

Arkansas Burial Association Board shall be referred to as The Board

1. Officers of Associations. All officials of burial associations must be members of the association of which they are officers. In the event, a person holds office in more than one association, he/she is required to hold membership in each association of which he/she is an officer. Total benefits which may be paid to such officer shall not exceed \$2,500.00.

7. Fidelity Bonds. Associations with money on hand will be required to have a bond with an approved corporate surety, on the Secretary/Treasurer and any other person(s) whose authorized signature is on the association's accounts. Bonds must be made in favor of the association, in the amount of the surplus of the association, less the monies invested as authorized, by Ark. Code Ann. §23-78-101(Effective July 1, 1985). However, the bond shall not be less than \$2,500.00.

9. Books and Records. All books, accounts, and records must be kept at the main office of the association and in such manner as to accurately reflect the condition of the association, subject to inspection of any member of the association or representative of the Board. Books of an association may be closed not more than 30 days prior to an assessment, and all members receiving certificates more than 30 days prior to an assessment, shall be included in the assessment.

10. Semi-Annual Reports. Each burial association or society licensed in this state shall file a Semi-Annual report showing the actual financial condition of the association as of June 30 and December 31, of each year on forms approved and/or provided by the Board. In addition to the accurate December Semi-Annual Report, other items or documents to be filed shall include, but are not limited to, the following:

- a) Annual fee of six hundred dollars (\$600.00) per association;
- b) Membership fees of twenty-five cents (\$0.25) per member based on the number of members as of December 31st;
- c) Minutes from the Annual Meeting for the calendar year;
- d) Proof of Bond in good standing;
- e) New Business 443 Reserves Report, if applicable.

If said report(s) is not received in the Board's office by August 15th and February 15th, penalties will be assessed, and if necessary, the Board will take action to procure the report, if not received within ten (10) days from due date. Should it become necessary for the Board's Auditor to travel to the association to procure the report, the Board's office shall recover expenses incurred as a result of the association's failure to file the report. These expenses shall be those authorized by Ark. Code Ann. §23-78-101 and shall be paid by the contract funeral home, and not from the Mortuary Fund. (Act 480 of 1985, effective July 1, 1985).

The Board may grant an extension of time to submit a report for good cause. A burial association or society shall file a request for an extension to the Board in writing before the due date of the report. Ark. Code Ann. § 23-78-120 (b) (3) (A)-(B).

11. Funeral Directors. The by-laws of burial associations may provide that the Secretary/Treasurer, upon being notified of the death of a member shall designate a funeral director to prepare the body for internment according to the terms of the certificate held by the member at time of death.

If at any time the contract funeral home customarily employed by the association cannot service the funeral, then the Secretary/Treasurer shall pay the servicing funeral home which provides the service according to the member's contract in accordance with Article 22 of the By-laws or one hundred percent (100%) for membership issued under Act 443.

12. Minutes of Meeting. Minutes of the annual meeting shall be submitted to the Board's office with the December report.; Minutes of a special meeting called to address changes in officers, rates, or other matters pertaining to the operation of a burial association shall be submitted to the Board office for approval within thirty (30) days. An approved copy will be returned to the association for its records.

14. Burial Certificates. No association shall state in its certificate, or advertise, any particular type or make of merchandise that will be furnished by said association

16. Applications. Applications for membership must be kept on file in the office of the association in the order in which they are received, and shall show number of said certificate. A copy of the certificate of membership shall be kept with said application. Date of increase or an addition to the membership must be noted on permanent record cards in the files of the association and a copy of the new certificate of membership shall be kept with said application. All applications for membership must be signed by the applicant, his/her parent, or legal representative and the soliciting agent.

20. Increase in Benefits. Any increase in benefits on present members may be written on a regular application form or on a printed form for this purpose. Such applications must be kept on file by the association, in the order in which they are received, and must show the number of the certificate and the date must be noted on the permanent record card of the association. A copy of the certificate of membership shall be kept with said application.

22. Grace Period. Each member of a burial association shall be entitled to a thirty (30) day grace period for payment of dues or assessments. The association shall be liable for payment of benefits for any member of said association, which dies during the thirty (30) day grace period.

23. Reinstatement of Membership. A member who has permitted his membership to lapse, for no longer than a period of one year, may be reinstated upon terms fixed in the by-laws of the association and by submitting an updated application and signing a statement of good health as in the original application. In such case, the assessments or dues in arrears must be paid. Otherwise, the member shall be written at the new rate at his/her attained age.

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- 26. Agent Applications.** Applications to the Board for an agent's license must be filled out, signed before a Notary Public by the applicant, an officer of the association, and accompanied by the statutory fee.
- 27. Agent License Fees.** The agent's license, regardless of the date issued, expires January 1, but may be renewed at any time before February 1, upon written request by the association and payment of the fee. After February 1, the Board may require that a formal application be filed with an accompanying affidavit to the effect that no solicitations have been made by the applicant since his or her license expired.
- 28. Misrepresentation of Facts.** Any agent who solicits members for any association upon a misrepresentation of facts may have his or her license revoked. The certificate of authority of any burial association, which shall knowingly permit or condone such conduct on the part of its agents, may also be revoked.
- 29. Incontestable Benefits.** Any certificate shall be incontestable, except for fraud, after the same has been in force for a period of one year.
- 30. Use of Particular Words.** Burial associations may use the terms "Premiums" and "Policy" in lieu of "Dues" and "Certificates".
- 31. Refund of Dues.** In the event the Secretary/Treasurer of an association shall deem it advisable to refund a member, any sum of money claimed due by such member, then such amount of the refund claim that has been credited to the Mortuary Fund, shall be paid from such Mortuary Fund and treated as a benefit paid.
- 32. Deposits of Membership Dues – Shortages and Overdraws.** (a) All assessments, membership dues and/or other funds collected by any burial association must be deposited by the Secretary/Treasurer of the association within

