

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 75

CEMETERIES AND FUNERAL TRUSTS

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Historical note: Chapter 16-75, Hawaii Administrative Rules, is based substantially upon Title VII, Chapter 22, Cemetery, of the rules of the Board of Cemetery, Department of Regulatory Agencies. [Eff 10/14/69; am 5/26/70; am 11/26/72; am 7/8/76; R 11/19/87]

SUBCHAPTER 1

GENERAL PROVISIONS

§16-75-1 Objective. This chapter is intended to clarify and implement chapter 441, Hawaii Revised Statutes, in order that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §26-9) (Imp: HRS §441-19)

§16-75-2 Definitions. Definitions of terms found in section 441-1, HRS, shall be adopted by reference. In addition, the following definitions shall be included:

"Board" means the designated board of trustees of the trust fund.

"Commingling" means to mingle or mix, such as deposit of client's funds in the licensee's corporation or personal account or with other trust accounts.

"Financial integrity" means the financial soundness or financial responsibility of a cemetery or pre-need funeral authority to engage in business as a cemetery and pre-need funeral authority.

"Provider" means the person obligated to provide the pre-need funeral or interment services and merchandise described in a pre-need contract.

"Trust fund" means the perpetual care and pre-need trust.

"Year" means calendar or fiscal years, whichever is applicable to the closing of the licensee's books. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-19)

§16-75-3 Notification and filing of names, addresses, and changes. (a) Any person holding a license shall file with the director the name and address of the business, and in the case of a partnership, corporation, or association, the names and addresses of the partners, officers, and directors, as the case may be, and shall notify the director in writing of any changes of the names and addresses as the case may be, not later than thirty days of the changes.

(b) A licensee who has a board as trustee of the trust fund shall cause the board to file with the director the name, address, and principal place of employment of each board member and the office held on the board by the member. The licensee shall notify the director in writing of any change of the members or composition of the board, as the case may be, not later than thirty days of the change.

(c) A licensee who has a trust company or bank as trustee of the trust fund shall cause the trust company or bank to file with the director the name and

address of the trust company or bank and the name and title of the trust officer who is the fiduciary agent directly responsible for asset management and safekeeping of the trust fund. The licensee shall notify the director in writing of any change in trust officer not later than thirty days of the change.

(d) The licensee shall file a copy of any amendments thereto of the declaration of the trust not later than thirty days of the amendments. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-19, 441-37)

§16-75-4 Renewal of license. Biennial renewal fees paid by mail shall be considered paid when due if the envelope bears a postmark of December 31 or earlier of each odd-numbered year. In addition to the renewal fees, each licensee shall submit, on a form prepared by the director, a report of the activities of the trust fund for the current year. [Eff 11/19/87; comp 1/21/92] (Auth: §441-19) (Imp: §§441-19, 441-24, 441-31)

§16-75-5 Bond. (a) Each applicant and licensee, as the case may be, shall provide a bond by a surety authorized by a certificate of authority granted by the state insurance commissioner to do business in the State.

(b) Where a bond cannot reasonably be secured, the director may pursuant to the authority provided in section 441-19 (9), HRS, provide for an alternative form of security so long as the alternative security is no less than that provided by the bond. Alternative forms of security may include, but not be limited to:

- (1) Certificate of deposit from a federally insured institution in the amount equal to the bond required; or
- (2) Cashier's check from a federally insured institution in the amount equal to the bond required; or
- (3) An irrevocable letter of credit in a form approved by the director drawn upon a bank or savings and loan association in the amount of the bond required.

(c) Any alternative security approved by the director for substitution of the bond shall be in the name of the director or in the case of a letter of credit shall designate the director as beneficiary for the benefit of any eligible person sustaining damage resulting from a failure on the part of the licensee or trustee to faithfully, promptly, and truly account and pay to the person sums that may be properly due from the licensee or trustee.

