



Province of Alberta

CEMETERIES ACT

GENERAL REGULATION

Alberta Regulation 249/1998

With amendments up to and including Alberta Regulation 166/2021

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(Consolidated up to 166/2021)

ALBERTA REGULATION 249/98

Cemeteries Act

GENERAL REGULATION

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Definitions

- 1 In this Regulation,
 - (a) “Act” means the *Cemeteries Act*;
 - (b) “burial permit” means a burial permit issued under the *Vital Statistics Act*;
 - (c) “columbarium operator” means

- (i) in respect of a columbarium in a cemetery, the owner of the cemetery,
- (ii) in respect of a columbarium in a church, the religious auxiliary or religious denomination that operates the columbarium, and
- (iii) in respect of a columbarium that is part of the facilities of a crematory, the owner of the crematory;
- (d) “grave lot” means the portion of land in a cemetery that is sold or provided as a unit for one or more graves;
- (e) “mausoleum” does not include a receiving vault for the temporary storage of dead human bodies pending burial, interment or other lawful disposition;
- (f) “newborn infant” means an infant under 28 days of age;
- (g) “organization” means
 - (i) a religious auxiliary, religious denomination or municipality that is permitted by the Act to establish and operate a cemetery, mausoleum or columbarium, or
 - (ii) in respect of an established cemetery, mausoleum or columbarium, the religious auxiliary, religious denomination, municipality or other corporate body operating that cemetery, mausoleum or columbarium.

Sale of Cemetery Supplies, Cemetery Services and Interment Space

Calculation of resale price

2 For the purposes of section 25(b) of the Act, the purchase price of a plot shall be an amount representing at least 85% of the market value of the plot at the date of resale.

AR 249/98 s2;251/2001

Cancellation without penalty

3 For the purposes of section 67(1) of the Act, a pre-need contract may be cancelled at any time, but the period within which it may be cancelled without charge or penalty is 30 days from the date on which the purchaser receives a copy of the contract.

AR 249/98 s3;251/2001

Requirements of contracts

4 A contract for the provision of cemetery supplies or cemetery services or both shall

- (a) be in writing,
- (b) be signed by the purchaser and the vendor,
- (c) contain a detailed listing of the cemetery supplies or cemetery services or both to be provided by the vendor and the cost to be charged to the purchaser for each of those cemetery supplies and cemetery services, and
- (d) contain a statement disclosing what portion of the money paid as the consideration under the contract is for the provision of perpetual care.

Form of notice in pre-need contracts

5 For the purposes of section 73(b) of the Act, the notice required in the case of a pre-need contract shall be in the form in the Schedule.

AR 249/98 s5;251/2001

Statement about cemetery

6 The owner of a cemetery shall, on request, file with the Director a statement for the period stated in the request setting out

- (a) the names of the purchasers of lots and in each case the number purchased, the price paid and the amount set aside in the perpetual care fund, and
- (b) the names of the purchasers of monuments or markers and in each case the price paid and the amount set aside in the perpetual care fund.

Statement about mausoleum or columbarium

7 The owner of a mausoleum or columbarium shall, on request, file with the Director a statement for the period stated in the request setting out the names of the purchasers of compartments or other space and in each case the number purchased, the price paid and the amount set aside in the perpetual care fund.

Disposition of Remains**Death of fetus**

8 In the case of the death of a fetus, the remains need not be disposed of as required by sections 5 and 6 of the Act, but

- (a) the manner of disposition is subject to the parents' or guardian's request,
- (b) the manner of disposition must not cause public offence, and
- (c) where the fetus completed 20 weeks' gestation or weighed 500 grams or more, a burial permit must be obtained prior to any disposition of the remains.

AR 249/98 s8;251/2001

Death of newborn infant

9 In the case of the death of a newborn infant, the remains need not be disposed of as required by sections 5 and 6 of the Act, but

- (a) the manner of disposition is subject to the parents' or guardian's request,
- (b) the manner of disposition must not cause public offence, and
- (c) a burial permit must be obtained prior to any disposition of the remains.

AR 249/98 s9;251/2001

Death of fetus or newborn infant in hospital

10 In the case of the death in a hospital of a fetus or a newborn infant, the hospital may dispose of the remains, but

- (a) the manner of disposition is subject to the parents' or guardian's request,
- (b) the manner of disposition must not cause public offence, and
- (c) the hospital must obtain the burial permit required under section 8 or 9.

