *income shortfall* is the amount of additional income that would need to be generated from the trust to fully cover the maintenance costs of the interment spaces for which funds were deposited. In a simple example, a cemetery depositing \$100 for each grave that it sells, invests that \$100 with the intent to earn sufficient income to pay for the long-term maintenance of that grave. Under California law, spending the \$100 is not allowed. The cemetery can only spend the income earned from the investment of the \$100. To the extent that the income does not fully cover the cost of maintaining the grave, the endowment care trust is said to have a shortfall that must be made up from other sources, such as from cemetery operations.⁴

Another potential explanation for endowment care shortfalls is the inadequate minimum deposit requirements in past years. In 1939, State law required the following deposits for cemeteries choosing to establishment endowment care trusts:

- At least \$6.50 per grave
- At least \$5 per niche
- At least \$15 per crypt

These minimums slowly increased over the years, but may never have been enough to ensure the trusts were sufficiently funded to cover long-run cemetery maintenance costs. As late as 2008, minimum deposit rates were a mere \$58.50, \$35 and \$100 respectively. The current rates shown in **Table 1** came into effect on January 1, 2009⁵. As Appendix C shows, the minimum deposits that California requires are still lower than most other states.

⁴ In the long-run, when the cemetery is sold out, there may not be another source to make up this shortfall. At that point, the endowment care trust would be expected to fully cover all cemetery maintenance costs.

⁵ See Appendix B for a more detailed history of the required minimum endowment care deposits.

Although Endowment Care Cemeteries Deposit at Least the Minimum Amounts Required by Law, There is a Substantial Statewide Shortfall

Over the past five years that we reviewed, all the endowment care cemeteries reported depositing at least the minimum required amounts for endowment care spaces they sell.⁶ As **Table 3** shows, in 2016 average deposits were well above the required minimums.⁷

Table 3: Reported Endowment Care Deposits for 2016

Type of Interment Space ¹	Minimum Required Deposit	Average Deposit ³	Highest Amount Reported
Adult Single Grave ²	\$ 117	\$ 329	\$ 3,446
Single Crypt	\$ 220	\$ 425	\$ 2,940
Single Niche	\$ 70	\$ 301	\$ 16,128
Scattering	\$ 70	\$ 83	\$ 343

Source: Annual endowment care annual reports and financial statements the cemeteries provide to the Bureau as required by Business and Professions Code, Section 7612.6.

¹ See Table 1 for definitions of the different types of interments.

² State law requires cemeteries to deposit a minimum of \$4.50 per square foot for each grave they sell. The amounts shown assume a grave size of 26 square feet.

³ The average is calculated as the simple mean by dividing the total of cemeteries' reported deposit amounts by the number of cemeteries.

In 2016, approximately 60 percent of endowment care cemeteries reported depositing more than the minimum amounts required by law. Some cemeteries deposit much more than the required minimums. For example, one cemetery reported depositing \$3,446 per grave space. This same cemetery indicated that it deposits \$545 per crypt and \$674 per niche. As **Table 3** shows, other cemeteries reported depositing even higher amounts for the crypts and niches they sell.

Although cemeteries deposit at least the minimum amounts the law requires, statewide, the costs of maintaining California's privately-owned cemeteries exceeds the income generated from the cemeteries' endowment care trusts. As of December 31, 2016, the 180 endowment care cemeteries included in the Bureau's analysis reported that they have sold approximately 8,291,197 interment spaces for which they have contributed to endowment care. As **Table 4** shows, the total long-run estimated cost to maintain these spaces is \$94,007,676 per year. However, the total income earned on endowment care trust investments during 2016 was \$41,320,051 – leaving an income shortfall of \$52,687,625.

⁶ Of the 195 cemeteries the Bureau licenses, 15 are not included in the study: four did not establish endowment care trusts; five are small, privately-owned cemeteries created solely for family interments on private estates, and have no public sales; the other six have not provided required annual reports necessary to evaluate the sufficiency of their endowment care funds. The Bureau is in the process of ensuring the collection of required annual reports from these cemeteries.

⁷ 2016 is the most recent year for which the Bureau has data on cemeteries' endowment care fund deposit rates.

Table 4: Endowment Care – Shortfall for Spaces Already Sold, as of December 31, 2016

Total Spaces Sold	Net Market Value of Endowment Care Trusts ¹		Estimated Long-run Annual Maintenance Cost	2016 Endowment Care Income	2016 Income Shortfall	Additional Endowment Care Needed
8,291,197	\$1,200,795,074	Total	\$94,007,676	\$41,320,051	\$52,687,625	\$1,130,635,730
		Per Space	\$11.34	\$4.98	\$6.35	\$136.37

Source: The Bureau's analysis of geographic data provided by the cemeteries in response to the Bureau's endowment care sufficiency questionnaire, and annual endowment care reports and financial statements the cemeteries provide to the Bureau as required by Business and Professions Code, Section 7612.6.

¹ Net market value is the total market value less liabilities, where total market value is the cash value of trust assets and liabilities are expenses the trust has incurred but not yet paid.

Over the past five years, on average, endowment care trusts have earned a 4.66 percent yield on investments (\$4.66 in income available for cemetery maintenance for every \$100 dollars in the trusts). With this yield, making up the \$52,687,625 income shortfall would require adding \$1,130,635,730 to the trusts. With this additional amount, income earned from investments would fully cover the annual costs of maintaining the endowment care spaces the cemeteries have already sold. Calculating this shortfall by space, in total, endowment care trusts are underfunded by about \$136 per space that the cemeteries have already sold.

Looking to the future, as of December 31, 2016, the cemeteries projected that they have approximately 3,998,022 spaces remaining to sell in their inventories.⁸ As summarized in **Table 5**, estimating the average annual cost to maintain each space as \$11.34, fully funding the endowment care trusts for future spaces the cemeteries sell would require \$972,909,206 of additional funds, which is approximately \$243 per space.