(d) The director shall retain possession of the security as described in subsection (b)(1), (2), and (3) under such terms and conditions as the director shall determine are necessary to carry out the purposes of protecting the public. In the

event the alternative security earns interest while in the possession of the director, the interest shall belong to the licensee or trustee. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §§441-19) (Imp: HRS §§441-19(9), 441-22.

§16-75-6 Office. Each licensee shall be required to maintain an office in the State and designate a person to be responsible for the daily operation of the office. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-19)

§16-75-7 Trustee. (a) The bank designated by the licensee as trustee of the trust fund shall be a federally insured bank regulated by federal or state authorities. Where the bank designated as trustee is not located in this State, the licensee shall disclose in all written contracts the name of the bank, the state it is located in, and its status with regard to state and federal insurance.

(b) The trust company designated by the licensee as trustee of the trust fund shall be a state chartered trust company.

(c) The board designated by the licensee as trustee of the trust fund shall be comprised of members, a majority of whom are residents of the State. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-19, 441-37)

§16-75-8 Doing business as. (a) A licensee shall not solicit business using a name other than the name appearing on the licensee's license.

(b) A licensee shall notify the director of any name change within fifteen days of the change. A fee shall be paid by the licensee for reissuance of a license when there has been a change of the licensee's name. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-20, 441-31)

SUBCHAPTER 2

APPLICATIONS

§16-75-12 Forms and instructions. An application filed with the director shall be prepared in accordance with and contain the information called for in the application form provided, and exhibits which may be required by the director with respect to the filing. The following forms are currently in use by the director:

- (1) Application for cemetery authority license;

- (2) Application for pre-need funeral authority license;
- (3) Cemetery authority bond;
- (4) Pre-need funeral authority bond;
- (5) Board of trustees bond;
- (6) Application for reinstatement of a suspended license; and
- (7) Tri-party agreement for substitute security. The forms may be modified from time to time as required. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-22, 441-29, 441-37)

§16-75-13 Application for pre-need funeral authority and cemetery license.

(a) An application for a pre-need funeral authority or cemetery license shall be accompanied by the required application fee which shall not be refunded.

(b) At the time of filing the application the applicant shall submit the exhibits as specified in section 16-75-22 (a). The exhibits specified in 16-75-22 (b) shall be required prior to licensure. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-19)

§16-75-14 License. An applicant approved for licensure shall submit the license fee which shall not be refunded. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-31)

§16-75-15 Reinstatement of suspended license. To reinstate a license suspended for failing, refusing, or neglecting to maintain the bond required by sections 441-22 and 441-37, HRS, the licensee, within sixty days from the date the license is suspended, shall file an application for reinstatement and pay the required fee. Failure to reinstate the license within the time prescribed shall cause the license to be terminated. In order to receive a new license an application shall be filed in accordance with section 16-75-13 and accompanied by the required application and license fees. A licensee, within fifteen days after receipt of the notification of the license termination, may request an administrative hearing to review the termination pursuant to chapter 91, HRS. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-22, 441-37)

§16-75-16 Denials. In the event the director proposes to refuse an application for the issuance of a license or for renewal of a license, the director shall notify the applicant by letter of the director's proposed action which shall

include a concise statement of the reasons therefor and a statement informing the applicant of the right to a notice and a hearing. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-23, 441-34)

§16-75-17 Hearing. Any person whose application for a license or renewal of a license is proposed to be denied by the director, may exercise the right to notice and a hearing pursuant to chapter 16-201, administrative practice and procedure, provided that a demand for hearing is filed with the director within sixty days of the date of the letter informing the applicant of the proposed denial of the application. If no demand for a hearing is filed within sixty days of the date of the letter, the director's proposed action shall become final. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-34)

§16-75-18 License not transferable. No license issued under chapter 441, HRS, shall be transferred, assigned, or loaned. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-19)

SUBCHAPTER 3

VALIDATION REQUIREMENTS

§16-75-22 Exhibits. (a) With every application for licensure an applicant shall submit the following:

- (1) A current credit report covering not less than the previous five years on the individual applicant, on each partner of a partnership, on each officer of a corporate entity;
- (2) A current financial statement prepared and signed by a licensed certified public accountant or public accountant on a form prescribed by the director; and
- (3) A state tax clearance from the department of taxation.