Who may control disposition

11(1) In this section,

- (a) "living with the deceased" includes a situation where
 - (i) the deceased resided before death in a care facility for health reasons and the spouse or adult interdependent partner continued to provide the usual support customarily associated with couples intending to continue a relationship, or

(ii) the deceased and the spouse or adult interdependent partner were living apart at the time of death due only to circumstances other than a breakdown of their relationship;

(b) “parent” means, if the deceased is a minor, the parent who had legal custody of the deceased at the time of death.

(2) Where the owner of a cemetery, crematory or mausoleum or a columbarium operator is faced with a dispute among a deceased’s family or others concerning who has the right to control the disposition of the deceased’s remains, the owner of the cemetery, crematory or mausoleum or the columbarium operator shall, subject to the order of a court, recognize a person’s right to control the disposition of those remains in the following order of priority:

- (a) the personal representative designated in the will of the deceased;
- (b) the spouse or adult interdependent partner of the deceased if the spouse or adult interdependent partner was living with the deceased at the time of death;
- (c) an adult child of the deceased;
- (d) a parent of the deceased;
- (e) a guardian of the deceased under the *Adult Guardianship and Trusteeship Act* or, if the deceased is a minor, under the *Child, Youth and Family Enhancement Act* or the *Family Law Act*;
- (f) an adult grandchild of the deceased;
- (g) an adult brother or sister of the deceased;
- (h) an adult nephew or niece of the deceased;
- (i) an adult next of kin of the deceased determined on the basis provided by sections 67 and 68 of the *Wills and Succession Act*;
- (j) the Public Trustee;
- (k) an adult person having some relationship with the deceased not based on blood ties or affinity;
- (l) the Minister of Human Services.

(3) If, under subsection (2)(c) to (h), the right to control the disposition of human remains or cremated remains passes to persons of equal rank, in the absence of agreement between or

among them, the order of priority begins with the eldest person in that rank and descends in order of age.

(4) If the person who, under this section, has the right to control the disposition of human remains or cremated remains is not available or is unwilling to give instructions, that right passes to the next available qualified person.

AR 249/98 s11;206/2001;142/2003;331/2003;8/2005;212/2005;35/2007;
68/2008;168/2010;31/2012

Burial of indigents and unclaimed bodies

12(1) Unless a demand for the body of a destitute or indigent person or an unclaimed body is made under the *Post-secondary Learning Act*, a local authority, hospital, funeral director or other person in charge of the disposition by burial of the body shall give notice to the person in charge of a cemetery and request permission to bury the body in the cemetery.

(2) The burial shall be carried out in accordance with this Regulation and the by-laws or rules governing the cemetery.

AR 249/98 s12;8/2005

Burial costs for indigents

13 When a destitute or indigent person dies, the Minister of Human Services is responsible for the cost of burial or other disposition of that person's body.

AR 249/98 s13;206/2001;35/2007;68/2008;31/2012

Director's Approval of Cemeteries and Mausolea

Application to operate or establish a cemetery

14(1) An organization wishing to operate or establish a cemetery shall apply to the Director for provisional approval of the cemetery site.

(2) The application shall be accompanied with

(a) a sketch plan that shows

(i) the location of the proposed cemetery site,

(ii) a general indication of the slope of the land,

(iii) the location of

(A) all buildings used for human habitation, and

(B) all water supplies used for domestic purposes

within 150 metres of any point on the perimeter of the proposed cemetery site, and

- (b) any additional information required by the Director.

Inspection of site

15 On receipt of an application under section 14, the Director may inspect the proposed cemetery site.

Provisional approval

16(1) The Director may, after considering the application and the results of any inspection carried out under section 15, grant a provisional approval for the operation or establishment of the cemetery subject to such terms and conditions the Director considers necessary.

(2) A provisional approval is valid for a period determined by the Director, not exceeding one year, and the Director may renew a provisional approval for further periods, each not exceeding one year.

(3) A provisional approval does not authorize use of the proposed cemetery site for burials.

Final certificate of approval

17(1) The Director may

- (a) issue a final certificate of approval subject to such terms and conditions the Director considers necessary, on being satisfied that the organization wishing to operate or establish a cemetery
 - (i) has obtained a separate title to the property comprising the cemetery in the organization's name or in the name of some other person acting on its behalf, and
 - (ii) is in compliance with other applicable legislation,

or

- (b) refuse to issue a final certificate of approval if, in the Director's opinion, it is not in the public interest to issue it.