Table 5: Endowment Care Needed to Maintain Future Spaces the Cemeteries Sell

Remaining Spaces to Sell		Cost of Maintenance	Additional Endowment Care Needed
3,998,022	Total	\$41,619,229	\$972,909,206
	Per Space	\$11.34	\$243.35

Source: Cemeteries responses to the Bureau's endowment care sufficiency questionnaire, and annual endowment care reports and financial statements the cemeteries provide to the Bureau as required by Business and Professions Code, Section 7612.6.

Combining the current shortfall with the amount of endowment care needed to maintain future spaces the cemeteries sell, fully funding California cemeteries' endowment care trusts would require adding \$2,103,544,935 to the trusts over the remaining life of the cemeteries. As **Table**

⁸ These are estimates based on each cemetery's current plan for future interments. Cemeteries have the ability to change these projections based on factors such as the amount of land they have available for development and consumer demand for the various types of interments they offer.

6 shows, to achieve this, on average, the trusts will need to grow by approximately \$526 for each space the cemeteries sell after December 31, 2016.⁹

Table 6: Total Additional Endowment Care Needed

Current Shortfall		Amount Needed to Maintain Future Spaces		Total Additional Endowment Care Needed	
Spaces Already Sold	Additional Endowment Care Needed	Projected Remaining Spaces to Sell	Additional ECF Needed	Total	Total divided by remaining spaces to sell
8,291,197	\$1,130,635,730	3,998,022	\$972,909,206	\$2,103,544,935	\$526.15

Source: Cemeteries responses to the Bureau's endowment care sufficiency questionnaire, and annual endowment care reports and financial statements the cemeteries provide to the Bureau as required by Business and Professions Code, Section 7612.6.

Some Cemeteries May Face Challenges to Achieve Endowment Care Sufficiency

While some cemeteries appear to be on track, others may face challenges to achieve endowment care sufficiency. The statewide averages discussed above can be divided into three subpopulations of cemeteries:

- For 21 cemeteries, endowment care income appears to be sufficient to cover the long-run costs of maintaining the endowment care spaces they have already sold. Based on the information these cemeteries have provided to the Bureau, they have no current income shortfall, and their endowment care trusts will require only minimal future growth to ensure long-run sufficiency.
- For 117 cemeteries, endowment care income is not sufficient to cover the endowment care spaces they have already sold, and long-run sufficiency will require more significant trust growth. Over the past five years, on average, these cemeteries' endowment care trusts have earned a 5.44 percent yield on investments (\$5.44 in income available for cemetery maintenance for every \$100 dollars in the trusts). With this yield, making up the current income shortfall and covering the costs to maintain the future spaces they sell will require these cemeteries' endowment care trusts to grow by approximately \$431 for each space they sell after December 31, 2016.
- There are 42 cemeteries that may face additional challenges to endowment care sufficiency. These cemeteries tend to be small in size – all but 6 are less than 100 acres – and 34 were established before endowment care trusts were required. Over the past five years, these 42 cemeteries' endowment care investment earnings have lagged behind the statewide average. The cemeteries have averaged a 3.23 percent yield on investments (\$3.23 in income available for cemetery maintenance for every \$100 dollars in the trusts). Given the remaining amount of space the cemeteries projected as having available for sale and their reported maintenance costs, making up the current income shortfall and covering the costs to maintain future spaces that they sell will require these

⁹ These amounts are expressed in present values. Similar to the discussion of growth on page 13 of this report, to maintain the purchasing power of endowment care trust income, the actual amount of the deposits will need to grow at least by the rate of inflation.

cemeteries' endowment care trusts to grow by approximately \$2,876 for each space they sell after December 31, 2016.

Although these cemeteries may face some challenges, their situations could change. Endowment care sufficiency could be achieved with smaller deposits. As discussed in the Scope and Methodology of this report, there are many variables that affect endowment care sufficiency. Addressing current income shortfalls, and working toward long-run sufficiency is a target to which cemeteries and the trustees can adjust their strategies over time. One of these strategies involves growing endowment care trusts through increased deposits. There are other strategies for growth.

Strategies for Endowment Care Growth

Once the State's minimum deposit requirements are met, the extent to which other strategies for endowment care trust growth are exercised is largely at the discretion of the cemeteries and their endowment care trustees. Other than ensuring their cemeteries meet the State's minimum deposit requirements, other strategies for endowment care trust growth include the following:

Increase Deposits

Cemeteries could increase the amount of their deposits to a level that would help ensure long-run sufficiency. Using the analysis above, on average, California's cemeteries would deposit \$526 for each interment space they sell after December 31, 2016. Because this is a statewide average, each cemetery would need to look closely at its endowment care trust to determine the proper amount to deposit for their cemetery. As discussed above, some cemeteries could deposit less than \$526 per space to ensure sufficiency. Some may need to deposit more.

Invest for Growth

In addition to deposits and deferring income, endowment care trusts may also grow through investment practices that maximize total returns on investments. Total returns include unrealized gains, which occur when the value of an investment (what it could be sold for now) exceeds the cost of an investment (what the investor paid for it). Although these gains or "profits" are only on paper – they are not actual cash that can be spent – they add value to an endowment care trust, and can influence other returns on investments, such as the amount of realized income (through dividends for example) earned from the trust. As discussed in the Introduction, one of the duties of trustees is to make endowment care assets productive. This is another way to say "make them grow" by maximizing the total return on investments.

Management Efficiencies

Cemeteries can attempt to maximize the use of space while minimizing the costs of long-run maintenance. Cemeteries have options in determining the inventories they have available for sale – depending on their location, market, and many other factors. The greater the density, the more spaces that can be sold, and the higher the expected total deposits to an endowment care trust. Even when a cemetery seems full, it may still have options to increase interment density. For example, older cemeteries may be able to eliminate roads or other structures to allow for

more interments. To the extent that a cemetery's deposits from interment sales more than offset the associated costs of maintenance, its endowment care shortfall is reduced.

