

CHAPTER 441
CEMETERY AND FUNERAL TRUSTS

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Note

Chapter heading amended by L 1987, c 153, §2.

Cross References

Sunset evaluations modified, see §§26H-4 and 26H-5.

Disposition of a decedent's remains, control of, see chapter 531B.

Prehistoric and historic burial sites, see §6E-43.

State-owned cemeteries, see chapter 110.

" **§441-1 Definitions.** As used in this chapter:

"Cemetery" means any property, or part interest therein, dedicated to and used or intended to be used for the permanent interment of human remains. It may be a burial park with one or more plots, for earth interment; a mausoleum with one or more vaults or crypt interments; a structure or place with one or more niches, recesses, or other receptacles for the interment of cremated remains, or any combination of one or more thereof.

"Cemetery authority" means any person who undertakes to establish, maintain, manage, operate, improve, or conduct a cemetery to inter human remains; or offers perpetual care of the cemetery; or sells or holds money in trust for pre-need interment services, whether or not the person undertakes such activity for profit; provided that this shall not apply to the designated trustee of the funds.

"Cemetery property" means any property, or part or interest therein, dedicated to, used or intended to be used for, the permanent interment of human remains. It may be a plot or plots in a burial park for earth interment; a place or places in a mausoleum for vault or crypt interment; one or more niches, recesses, or other receptacles for the interment of cremated remains; or any combination of one or more thereof.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of the department of commerce and consumer affairs.

"Funeral services" means arranging for or providing for pick up of human remains, embalming, placing the same on display, or otherwise providing for final disposition of human remains.

"Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated for cemetery purposes.

"Mausoleum crypt" means a chamber or space in a structure or building of sufficient size, used or intended to be used, to entomb human remains.

"Mortuary authority" means any person who undertakes to furnish funeral services and related commodities.

"Niche" means a recess of space in a structure or plot of earth used or intended to be used for the permanent interment therein of the cremated remains of one or more deceased persons.

"Perpetual care" by whatever term denominated by a cemetery authority, including but not limited to endowment care, endowment fund care, and free maintenance, means keeping the sod in repair, keeping all places wherein interments have been made in proper order, caring for the trees and shrubs, and the general maintenance, care, preservation and embellishment of a cemetery, regularly and continually without limitation as to time.

"Perpetual care cemetery" means any cemetery or section of a cemetery, the plots, crypts, or niches of which are sold or disposed of, or are offered for sale or disposition, upon the representation that the plots, crypts, or niches will receive perpetual care.

"Perpetual care fund" means a fund separately maintained to provide for the perpetual care of a cemetery in conformity with this chapter.

"Person" means an individual, partnership, corporation, county, association, or any other group however organized.

"Plot" means a grave or space in a cemetery sold or otherwise disposed of to one or more persons, used or intended to be used, for the permanent interment therein of the remains of one or more deceased persons.

"Pre-need funeral authority" means any person who is engaged in the business of selling pre-need funeral services, or holds money in trust to provide for future funeral services; provided that this shall not apply to the designated trustee of the funds.

"Pre-need funeral service" means arranging for the pick up of human remains, embalming, placing the same on display, furnishing of funeral services and related commodities, including but not limited to caskets and urns, or otherwise providing for the final disposition of human remains, which services are to be rendered at some future date.

"Pre-need interment services" means the furnishing of opening and closing services and related commodities, including but not limited to vaults, markers, and vases, which services are to be rendered at some future date.

"Pre-need trust" means a fund separately maintained to provide for the future services agreed to or contracted for by

the pre-need funeral service plan participant or the pre-need interment service plan participant.

"Trustee" means a bank or a trust company, authorized to transact such business in the State, or a board of trustees appointed by the governing body of the cemetery and pre-need funeral authority, designated as trustee pursuant to a written trust agreement under the terms of this chapter for the funds deposited by an authority. The board of trustees may consist of three or more members; provided that no member of the board shall be affiliated with the authority which appointed the board. [L 1967, c 199, pt of §1; HRS §441-1; am L 1969, c 242, §1; am L 1975, c 21, §2; am L 1981, c 221, §2; am L 1982, c 204, §8; am L 1985, c 101, §1]

" **§441-2 Certificate of dedication.** Every cemetery authority from time to time as its property may hereafter be made available for cemetery purposes, shall file in the office of the bureau of conveyances or, in the case of registered land, in the office of the assistant registrar of the land court, a written certificate of dedication containing a description of the land or other property which is to be made available for cemetery purposes, and dedicating the property exclusively to cemetery purposes. [L 1967, c 199, pt of §1; HRS §441-2]

" **§441-3 Map or plat required; unique identifier.** (a) The cemetery authority, as any of the dedicated cemetery property, or any part or section thereof, is offered for sale, transfer, or disposition in the form of plots, crypts, or niches, shall also:

- (1) In the case of land, survey and subdivide the dedicated cemetery property into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, blocks, plots, avenues, walks, or other subdivisions, with descriptive names, initials, or numbers that uniquely identify each plot;
- (2) In the case of a mausoleum or columbarium, make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names, initials, or numbers that uniquely identify each niche, mausoleum, or crypt; and
- (3) File the maps or plats required by this section in the office of the bureau of conveyances or the office of the assistant registrar of the land court, and maintain a copy of all filed maps as a permanent record of the cemetery authority.

(b) The cemetery authority shall also maintain a permanent, accurate record of the identity of each person whose remains are located in the cemetery, together with the corresponding unique identifier that indicates the location of the person's remains within the cemetery. The records required by this section shall be prepared and maintained in a manner that will enable the cemetery authority to timely respond to inquiries from the public or the department regarding the location of a person's remains within the cemetery.

(c) The cemetery authority shall specify the unique identifier of a plot, crypt, or niche in any document that provides for the sale, transfer, or disposition of the plot, crypt, or niche. [L 1967, c 199, pt of §1; HRS §441-3; am L 2007, c 188, §2]

" **§441-4 Subdivision law not applicable; approval of location and boundaries by council.** No provision of law, ordinance, or government regulation relating generally to subdivisions, or the sale or transfer of land within subdivisions, shall be applicable to cemeteries. Each county may enact ordinances dealing separately with the development of cemeteries. No cemetery shall hereafter be established, nor shall the boundaries of any existing cemetery be extended, without the location and boundaries of the cemetery or extension thereof having first been approved by the council of the county in which the cemetery is located. The approval may be endorsed in writing by authority of the council, upon the certificate of dedication referred to in section 441-2, and the registrar of conveyances or the assistant registrar of the land court, shall not accept for filing any certificate of dedication without such endorsement or, in lieu thereof, a certified copy of a resolution of the council approving the location and boundaries of the cemetery or extension thereof which resolution shall be recorded. [L 1967, c 199, pt of §1; HRS §441-4]

Revision Note

"Council" substituted for "board of supervisors" to conform to terminology of county charters.