(2) An organization that receives a final certificate of approval shall without delay advise the Director of

- (a) the name and address of the person in charge of maintaining the cemetery records, and
- (b) any change in that information.

Alteration in size of cemetery

18 An organization wishing to alter the size of a cemetery that it operates shall apply to the Director for provisional approval and a final certificate of approval concerning the proposed alteration in the same manner as set out in sections 14 to 17.

Previous approvals continued

19(1) A provisional approval or a final certificate of approval that

- (a) was granted or issued under any predecessor to this Regulation, and
- (b) is in force on November 30, 1998,

is continued and deemed to have been granted or issued under this Regulation.

(2) An application for a provisional approval or a final certificate of approval made under the *Establishment and Operation of Cemeteries and Mausolea Regulation (AR 240/90)* as it existed on November 30, 1998 and not concluded by November 30, 1998 shall be dealt with under this Regulation.

Application to operate or establish a mausoleum

20(1) An organization wishing to operate or establish a mausoleum shall apply to the Director for approval of the mausoleum and its site and the application shall be in the form set by the Director and accompanied with any information required by the Director.

(2) On receipt of an application, the Director may inspect the proposed mausoleum site.

(3) The Director may, after considering the application and the results of any inspection carried out under subsection (2), approve the application or refuse to approve the application if, in the Director's opinion, it is not in the public interest to approve it.

(4) An organization wishing to alter the size of a mausoleum that it operates shall apply under this section to the Director for approval concerning the proposed alteration.

(5) This section does not apply if a mausoleum or proposed mausoleum contains 12 or fewer compartments or other spaces for interment.

Contact information

20.1 The owner of a cemetery shall, on request, provide to the Director information about how the public can contact the owner or its representatives in respect of matters relating to the operation of the cemetery.

AR 331/2003 s3

Information to public

20.2 The Director may make available to the public in any manner that the Director considers appropriate

- (a) the name and address of a cemetery;
- (b) the name of the owner of a cemetery;
- (c) information provided to the Director under section 20.1.

AR 331/2003 s3

Operation of Cemeteries and Mausolea**Other uses**

21(1) The owner of a cemetery shall not permit any portion of the land contained in the cemetery, as described in the final certificate of approval, to be used for any purpose other than a cemeterial purpose, unless the prior approval of the Director for that other use has been obtained.

(2) The Director may make an approval under subsection (1) subject to such terms and conditions the Director considers necessary.

Layout of cemetery

22(1) The owner of a cemetery established after May 8, 1964 shall ensure that the cemetery is laid out in such a manner as to provide for

- (a) adequate walks and roadways to provide reasonable access to all sections of the cemetery, and
- (b) grave lots of adequate size to permit burials to be carried out.

(2) A grave lot shall be not less than 1.2 metres in width and 2.8 metres in length, except in those sections intended exclusively for the burial of bodies of children and of urns containing cremated remains.

(3) A grave lot shall not be located closer than 9.1 metres from a public highway.

AR 249/98 s22;331/2003

Division of cemetery

23(1) The owner of a cemetery shall ensure that the cemetery is divided in such a manner as to facilitate the keeping of records and the finding of any grave.

(2) A cemetery may be divided into blocks or sections, each of which may contain a number of grave lots.

(3) Blocks or sections of a cemetery shall be marked by suitable signs.

(4) Blocks or sections and grave lots in a cemetery shall be numbered and lettered so that each grave lot may be readily located and identified.

Maintaining of plans

24 To facilitate the keeping of records and the finding of any grave, the owner of a cemetery shall maintain a plan of the cemetery showing

- (a) how the cemetery is divided by roadways and walks,
- (b) the location of blocks or sections, and
- (c) the location of grave lots.

Graves

25(1) The owner of a cemetery shall ensure that all graves are dug to a depth so that between the top of the casket and the ground surface level there is a distance of at least 0.6 metre if a substantial grave liner is used or at least 0.9 metre if such a grave liner is not used.

(2) More than one body may be interred in one grave if the top of the uppermost casket is at least 0.6 metre below the ground level if a substantial grave liner is used or at least 0.9 metre below the ground level if such a grave liner is not used.