Defer the Use of Income

In addition to the deposits cemeteries make from sales, deferring the use of income until it is needed could also help grow cemeteries' endowment care trusts. Historically, most of the endowment care cemeteries the Bureau licenses have expended all available endowment care income, regardless of the age and remaining life of their cemeteries. Deferring the use of income until later in a cemetery's lifecycle may help grow the trust through compounding the income over time; the income earns income. However, this may not be a realistic strategy for all cemeteries. Due to the lack of sales, or other factors, some may not generate enough revenue on their own to be able to afford to maintain their cemetery grounds. For these cemeteries, it may not be practical to defer the use of endowment care income.

Recommendations:

1. Increase the minimum endowment care deposit rates specified in Health and Safety Code, Section 8738 as follows:

Table 7: Recommended Increased Minimum Deposits for Endowment Care		
Type of Interment Space	Minimum Deposit	
Graves	10 percent of net price ¹ , or \$250, whichever is greater, and	the minimum deposit amount of \$250 increases (or decreases) annually with the Consumer Price Index, starting January 1, 2020.
Crypts	10 percent of net price, or \$250, whichever is greater, and	the minimum deposit amount of \$250 increases (or decreases) annually with the Consumer Price Index, starting January 1, 2020.
Niches	10 percent of net price, or \$150, whichever is greater, and	the minimum deposit amount of \$150 increases (or decreases) annually with the Consumer Price Index, starting January 1, 2020.
Scattering	10 percent of net price, or \$150, whichever is greater, and	the minimum deposit amount of \$150 increases (or decreases) annually with the Consumer Price Index, starting January 1, 2020.

¹ Net price is the retail price less any discounts the cemetery provides to consumers for the purchase of an interment space.

To form its recommendation, the Bureau reached out to other state regulatory authorities to obtain information about the endowment care deposits their states require of privately-owned cemeteries. Appendix C summarizes the other state's requirements.

The Bureau also discussed the recommendation with the focus group of industry experts who assisted with its study methods. The focus group participants agreed that an increase in the minimum deposit amounts is necessary, and generally agreed with the net price method identified above. Further, the focus group participants provided net price data to the Bureau to help inform whether the rates in **Table 7** above would, on average, help ensure the endowment care trusts of the cemeteries the Bureau licenses are sufficient to pay for long-run cemetery maintenance. The Bureau evaluated the net price data the participants provided. Its evaluation shows that the above increases could result in average deposits of \$562 for each grave, \$914 for each crypt, and \$354 for each niche sold going forward. Further, with the change, the median deposit across all types of interment spaces is estimated to be \$536, which is approximately equal to the statewide average deposit of \$526 necessary for endowment care sufficiency identified in **Table 6** of this report.

2. The Bureau will continue to collect necessary data and monitor cemetery endowment care trust activity. The Bureau should conduct a follow up study, and provide a follow-up report to the appropriate policy committees of the Legislature by January 1, 2023.

Appendix A – Scope and Methodology

Data Collection and Methods

To evaluate endowment care sufficiency, the Bureau gathered key information about each of the endowment care cemeteries it licenses, including the following historical financial data collected from annual reports the cemeteries provided to the Bureau over the 2012 through 2016 period:

- Market values of endowment care assets.
- Income earned on endowment care investments.
- Cemetery maintenance expenses.
- Amounts cemeteries report depositing to their endowment care trusts to comply with Health and Safety Code, Section 8738.

In addition to financial data, the Bureau mailed a questionnaire to the 191 endowment care cemeteries it licenses to obtain key information about each cemetery's size and interments. All 191 cemeteries responded to the questionnaire, which is included as Attachment 1 to this Appendix. Of the 191 cemeteries that responded to the Bureau's questionnaire, 11 are not included in the study: five are small, privately-owned cemeteries created solely for family interments on private estates and have no public sales; the other six have not provided required annual reports necessary to identify the key financial data necessary to evaluate the sufficiency of their endowment care trusts. The Bureau is in the process of ensuring the collection of the required annual reports from these cemeteries.

For the remaining 180 endowment care cemeteries, the Bureau used the above information to evaluate endowment care sufficiency on a statewide basis. Specifically, coupling the key financial information it obtained from each cemetery with information obtained from its questionnaire, the Bureau estimated the following:

- The current state-wide endowment care shortfall as of December 31, 2016.
- The additional endowment care funds necessary to cover the current shortfall as well as ensure future spaces the cemeteries sell are properly cared for.

The analysis is shown in Attachment 2 to this Appendix, which also aligns with the information presented on pages 5 through 7 of the report.

In addition to gathering key information about each of the endowment care cemeteries it licenses, the Bureau reached out to other state regulatory authorities to obtain information about the endowment care deposits their states require of privately-owned cemeteries to help form its recommendations. Appendix C summarizes the other state's requirements.

A Discussion of the Study's Assumptions

Any model used to predict the amount of endowment care necessary for the long-run cemetery maintenance relies on assumptions that may or may not turn out to be accurate over the long-term. Being transparent about these assumptions informs readers about the limitations of the data. The assumptions in this study include:

1. Long-run maintenance costs per space equal 80 percent of those incurred in 2016.
2. Cemeteries' endowment care trusts will continue to average a 4.66 percent yield on investments.
3. The value of the endowment care trusts grow at least at the rate of inflation after available income is distributed to the cemeteries and all trust expenses are paid.
4. Cemeteries and trustees comply with all laws and regulations for the preservation of endowment care principal.
5. In responding to the Bureau's questionnaire, if a cemetery did not know the remaining interment spaces available for sale, the study assumed a standard rate of 1,500 spaces per acre.
6. The use of substitute measures for missing data.

Long-run Maintenance Costs

Once a cemetery is no longer economically profitable, it is reasonable to assume it will have fewer staff and lower overall costs. Additionally, costs may also decrease as the level of necessary maintenance decreases. California law sets minimum maintenance standards for the cemeteries the Bureau licenses. However, cemeteries set their own maintenance standards as well, and the maintenance they perform while they are actively selling interment spaces may be at a higher standard than what is required by law. Ultimately, the cemeteries the Bureau licenses are private businesses. The cemeteries may revert to the minimum maintenance standards once they are no longer economically productive.