" **§441-5 Securities law not applicable to sales of cemetery property.** No provision of law, ordinance, or government regulation relating to the registration and sale of securities shall apply to the sale by a cemetery authority of plots, crypts, or niches dedicated, described, and shown on a proper map or plat pursuant to this chapter. [L 1967, c 199, pt of §1; HRS §441-5]

" **[§441-5.5] Family burial plots.** Owners of residential or agricultural property who use or intend to use their property for the interment of family members, shall be exempt from the provisions of this chapter; provided:

- (1) Burial plots on the owner's property shall be offered to family members only;
- (2) Burial plots shall not be sold or transferred to anyone, except as part of a sale or transfer of all or a substantial portion of the property; and
- (3) Any subsequent disinterment of any person interred on the property shall be conducted as though the property were cemetery property under section 6E-41. [L 1996, c 145, §2]

" **§441-6 When dedication complete; effect of dedication.** Upon the recordation or filing of a map or plat and certificate of dedication pursuant to sections 441-2 and 441-3, the dedication is complete with respect to all property or parts thereof which are described or depicted in or on both the certificate of dedication and map or plat for all purposes and thereafter the property shall be occupied and used exclusively for cemetery purposes. [L 1967, c 199, pt of §1; HRS §441-6]

" **§441-7 Constructive notice of dedication.** The filed map or plat and the recorded certificate of dedication shall constitute constructive notice to all persons of the dedication of the property to cemetery purposes. [L 1967, c 199, pt of §1; HRS §441-7]

" **§441-8 Resurvey; amended map or plat.** Any plat of the property mapped or platted in accordance with this chapter may be resurveyed and replatted, and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person. [L 1967, c 199, pt of §1; HRS §441-8]

" **§441-9 Dedicated property exempt from improvement assessment.** All property dedicated to cemetery purposes pursuant to this chapter, including roads, alleys, and walks, but excluding property on which there are family burial plots, shall be exempt from public improvement assessments. [L 1967, c 199, pt of §1; HRS §441-9; am L 1996, c 145, §3]

Cross References

Excise tax exemption, see §237-23.

Real property tax exemption, see §246-32.

" **§441-10 Proration and consolidation of existing improvement district encumbrances in order to clear such encumbrances prior to dedication.** Notwithstanding section 441-4 exempting dedicated cemetery property from subdivision laws, the map or plat required by section 441-3 may be treated for purposes of proration or consolidation of any improvement district lien as a subdivision or consolidation thereof. [L 1967, c 199, pt of §1; HRS §441-10]

" **§441-11 Use as cemetery may not be disturbed after dedication.** After property is dedicated to cemetery purposes pursuant to this chapter, neither the dedication nor the title of any plot, crypt, or niche owner shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any liens or encumbrances, by sale under execution, power of sale, or foreclosure, or otherwise except as expressly provided by law. Nothing herein, however, shall affect the rights of encumbrances which attached to property prior to the dedication thereof for cemetery purposes. [L 1967, c 199, pt of §1; HRS §441-11]

Cross References

Cemeteries; removal or redesignation, see §6E-41.

" **§441-12 Mortgages and liens; consumer contracts; sales prohibited.** (a) Cemetery authorities may secure pecuniary obligations by mortgage or lien upon their property, whether or not the property has been set aside for interment purposes, and may sell plots, crypts, niches, or contracts containing pre-need interment services subject to such mortgage or lien within the limitations and conditions imposed by this chapter.

(b) All mortgages and other liens of any nature hereafter contracted for and recorded on the property which has been and was, at the time of the perfection of the lien, dedicated to cemetery purposes pursuant to this chapter, shall not affect or impair the dedication of the property to cemetery use, or the title of any plot, crypt, or niche contract, or the obligation of the cemetery authority to fully perform any contract containing pre-need interment services, but the mortgage or other lien shall be subject and subordinate to the dedication and title of any plot, crypt, or niche contract and the obligation of the cemetery authority to fully perform any contract containing pre-need interment services, and any and all sales made upon foreclosure, insolvency, or federal bankruptcy proceeding shall be subject and subordinate to the dedication

and title of any plot, crypt, or niche contract and the obligation of the cemetery authority to fully perform any contract containing pre-need interment services.

(c) A statutory lien is created, without recordation of the lien, upon all real and personal property held by a pre-need funeral authority upon the filing with the department of audited financial statements, audited by an independent certified public accountant, that indicate that its pre-need funeral trusts are not fully funded as required by applicable law. The amount of the lien shall be equal to the amount that the pre-need funeral trusts are underfunded. This lien shall have priority over all subsequent real property mortgages, security interests, and liens created upon the real and personal property of the pre-need funeral authority and shall terminate at the time when the pre-need funeral trusts are properly funded, as evidenced by records and certification of the trustee and subsequent assurance from the independent certified public accountant that the underfunding was corrected.

(d) Notwithstanding any other language to the contrary, sales by a cemetery or pre-need funeral authority of accounts receivables from contracts containing pre-need interment, pre-need funeral, or perpetual care services shall be prohibited. Sales made in violation of this subsection shall be void.

(e) Any transfer of pre-need funeral trust funds and the obligations related thereto shall be to another person subject to section 441-20 or 441-30.5. Any transfer of pre-need funeral trust funds and pre-need funeral contracts and obligations related thereto in accordance with this section shall include the transfer of pre-need funeral contracts made, entered into, or purchased by the pre-need funeral authority prior to the transfer. [L 1967, c 199, pt of §1; HRS §441-12; am L 2007, c 188, §3]

" **§441-13 Sale of plots after dedication; sale of encumbered plots prohibited unless encumbrance subordinate to dedication.**

After property is dedicated pursuant to this chapter, a cemetery authority may sell, transfer, and convey plots, crypts, or niches thereof, which plots, crypts, or niches shall be described by reference to the map or plat, or amended map or plat, filed in accordance with section 441-3 or 441-8. No plot, crypt, or niche shall be sold, transferred, conveyed, or otherwise disposed of, or offered for sale, transfer, conveyance, or other disposition, unless the property on or in which the plot, crypt, or niche is included has been dedicated pursuant to this chapter, nor shall any plot, crypt, or niche be sold, transferred, conveyed, or otherwise disposed of, or offered for sale, transfer, conveyance, or other disposition,

unless the property on or in which the plot, crypt, or niche is included shall either be free and clear of all encumbrances or there has been recorded the written consent of every encumbrancer thereof that the encumbrancer's encumbrance shall be subject and subordinate to the dedication of the property to cemetery purposes and the title of any plot, crypt, or niche owner. [L 1967, c 199, pt of §1; HRS §441-13; gen ch 1985; am L 2007, c 188, §4]

" **§441-14 Dedication to cemetery purposes does not violate laws against perpetuities.** Dedication to cemetery purposes pursuant to this chapter is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public. [L 1967, c 199, pt of §1; HRS §441-14]

Cross References

Uniform statutory rule against perpetuities, see chapter 525.