Maintenance of cemetery

26(1) The owner of a cemetery shall maintain the grounds of the cemetery, including all interment space, structures and markers, so as to ensure the safety of the public and preserve the dignity of the cemetery.

(2) To comply with subsection (1), the owner of a cemetery may use income from perpetual care funds and shall not make any further or other charge to any person.

Care of cemeteries

27 The owner of a cemetery shall ensure that

- (a) the cemetery and any required fences, walks and entrances to the cemetery are kept in a good state of repair,
- (b) no offence is committed in the operation of the cemetery, and
- (c) no public health nuisance arises from the operation of the cemetery.

Removal of monuments, etc.

28 Subject to section 29, no person shall move or remove any monument, marker, fence, railing or other work that is placed for the protection or ornamentation of a cemetery or grave lot and is installed in accordance with the by-laws of the cemetery.

Maintenance

29(1) The owner of a cemetery may direct or permit

- (a) any monument or other item referred to in section 28 to be removed for necessary repairs, and
- (b) any fence or railing or other work for protection or ornamentation erected on or around a grave lot to be removed if the fence or railing or other work is in such a state of disrepair as to be unsightly or dangerous.

(2) Where a monument or other item is removed under subsection (1)(a), it shall be returned as soon as practicable.

(3) The owner of a cemetery shall not act under subsection (1)(b) until the owner has taken reasonable steps to determine that

- (a) no interested person, including any close relative of the deceased, is prepared to make repairs, and

- (b) no contract or other arrangement exists by which the owner has undertaken to maintain the fence, railing or other work.
- (4) Where the owner of a cemetery acts under subsection (1)(b), the owner may dispose of or otherwise deal with any material removed and no person has any claim in respect of that material.
- (5) The owner of a cemetery may direct that a monument or marker be moved to be in line with other monuments or markers or to facilitate care of the cemetery.
- (6) Where a monument or marker is moved under subsection (5)
 - (a) the monument or marker must in its new position continue to relate directly to the grave for which it was erected, and
 - (b) the owner of the cemetery is responsible for any damage to the monument or marker that may occur when it is moved.

AR 249/98 s29;331/2003

Closing of cemeteries

30(1) Where the owner discontinues the operation of a cemetery in which dead human bodies or human remains have been buried, the owner shall take all necessary steps to ensure that the cemetery will be maintained so as not to give rise to any offence or public health nuisance.

(2) In the case of a discontinued cemetery that is owned by a person or an organization other than a municipality, the owner may enter into an agreement with the municipality in which the cemetery is located or with a municipality served by the cemetery, whereby the municipality agrees to provide maintenance for the cemetery in compliance with subsection (1).

(3) Where an agreement is entered into under subsection (2), the municipality has the same responsibility under subsection (1) as the owner of the cemetery.

Permit re mausoleum

31 The owner of a mausoleum shall obtain any permit or approval required by any enactment or municipal bylaw in respect of the construction or operation of a mausoleum.

Construction standards

32 The owner of a mausoleum shall ensure that the mausoleum is so situated and constructed of such materials and in such a manner that

- (a) it will not give rise to any offence or public health nuisance, and
- (b) it will provide protection against vandalism to the bodies interred or stored in it.

Care of mausoleum

33 The owner of a mausoleum and the owner of a cemetery in which a mausoleum is located shall ensure that

- (a) the mausoleum is maintained in a good state of repair,
- (b) no offence is committed in the operation of the mausoleum,
- (c) no public health nuisance arises from the operation of the mausoleum, and
- (d) precautions are taken to prevent vandalism and to protect the bodies interred or stored in the mausoleum.

Relationship of mausoleum to cemetery

34 A mausoleum shall be considered for administrative purposes to be part of the cemetery in which it is located.

Record keeping

35 The person who is appointed to maintain the cemetery records shall

- (a) maintain the records of interment or storage of bodies in any mausoleum located in the cemetery, and
- (b) submit any returns in the form, at the times and containing the information that the Director of Vital Statistics requires.

Evidence of ownership

36 The owner of a cemetery shall, at the time of the sale or agreement for sale of each grave lot, compartment or other space in the cemetery or mausoleum, deliver to the purchaser a certificate, agreement or other document showing the following:

- (a) the name of the purchaser;
- (b) the date of the purchase;
- (c) the amount of the sale and terms of payment, if any;
- (d) the amount, if any, to be deposited to the perpetual care fund;
- (e) in the case of a grave lot, its location, its area or dimensions and the number of grave spaces in it;
- (f) in the case of a mausoleum, the number or other designation of the compartment or space in it.