Average Yields

Regarding the second assumption above, there is no way to tell whether endowment care trusts will continue to average a 4.66 percent yield on investments. Yields could increase or decrease. For the purposes of this study, we assume the endowment care trusts continue to earn the average yield on investment experienced during the 2012 through 2016 period.

Growth

Regarding the third assumption, once the cemetery is sold out and is no longer contributing to endowment care, the value of its investments must still grow at least at the rate of inflation. With no growth, the loss of purchasing power will occur. For example, a 4.66 percent annual yield on an endowment care trust valued at \$1,000,000 is an annual income of \$46,600 distributable to the cemetery for maintenance. This income will lose purchasing power with inflation. At a two-percent rate of inflation, the purchasing power of \$46,600 declines to \$38,228 in ten years.¹⁰ In this example, after income is distributed to the cemetery, the value of the endowment care

¹⁰ Real purchasing power is the reciprocal of $1 +$ the inflation rate to the x power times the annual income, where x is the number years from the time the investment is valued. In the example, the real purchasing power of a fixed \$46,600 income after 10 years with a two-percent rate of inflation is calculated as: $\$46,600 \times (1 / (1 + 0.02)^{10}) = \$46,600 \times 0.8203 = \$38,228$.

principal would need to grow at two-percent per year in order to maintain the same purchasing power over time.

Preservation of Endowment Care Principal

Regarding the fourth assumption, the study assumes all deposits made to the endowment care trust are preserved. Current law helps ensure the preservation of trust principal. It does not allow for the expenditure of principal, requires at least 50 percent of realized capital gains be added to principal each year, and requires trustees to set aside a reasonable percentage of the income from the trust to replace principal investment losses.

Spaces per Acre

In responding to the Bureau's questionnaire, each cemetery estimated either the remaining number of interment spaces it anticipates selling or, if it lacked this data, estimated the remaining acreage it anticipates being developed for sale as an indicator of the potential for future endowment care collections. In discussion with experts within the cemetery industry, it is common practice to estimate 1,500 spaces per acre for planning purposes. To the extent that cemeteries inter more than 1,500 spaces per acre, this could reduce the average endowment care deposits required per space discussed in the Results section of this report.

Missing Data

In instances where the Bureau had not yet received a 2016 report from a cemetery, either because the report was not yet due or because it was late and the Bureau was in the process of taking necessary action to obtain the report, it used the data available for the 2012 through 2015 period to evaluate endowment care trust sufficiency. Where average income yields for a particular year were necessary to summarize statewide data, the Bureau applied the average yield for the cemeteries reporting to the cemeteries that had not yet reported so as to not skew the data.

Appendix A: Attachment 1 – Questionnaire Mailed to the Endowment Care Cemeteries



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CEMETERY AND FUNERAL BUREAU

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October 24, 2016

First And Last Name, Title
Cemetery Authority Name – COA #
Mailing Address
City, State, Zip

RE: Cemetery Endowment Care Fund Sufficiency Study

Dear Cemetery Manager,

As you know, Assembly Bill 180 (Bonilla, Chapter 395, Statutes of 2015) became effective January 1, 2016 and requires the Cemetery and Funeral Bureau (Bureau) to conduct a study to obtain information to determine if the endowment care fund levels of each licensee's cemetery are sufficient to cover the cost of future maintenance. Furthermore, the Bureau is required to report its findings and recommendations to the Legislature by January 1, 2018 (Business and Professions Code Section 7612.11).

To conduct the study, the Bureau requires information about your cemetery property. Please respond to all of the questions in Section I below. Additionally, if the cemetery has a master plan for development and/or is able to respond to the questions in Section II, please answer those questions as well.

Section I – Please answer each question; do not leave any questions blank.

1. What year was the cemetery established? _____
2. What is the total size (developed and undeveloped) of the cemetery in acres? _____
3. Developed Cemetery Property:
 - a. How many total **acres** has the cemetery sold for interment, including preneed sales, as of the date of this letter? _____
 - b. Of the total acres the cemetery has sold for interment (in 3a), how many acres contain spaces for which endowment care fees have been collected? _____
4. How many total acres (developed and undeveloped) of cemetery property are remaining to be sold (i.e., as yet unsold) as of the date of this letter? _____

Section II – If known, please respond to the following questions.

5. What year did the cemetery start collecting endowment care fees? _____

6. How many total **spaces** has the cemetery sold for interment, including preneed sales, as of the date of this letter? _____

Note: For the purpose of the study, a "space" is defined as an area in which a casket can be placed or a niche for cremated remains. For example, count each ground space or crypt as one space; count companion graves or crypts as two spaces; and count each niche as one space regardless of the number of urns it may contain.

Section II – Continued

7. Of the total spaces the cemetery has sold for interment (in 6), how many spaces have contributed to endowment care? _____
8. Based on your best estimation, how many interment spaces does the cemetery have remaining to be sold (i.e., as yet unsold) in all developed and undeveloped acreage as of the date of this letter? _____

The Bureau appreciates your assistance in fully responding to each of the questions in Section I above, and any information you can provide in response to the questions in Section II. Please return your responses to the Bureau at the letterhead address by January 2, 2017.

If you have any questions, please contact David Edwards of my staff at 916.574.7884. Thank you for your time and attention to this very important matter.

