

JAN 23 2009

A BILL FOR AN ACT

RELATING TO UNCLAIMED PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 441-22.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§441-22.5 Mortuary, cemetery, or pre-need funeral
4 authority; disclosure requirements. (a) No cemetery property,
5 interment services, funeral services, and related commodities
6 shall be sold unless the mortuary, cemetery, or pre-need funeral
7 authority first satisfies the requirements stated in section
8 441-22.6.

9 (b) Every cemetery or pre-need funeral authority shall be
10 required to provide to the purchaser of cemetery property, pre-
11 need interment, or pre-need funeral services and related
12 commodities a written contract which shall contain the following
13 disclosures:

14 (1) The names and addresses of the cemetery or pre-need
15 funeral authority, purchaser, and contract
16 beneficiary, if the beneficiary is someone other than
17 the purchaser[+], and the date of birth of the



1 purchaser or contract beneficiary if the beneficiary
2 is someone other than the purchaser;

3 (2) A clear and concise itemized statement of the
4 property, including, for cemetery property, the
5 location of the plot, crypt, or niche by its unique
6 identifier, and any services and related commodities
7 to be supplied or not supplied and by whom,
8 particularly if the authority is not to be the
9 provider under the terms of the contract;

10 (3) The purchase price of each item of property, services,
11 and related commodities to be supplied, the total
12 purchase price, and how the total purchase price is
13 payable, including any credit terms, if applicable;
14 provided that, pursuant to section 441-22.7,
15 disclosure shall also be made that further additional
16 charges or fees for perpetual care subsequent to the
17 execution of the contract are prohibited for any
18 purpose and on any occasion, except for reasonable
19 fees related to the administrative costs of
20 transferring ownership rights, including the cost of
21 research, document and file preparation, photocopying,
22 notary fees, records transfer and storage, and any



- 1 other costs directly related to the transfer of
2 ownership rights;
- 3 (4) Related costs covered under the contract;
- 4 (5) The basis on which funds are to be deposited in trust,
5 including:
- 6 (A) The name and address of the trustee; provided
7 that the disclosure shall not preclude the
8 cemetery or pre-need funeral authority from
9 changing the trustee named;
- 10 (B) The percentage of the contract price for
11 trustable items to be placed in trust; provided
12 that the percentage shall be no less than seventy
13 per cent;
- 14 (C) The percentage of the contract price for
15 trustable items that the cemetery or pre-need
16 funeral authority will retain and not deposit
17 into the trust; provided that the percentage
18 shall not be more than thirty per cent; and
- 19 (D) Where a portion of the contract price relates to
20 property, services, or related commodities that
21 are not trustable items, a clear description of
22 what those non-trustable items are;



1 (6) The refund, cancellation, and default provisions of
2 the contract, including an explanation of the
3 requirements of section 441-22.8, and a statement in
4 twelve-point bold type in substantially the following
5 form:

6 "YOU HAVE REFUND, CANCELLATION AND DEFAULT RIGHTS
7 UNDER STATE LAW AND UNDER THE CONTRACT. PLEASE READ
8 THE CONTRACT CAREFULLY FOR AN EXPLANATION OF THESE
9 RIGHTS";

10 (7) The date and place of execution of the contract;

11 (8) The cemetery or pre-need funeral authority's or its
12 duly authorized agent's signature on the contract and
13 the identification of this person by name and title;

14 (9) A statement that the written contract, when signed,
15 shall constitute the entire agreement between the
16 parties relative to its subject matter and that all
17 obligations of both parties shall be fixed and
18 enforceable by the other parties of the contract;

19 [and]

20 (10) A statement that the contract may not waive any rights
21 of the consumer or duties of the cemetery or pre-need
22 funeral authority under the law[-]; and



1 (11) A statement that cemetery property and moneys paid
2 toward preneed services shall be treated as abandoned
3 property for the purposes of chapter 523A if:

4 (A) The property or preneed services remain unused as
5 of the one hundred fifteenth birthdate of the
6 purchaser or the contract beneficiary, if the
7 beneficiary is someone other than the purchaser,
8 and;

9 (B) The cemetery or preneed funeral authority does
10 not receive a response within ninety days of a
11 written inquiry sent through certified or
12 registered mail to the last known address of the
13 purchaser or contract beneficiary, if the
14 beneficiary is someone other than the purchaser.

15 (c) No mortuary, cemetery, or pre-need funeral authority
16 shall charge a price for the cemetery property, interment, or
17 funeral services, whether it be at-need or pre-need, which is
18 greater than the price on the itemized price list or contract
19 which the purchaser had signed, unless the purchaser or the
20 purchaser's authorized representative requests an additional
21 item, the authority discloses the price for the additional item,
22 and the purchaser or its authorized representative approves the

1 price for the additional item. The mortuary, cemetery, or pre-
2 need funeral authority may charge the higher price for the
3 additional item but shall collect in payment only that sum which
4 is the difference between the higher price and the price listed
5 on the itemized price list or contract which the purchaser had
6 previously signed."