" **§441-15 Removal of dedication.** Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes unless and until the dedication is removed from all or any part of it by an order and decree of the circuit court of the judicial circuit in which the property is located and the decree is filed in the bureau of conveyances or land court in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

- (1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed;
- (2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains. [L 1967, c 199, pt of §1; HRS §441-15]

" **§441-16 Hearing.** The notice of hearing provided in section 441-15 shall be given by publication once a week for at least three consecutive weeks in a daily newspaper of general circulation in the county where the cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. The notice shall:

- (1) Describe the portion of the cemetery property sought to be removed from dedication;
- (2) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication;
- (3) Specify the time and place of the hearing. [L 1967, c 199, pt of §1; HRS §441-16]

" **§441-17 Existing cemeteries deemed dedicated; extension of existing cemeteries.** All existing cemeteries or parts thereof which shall have been lawfully established, and for which a map or plat substantially similar to that required by section 441-3 has been filed or recorded in the bureau of conveyances or in the office of the assistant registrar of the land court, shall be deemed to have been dedicated as of [July 1, 1967], to the same extent and with like effect as provided in this chapter. [L 1967, c 199, pt of §1; HRS §441-17]

" **§441-18 REPEALED.** L 1981, c 221, §3.

" **§441-19 Powers and duties of director.** In addition to any other powers and duties authorized by law, the director, pursuant to chapter 91 shall:

- (1) Grant licenses to cemetery and pre-need funeral authorities pursuant to this chapter and rules adopted pursuant thereto;
- (2) Adopt, amend, or repeal rules as the director deems proper to fully effectuate this chapter and carry out the purpose thereof, which is the protection of the general public in its acquisitions of cemetery property, pre-need interment services, at-need funeral services, and pre-need funeral services. The rules may forbid acts or practices deemed by the director to be detrimental to the accomplishment of the purpose of this chapter, and the rules may require mortuary, cemetery, and pre-need funeral authorities to make reports to the director containing such information as will better enable the director to enforce this chapter and the rules, or as will better enable the director from time to time to amend the rules to more fully effectuate the purpose of this chapter. The rules may also require mortuary, cemetery, and pre-need funeral authorities to furnish reports to their clients containing such matters of information as the director deems necessary to promote the purpose of this chapter; provided that this enumeration of

specific matters which may properly be made the subject of rules shall not be construed to limit the director's broad general power to make all rules necessary to fully effectuate the purpose of this chapter;

- (3) Enforce this chapter and rules adopted pursuant thereto;
- (4) Fine, suspend, or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause that would be grounds for revocation or suspension of a license;
- (5) Report to the governor annually and at such other times and in such other manner as the governor may require concerning the director's activities;
- (6) Publish and distribute pamphlets and circulars containing such information as the director deems proper to further the accomplishments of the purpose of this chapter;
- (7) Investigate the actions of any person acting in the capacity of a licensee under this chapter if there is reason to believe that there may be a violation of this chapter or the rules adopted pursuant thereto;
- (8) Extend the deadline for, or defer the filing of, any periodic report required under this chapter, provided that the licensee meets the conditions and requirements set forth by the director in rules; and
- (9) Provide in the rules for alternatives to any bonding or insurance requirement imposed by this chapter when a bond or insurance cannot reasonably be secured and the alternative measures provide for the same degree of protection to the consumer. [L 1967, c 199, pt of §1; HRS §441-19; am L 1969, c 242, §2; am L 1975, c 21, §4; am L 1981, c 221, §4; am L 1985, c 101, §2; gen ch 1985; am L 1986, c 35, §1; am L 1992, c 202, §50]

" **§441-19.5 REPEALED.** L 1982, c 66, §9.

" **§441-20 License required to act as cemetery or pre-need funeral authority.** No person shall act as a cemetery or pre-need funeral authority without a license previously issued by the director in compliance with this chapter and the rules of the director; provided that the director shall exempt any cemetery authority upon its proof satisfactory to the director that it will not make any additional interments. [L 1967, c 199,

pt of §1; HRS §441-20; am L 1969, c 242, §3; am L 1975, c 21, §5; am L 1981, c 221, §5; am L 1982, c 66, §2]

" **[§441-20.5] Audit of records of cemetery or pre-need funeral authority.** The department may audit the records of any cemetery or pre-need funeral authority with respect to its funds and pre-need trusts as they pertain to the deposits and withdrawals to the fund and trust. For that purpose, the department shall have free access to the office and places of business of all cemetery and pre-need funeral authorities and the trustee. The department may contract with a private consultant to audit the records of any cemetery or pre-need funeral authority, the cost of which shall be borne by the authority. [L 1985, c 101, §28]

" **[§441-20.6] Retaining consultants.** (a) The director may retain private consultants, by contract or otherwise, as determined by the director, in connection with the review of filings required of cemetery authorities, pre-need funeral authorities, or applicants under this chapter. Except as limited under subsection (c) below, the cost of contracting private consultants shall be borne by the cemetery authority, pre-need funeral authority, or applicant making the filing.

(b) The consultant shall perform all tasks as directed by the director under subsection (a), including but not limited to:

- (1) Reviewing the filing, in whole or in part, including documentation and other provided materials, for the purpose of examining its compliance with the requirements of this chapter, rules adopted by the director pursuant to this chapter, and other applicable laws; and
- (2) Providing to the director a written analysis of the filing upon completing the review, including an opinion of the nature and extent to which there is compliance with this chapter, rules adopted by the director pursuant to this chapter, and other applicable laws.

(c) Without the written consent of the cemetery authority, pre-need funeral authority, or applicant making the filing, the cost to be borne by a cemetery authority, pre-need funeral authority, or applicant for a filing under this chapter shall not exceed \$25,000; provided that in the event the cost reaches \$25,000 and prior to any consultant continuing with the review, the cemetery authority, pre-need funeral authority, or applicant making the filing shall:

- (1) Provide written consent to exceed the \$25,000 fee;
- (2) Withdraw the filing; or

- (3) Except in the case of an incomplete filing, receive a denial or refusal by the director to approve the filing.

By providing the written consent described in subsection (c)(1), the cemetery authority, pre-need funeral authority or applicant making the filing shall not be deemed to have waived any rights it may have under chapters 91 and 436B should the director subsequently deny or refuse to approve the filing. [L 2002, c 214, §1]

" **§441-21 No cemetery or pre-need funeral authority license issued when.** No cemetery or pre-need funeral authority license shall be issued:

- (1) To any person unless the person has filed an application therefor;
- (2) To any person who does not possess financial integrity;
- (3) To any person unless it is a religious institution, corporation, county, or any association which has a perpetual existence;
- (4) To any person unless the person files with the director a bond as required by section 441-22;
- (5) To any person failing to establish and maintain pre-need trusts and perpetual care funds as required by this chapter;
- (6) To any person failing to file with the director a copy of the documentation as required by either section 441-37(a) and (b) or section 441-37(a) and (c);
- (7) To any person failing to file with the director a copy of contract form as required by section 441-32.5. [L 1967, c 199, pt of §1; HRS §441-21; am L 1969, c 242, §4; am L 1975, c 21, §6; am L 1981, c 221, §6; am L 1982, c 66, §3; am L 1985, c 101, §3]

" **§441-22 Bond.** (a) A cemetery authority selling perpetual care, a cemetery authority selling pre-need interment services, or a pre-need funeral authority shall file and maintain with the director a bond in the penal sum of \$50,000 for each new license and for the renewal of a license. The bond shall continue in full force and effect, and shall run concurrently:

- (1) With the period of the license and for any renewal thereof; or
- (2) With the period established by the director pursuant to the rules as the case may be, unless terminated or canceled by the surety.