Sincerely,

Lisa M. Moore, Chief
Cemetery and Funeral Bureau

Appendix A: Attachment 2 – Endowment Endowment Care Sufficiency Calculation Worksheet

Line #	Estimating Current Endowment Care Shortfall	Amount	Sources
1	2016 Net Market Value of Endowment Care Trusts ¹	\$ 1,200,795,074	Annual Reports (AR) and Financial Statements (FS) 2
2	2016 Income Available for Cemetery Maintenance	\$ 41,320,051	Annual Reports (AR) and Financial Statements (FS)
3	Average Income Yield for Cemetery Maintenance 2012 through 2016	4.66%	Annual Reports (AR) and Financial Statements (FS)
4	Estimated Annual Maintenance Expenses at End of Life	\$ 94,007,676	Annual Reports (AR) and Financial Statements (FS)
5	Income Shortfall	\$ (52,687,625)	Calculation: Line 2 - Line 4
6	Total Endowment Care Spaces Sold Since Inception	8,291,197	Cemetery Questionnaire (Appendix A, Table 2).
7	Average Annual Maintenance Expense per Endowment Care Space Already Sold	\$ 11.34	Calculation: Line 4 / Line 6
8	Annual Maintenance Expense per Space Covered by ECF Income	\$ 4.98	Calculation: Line 2 / Line 6
9	Current Income Shortfall per Space	\$ 6.35	Calculation: Line 7 - Line 8
10	Amount of Additional Endowment Care Necessary to Cover Maintenance Costs for Spaces Already Sold	\$ 1,130,635,730	Calculation: Line 5 / Line 3
11	Total Shortfall per Space Already Sold	\$ 136.37	Calculation: Line 10 / Line 6

Sources: As referenced in the table.

¹ Net market value is the total market value less liabilities as of December 31, 2016, where total market value is the cash value of trust assets, and liabilities are expenses the trust has incurred but not yet paid.

² Analysis of annual reports and financial statements the cemeteries provide to the Bureau as required by Business and Professions Code, Section 7612.6.

Line #	Estimating Endowment Care Needed for Future Spaces to be Sold	Amount	Source
12	Total Future Spaces to be Sold	3,998,022	Cemetery Questionnaire (Appendix A, Table 2).
13	Annual Maintenance Expense per Space Already Sold	\$ 11.34	Line 7
14	Estimated Annual Maintenance Costs for Future Spaces to be Sold	\$ 45,337,569	Calculation: Line 12 x Line 13
15	Additional Endowment Care Necessary to Fully Fund Maintenance Costs for Future Spaces to be Sold	\$ 972,909,206	(B) Calculation: Line 14 / Line 3
16	Endowment Care Necessary to Cover Future Sales (A) + (B) = Total Additional ECF Required at End of Life:	\$ 243.35	Calculation: Line 15 / Line 12
16	2016 Net Market Value of Endowment Care Trusts ¹	\$ 2,103,544,936	Calculation: Line 10 + Line 15
17	Total Endowment Care Needed to End of Life	\$ 1,200,795,074	Line 1
18	Total Endowment Care Per Space Going Forward	\$ 526.15	Line 16 + Line 17
19	Future ECF Fee per Square Foot @ 26 sq. ft. per Space	\$ 20.24	Line 16 / Line 12
20			Line 19 / 26

Appendix B: Historical Minimum Endowment Care Trust Deposits for Endowment Care Cemeteries¹

The Table below summarizes the minimum endowment care deposits required from inception of the law to the present. Cemeteries established before September 17, 1955 were not required to be endowment care cemeteries. However, as discussed on page 4 of the report, most have chosen to establish endowment care trusts. Once these cemeteries opted-in, they became endowment care cemeteries subject to the minimum deposit requirements. As the Table shows, there have been many adjustments to the required minimums over the years

Law	Required Deposit Amounts per Space ³			
	Graves	Niches	Crypts	Scattering
Stats.1939, c. 60, p. 713, § 8738 ²	\$ 6.50	\$ 5.00	\$ 15.00	\$ -
Stats.1951, c. 176, p. 428, § 29;	\$ 13.00	\$ 5.00	\$ 30.00	\$ -
Stats.1957, c. 1635, p. 3004, § 4;	\$ 16.90	\$ 10.00	\$ 40.00	\$ -
Stats.1961, c. 480, p. 1577, § 1;	\$ 22.10	\$ 10.00	\$ 40.00	\$ -
Stats.1969, c. 983, p. 1954, § 10;	\$ 26.00	\$ 10.00	\$ 40.00	\$ -
Stats.1976, c. 525, p. 1276, § 3;	\$ 32.50	\$ 15.00	\$ 50.00	\$ -
Stats.1980, c. 460, p. 969, § 1;	\$ 39.00	\$ 20.00	\$ 60.00	\$ -
Stats.1986, c. 270, § 1;	\$ 45.50	\$ 25.00	\$ 75.00	\$ -
Stats.1992, c. 797 (A.B.3746), § 10;	\$ 58.50	\$ 35.00	\$ 110.00	\$ -
Stats.2008, c. 545 (S.B.1135), § 1.)	\$ 117.00	\$ 70.00	\$ 220.00	\$ 70.00

Source: Statutes Applicable to the Enacting of and Amendments to Health and Safety Code, Section 8738.

¹ The amounts shown do not include minimum initial deposits required for newly established cemeteries. For example, cemeteries established after January 1, 1977 were required to place a \$35,000 initial deposit to their endowment care funds as a condition of receiving a Certificate of Authority (cemetery) license.

² Read as "Statutes of 1939, Chapter 60, Page 713, Section 8738." Accessible electronically at the Website of the California Assembly, Office of the Chief Clerk:

³ Amounts shown are the minimum required deposits for a single interment space of the type listed. For graves, the amounts shown assume a grave size of 26 square feet. For example, in 1939 cemeteries that chose to establish endowment care trusts were required to deposit at least \$0.25 per square foot of grave space that they sold. This minimum deposit equated to \$6.50 per grave ($\$0.25 \times 26 = \6.50). Starting in 1957, the law added stipulations for the purchase of double interment spaces, which are not shown in the table. For example, in 1957 the law required a \$40 minimum deposit for a single crypt and lowered the required minimum deposit to \$20 for each additional crypt that a consumer purchased. See Table 1 of the report for definitions of the different types of interments.