(b) In addition to the requirements in subsection (a) the following shall be submitted by the applicant prior to licensure:

- (1) A statement indicating who will be the trustee for the trust fund. If a board shall be appointed as trustee the name, address, and principal place of employment of each board member and the office to be held by the member shall be disclosed. If a trust company or bank shall be appointed as trustee the name and

- address of the trust company and the name and title of the trust officer who is to be the fiduciary agent shall be disclosed;
- (2) An executed copy of the declaration of the trust between the applicant and the designated trustee of the trust fund and any amendments thereto;
 - (3) A copy of the sales contract forms to be used by the applicant in the selling of pre-need services and cemetery property;
 - (4) A list of the providers obligated to provide the pre-need funeral or interment services and merchandise described in a pre-need contract;
 - (5) In the case of an applicant who is:
 - (A) A corporation organized and existing under laws of the State, a filed stamped copy of the articles of incorporation and affidavit of officers as filed with the business registration division of the department; or
 - (B) An association organized and existing under laws of the State, a copy of the by-laws of the association and names of the directors and officers; and
 - (6) In the case of an applicant who has:
 - (A) Established a trust account with a bank or trust company, a bond in the penal sum of \$50,000 with the applicant designated as principal; or
 - (B) Appointed a board as trustee of the trust fund, a bond in the penal sum of \$50,000 with the applicant designated as principal; a bond in the penal sum of \$100,000 with the board designated as principal; and an affidavit by the chairman of the board attesting that no member of the board is affiliated with the applicant who is seeking licensure. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-21, 441-22, 441-37)

SUBCHAPTER 4

RECORDS

§16-75-26 Keeping of books; accounts; records. (a) A licensee shall maintain separate accounting records of its pre-need sales and perpetual care sales, including contracts sold, payments received, trust deposits, requests for trust withdrawals, and payments to providers. Records shall be separate from the licensee's other accounting records.

(b) A trustee shall maintain within the State, all books, account records, cash ledgers, and evidence of investments relating to the trust fund. The accounts shall include a record of trust deposits, trust withdrawals, principal, income, and investment. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-19, 441-24)

§16-75-27 Contract forms; content; filing. The contract forms used by a licensee for the selling of pre-need services and cemetery property shall not contain misleading or deceptive information, or be used in connection with solicitation by false, misleading or deceptive advertising or sales practices. No licensee shall use a contract form without first filing the contract with the director. [Eff 11/19/87; comp 1/21/92] (Auth: §441-19) (Imp: §441-32.5)

SUBCHAPTER 5

REPORTS

§16-75-31 Audited financial statement. (a) A licensee selling pre-need services or holding money in trust for pre-need funeral services shall file with the director an audited financial statement which shall include the following special areas of concern:

- (1) The amount collected for the year pursuant to pre-need arrangement contracts or plans or any agreements collateral thereto; and
- (2) An accounting of the principal deposits and additions to principal for the year to include an analysis of the time frame within which deposits are made to principal after receipt by the licensee; and
- (3) An accounting of any withdrawal from the principal for the year, itemized as to the nature of the expenditures; and
- (4) The total amount of principal and income held at the end of the year; and
- (5) A statement showing separately the total amount of the trust fund invested in each of the investments authorized by this chapter and the amount of cash principal on hand not invested.