The form of the bond shall be approved by the director.

(b) All bonds required by this section shall be issued by a surety company authorized to do business in the State, and shall run to the State. The bond shall be conditioned that the cemetery or pre-need funeral authority will faithfully, promptly, and truly account and pay over to all persons to or for whom it may sell, lease, or otherwise deal in cemetery property, pre-need interment, or pre-need funeral services all sums of money that may properly be due them.

(c) In addition to any other remedy, the director or any person claiming to have sustained damage by reason of any breach of the conditions of the bond may bring action on the bond for the recovery of any damages sustained therefrom. The liability of the surety shall not exceed the amount of the bond issued to the establishment for which the bond was issued.

(d) Termination, cancellation, or expiration shall not be effective, unless notice thereof is delivered by the surety to the director at least sixty days prior to the date of termination, cancellation, or expiration. The director shall give notice to the affected licensee that notice of termination, cancellation, or expiration, has been received and that the license of the licensee shall be placed on a limited and conditional status upon termination, cancellation, or expiration of the bond, unless prior thereto, a new bond has been filed with the director. The limitations and conditions of the license shall be set forth in the notice and shall include, but not be limited to, the following:

- (1) The licensee shall not sell any pre-need services or merchandise to consumers;
- (2) The licensee may sell perpetual care to satisfy the requirements of section 441-36; provided that perpetual care payments received by the licensee shall be transferred to the trustee no later than fifteen days after receipt for deposit into the perpetual care fund;
- (3) All moneys collected or received by the licensee as payments on previously executed contracts for pre-need and perpetual care shall be transferred to the trustee no later than fifteen days after receipt for deposit into trust;
- (4) Withdrawal of principal from the pre-need trust shall only be in accordance with this chapter and rules adopted by the director pursuant to chapter 91;
- (5) No interest or income from the pre-need trust shall be withdrawn from the trust fund by the licensee or trustee;
- (6) Withdrawal of interest or income from the perpetual care fund shall be allowed only to cover

administrative expenses limited to payroll and fixed monthly operating expenses related to maintaining perpetual care of the cemetery;

- (7) The licensee shall continue to seek a surety who will provide bonding in accordance with this section;
- (8) Failure of the licensee to submit satisfactory proof of bond coverage within one year may result in the suspension of its license; and
- (9) The director shall have the right to alter, amend, modify, or supplement any of the limitations and conditions in the interest of the contract holders of the licensee.

(e) Failure, refusal, or neglect of a licensed cemetery or pre-need funeral authority to maintain in full force and effect a bond as required by this section shall cause the license to be placed on automatic limited and conditional status effective as of the date of termination, cancellation, or expiration of its bond. The licensee shall abide by the limitations and conditions set forth in subsection (d) until satisfactory proof of bond coverage is submitted to the director as required by this section. Failure to abide by any of the limitations and conditions set forth in subsection (d) shall result in an automatic fine against the licensee of \$1,000 per violation of any limitation or condition. Each day's continuance of a violation may be treated as a separate violation. Within sixty days after receipt of the notification of the imposition of the automatic fine, the licensee may request an administrative hearing to review the automatic fine pursuant to chapter 91.

(f) A licensee on limited and conditional status who fails, refuses, or neglects to submit satisfactory proof of bond coverage as required by this section within a period of one year, unless otherwise modified by the director, shall cause the automatic and immediate suspension of its license. The director shall not reinstate the license until satisfactory proof of bond coverage is submitted to the director. During the period of suspension the licensee is prohibited from acting or assuming to act as a cemetery or pre-need funeral authority except to the extent that it provides perpetual care services or honors the obligations of its pre-need contracts with customers. The licensee shall notify the trustee of the trust of the suspension of its license. The licensee may seek to surrender its license pursuant to section 441-46 or transfer its license pursuant to section 441-30.5.

(g) Failure to effect a reinstatement of a suspended license within sixty days shall cause it to be terminated, thereby forfeiting all license and renewal fees and the rights of the licensee to use the license, and to act as a cemetery or

pre-need funeral authority under this chapter. Within sixty days after receipt of the notification of the license termination, the licensee may request an administrative hearing to review the termination pursuant to chapter 91. The licensee shall notify the trustee of the trust of the termination of its license.

(h) A licensee who is able to show that a bond cannot be reasonably secured may, with the approval of the director, file an alternative form of security as provided by rule in lieu of the bond required by this section. The filing of this alternative form of security shall allow the director to reinstate a license which has been placed on a limited and conditional status, suspended, or terminated. [L 1967, c 199, pt of §1; HRS §441-22; am L 1968, c 14, §2; am L 1969, c 242, §5; am L 1970, c 210, §1; am L 1975, c 21, §7; am L 1981, c 221, §7; am L 1982, c 66, §4; am L 1985, c 101, §4; am L 1988, c 73, §2]

" **§441-22.1 Exemption.** The director shall exempt any cemetery authority from the bonding requirement and the fee requirements for license, renewal and reinstatement upon proof satisfactory to the director that it does not sell for financial profit. [L 1968, c 14, §3; am L 1981, c 221, §8; am L 1985, c 101, §5]

" **§441-22.2 Pre-need trusts required.** Every cemetery and pre-need funeral authority shall maintain one or more trusts for deposit of payments received from purchasers of pre-need services. [L 1969, c 242, §15; am L 1982, c 66, §5; am L 1985, c 101, §6]

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

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

- (1) The names and addresses of the cemetery or pre-need funeral authority, purchaser, and contract beneficiary, if the beneficiary is someone other than the purchaser;
- (2) A clear and concise itemized statement of the property, including, for cemetery property, the

location of the plot, crypt, or niche by its unique identifier, and any services and related commodities to be supplied or not supplied and by whom, particularly if the authority is not to be the provider under the terms of the contract;