Appendix C: Comparing Minimum Endowment Care Trust Deposit Rates Across States

The Cemetery Bureau reached out to other state regulatory authorities to obtain information about the endowment care deposits their states require of privately-owned cemeteries to help form its recommendations. The Table summarizes the other state's requirements as of August 1, 2017, and is sorted from highest to lowest required minimum deposits. As the table shows, most states require cemeteries to deposit a percentage of the price of each interment to their trusts for each interment they sell. Some states base the minimum deposit amounts on the gross sales price, which is the retail price that would be listed, for example, on a cemetery's price list. Other states base their minimum required deposits on the net price the cemetery receives from the sale of an interment, which is the gross price less any discounts the cemetery provides to consumers for the purchase of an interment spaces. Tying the minimum deposit amount to the price of each interment means deposits increase with inflation. In addition to requiring a percentage of the price of each interment be deposited, some states, such as Texas, Florida, and Illinois also set a minimum deposit amount to ensure funding to the trusts, while Georgia ties its minimum required deposits to the consumer price index, which is an index of the variation in prices paid by typical consumers for retail goods and other items.

State	Type of Interment Space and Required Minimum Deposits			
	Graves ¹	Lawn Crypts ²	Mausoleum Crypts ²	Niches ³
Minimum Required Endowment Care Trust Deposits Based on Percent of Interment Price				
New Mexico	25% of net price	25% of net price	10% of net price	10% of net price
Arkansas	20% of gross price	5% of gross price	5% of gross price, but not less than \$40	5% of gross price
Iowa	20% gross price with minimum of \$50	20% gross price with minimum of \$50	20% gross price with minimum of \$50	20% gross price with minimum of \$50
Kentucky	20% of gross price; minimum of \$20 per grave space	5% of gross price with minimum of \$25 per crypt space	5% of gross price with minimum of \$25 per crypt space	10% of gross selling price with minimum of \$15 per niche
Minnesota	20% of net price	20% of net price	10% of net price	10% of net price
Tennessee	20% of net price; minimum of \$0.5 per square foot of grave space (sq.ft.)	20% of the net sales price of the land excluding the lawn crypt; minimum of \$50.	10% of net price	10% of net price
Michigan	15% of all gross price; minimum of \$20	15% of all gross price; minimum of \$20	15% of all gross price; minimum of \$20	15% of all gross price; minimum of \$20
Illinois	The greater of \$1 per sq. ft. or 15% of gross price; minimum of \$25 for each interment right.	10% of the gross price with a minimum of \$25 for each entombment right.	10% of the gross price with a minimum of \$25 for each entombment right.	10% of the gross price with a minimum of \$15 for each inurnment right.
Alabama	15% of net price	15% of net price	5% of net price	5% of net price
Colorado	15% of net price	10% of net price	10% of net price	10 % of net price
Georgia	15% of the net price with a minimum of \$65. Minimum of \$65 changes with CPI.	15% of the net price with a minimum of \$65. Minimum of \$65 changes with CPI.	7.5% of net price with a minimum of \$65. Minimum changes with CPI.	7.5% of net price with a minimum of \$65. Minimum changes with CPI.
Indiana	Greater of 15% of net price or \$0.80/ sq. ft.	Greater of 15% of net price or \$0.80/ sq. ft.	Greater of 8% of net price or \$100 per crypt	\$20 per niche
Kansas	15% of the net price; minimum of \$25.	5% of the net price but not less than \$50 for each crypt.	10% of the net price but not less than \$100 per crypt.	5% of the net price, but not less than \$50

Continued from previous page.

State	Type of Interment Space and Required Minimum Deposits			
	Graves ¹	Lawn Crypts ²	Mausoleum ²	Niches ³
Minimum Required Endowment Care Trust Deposits Based on Percent of Interment Price				
Missouri	15% of gross price; minimum of \$20 for each space	10% of gross price; minimum of \$75 per grave space	Community mausoleums - greater of 10% of gross price or \$100 per crypt. Garden mausoleums - greater of 10% of gross price or \$100 for each crypt	Community mausoleums - greater of 10% of gross price or \$100 per crypt. Garden mausoleums - greater of 10% of gross price or \$100 for each crypt
Oregon	15% of gross price; minimum of \$5	15% of gross price; minimum of \$5	5% of gross price	5% of gross price
Pennsylvania	15% of gross price; minimum of \$1 per sq.ft.	15% of gross price; minimum of \$1 per sq.ft.	15% of the construction cost of each crypt; \$50 minimum	15% of the construction cost of each crypt; \$50 minimum
Mississippi	15% of net price; minimum of \$0.40 per sq. ft.	15% of net price; minimum of \$0.40 per sq. ft.	5% of net price; minimum of \$50	5% of net price; minimum of \$10
Texas	15% of net price; minimum of \$1.75 per sq./ft.	7% of net price; minimum of \$105 (or \$60 if crypt is accessible only through another crypt)	7% of purchase price; minimum of \$105 (or \$60 if crypt is accessible only through another crypt)	7% of purchase price; minimum of \$105 (or \$60 if crypt is accessible only through another crypt)
Wisconsin	15% of net price; minimum of \$25	15% of net price; minimum of \$25	25% of net price until the care fund equals 25% of the cost of construction	25% of net price until the care fund equals 25% of the cost of construction
Louisiana	10% of gross price	10% of gross price	10% of gross price	10% of gross price
Maryland	10% of gross price	10% of gross price	10% of gross price	10% of gross price
Oklahoma	10% of gross price	10% of gross price	10% of gross price	10% of gross price
Washington	10% of gross price	10% of gross price	10% of gross price	10% Gross Price; minimum of \$5
Florida	10% of net price; minimum of \$25 per burial right	10% of net price; minimum of \$25 per burial right	10% of net price; minimum of \$25 per burial right	10% of net price; minimum of \$25 per burial right
Idaho	10% of net price, minimum \$10	Does not stipulate	\$25 per crypt	\$5 per niche
North Carolina	10% of net price; minimum \$100	10% of net price; minimum \$100	10% of net price; minimum \$100	10% of net price; minimum \$100
Ohio	10% of net price	10% of net price	10% of net price	10% of net price
South Carolina	10% of net price; minimum of \$40	10% of net price; minimum of \$40	5% of net price; minimum of \$100	5% of net price; minimum of \$100
Virginia	10% of Net Price	10% of Net Price	10% of Net Price	10% of Net Price
West Virginia	10% of net price, minimum \$10	10% of net price, minimum \$10	5% of Net Price	5% of Net Price

Continued from previous page.