Register

37(1) The owner of a cemetery shall keep a register in which the owner shall enter, with respect to each grave lot, compartment or other space in the cemetery or mausoleum,

- (a) the date of sale,
- (b) the sale price,
- (c) the name and address of the purchaser,
- (d) the name and address of any person to whom it is transferred and the date of transfer,
- (e) the date of each burial or interment in it,
- (f) the name of each deceased person buried or interred in it,
- (g) the name and address of the personal representative or next of kin of each deceased person,
- (h) the name of the funeral director or other person in charge of the funeral of the deceased person,
- (i) the amount of any charge made for services rendered and the nature of those services rendered at the time of burial or interment, and
- (j) the particulars of each disinterment or removal of a dead human body.

(2) The owner of a cemetery shall keep the register referred to in subsection (1) available for inspection by

- (a) the Director or a person designated in writing by the Director,

- (b) any police officer carrying out law enforcement duties, or
- (c) any relative of a deceased person whose burial or interment is listed in the register.

Burial permit

38 The owner of a cemetery shall not permit the burial or interment of a dead human body in the cemetery or a mausoleum in the cemetery unless the funeral director or other person officiating at the burial or interment has delivered a burial permit to the owner or to the person appointed to maintain the records.

Disinterment

39 No person shall disinter or remove a dead human body from a cemetery or mausoleum for any purpose unless that person first obtains a permit for disinterment issued by the Director of Vital Statistics and delivers it to the owner of the cemetery.

Columbaria**Location of columbarium**

40 No person shall construct or maintain a columbarium unless it is located

- (a) in a cemetery,
- (b) in a church, or
- (c) as part of the facilities of a crematory.

Permit re columbarium

41 The columbarium operator shall obtain any permit or approval required by any enactment or municipal bylaw in respect of the construction or operation of a columbarium.

Construction standards

42 The columbarium operator shall ensure that the columbarium is so situated and constructed of such materials and in such a manner that

- (a) it will not give rise to any offence or public health nuisance, and
- (b) it will provide protection against vandalism to the cremated remains stored in it.

Care of columbarium

43 The columbarium operator shall ensure that

- (a) the columbarium is maintained in a good state of repair,
- (b) no offence is committed in the operation of the columbarium,
- (c) no public health nuisance arises from the operation of the columbarium, and
- (d) precautions are taken to prevent vandalism and to protect the cremated remains stored in the columbarium.

Columbarium in cemetery

44 Where a columbarium is situated in a cemetery,

- (a) it shall be considered for administrative purposes to be part of the cemetery, and
- (b) the person who is appointed to maintain the cemetery records shall maintain any records concerning the columbarium that are required by this Regulation or other legislation.

Repairs and modifications

45(1) If, in the opinion of the Director, the operation of a columbarium is contrary to the Act or this Regulation, the Director may give notice in writing to the columbarium operator requiring that repairs or modifications be carried out and completed within a period specified in the notice.

(2) A columbarium operator who receives a notice under subsection (1) shall comply with it.

Evidence of ownership

46 A columbarium operator shall, at the time of the sale or agreement for sale of each compartment or space in the columbarium, deliver to the purchaser a certificate, agreement or other document showing the following:

- (a) the name of the purchaser;
- (b) the date of the purchase;
- (c) the amount of the sale and terms of payment, if any;

- (d) the amount, if any, to be deposited to the perpetual care fund;
- (e) the number or other designation of the compartment or space in the columbarium.

Register

47(1) A columbarium operator shall keep a register in which the operator shall enter, with respect to each compartment or space in the columbarium,

- (a) the date of sale,
- (b) the sale price,
- (c) the name and address of the purchaser,
- (d) the name and address of any person to whom it is transferred and the date of transfer,
- (e) the date of placing cremated remains in it,
- (f) the name of each deceased person whose cremated remains are placed in it,
- (g) the name and address of the personal representative or next of kin of each deceased person,
- (h) the amount of any charge made for services rendered and the nature of those services rendered at the time of placing cremated remains in it, and
- (i) the particulars of each removal of cremated remains from it.