- (3) The purchase price of each item of property, services, and related commodities to be supplied, the total purchase price, and how the total purchase price is payable, including any credit terms, if applicable; provided that, pursuant to section 441-22.7, disclosure shall also be made that further additional charges or fees for perpetual care subsequent to the execution of the contract are prohibited for any purpose and on any occasion, except for reasonable fees related to the administrative costs of transferring ownership rights, including the cost of research, document and file preparation, photocopying, notary fees, records transfer and storage, and any other costs directly related to the transfer of ownership rights;
- (4) Related costs covered under the contract;
- (5) The basis on which funds are to be deposited in trust, including:
 - (A) The name and address of the trustee; provided that the disclosure shall not preclude the cemetery or pre-need funeral authority from changing the trustee named;
 - (B) The percentage of the contract price for trustable items to be placed in trust; provided that the percentage shall be no less than seventy per cent;
 - (C) The percentage of the contract price for trustable items that the cemetery or pre-need funeral authority will retain and not deposit into the trust; provided that the percentage shall not be more than thirty per cent; and
 - (D) Where a portion of the contract price relates to property, services, or related commodities that are not trustable items, a clear description of what those non-trustable items are;
- (6) The refund, cancellation, and default provisions of the contract, including an explanation of the requirements of section 441-22.8, and a statement in twelve-point bold type in substantially the following form:

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

- (7) The date and place of execution of the contract;
- (8) The cemetery or pre-need funeral authority's or its duly authorized agent's signature on the contract and the identification of this person by name and title;
- (9) A statement that the written contract, when signed, shall constitute the entire agreement between the parties relative to its subject matter and that all obligations of both parties shall be fixed and enforceable by the other parties of the contract; and
- (10) A statement that the contract may not waive any rights of the consumer or duties of the cemetery or pre-need funeral authority under the law.

(c) No mortuary, cemetery, or pre-need funeral authority shall charge a price for the cemetery property, interment, or funeral services, whether it be at-need or pre-need, which is greater than the price on the itemized price list or contract which the purchaser had signed, unless the purchaser or the purchaser's authorized representative requests an additional item, the authority discloses the price for the additional item, and the purchaser or its authorized representative approves the price for the additional item. The mortuary, cemetery, or pre-need funeral authority may charge the higher price for the additional item but shall collect in payment only that sum which is the difference between the higher price and the price listed on the itemized price list or contract which the purchaser had previously signed. [L 1980, c 23, pt of §1; am L 1985, c 101, §7; am L 1998, c 232, §2; am L 2007, c 188, §5]

" **§441-22.6 Mortuary, cemetery, or pre-need funeral authority: price list to be furnished.** (a) Each mortuary, cemetery, or pre-need funeral authority shall provide to every prospective purchaser, for written approval, a current price list, which shall contain separately stated prices for each type of property, service, or item which is a part of the cemetery property, interment, or funeral services and related commodities which the mortuary, cemetery, or pre-need funeral authority offers, including the price for services directly related to the transfer of ownership rights. Pursuant to section 441-22.7, no further additional charges or fees shall be added to the price list for perpetual care subsequent to the execution of the contract for any purpose and on any occasion.

(b) The mortuary, cemetery, or pre-need funeral authority may use the format for a price list as established by the rules adopted by the director. [L 1980, c 23, pt of §1; am L 1985, c 101, §8; am L 1998, c 232, §3]

" **[\$441-22.7] Further additional charges or fees for perpetual care prohibited; unfair or deceptive act or practice; penalty.** (a) Subsequent to the execution of a valid written contract for the sale of cemetery property, interment services, funeral services, and related commodities by a mortuary, cemetery, or pre-need funeral authority to a purchaser in accordance with this chapter, further additional charges or fees for perpetual care shall be prohibited beyond those originally agreed upon in the contract and no such charges or fees shall be charged or collected by the seller for any purpose and upon any occasion; provided that a reasonable fee may be charged for administrative costs related to the transfer of ownership rights, including the cost of research, document and file preparation, photocopying, notary fees, records transfer and storage, and any other costs directly related to the transfer of ownership rights.

(b) A mortuary, cemetery, or pre-need funeral authority who violates subsection (a) is guilty of engaging in an unfair or deceptive act or practice under section 480-2, and shall be fined not less than \$500 nor more than \$10,000 for each violation. The penalties provided in this subsection are cumulative to the remedies or penalties available under all other laws of this State. [L 1998, c 232, §1]

" **[\$441-22.8] Cancellation; default and termination; refund.** (a) At any time before pre-need funeral services or pre-need interment services are received by the purchaser or the purchaser's contract beneficiary, the purchaser may cancel the contract containing any pre-need funeral services or pre-need interment services by notifying the cemetery or pre-need funeral authority, in writing, of the purchaser's desire to cancel the contract.

(b) Before a cemetery or pre-need funeral authority terminates a contract containing pre-need funeral services or pre-need interment services because of a delinquency in payment, the following conditions shall be met:

- (1) Four months in advance of the contemplated termination date, the cemetery or pre-need funeral authority shall provide written notice to the purchaser at the purchaser's last known address and the notice shall include at a minimum:

- (A) The total amount owed under the contract at the time it was originally signed, dates and amounts of payments, adjustments, and credits received to date, and the amount of the delinquency;
 - (B) An explanation as to how the purchaser may effectuate continuance of the contract within four months of the date of notice;
 - (C) A statement that failure to effectuate continuance of the contract may result in termination of the contract; and
 - (D) A statement that advises the purchaser of all other requirements under this subsection;
- (2) During the four-month period, but not less than once a month, and only so long as the purchaser fails to effectuate continuance of the contract as provided herein, the cemetery or pre-need funeral authority shall provide the written notice required under paragraph (1);
 - (3) If, however, there is a reasonable good faith bona fide dispute between the parties as to the amount of delinquency, the four-month period shall not start until the dispute is resolved; and
 - (4) If the purchaser fails to effectuate continuance of the contract by the end of the four-month period, the cemetery or pre-need funeral authority may terminate the contract under the terms and conditions of the contract.

If the purchaser elects to effectuate continuance of the pre-need funeral services or pre-need interment services contract within the four-month period, the cemetery or pre-need funeral authority may require that the purchaser make payment to effectuate the continuance; provided that the amount required shall not be in excess of one installment payment of the purchaser's contract. The purchaser shall resume payment on the pre-need funeral services or pre-need interment services contract in the amounts and as often as required under the terms and conditions of the contract and until all payments owed on the contract are paid in full.

(c) A cemetery or pre-need funeral authority shall not be obligated to:

- (1) Allow a purchaser to effectuate continuance of a contract where a purchaser becomes delinquent again after the four-month period provided in subsection (b) has passed, and may thereafter terminate the contract under the terms and conditions of the contract; provided that the cemetery or pre-need funeral authority gives written notice of the termination to

the purchaser at the purchaser's last known address at least ninety days prior to termination; or

- (2) Provide pre-need funeral services or pre-need interment services unless the contract is paid in full.