State	Type of Interment Space and Required Minimum Deposits			
	Graves ¹	Lawn Crypts ²	Mausoleum ²	Niches ³
Minimum Required Endowment Care Trust Deposits Fixed. (Not Based on Percent of Interment Price)				
Nevada	\$5 per sq.ft	\$5 per sq.ft	\$125 adult crypt; \$125 for first adult crypt of a tandem companion mausoleum crypt; \$100 each additional crypt; \$60 each crypt that is less than half the size of adult crypt	\$40 each niche
California	\$4.5 per sq. ft.	\$4.5 per sq. ft.	\$220 per crypt but if companion crypt then \$220 for first and \$110 for each additional	\$75 per space
Arizona	\$2.75 per sq. ft.	\$120 each	\$120 each	\$36 each
Utah	\$1.50 sq.ft.	\$1.50 sq.ft.	\$60 each crypt	\$60 each crypt
Hawaii	\$1 per sq. ft. of interment space	\$1 per sq. ft. of interment space	\$50 each crypt	\$15 each
Nebraska	\$.25 per sq. ft. for each lot sold in a park plan or memorial plan cemetery; \$.50 per sq. ft. of each lot sold in a monument plan cemetery or a combined monument and park plan cemetery	\$.25 per sq. ft. for each lot sold in a park plan or memorial plan cemetery; \$.50 per sq. ft. of each lot sold in a monument plan cemetery or a combined monument and park plan cemetery	10% of the net price; minimum of \$50	10% of the net price; minimum of \$25
Delaware	No Law	No Law	No Law	No Law

Source: Data that the Bureau collected from other States.

¹ A "Grave" is a space of earth, used, or intended to be used, for the disposition of human remains. "Sq. ft." refers to a minimum required deposit for each square foot of grave space.

Interment in a mausoleum occurs in a structure or building for the entombment of human remains, while lawn crypts can include stand-alone above-ground entombments.

³ A "Niche" is a space used, or intended to be used, for the placement of cremated human remains.

Note: The Bureau did not obtain information about the minimum endowment care deposits other states require for scattering interments. A "Scattering," for this report, is defined as the authorized dispersal of cremated remains in a defined area within a licensed cemetery. As discussed on Page 2 of the report, California requires privately-owned cemeteries to deposit a minimum of \$70 to their endowment trusts for each scattering that occurs on their cemetery grounds.

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 82-312
of	:	<u>JUNE 22, 1982</u>
GEORGE DEUKMEJIAN	:	
Attorney General	:	
Victor D. Sonenberg	:	
Deputy Attorney General	:	
	:	

The CEMETERY BOARD has requested an opinion on the following question:

Do the statutes governing the operation of cemeteries permit a cemetery authority to transfer an endowment care fund to a corporation which is not a bank or trust company qualified under California law to engage in the trust business?

CONCLUSION

The statutes governing the operation of cemeteries do not permit a cemetery authority to transfer an endowment care fund to a corporation which is not a bank or trust company qualified under California law to engage in the trust business.

ANALYSIS

The present question concerns the statutory limitations upon the types of entities that may hold and manage a cemetery endowment care fund. This question arises out of a situation where a "cemetery authority" (i.e., the owner of a cemetery (Health & Saf. Code, § 7018))¹ has created a wholly owned separate corporation to hold and manage its endowment care fund. An endowment care fund is a fund established by a cemetery authority which is invested to provide income to be used only for the "care, maintenance, and embellishment" of the cemetery. (§§ 8726, 8728, 8750.) The Legislature has declared that the fund's providing of such care to a cemetery fulfills a duty to those interred there and benefits and protects the public by preventing cemeteries from becoming "places of reproach and desolation in the communities in which they are situated." (§ 8736; see 18 Ops.Cal.Atty.Gen. 272, 274 (1951).)

The initial creation of an endowment care fund is provided for by the requirement that before selling any plots the cemetery deposit in such a fund \$25,000 or \$35,000 if the cemetery was established after 1976. (§ 8738.1.) Additionally, the cemetery, prior to the initial sale of a plot, must deposit a specified amount in the fund, depending on the type of plot sold or disposed of. (§ 8738; see 18 Ops.Cal.Atty.Gen. 272, *supra*, at p. 274.) The cemetery also may collect from all purchasers, subsequent to its adoption of a maintenance or embellishment plan, a reasonable sum to apply to the endowment care fund. (§§ 8728, 8729.) The endowment care fund of a cemetery must be kept separate from all other funds of the cemetery. (§§ 8726, 8738.2; 28 Ops.Cal.Atty.Gen. 321, 322 (1956).)

Every cemetery authority may establish and operate an endowment care fund for its cemetery. (§ 8725.) However, an endowment care fund is mandatory with respect to every private cemetery (i.e., nonchurch or nonpublicly owned cemetery (§ 8250)) established after September 7, 1955. (§ 8739.1.)

The question who may hold such a fund is primarily governed by section 8725 which in relevant part provides that "[t]he funds may be held in the name of the cemetery authority or its directors or in the name of the trustees appointed by the cemetery authority." With respect to the appointment of such trustees, section 8731 provides:

"The cemetery authority may appoint a board of trustees of not less than three in number as trustees of its endowment care fund. The members

¹ Hereafter all section references are to the Health and Safety Code unless otherwise specified.

of the board of trustees shall hold office subject to the direction of the cemetery authority."