(2) The columbarium operator shall keep the register referred to in subsection (1) available for inspection by

- (a) the Director or a person designated in writing by the Director,
- (b) any police officer carrying out law enforcement duties, or
- (c) any relative of a deceased whose cremated remains are in the columbarium.

Repeals, Expiry and Coming into Force

Repeals

48(1) Sections 1 to 12 and 18 and Schedule 1 of the *Cemeteries, Mausolea and Columbaria Regulation* (AR 238/90) are repealed.

(2) The *Establishment and Operation of Cemeteries and Mausolea Regulation* (AR 240/90) and the *Establishment and Operation of Columbaria Regulation* (AR 241/90) are repealed.

Expiry

49 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on November 30, 2025.

AR 249/98 s49;331/2003;172/2013;173/2018;166/2021

50 Repealed AR 331/2003 s7.

Schedule 1

The following shall appear in each pre-need contract under the Act:

Right to Cancel by Purchaser or Lessee

1 You may cancel this contract at any time for any reason. You may cancel without charge or penalty at any time during the period from the day you enter into the contract until 30 days after you receive a copy of the contract. If you cancel after 30 days you may still have to pay for interment space and for any cemetery supplies and cemetery services that have already been supplied, performed or delivered, as the case may be.

[Note to commercial sellers: at the end of paragraph 1 insert either the first statement or the second statement which follows, depending on which one corresponds to your election of when to charge the administration fee.]

After the penalty-free 30-day cancellation period is over, the seller will charge an administration fee of _____% of the cost of the goods and services portion of the contract before your payment is placed in trust. This administration fee is non-refundable if you cancel.

After the penalty-free 30-day cancellation period is over, the seller will place in trust all of your payment relating to the goods and services portion of the contract but if you cancel, the seller will

charge a non-refundable administration fee of _____% of the total amount in your pre-need cemetery plan.

2 If you cancel this contract, the seller has 15 days to refund any money you are owed. To cancel, you must give a notice of cancellation to the owner of the cemetery, columbarium or mausoleum at the address shown in the contract or to the seller of this contract at the address shown in the contract. You should give notice of cancellation by a method that will allow you to prove that you gave notice, such as registered mail, fax, courier or by personal delivery.

Resale of Interment Space

3 After the penalty-free 30-day cancellation period is over, the seller will _____ will not _____ allow you to resell your interment space on the open market. A seller who does not allow resale must buy back the unused interment space from you, if you wish, and must pay you at least 85% of its market value at the date of resale.

AR 249/98 Sched.;157/2006

Schedule 2

Definitions

1 In this Schedule,

- (a) “debentures” includes debenture stock;
- (b) “improved real estate” means an estate in fee simple in land
 - (i) on which there exists a building, structure or other improvement used or capable of being used for residential, commercial or industrial purposes,
 - (ii) on which there is being erected such a building, structure or other improvement,
 - (iii) which is serviced with the utilities necessary for such a building, structure or other improvement, but only when the land is being mortgaged for the purpose of erecting the building, structure or other improvement, or
 - (iv) which is being used for agricultural purposes,

but does not include an estate in fee simple in mines or minerals held separately from the surface;

- (c) “loan corporation” means a loan corporation registered under the *Loan and Trust Corporations Act*;
- (d) “municipal corporation” means
 - (i) a municipal authority as defined in the *Municipal Government Act*, and
 - (ii) a municipality or municipal authority created by legislation similar to the *Municipal Government Act* in another province or territory;
- (e) “securities” includes stocks, debentures, bonds, shares and guaranteed investment certificates or receipts;
- (f) “trust corporation” means a trust corporation registered under the *Loan and Trust Corporations Act*.

Application

2 This Schedule applies for the purposes of investment by an authorized trustee of

- (a) perpetual care funds, pursuant to section 36(1) of the Act, and
- (b) money held in trust by a seller as set out in section 44 of the Act, pursuant to section 45(4)(b) of the Act.