(b) A licensee operating a cemetery or a cemetery holding perpetual care funds shall file with the director an audited financial statement which shall include the following special areas of concern:

- (1) The amount collected for the year as payment for perpetual care; and

- (2) Accounting of the principal deposits and additions to principal for the year, including an analysis of the time frame within which deposits are made to principal after receipt of final payment by the licensee; and
 - (3) A statement concerning whether separate accounts are maintained, reflecting the principal amount, the income apportioned for the year, the cost of care charged for the year, and the excess of income credited to the trust account to be used in any future years; and
 - (4) A statement showing separately the total amount of the perpetual care funds invested in each of the investments authorized by this chapter, and the amount of cash on hand not invested; and
 - (5) A statement of the general operations of the cemetery, including current maintenance, reflecting income and expense or receipts and disbursements. The principal sources of revenue and expense are to be detailed. The statement shall also include a summary of payroll costs indicating by classification cemetery labor, office, administrative and supervisory, and officers and trustees salaries.
- (c) The audited financial statement described in subsections (a) and (b) shall be prepared by a certified public accountant or a public accountant licensed in this State, and each report shall contain a certificate prepared and signed by the accountant regarding the financial statements given or made in each report and each statement shall fully and accurately report the position and financial condition of the trust fund.
- (d) Whenever a licensee fails to file an audited financial statement, the director may cause an audit of the funds to be made, the cost of which shall be borne by the licensee. If any licensee refuses to pay the expense for the audit within fifteen days of the completion thereof it shall be cause for disciplinary action against the licensee pursuant to chapter 91, HRS. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §§441-19, 441-20.5) (Imp: HRS §§441-24.5, 441-20.5, 441-23)

§16-75-32 Actuarial report. (a) The actuarial report submitted by the licensee to the director shall, at a minimum include the following information:

- (1) The actual assets of the fund at the end of the year;
- (2) A statement of the fund's deposits, income, and disbursements for the year;
- (3) The liabilities of the fund and the actuarial assumptions used to calculate those liabilities in sufficient detail to allow the reasonableness of the assumptions to be examined;

- (4) The actuary's conclusion as to whether the fund has a deficit or surplus;
 - (5) If the fund has a deficit, the actuary's recommendation as to what steps are necessary to eliminate the deficit; and
 - (6) The actuary's background including years in practice and any professional designations which have been received.
- (b) If a deficit exists, the report shall be accompanied by a proposal from the licensee to eliminate the deficit.
- (c) The actuarial report described in subsection (a) shall be prepared by an actuary who at a minimum has passed the first five examinations administered by the Society of Actuaries and has earned the designation of Associate of the Society of Actuaries (A.S.A.). [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.6)

§16-75-33 Certificate of insurance. A licensee who has a board as trustee of the trust fund shall obtain insurance in accordance with section 441-41 (b)(2), HRS, if the institution where the trust fund is held does not federally insure the full amount of the fund. A certificate of insurance from an insurance company or agency, showing full policy coverage of the licensee for the amount of the fund held in trust shall be submitted within one year from the date of original licensure and with every biennial renewal period of the license. The insurance policy shall provide that the insurer will give written notice of cancellation or termination to the director sixty days before the effective date of the cancellation or termination of the insurance. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-41)

§16-75-34 Application for extension of time for filing reports. (a) When a written application is made for an extension of time within which to make and file any periodic report required by the director or to otherwise comply with any statutory requirement or order by the director, the petition for an extension of time shall be filed before the expiration of the period described, shall be sworn to before a notary public, and shall set forth in detail:

- (1) What efforts have been made by the licensee to prepare the report or to comply with the statute or order specified;
- (2) Facts showing why the report could not be made and filed or the statute or order complied with within the time prescribed;
- (3) Other facts which justify an extension of time; and
- (4) The further period of time necessarily required within which to make and file the report or to comply with the statute or order.

(b) The petition for an extension of time to file a report shall be available for public inspection by any person requesting review of the licensee's reports in accordance with section 441-24.7, HRS. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-19)

§16-75-35 Application for deferral of filing reports. (a) Consideration may be given by the director to defer the filing of a periodic report; provided the written application for deferral is filed by a licensee who demonstrates proof that one or more of the following conditions exists:

- (1) The licensee has sold eighty per cent of the cemetery property available where the property shall not be developed further;
- (2) The amount of gross income for the licensee for the year is less than \$15,000;
- (3) The number of sales by the licensee for the year totaled not more than ten;
- (4) The cost for the licensee to do the periodic report would exceed twenty per cent of the income from the trust; or
- (5) The audited financial statement of the trust filed in accordance with section 441-24.5, HRS, shows that the assets of the trust exceed ten per cent of the liabilities of the trust.