However, an alternative to the appointment of a board of trustees is afforded by section 8733.5 which provides:

"In lieu of the appointment of a board of trustees of its endowment care fund, any cemetery authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified under the provisions of the Bank Act of the State of California to engage in the trust business."²

The specific question we consider is whether under these statutes a cemetery authority may transfer the endowment care fund to a corporation which is not a bank or trust company qualified under California law to engage in the trust business.³ As can be seen from the sections set forth above, the Legislature has specified only four types of entities as being authorized to hold an endowment care fund: (1) a cemetery

² The Bank Act (Stats. 1909, ch. 76, p. 87) was repealed and superseded in 1949 by the statute enacting the Banking Code. (Stats. 1949, ch. 755, § 1, 3450, pp. 1376, 1488.) However, the Banking Code provided that it was to "be construed as restatements and continuations" of substantially similar statutes on the same subject, "and not as new enactments." (*Id.*, § 2, p. 1376.) Likewise, the statute enacting the present Financial Code (Stats. 1951, ch. 364) which superseded and repealed the Banking Code (*id.*, § 50001, p. 1158) also provided that it was to "be construed as restatements and continuations" of substantially similar statutes on the same subject, "and not as new enactments." (*Id.*, § 2, p. 829.) Thus, in effect, the Bank Act was continued and restated in these successive statutes. The significance of such continuations is addressed by Government Code section 9604 which provides:

"When the provisions of one statute are carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments, any reference made by any statute, charter or ordinance to such provisions shall, unless a contrary intent appears, be deemed a reference to the restatements and continuations."

Accordingly, reference in section 8733.5 to the now-repealed Bank Act must be deemed to refer to the pertinent provisions of that act as restated and continued in the Financial Code. (See *Valley Electric Co. v. Slagle* (1956) 142 Cal.App.2d 81, 83-84; and see 3 Ops.Cal.Atty.Gen. 168, 169 (1944).)

³ We note that a cemetery authority must itself be a corporation (§ 8252) and that a cemetery authority may hold an endowment care fund (§ 8725). We thus assume that the question refers to a transfer to a corporation other than the cemetery authority.

authority (§ 8725); (2) its board of directors (*ibid.*);⁴ (3) a board of at least three trustees appointed by the cemetery authority (*ibid.*, § 8731); and (4) a qualified bank or trust company as sole corporate trustee (§ 8733.5). Thus the only corporation, other than the cemetery authority itself, specified in the legislative enumeration of entities authorized to hold the endowment care fund is a qualified bank or trust company.⁵ The section authorizing such sole corporate trustees, section 8733.5, was enacted in 1941 (Stats. 1941, ch. 176, § 1, p. 1220), ten years after the Legislature specified the other entities authorized to hold endowment care funds. (Stats. 1931, ch. 1148, § 16, p. 2442.) Thus in an unpublished opinion issued by this office before the enactment of section 8733.5, it was concluded that an endowment care fund could not be turned over to a corporate trustee even if it was a trust company. As that opinion stated: "Apparently the statute had in mind that the board of trustees was to be a deliberative body and that individuals as distinguished from corporate entities were to serve thereupon." (Atty.Gen. unpub. op., L.B. 184, p. 176 (Jan. 27, 1940).)

Thus in subsequently providing that "[i]n lieu of the appointment of a board of trustees of its endowment care fund" the cemetery authority could appoint as sole trustee a bank or trust company legally qualified to be in the trust business (§ 8733.5), the Legislature was instituting an exception to the requirement that the fund be held by a board of trustees or by the cemetery authority itself. Since that exception is confined to corporations qualified to be in the trust business, it would be inappropriate for us to construe the provision to encompass corporations not so qualified and thus enlarge the exception. As was stated in *Harris v. Alcoholic Beverage Control Appeals Board* (1962) 201 Cal.App.2d 567, 571: "An exception to a statute is to be narrowly construed. [Citation omitted.] When a statute specifies an exception, no others may be added under the guise of judicial construction." (*Accord, Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 189.)

Nevertheless, it has been urged that when a cemetery authority transfers an endowment care fund to a corporation it wholly owns, it is complying with the statute even though the corporation is not qualified as a trust company. The reasoning is that the statute expressly allows a cemetery authority to hold an endowment care fund (§ 8725) and that by transferring the fund to its wholly owned corporation the cemetery authority

⁴ The ability of the directors of a cemetery authority to act as the board of trustees of the endowment care fund has been substantially restricted by the enactment in 1976 of the present section 8732 (Stats. 1976, ch. 729, § 6, p. 1753) which provides that not more than one member of the fund's board of trustees "may have a proprietary interest in the cemetery authority."

⁵ Under California law banks and trust companies must be corporations. (Fin. Code, §§ 102, 107, 1501; Ins. Code, § 12392; 34 Ops.Cal.Atty.Gen. 27, 28 (1959).)

is, in effect, holding the fund. It is our opinion, however, that the indirect holding of an endowment care fund under such circumstances is not countenanced by the statute.

By providing that a cemetery authority could transfer an endowment care fund to a board of trustees which it appointed (§§ 8725, 8731) and which held office subject to its direction (§ 8731), the Legislature has expressly demonstrated its awareness of the possibility of the cemetery authority's transferring the fund to a separate entity which it created and controlled as opposed to its direct holding of the fund. But in expressly specifying that such separate entity be a board of trustees with at least three members, unless it was a bank or trust company qualified to engage in the trust business (§ 8733.5), the clear implication is that the Legislature intended to preclude transfers to entities of a type it did not specify whether or not such entities are wholly owned by a cemetery authority.

" . . . "In the grants [of powers] and in the regulation of the mode of exercise, there is an implied negative; an implication that no other than the expressly granted power passes by the grant; that it is to be exercised only in the prescribed mode"" (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196.)

See also *Garson v. Juarique* (1979) 99 Cal.App.3d 769, 774:

"Since the ordinance in question expressly mentioned several particular means . . . [of compliance] yet omitted to mention the possibility of compliance through other conceivable means . . . an inference arises that the means enumerated were intended to be exclusive."

And see *Kirby v. Alcoholic Bev. etc. App. Bd.* (1969) 3 Cal.App.3d 209, 221.

Consequently, in construing the statute which explicitly specifies those entities which may hold an endowment care fund, we decline to interpose an additional alternative which was not specified by the Legislature. As stated in *Cemetery Board v. Telophase Society of America* (1978) 87 Cal.App.3d 847, 858: "It is well established that it is not the proper function of the courts to supply legislative omissions from a statute in an attempt to make it conform to a presumed intention of the Legislature not expressed in the statutory language."

We therefore conclude that an endowment care fund cannot be transferred to a corporation that is not a bank or trust company qualified under California law to engage in the trust business.