Authorized trustee investments

3 An authorized trustee may invest any trust money in the authorized trustee’s hands, if the investment is in all other respects reasonable and proper, in any of the following:

- (a) securities of the Government of Canada, the government of any province or territory of Canada, any municipal corporation in any province or territory of Canada, the Government of the United Kingdom or the Government of the United States of America;
- (b) securities the payment of the principal and interest of which is guaranteed by the Government of Canada, the government of a province or territory of Canada, a municipal corporation in any province or territory of Canada, the Government of the United Kingdom or the Government of the United States of America;
- (c) debentures issued by a school division, drainage district, hospital district or health region under the *Regional Health Authorities Act* in Alberta that are secured by or payable out of rates or taxes;

- (d) bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada or the government of a province or territory of Canada has agreed to make, if the payments are sufficient
 - (i) to meet the interest on all the bonds, debentures or other evidences of indebtedness outstanding as it falls due, and
 - (ii) to meet the principal amount of all the bonds, debentures or other evidences of indebtedness on maturity;
- (e) bonds, debentures or other evidences of indebtedness
 - (i) of a corporation incorporated under the laws of Canada or of a province or territory of Canada that has earned and paid
 - (A) a dividend in each of the 5 years immediately preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or
 - (B) a dividend in each year of a period of 5 years ended less than one year before the date of investment on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid,
 - and
 - (ii) that are fully secured by a first mortgage, charge or hypothec to a trustee on any, or on any combination, of the following assets:
 - (A) improved real estate;
 - (B) the plant or equipment of a corporation that is used in the transaction of its business;
 - (C) bonds, debentures or other evidences of indebtedness or shares of a class or classes authorized by this section;
- (f) bonds, debentures or other evidences of indebtedness issued by a corporation incorporated in Canada if at the date of the investment or loan the preferred shares or

common shares of that corporation are authorized investments under clause (i) or (j);

- (g) guaranteed investment certificates or receipts of a trust corporation;
- (h) bonds, debentures, notes or deposit receipts of a loan corporation, trust corporation or credit union;
- (i) preferred shares of any corporation incorporated under the laws of Canada or of a province or territory of Canada that has earned and paid
 - (i) a dividend in each of the 5 years immediately preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or
 - (ii) a dividend in each year of a period of 5 years ended less than one year before the date of investment on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;
- (j) fully paid common shares of a corporation incorporated in Canada or the United States of America that during a period of 5 years that ended less than one year before the date of investment has either
 - (i) paid a dividend in each of those years on its common shares, or
 - (ii) had earnings in each of those years available for the payment of a dividend on its common shares, of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends, as the case may be;
- (k) notes or deposit receipts of banks;
- (l) securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development, approved by the *Bretton Woods and Related Agreements Act* (Canada), but only if the bonds, debentures or other securities are payable in the currency of Canada, the United Kingdom, any member of the British Commonwealth or the United States of America;

- (m) securities issued or guaranteed by Inter-American Development Bank or by Asian Development Bank, but only if the bonds, debentures or other securities are payable in the currency of Canada or the United States of America;
- (n) first mortgages, charges or hypothecs on improved real estate in Canada, but only if
 - (i) the loan does not exceed 75% of the value of the property at the time of the loan as established by a report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, or
 - (ii) the loan is an insured loan under the *National Housing Act, 1954* (Canada) SC 1953-54 c23.

Restrictions on investments

- 4(1)** In determining market values of securities an authorized trustee may rely on published market quotations of a recognized stock exchange in Canada or the United States of America.
- (2)** No corporation that is an authorized trustee shall invest trust money in its own securities or lend money on the security of its own securities.
- (3)** In the case of an investment under section 3(e), the inclusion, as additional security under the mortgages, charges or hypothecs, of any other assets not of a class authorized by this Schedule as investments does not render the bonds, debentures or other evidences of indebtedness ineligible as an investment.
- (4)** No investment may be made under section 3(e), (h) or (i) that would at the time of making the investment cause the aggregate market value of the investments made under those clauses to exceed 35% of the market value at that time of the whole trust estate.
- (5)** Investments made by the testator or settlor and retained by the authorized trustee under the authority of the trust instrument that come within any of the classes authorized by section 3(e), (h) or (i) may, notwithstanding subsection (4), be retained by the authorized trustee under the authority of the trust instrument.
- (6)** No sale or other liquidation of any investment made under section 3(e), (h) or (i) is required solely because of any change in the ratio between the market value of those investments and the market value of the whole trust estate.

(7) In the case of an investment under section 3(i) or (j), not more than 30% of the total issue of shares of any corporation may be purchased for any trust.

(8) No investment shall be made under section 3(j) that, at the time of making the investment, would cause the aggregate market value of the common shares held for any particular trust fund to exceed 15% of the market value of that trust fund at that time.