(b) A written application for deferral in filing a periodic report shall be filed with the director before the expiration of the period described, shall be notarized, and shall set forth in detail:

- (1) The report for which application is made for deferral;
- (2) Facts which support the licensee's claim to meeting one or more of the conditions specified in subsection (a);
- (3) A proposal by the licensee of an alternative report which could be submitted that would provide similar information as would be contained in the report requesting to be deferred; and
- (4) The date which the alternative report shall be submitted.

(c) The director shall have the right to approve or disapprove the application for deferral, to approve the alternative report proposed by the licensee, or require that the licensee submit other information to the satisfaction of the director. Any report submitted in lieu of the required periodic report, at a minimum, shall disclose the current financial condition of the trust fund.

(d) The application for deferral of filing a periodic report shall be available for public inspection by any person requesting review of the licensee's reports in accordance with section 441-24.7, HRS. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-19)

SUBCHAPTER 6

TRUST ADMINISTRATION

§16-75-39 Deposits to the trust account. A trustee shall accept all payments transferred to it from the licensee, shall immediately deposit the payments into trust, and shall hold, administer, and distribute the money in trust in accordance with chapter 441, HRS, and this chapter. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-38, 441-40)

§16-75-40 Withdrawals from the trust account; principal. (a) The trustee of the pre-need trust account shall permit withdrawal of principal only under the following circumstances and conditions:

- (1) If the licensee files a certified statement with the trustee that the pre-need merchandise and services covered by a pre-need contract have been furnished and delivered in accordance therewith; or
 - (2) If the licensee files a verified statement that a specified pre-need contract has been cancelled in accordance with its terms.
- (b) The trustee of the perpetual care trust account shall not permit nor withdraw money from the principal and shall keep the principal forever irreducible and inviolable. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-39, 441-40)

§16-75-41 Use or withdrawal of income or net capital gains from the trust account. (a) The trustee of the pre-need trust account shall permit withdrawal by the licensee of the income from the trust, or any net capital gains subject to the limitations described below:

- (1) If the price of a pre-need funeral or interment services is fixed in a pre-need contract, no withdrawal of income or net capital gains can be made if the aggregate market value of the trust falls below five per cent of the principal amount then held in trust; or
- (2) If the price of a pre-need funeral or interment services is to be determined at need, no withdrawal of income or net capital gains can be made if the withdrawal would reduce the market value of the trust fund below an amount equal to the sum of:
 - (A) All payments made under all contracts; plus
 - (B) Interest on the payments at a commercially reasonable rate.

The trustee shall arrange for the income or any net capital gains to be applied to the principal of the trust when it finds the conditions described in

paragraph (1) or (2) are present and shall continue to apply the income or any net capital gains to the principal until withdrawals of income or any net capital gains can be permitted by the licensee without limitations.

(b) Subject to the limitations specified in subsection (a) hereinabove, the trustee of the pre-need trust account shall permit the withdrawal by the licensee of any remaining surplus income, or any net capital gains from investments, under the following limitations.

- (1) The trustee shall establish a reserve from which principal losses may be replaced by setting aside a reasonable percentage of surplus income, if any, or net capital gains from any investments; and
- (2) The audited financial statements filed by licensee in accordance with section 441-24.5, HRS, and the actuarial reports filed by the licensee in accordance with section 441-24.6, HRS, for the fiscal or calendar year preceeding such withdrawal indicates that the funds deposited in the pre-need trust are sufficient to cover the claims of the pre-need trust participants.