(d) If the contract is canceled or terminated pursuant to subsection (a) or (b) or for any other reason, the purchaser shall be entitled to a refund of the amounts paid by the purchaser, less amounts that may be retained by the cemetery or pre-need funeral authority for its costs pursuant to section 441-38(b). The cemetery or pre-need funeral authority shall make the refund to the purchaser within thirty days of:

- (1) Receipt of the purchaser's written notice of cancellation; or
- (2) Termination of the contract. [L 2007, c 188, §1]

" **§441-23 Fine, revocation, suspension, and renewal of authority licenses.** In addition to any other actions authorized by law, the director may fine an authority, revoke any authority license, or suspend the right of the licensee to use the license, or refuse to renew any license for any cause authorized by law, including but not limited to the following:

- (1) Any dishonest or fraudulent act as a cemetery or pre-need funeral authority that causes substantial damage to another;
- (2) Making repeated misrepresentations or false promises through advertising or otherwise;
- (3) Violation of this chapter or the rules adopted pursuant thereto;
- (4) Commingling the money or other property of others with that of the licensee;
- (5) Having been adjudicated insane or incompetent;
- (6) Selling or offering to sell any cemetery property, pre-need interment, funeral services, or pre-need funeral services based on speculation or promises of profit from resale;
- (7) Failing to file the actuarial study or an audited financial statement or to maintain in effect the bond as required by section 441-22;
- (8) Failing to maintain pre-need trusts or perpetual care funds as required by this chapter; or
- (9) Violating section 441-22.7. [L 1967, c 199, pt of §1; HRS §441-23; am L 1969, c 242, §6; am L 1974, c 205, §2(7); am L 1975, c 21, §8; am L 1981, c 221, §9; am L 1982, c 66, §6; am L 1985, c 101, §9; am L 1992, c 202, §51; am L 1998, c 232, §4]

" **§441-24 Inspection of cemetery or pre-need funeral authority books.** The books, records, and papers of every cemetery authority whether or not a corporation, which operates or claims to operate a perpetual care cemetery, and of every pre-need funeral authority shall be subject to examination by the director as provided by law, and every cemetery authority operating a perpetual care cemetery, and every pre-need funeral authority shall submit such information as may be required by the director to furnish information as to whether or not the cemetery or pre-need funeral authority has complied with this chapter.

The records of every cemetery authority shall include the information required under section 441-3(b). The records of every cemetery and pre-need funeral authority shall also include a record of any and all notifications from purchasers or representatives of purchasers regarding:

(1) Any change in address; and

(2) Notice of cancellation,

and shall include copies of any and all written notices of termination that were sent to purchasers. Change of address notices, cancellation notices, and notices of termination relating to each contract containing any pre-need funeral services or pre-need interment services shall be maintained by the authority at all times prior to delivering goods or rendering services on the contract and for a period of at least six months after all goods have been delivered or all services have been rendered. [L 1967, c 199, pt of §1; HRS §441-24; am L 1969, c 242, §7; am L 1975, c 21, §9; am L 1981, c 221, §10; am L 1983, c 167, §15; am L 1985, c 270, §4; am L 2002, c 40, §75; am L 2007, c 188, §6]

" **§441-24.5 Pre-need trusts and perpetual care funds; audited financial statements.** Every cemetery authority operating a perpetual care cemetery or which engages in pre-need sales or holds money in trust for pre-need interment services, and every pre-need funeral authority which engages in pre-need sales or holds money in trust for pre-need funeral services shall submit an audited financial statement of its pre-need trusts and perpetual care funds to the director within ninety days after the close of the authority's books on a fiscal or calendar year basis. [L 1982, c 66, §1; am L 1985, c 101, §10; ree L 1986, c 339, §74]

Note

The amendment by L 1985, c 269, §55, is not included in this section.

" **[\$441-24.6] Pre-need trusts and perpetual care funds; actuarial studies.** (a) Every cemetery authority operating a perpetual care cemetery and every cemetery or pre-need funeral authority offering pre-need services shall contract with an independent actuary to conduct an annual study of its level of funding. In the case of a perpetual care cemetery, the study shall be to determine whether the authority's perpetual care fund will provide sufficient income to cover the costs of the perpetual care of the cemetery. In the case of a cemetery or pre-need funeral authority, the study shall be to determine whether the authority's pre-need trust will be sufficient to cover the claims of pre-need plan participants.

(b) The actuarial study shall be submitted to the director within one hundred twenty days after the close of the authority's books for the fiscal or calendar year. At a minimum, such study shall detail the assets and liabilities of the fund or trust, the actuarial assumptions used in preparing the report and the actuary's conclusions as to whether the levels of funding are adequate. If the actuary concludes that the funding is not adequate, the actuary shall recommend what actions are necessary to protect the perpetual care fund or pre-need trust participants.

(c) If the study concludes that the levels of funding are not adequate or that the interests of the participants in the perpetual care fund or pre-need trusts are in any other respect not adequately protected, the director may require that a greater portion of the income be transferred to the fund or trust or may take such other action as is necessary to correct any inadequacies or may suspend the authority's right to accept further participants in the fund or trust. If requested by the authority, a hearing on the action taken by the director shall be conducted pursuant to chapter 91. [L 1985, c 101, §25]

" **[\$441-24.7] Actuarial study, audited financial statement, trust agreement; available for review.** (a) The actuarial study, audited financial statement, and trust agreement filed by a cemetery or pre-need funeral authority, as required by this chapter, shall be available for review by any member of the general public upon request. The review of these documents shall be done during the department's normal business hours. The director shall have the right to deny review for reasons specified in rules adopted by the director pursuant to chapter 91.

(b) Upon delivery of an itemized price list to a prospective purchaser and upon execution of a contract for perpetual care and pre-need services, the cemetery or pre-need

funeral authority shall notify the person of the availability for review of the actuarial study, audited financial statement, and trust agreement on file with the department as provided in this section. [L 1985, c 101, §26]

" **§441-25 License not required to act as cemetery or pre-need funeral salesperson.** Chapter 467, relating to real estate brokers and salespersons, shall not be applicable to cemetery salespersons. [L 1967, c 199, pt of §1; HRS §441-25; am L 1969, c 242, §8; am L 1970, c 62, §1; am L 1975, c 21, §10; am L 1976, c 200, pt of §1; am L 1981, c 221, §11; gen ch 1993]

" **§§441-26 to 441-28 REPEALED.** L 1981, c 221, §§12 to 14.

" **§441-29 Application for license; fees.** Every applicant for a license under this chapter shall file an application with the director in such form and setting forth such information as may be prescribed or required by the director and shall furnish such additional information bearing upon the issuance of the license as the director requires. In the case of a copartnership or corporation any officer may sign the application on behalf of the applicant. The application shall be accompanied by an application fee. [L 1967, c 199, pt of §1; HRS §441-29; am L 1975, c 21, §13; am L 1981, c 221, §15; am L 1985, c 101, §11; am L 1992, c 202, §52; am L 1997, c 40, §7]

" **§441-30 Form of licenses.** The form of every license shall be prescribed by the director, and shall be issued in the name of the department, and signed by the director. [L 1967, c 199, pt of §1; HRS §441-30; am L 1975, c 21, §14; am L 1981, c 221, §16]

" **[\$441-30.5] Transfer of license.** (a) No license issued under this chapter shall be transferred, assigned, or loaned to another person. Any transaction involving the transfer of a licensee's business to another person shall require the prior approval of the director.

