

Statement of: Morningside Cemetery Association
East Charlotte, VT

RE: V.S.A. Chapter 121. Cemeteries
Paragraph 5309 – Investment of Funds

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Current Law

Following is the statutory language that governs how Vermont cemeteries *must* invest endowment or “perpetual care” funds. It was last amended in 1979.

The principal sum of funds shall be invested in bonds of the United States or the state of Vermont, or in the bonds or in notes issued in anticipation of taxes and authorized by vote of any town, village, or city in this state, or loaned upon the first mortgage on real estate in this state a sum not in excess of sixty percent of the value of such real estate, or upon collateral of any of the above securities of equal value with the loan, or in shares of a savings and loan association of this state or share amounts of a federal savings and loan association with its principal office in this state and to the extent to which the withdrawal or repurchase value of such shares or accounts may be insured by the Federal Savings and Loan Insurance Corporation, or stock in a federal bank or a safe deposit company or a national bank or state bank or trust company organized and doing business in the United States. Up to thirty-five percent of the association’s assets may be invested in common or preferred stocks of corporations organized and existing under the laws of any state of the United States of America, or may be invested in the manner required for the investment of trust funds, unless otherwise authorized by the donor: No assets of the association may be loaned to a member, officer, trustee, or director of any such cemetery agency.

Key Elements

- A. The statute requires that at least 65% of funds be invested in:
1. U.S. Treasuries or bonds issued by the State of Vermont; or
 2. Municipal bonds or tax anticipation notes issued by Vermont cities and towns;
 3. First mortgages not to exceed sixty percent (60%) loan-to-value;
 4. Collateral of eligible securities of equal value with the loan;
 5. Shares of Vermont savings and loan associations;

6. Shares of federal savings and loan associations with principal offices in Vermont and that are insured by FSLIC; or
 7. Stock in federal banks or safe deposit companies, or national banks or state banks or trust companies organized and doing business in the United States [“bank stocks”].
- B. Corporate bonds, even those that are designated as investment grade, are ineligible.
- C. No more than thirty-five percent [$<35\%$] of the association’s assets may be invested in common or preferred stocks of corporations.

Major Flaws

- The existing regulations have been in effect 42 years. They are outdated and inoperable.
- Savings and loan associations, both state and federal, do not exist anymore as financial institutions distinct from commercial banks. FIRREA, which was enacted in the late-1980s, erased their unique features.
- The Federal Savings and Loan Insurance Corporation (FSLIC), which the law says *must* insure federal S&Ls in which investments are made, ceased to exist more than 30 years ago.
- Banking and investment tools and strategies have evolved dramatically. For example, mutual funds are not eligible investments under this state law.

Revised Language Proposed

Cemetery associations that hold funds in trust for their perpetual care may invest these assets in accordance with investment policies adopted by their organizations. Such policies shall specify the purpose and objectives for managing and administering the funds. Portfolios must be well diversified, using instruments and allocations that are prudently selected and intended to achieve short- and long-term objectives. Associations may delegate management to investment managers that are registered with the U.S. Securities and Exchange Commission (SEC) and thus have fiduciary responsibility for the management of the assets.