For the purposes of this chapter, "net capital gains" means the amount by which the cumulative capital gains since the establishment of the pre-need trust account exceeds the sum of cumulative capital losses since the establishment of the account.

(c) The trustee of the perpetual care trust account shall permit withdrawal by the licensee of the income from the trust for the sole purpose of ordinary and necessary expenses of the care, maintenance, and embellishment of the cemetery. [Eff 11/19/87; am and comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §§441-39, 441-40)

§16-75-42 Eligible investments; scope. (a) The trust company or bank designated as trustee shall invest in and shall hold as assets only allowable investments as provided in section 441-41(a), HRS. A board designated as trustee shall invest in and shall hold as assets only allowable investments as provided in section 16-75-43.

(b) No security or other investment shall be eligible for purchase or acquisition under section 16-75-43, unless it is interest bearing or interest accruing or dividend or income paying. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-41)

§16-75-43 Investment of trust funds allowable by a board of trustees. (a) In addition to the investments permitted by section 441-41(b), HRS, a board of trustees may invest and re-invest the trust funds in the following enumerated securities; provided that the investment standards of section 441-41, HRS, are met:

- (1) Deposits in a bank which is insured by the Federal Deposit Insurance Corporation (FDIC);
- (2) Deposits in a savings and loan association which is insured by the Federal Savings and Loan Insurance Corporation (FSLIC);
- (3) Certificates of deposits or other interest-bearing accounts in any bank in this State insured by the FDIC or any savings and loan association in this State insured by the FSLIC;
- (4) Investment certificates or shares in any state or federally chartered savings and loan association which is federally insured;
- (5) Interest-bearing bonds of the United States or any agency thereof, or of this State, or of any County in this State of which the faith of the United States, State, or County, as the case may be, is pledged; and
- (6) Stocks as provided in section 441-41(b)(3), HRS.

(b) Trust funds invested in the above enumerated securities shall be insured on a cash basis by the institution or agency for the full amount of the funds. If the institution or agency insures a portion of the fund, the perpetual care and pre-need authority shall acquire additional insurance in the amount equal to or in excess of the funds held by the institution or agency. The insurance shall be in full force and effect and shall not lapse or be reduced below the full amount of the funds. The license of the cemetery and pre-need authority shall be subject to the same actions as provided in section 441-41(b)(2), HRS, for failure, refusal, or neglect to maintain in full force and effect the insurance as required by this section. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-41)

§16-75-44 Prohibited investments. (a) Trust funds shall not be used in any way, directly or indirectly, as prohibited in this section.

(b) In the case of trust funds where a board is appointed as trustee, the trustee shall not make any loan or loans to any officer or director of the cemetery and pre-need funeral authority, or to any of its officers, directors, agents, or employees, or to any trustee of the trust, or to any company, firm, copartnership, association, or individual, either directly or indirectly.

(c) In the case of trust funds where a bank or trust company is appointed as trustee, the trustee may be permitted to make a loan or loans to an officer, director, agent, or employee of the cemetery and pre-need funeral authority, or to a company, firm, copartnership, association, or individual upon the written application of the person, company, firm, copartnership, association, or individual, stating the line of credit applied for, terms and security offered therefor to the trust fund, and then only with the written approval of the trustee of the trust

fund before the loan is made, and the approval of the loan as allowed by the trustee of the trust fund shall be made a part of the financial records of the cemetery and pre-need funeral authority to be disclosed in the annual audit. Loans may be made to any officer, director, agent, or employee of the cemetery or pre-need funeral authority without application and approval:

- (1) In any amounts where the loans are secured by bonds of the State, or bonds or notes of the United States, or certificated of indebtedness of the United States, where the amount of the collateral is equal to at least one hundred five per cent of the amount of such loan; and
- (2) In amounts, excluding loans secured, as provided in paragraph (1), not in excess of \$5,000 in aggregate principal owing by any individual at any one time.

Any cemetery or pre-need funeral authority, or trustee who knowingly permits the funds of the trust fund to be loaned in a dishonest manner or contrary to this section shall be in violation of chapter 441, HRS, and this chapter.