(b) The director may disapprove the proposed transfer of a license:

- (1) For failure of the current licensee to meet and satisfy the requirements of section 441-46;
- (2) For failure of the person intending to assume the current licensee's business to meet and satisfy the requirements of section 441-21; or
- (3) In the interest of the contract holders of the current licensee.

(c) Within sixty days after receipt of the notification of disapproval of the transfer of the licensee's business, the licensee may request an administrative hearing to review the disapproval pursuant to chapter 91. [L 1988, c 73, §1]

" **§441-31 Fees; biennial renewals.** (a) The fee for a cemetery or pre-need funeral authority original license, for reinstatement of a suspended license, for biennial renewal of a license, and for the reissuance of a license when there has been a change in the licensee's name, shall be as provided in rules adopted by the director pursuant to chapter 91.

(b) The biennial renewal fee shall be paid to the director on or before December 31 of each odd-numbered year. Failure, neglect, or refusal of any duly licensed cemetery or pre-need funeral authority to pay the biennial renewal fee shall constitute a forfeiture of its license. Any such license may be restored upon written application therefor within one year of such date and the payment of the delinquent fees plus an amount equal to ten per cent thereof. [L 1967, c 199, pt of §1; HRS §441-31; am L 1968, c 14, §4; am L 1969, c 242, §12; am L 1975, c 21, §15 and c 118, §6; am L 1981, c 221, §17; am L 1982, c 66, §7 and c 204, §8; am L 1983, c 124, §17; am L 1985, c 101, §12; am L 1992, c 202, §53]

" **§441-32 Delivery of agreement.** The cemetery or pre-need funeral authority shall deliver a copy of any contract pertaining to cemetery property, pre-need interment or pre-need funeral services to the person or persons signing it at the time the signature is obtained; provided that only one copy need be delivered to the parties signing as co-tenants. [L 1967, c 199, pt of §1; HRS §441-32; am L 1969, c 242, §13; am L 1985, c 101, §13]

" **§441-32.5 Sales contracts; filing with the director.** Every cemetery or pre-need funeral authority shall file with the director a copy of all existing contract forms, and any new contract form prior to its use, relating to the selling of cemetery property or pre-need services and related commodities. The content of the contract shall be in conformance with section 441-22.5(b). [L 1981, c 221, §23; am L 1985, c 101, §14]

" **§441-33 REPEALED.** L 1981, c 221, §18.

" **§441-34 REPEALED.** L 1992, c 202, §193.

" **§441-35 Perpetual care fund expressly permitted.** A perpetual care fund and all payments or contributions to it are

expressly permitted as and for charitable and eleemosynary purposes. No payment, gift, grant, bequest, or other contribution for perpetual care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property. [L 1967, c 199, pt of §1; HRS §441-35]

Cross References

Uniform statutory rule against perpetuities, see chapter 525.

" **§441-36 Perpetual care required.** Any cemetery hereafter established shall be a perpetual care cemetery. No existing cemetery shall be operated as, or advertised or represented to be, a perpetual care cemetery except in compliance with this chapter. Every cemetery authority operating a perpetual care cemetery shall establish a perpetual care fund. [L 1967, c 199, pt of §1; HRS §441-36; am L 1985, c 101, §16]

" **§441-37 Trustee of perpetual care fund and pre-need trust.**

(a) Every perpetual care fund and pre-need trust shall be administered by a bank or a trust company authorized to do business in the State; or a board of trustees as defined in section 441-1. Each authority covered under this chapter shall file with the director a copy of an executed copy of the declaration of the fund or trust and any amendment thereto.

(b) The bank or trust company appointed as trustee shall file a notice with the director disclosing the name of the bank or trust company, business address, and such additional information as the director requires. A successor trustee shall be subject to the requirements stated in this section.

(c) The board of trustees appointed as trustee shall file the following:

- (1) A notice with the director disclosing the names of its members;
- (2) A sworn affidavit stating that its members are not affiliated with the authority which appointed it;
- (3) A bond in the penal sum of \$100,000 issued by a surety company authorized to do business in the State; and
- (4) Evidence of the insurance required by section 441-41(b).

The bond required in this subsection may be filed either as a board or an individual board member for \$100,000 and shall run to the State. The bond shall be conditioned that the board of

trustees will faithfully, promptly, and truly account and pay over to all persons to or for whom it may hold money in trust all sums of money that may properly be due them. The director or any person claiming to have sustained damage by reason of any breach of the conditions of the bond may bring action on the bond for the recovery of any damages sustained therefrom. The liability of the surety shall not exceed the amount of the bond issued to the board of trustees. The bond shall continue in full force and effect. [L 1967, c 199, pt of §1; HRS §441-37; am L 1981, c 221, §19; am L 1985, c 101, §17]

" **§441-38 Contributions and payments to the trustee.** (a) A cemetery authority may take, receive, and transfer to the trustee as a part of or incident to the perpetual care fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for perpetual care purposes and shall transfer to the trustee the amount stipulated in the contract or deed as being for perpetual care purposes for each plot, niche, or mausoleum crypt sold or disposed of, but not less than:

- (1) \$1 per square foot of interment space;
- (2) \$50 for each mausoleum crypt;
- (3) \$15 for each niche.

Such transfer shall be made not later than thirty days after the receipt of the final payment of the purchase price of each plot, niche, or crypt sold as property entitled to perpetual care.

(b) A cemetery or pre-need funeral authority may take and receive, but shall transfer to the trustee as part of or incident to the pre-need trust, all payments received after the recovery of acquisition costs, which shall be the lesser of thirty per cent of the contract price or the difference between the contract price and the cost of the pre-need interment or pre-need funeral services contracted to be provided. The transfer shall be made not later than thirty days after receipt of payment from the purchaser and shall be immediately deposited in the trust. [L 1967, c 199, pt of §1; HRS §441-38; am L 1985, c 101, §18]

" **§441-39 Principal of fund or trusts; use of income, reserves.** (a) The principal of the perpetual care fund shall be invested and in no event reduced. Only so much of the income of the fund shall be paid to the cemetery authority as it, by submission of vouchers, can reasonably show to be necessary to cover the cost of perpetual care of the cemetery, including reasonable administrative expenses incurred in connection therewith; provided that a reserve may be created from which

principal losses may be replaced by setting aside a reasonable percentage of surplus income, if any, or net capital gains from investments, and a reserve may also be set aside out of surplus income or net capital gains for future maintenance, repair, or restoration of property or embellishments in the cemetery, which may be necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. "Net capital gains" means the amount by which the cumulative capital gains since the establishment of the perpetual care fund exceeds the sum of cumulative capital losses since the establishment of the fund. Any surplus income or net capital gains not so set aside in reserve shall become a part of the principal of the fund.