7 SECTION 2. Section 523A-3, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§523A-3[+] Presumptions of abandonment. (a) Property
10 is presumed abandoned if it is unclaimed by the apparent owner
11 during the time set forth below for the particular property:

- 12 (1) Traveler's check, fifteen years after issuance;
13 (2) Money order, seven years after issuance;
14 (3) Stock or other equity interest in a business
15 association or financial organization, including a
16 security entitlement under article 8 of the Uniform
17 Commercial Code - Investment Securities, five years
18 after the earlier of:

- 19 (A) The date of the most recent dividend, stock
20 split, or other distribution unclaimed by the
21 apparent owner; or



- 1 (B) The date of the second mailing of a statement of
2 account or other notification or communication
3 that was returned as undeliverable or after the
4 holder discontinued mailings, notifications, or
5 communications to the apparent owner;
- 6 (4) Debt of a business association or financial
7 organization, other than a bearer bond or an original
8 issue discount bond, five years after the date of the
9 most recent interest payment unclaimed by the apparent
10 owner;
- 11 (5) A demand, savings, or time deposit, including a
12 deposit that is automatically renewable, five years
13 after the earlier of maturity or the date of the last
14 indication by the owner of interest in the property;
15 provided that a deposit that is automatically
16 renewable is deemed matured for purposes of this
17 section upon its initial date of maturity, unless the
18 owner has consented to a renewal at or about the time
19 of the renewal and the consent is in writing or is
20 evidenced by a memorandum or other record on file with
21 the holder;



- 1 (6) Money or credits owed to a customer as a result of a
2 retail business transaction, five years after the
3 obligation accrued;
- 4 (7) Gift certificate not exempt under section 523A-3.5,
5 five years after December 31 of the year in which the
6 certificate was sold, but if redeemable in merchandise
7 only, the amount abandoned shall be deemed to be one
8 hundred per cent of the certificate's face value;
- 9 (8) Amount owed by an insurer on a life or endowment
10 insurance policy or an annuity that has matured or
11 terminated, five years after the obligation to pay
12 arose or, in the case of a policy or annuity payable
13 upon proof of death, three years after the insured has
14 attained, or would have attained if living, the
15 limiting age under the mortality table on which the
16 reserve is based;
- 17 (9) Property distributable by a business association or
18 financial organization in a course of dissolution, one
19 year after the property becomes distributable;
- 20 (10) Property received by a court as proceeds of a class
21 action, and not distributed pursuant to the judgment,
22 one year after the distribution date;



- 1 (11) Property held by a court, government, governmental
2 subdivision, agency, or instrumentality, one year
3 after the property becomes distributable;
- 4 (12) Wages or other compensation for personal services, one
5 year after the compensation becomes payable;
- 6 (13) Deposit or refund owed to a subscriber by a utility,
7 one year after the deposit or refund becomes payable;
- 8 (14) Property in an individual retirement account, defined
9 benefit plan, or other account or plan that is
10 qualified for tax deferral under the income tax laws
11 of the United States, three years after the earliest
12 of the date of the distribution or attempted
13 distribution of the property, the date of the required
14 distribution as stated in the plan or trust agreement
15 governing the plan, or the date, if determinable by
16 the holder, specified in the income tax laws of the
17 United States by which distribution of the property
18 shall begin to avoid a tax penalty; [~~and~~]
- 19 (15) Cemetery property, preneed funeral services, and
20 preneed internment services, ninety days after the one
21 hundred fifteenth birthdate of the purchaser or



1 contract beneficiary, if the beneficiary is someone
2 other than the purchaser; and

3 [~~(15)~~] (16) All other property, five years after the owner's
4 right to demand the property or after the obligation
5 to pay or distribute the property arises, whichever
6 first occurs.

7 (b) At the time that an interest is presumed abandoned
8 under subsection (a), any other property right accrued or
9 accruing to the owner as a result of the interest, and not
10 previously presumed abandoned, shall also be presumed abandoned.

11 (c) Property is unclaimed if, for the applicable period
12 set forth in subsection (a), the apparent owner has not
13 communicated in writing or by other means reflected in a
14 contemporaneous record prepared by or on behalf of the holder,
15 with the holder concerning the property or the account in which
16 the property is held, and has not otherwise indicated an
17 interest in the property. A communication with an owner by a
18 person other than the holder or [~~its~~] the holder's
19 representative [~~who has not in writing identified~~] and which
20 does not identify the property to the owner in writing shall not
21 be an indication of interest in the property by the owner.



1 (d) An indication of an owner's interest in property

2 includes:

3 (1) The presentment of a check or other instrument of
4 payment of a dividend or other distribution made with
5 respect to an account or underlying stock or other
6 interest in a business association or financial
7 organization or, in the case of a distribution made by
8 electronic or similar means, evidence that the
9 distribution has been received;

10 (2) Owner-directed activity in the account in which the
11 property is held, including a direction by the owner
12 to increase, decrease, or change the amount or type of
13 property held in the account;

14 (3) The making of a deposit to or withdrawal from a bank
15 account; and

16 (4) The payment of a premium with respect to a property
17 interest in an insurance policy; but the application
18 of an automatic premium loan provision or other
19 nonforfeiture provision contained in an insurance
20 policy shall not prevent a policy from maturing or
21 terminating if the insured has died or the insured or
22 the beneficiary of the policy has otherwise become



1 entitled to the proceeds before the depletion of the
 2 cash surrender value of a policy by the application of
 3 those provisions.

4 (e) Property shall be payable or distributable for
 5 purposes of this part notwithstanding the owner's failure to
 6 make demand or present an instrument or document otherwise
 7 required to obtain payment."

8 SECTION 3. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2009.

11

INTRODUCED BY: *[Signature]*
Erzanne Chun Cleveland

Randy H. Bell



Report Title:

Preneed Funeral Trusts; Unclaimed Property

Description:

Includes cemetery property, preneed funeral services, and preneed interment in definition of unclaimed property; requires notice. Creates presumption.