(d) No trust funds shall be used in any way by the cemetery or pre-need funeral authority, or any director, officer, agent, or employee of any cemetery or pre-need funeral authority, or trustee as collateral for other security.

(e) No trust funds or monies intended for the trust fund shall be commingled with the funds of any person, firm, company, copartnership, association, or corporation. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-19)

SUBCHAPTER 7

PUBLIC REVIEW OF RECORDS

§16-75-49 Location of records. The following types of records shall be available for public review at the department's office of the cemetery and mortuary program:

- (1) Trust agreement filed by the licensee; and
- (2) Audited financial statement filed by the licensee; and
- (3) Actuarial report filed by the licensee.
[Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.7)

§16-75-50 Hours of inspection. Requests for records may be made and records may be reviewed during regular working hours on each business day the

office is open to the public. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.7)

§16-75-51 To whom and where request made. The request for a particular record shall be made to the designee of the office in which the record is located who shall be the records access officer for the office. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.7)

§16-75-52 Form of request and identification. Where original or official records are requested to be reviewed, the name and address, together with appropriate proof of identity shall be requested of the applicant. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.7)

§16-75-53 Number of records permitted. It shall be discretionary with the director or the records access officer as to the number of records an applicant may request and receive for review at any one time. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.7)

§16-75-54 Use of pens prohibited. The use of pens shall be prohibited when reviewing records. No marks of any kind shall be made on any record provided. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.7)

§16-75-55 No opinion to be rendered. No opinion or similar statement shall be offered or rendered by the records access officer or employee of the office with reference to the interpretation of the records. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.7)

§16-75-56 Temporary unavailability of records. Where a record is in use, or has not been filed by a licensee pursuant to section 16-75-34 or section 16-75-35, the applicant shall be so notified and shall be afforded the opportunity to review the record once it is returned, or to review the written application and any alternative report filed by the licensee with respect to compliance with section 16-75-34 or section 16-75-35. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §441-19) (Imp: HRS §441-24.7)

SUBCHAPTER 8

PRACTICE AND PROCEDURE

§16-75-60 Administrative practice and procedure. The rules of practice and procedure for cemetery and pre-need funeral authorities shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §§91-2, 441-19) (Imp: HRS §§91-2, 441-19)

SUBCHAPTER 9

PENALTY

§16-75-64 Penalty. In addition to the penalties otherwise provided by law, any licensee who violates, or fails to comply with any of the provisions of this chapter shall be subject to:

- (1) A fine of not more than \$1000 for each violation;
- (2) Surrender of license;
- (3) Revocation of license;
- (4) Suspension of the right to use the license;
- (5) Refusal of right of licensee to use the license;
- (6) Refuse to renew any license; and
- (7) Any of the penalties enumerated in chapter 441, HRS. [Eff 11/19/87; comp 1/21/92] (Auth: HRS §§91-2, 441-23, 441-45, 441-46) (Imp: HRS §§91-2, 441-23, 441-45)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments to and compilation of chapter 16-75, Hawaii Administrative Rules on the Summary page dated December 31, 1991, were adopted on December 31, 1991, following a public hearing held on November 8, 1991, after public notices were given in the Garden Island, Maui News, West Hawaii Today, Hawaii Tribune-Herald, and the Honolulu Star-Bulletin and Honolulu Advertiser on October 6, 1991.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Robert A. Alm

ROBERT A. ALM, Director
Department of Commerce and Consumer Affairs

APPROVED AS TO FORM: Date 12/31/91

/s/ David A. Webber

Deputy Attorney General

APPROVED: Date 1/10/92

/s/ John Waihee

JOHN WAIHEE
GOVERNOR
STATE OF HAWAII

1/10/92

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Amendments and Compilation of Chapter 16-75
Hawaii Administrative Rules

December 31, 1991

1. §16-75-41 is amended.
2. Chapter 75 is compiled.