(b) The principal of the pre-need trust shall be invested and shall not be diminished or withdrawn except in payment of the pre-need interment or pre-need funeral services contracted for and provided to the deceased purchaser or designee or for the contractual refund to the purchaser. The cemetery or pre-need funeral authority shall submit to the trustee a certified statement that the purchaser or an assignee of the purchaser has received the pre-need services under contract with the authority in order for the principal to be withdrawn. In the case of refund to the purchaser, the authority shall submit to the trustee a certified statement that the purchaser desires a refund. A reserve may be created from which principal losses may be replaced by setting aside a reasonable percentage of surplus income, if any, or net capital gains from investments. [L 1967, c 199, pt of §1; HRS §441-39; am L 1985, c 101, §19]

" **§441-40 Application of principal and income; responsibility of trustee.** (a) The trustee shall be held responsible for all payments received for deposit in the perpetual care fund and pre-need trust. The trustee shall not withdraw money from the income of the perpetual care fund unless the cemetery authority submits a certified statement that withdrawals shall be used for the perpetual care of the cemetery, including reasonable administrative expenses incurred in connection with operating a perpetual care cemetery. Further, the trustee shall not withdraw money from the principal of the pre-need trust unless the cemetery or pre-need funeral authority submits a certified statement that the person entitled to the pre-need services or the assignee has received the services or that the purchaser has requested a refund of moneys.

(b) For the purposes of asset management and safekeeping of the funds, the trustee shall have the authority to inquire into the propriety of expenditures made by a cemetery and pre-need funeral authority in connection with the operation of the authority's business.

(c) The cemetery and pre-need funeral authority shall provide the trustee with the findings of the annual audit and actuarial study, which shall serve as guidelines in the management and safekeeping of the funds. [L 1967, c 199, pt of §1; HRS §441-40; am L 1985, c 101, §20]

" **§441-41 Investment of perpetual care funds and pre-need trusts.** (a) The investment of perpetual care funds and pre-need trusts by a bank or trust company appointed as trustee shall be governed by the standards prescribed in article 8 of chapter 412.

(b) The investment of perpetual care funds and pre-need trusts by a board of trustees shall be governed by the following standards:

- (1) Funds may be invested in either:
 - (A) An institution listed with the New York Stock Exchange, that is a member of the Securities Investor Protection Corporation (SIPC), and provides additional insurance coverage of \$1,000,000 per account above and beyond the minimum cash and securities protected by the Securities Investor Protection Corporation; or
 - (B) An institution whose deposits are federally insured.
- (2) Funds invested with an institution as provided in section 441-41(b)(1) shall be insured on a cash basis by the institution for the full amount of those funds. If the institution insures a portion of the fund, the perpetual care and pre-need funeral authority shall acquire additional insurance in the amount equal to or in excess of the funds held by the institution. The insurance shall be in full force and effect and shall not lapse or be reduced below the full amount of the funds. The perpetual care and pre-need funeral authority shall immediately notify the director when the insurance is not in conformity with the requirements stated herein. Failure, refusal, or neglect of a licensed cemetery and pre-need funeral authority to maintain in full force and effect the insurance as required by this section shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the insurance. The authority's license shall not be reinstated until evidence of insurance as required in this section is received by the director. The director may assess a fee on the licensee not to exceed \$500 as a condition for the reinstatement of a

suspended license, pursuant to this section. Failure to effect a reinstatement of a suspended license within sixty days of the expiration of the requirement of licensing shall cause it to be terminated, thereby forfeiting all license and biennial renewal fees. A licensee may, within fifteen days after receipt of the notification of the license termination, request an administrative hearing pursuant to chapter 91.

- (3) Investment by the board of trustees in an institution described in section 441-41(b)(1)(A) shall be limited to stocks which are either listed on a national securities exchange or traded over-the-counter on the national market of the National Association of Securities Dealers, Inc., Automated Quotation System. Only the board of trustees shall have the authority to make investment decisions. No securities salesperson shall be granted or allowed to have discretionary authority over the account.
- (4) Investment of moneys designated for perpetual care and pre-need services shall be held intact. [L 1967, c 199, pt of §1; HRS §441-41; am L 1982, c 66, §8; am L 1985, c 101, §21; am L 1993, c 350, §22]

" **§441-42 Trustee's compensation.** The trustee shall be entitled to the same compensation as provided by law for trust companies in the management of fiduciary accounts, but in no event shall any sum in excess of five per cent of the income derived from the fund or pre-need trust in any year be paid as compensation to the trustee for its services in the administration of the fund or trust. [L 1967, c 199, pt of §1; HRS §441-42; am L 1985, c 101, §22]

" **§441-43 Inspection, regulation, and supervision of administrator.** Any administrator of a perpetual care fund, other than a trust company, shall be subject to inspection, supervision, and regulation by the director to the same extent and in the same manner as may be from time to time provided by law for the inspection, supervision, and regulation of trust companies doing business in the State. [L 1967, c 199, pt of §1; HRS §441-43; am L 1975, c 21, §16; am L 1981, c 221, §20]

" **§441-44 Trustee's account; enforcement by attorney general.** The trustee shall annually file with the director an account which shall be made in such form as shall be prescribed by the director. The director shall notify the attorney general of any failure on the part of the trustee to comply with sections 441-37 to 441-44, or of the instrument creating the

fund, or trust, and the attorney general may take such action as deemed appropriate. [L 1967, c 199, pt of §1; HRS §441-44; am L 1975, c 21, §17; am L 1981, c 221, §21; am L 1985, c 101, §23]

" **§441-45 Penalty.** In addition to the penalties otherwise provided by law, any cemetery or pre-need funeral authority that violates, or fails to comply with any of the provisions of this chapter or rules adopted pursuant thereto shall be fined not more than \$5,000 for each violation. [L 1967, c 199, pt of §1; HRS §441-45; am L 1981, c 221, §22; am L 1985, c 101, §24; am L 1988, c 73, §3; am L 2007, c 188, §7]

" **§441-46 Surrender of license.** (a) A pre-need authority licensee covered under this chapter may seek to terminate all further responsibilities for compliance with the requirements of this chapter by voluntarily offering to surrender its license to the director with a sworn statement to that effect. The statement shall be accompanied by an affidavit that the licensee has lawfully expended or refunded all pre-need trust funds accepted by the person or made provisions to transfer the pre-need trust funds subject to the obligations related thereto to another person subject to approval of the director, and that the pre-need authority surrendering the license will accept no additional pre-need payments.

(b) A cemetery authority licensee covered under this chapter may seek to terminate all further responsibilities for compliance with the requirements of this chapter by voluntarily offering to surrender its license to the director with a sworn statement to that effect. The statement shall be accompanied by an affidavit that the licensee has made provisions to have the trustee of the perpetual care fund provide for the perpetuity of the cemetery or to transfer the perpetual care fund subject to the obligations related thereto to another person subject to the approval of the director, and that the authority seeking to surrender the license will make no additional interments.

(c) The person proposed to receive the pre-need trust or perpetual care fund subject to the obligations related thereto shall meet and satisfy the requirements of section 441-21 prior to the director accepting the voluntary surrender of the pre-need or cemetery authority license and canceling or revoking the license. [L 1985, c 101, §27; am L 1988, c 73, §4]