(9) No sale or other liquidation of common shares is required under this section solely because of any change in the ratio between the market value of those shares and the market value of the whole trust fund.

Court approved trustee investments

5 In addition to the investments authorized by section 3 or by the trust instrument (except when that instrument expressly prohibits the investment), an authorized trustee may invest funds in any other securities that the Court of Queen's Bench on application in any particular case approves as fit and proper, but nothing in this section relieves the authorized trustee of the trustee's duty to take reasonable and proper care with respect to the investments so authorized.

Deposit of trust funds

6 An authorized trustee may, pending the investment of any trust money, deposit it for a time that is reasonable in the circumstances

- (a) in any bank or treasury branch,
- (b) in any trust corporation,
- (c) in any credit union, or
- (d) in any loan corporation.

Registration of securities

7(1) Except in the case of a security that cannot be registered, an authorized trustee who invests in securities shall require the securities to be registered in the authorized trustee's name as the trustee for the particular trust for which the securities are held, and the securities may be transferred only on the books of the corporation in the authorized trustee's name as trustee for that trust estate.

(2) This section does not apply when the authorized trustee is a trust corporation.

Statutory powers of authorized trustee

8(1) The powers conferred by this Schedule relating to trustee investments are in addition to the powers conferred by the instrument, if any, creating the trust.

(2) Nothing in this Schedule relating to trustee investments authorizes an authorized trustee to do anything that the authorized trustee is in express terms forbidden to do or to omit to do anything that the authorized trustee is in express terms directed to do by the instrument creating the trust.

Variation of investments

9(1) An authorized trustee in the trustee's discretion may

- (a) call in any trust funds invested in securities other than those authorized by this Schedule and invest the funds in securities authorized by this Schedule, and
- (b) vary any investments authorized by this Schedule.

(2) No authorized trustee is liable for a breach of trust by reason only of the authorized trustee's continuing to hold an investment that since its acquisition by the authorized trustee has ceased to be one authorized by the instrument of trust or by this Schedule.

(3) When an authorized trustee has improperly advanced trust money on a mortgage that would at the time of the investment have been a proper investment in all respects for a lesser sum than was actually advanced, the security is deemed to be an authorized investment for that lesser sum and the authorized trustee is liable to make good only the amount advanced in excess of the lesser amount with interest.

Concurrence by authorized trustee in corporate schemes

10(1) When an authorized trustee holds securities of a corporation in which the authorized trustee has properly invested money under this Schedule, the authorized trustee may concur in any compromise, scheme or arrangement

- (a) for the reconstruction of the corporation or for the winding-up or sale or distribution of its assets,
- (b) for the sale of all or any part of the property and undertaking of the corporation to another corporation,
- (c) for the amalgamation of the corporation with another corporation,
- (d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them, or

- (e) whereby
 - (i) all or a majority of the shares, stock, bonds, debentures and other securities of the corporation, or of any class of them, are to be exchanged for shares, stock, bonds, debentures or other securities of another corporation, and
 - (ii) the authorized trustee is to accept the shares, stock, bonds, debentures or other securities of the other corporation allotted to the trustee pursuant to the compromise, scheme or arrangement,

in like manner as if the authorized trustee were entitled to the securities beneficially and may, if the securities are in all other respects reasonable and proper investments, accept any securities of any denomination or description of the reconstructed or purchasing or new corporation instead of or in exchange for all or any of the original securities.

(2) An authorized trustee is not responsible for any loss occasioned by any act or thing done in good faith under subsection (1) and the authorized trustee may, if the securities accepted under subsection (1) are in all other respects reasonable and proper investments, retain them for any period for which the authorized trustee could have properly retained the original securities.

Subscription for securities

11(1) If any conditional or preferential right to subscribe for any securities in any company is offered to an authorized trustee in respect of any holding in the company, the authorized trustee may, as to all or any of the securities,

- (a) exercise that right and apply capital money subject to the trust in payment of the consideration, or renounce the right, or
- (b) assign for the best consideration that can be reasonably obtained the benefit of that right, or the title to it, to any person, including any beneficiary under the trust,

without being responsible for any loss occasioned by any act or thing so done by the trustee in good faith.

(2) Notwithstanding subsection (1), the consideration for any such assignment shall be held as capital money of the trust.

(3) The powers conferred by this section may be exercised only with the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

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