five (5) business days from the date collected and/or received by the association. All collections must be deposited into the burial association's Mortuary Fund for payment of membership benefits or invested as authorized by Act 91 of 1953 as amended, provided however that each burial association operating in this State is authorized to keep \$300.00 cash on hand, said funds are hereby specifically exempted from the aforementioned requirement. (b) All accounts, records, and books reflecting the financial status of all burial associations shall be open to inspection by the Auditor and employees of the Arkansas Burial Association Board. Anytime a shortage is found in a burial association by the auditors, it shall be considered prima facie violation of the Burial Association Act (Ark. Code. Ann. §23-78-101 et. seq.) and the Board may immediately take steps to remove the Secretary/Treasurer and/or revoke or suspend the Certificate of Authority granted under said Act. (c) In addition, the Board may immediately call upon the Secretary/Treasurer's bond. (d) Funds received by an agent of a burial association are considered to have been received by the association. Associations shall not permit agents to deduct the operating expense from collections prior to remitting them to the Secretary/Treasurer of the association. All funds collected must be deposited in the bank account of the association and all disbursements must be made by check, signed by the Secretary/Treasurer of the association. The exception to this rule is that the membership fee may be paid directly to the Secretary/Treasurer or to some other person appointed by the association as solicitor and licensed by the Board. (Effective July 1, 1985).

33. Benefits Owing. If at the end of any calendar year the funds in the treasury of the association are insufficient to meet the losses, then the Secretary/Treasurer may cause an extra assessment to be levied. The association, shall charge off the benefits owing if not paid by the following June 30 Semi-Annual Report and the contract funeral home shall absorb the loss. Payments owing to a servicing funeral home, other than the contract funeral home, shall have priority and paid as funds are available. **34. Service Area Notification to Members.** All burial associations, upon notification of address change outside the service area, shall notify in writing that policy holder. of changes in benefits if any.

35. Assumption of Burial Associations by Insurance Companies.

35.1. Burial associations shall petition the Board for approval for assumption by an insurance company and shall submit the following documents to the Board at least 90 days prior to the proposed effective date of the assumption:

- a) Proof that the Notice of Assumption was published in the local paper having general circulation in the city and/or county in which the association is located. That the notice was published at least two weeks prior to the date of the public meeting of the said association and not less than one week prior to the meeting.
- b) A notarized copy of the minutes of the meeting at which the assumption was approved, including the names of all members present during the meeting either in person or by affirmative proxy. Affirmative proxy shall be defined as a voting form that is mailed to all members of the association to return by a certain date voting for or against assumption. The following requirements must be met:
 1. Approval of the assumption shall be by majority of those members actually participating either in person, and/or via proxy. Members participating in person or by affirmative proxy shall be no less than twenty-six percent (26%) of the total membership.
 2. The Secretary-Treasurer shall exercise via proxy no more than twenty-five percent (25%) of the remaining votes of total membership.
- c) A copy of the Public Notice announcing the meeting to discuss the assumption, and shall include a copy of the agenda with the following items to be discussed:
 1. The amount each member is expected to receive under the proposed assumption.
 2. The amount each member is expected to receive for those

opting out.

3. The amount of all claims, debts, and obligations of the association to be satisfied out of the association's assets.
 4. Any other options that may be available to the member, including prepaid funeral arrangements and potential transferred membership into another association.
- d) A notarized copy of the letter l to be sent to all the association members stating the date, time and place of the public meeting, as well as the particulars of the assumption, including but not limited to:
1. The amount each member is expected to receive under the proposed assumption.
 2. The amount each member is expected to receive for those opting out.
 3. The amount of all claims, debts, and obligations of the association to be satisfied out of the association's assets.
 4. Any other option that may be available to the member, including pre-paid funeral arrangements and the potential to transfer membership into another association.
- e) A list of all policy holders including addresses and phone numbers receiving the notarized letter and affirmative proxy voting form announcing the public meeting.
- f) An affidavit by the Secretary-Treasurer and/or counsel for the association verifying that the association has identified members and/or attempted in good faith to identify members that may be adversely affected by any assumption and that a separate notice to those individuals to that effect has been sent along with any other required notices.

35.2. In order that an insurance company may assume a burial association, the following conditions must be met:

- a) The insurer must be a legal reserve or stipulated premium insurance company, actively engaged in business in the State of Arkansas, for the last two (2) years.
- b) The assuming insurance company must conduct an independent actuarial study to determine the amount of the money that is needed to reserve the policies of the burial association being assumed. This study is subject to Board approval.
- c) The face amount of the policy issued by the insurance company, in lieu of the membership certificate, shall be in the same amount and at the same premium rate as the membership certificate.
- d) The assuming insurance company must state in its Assumption agreement, that all claims, in behalf of a policyholder, will be paid in cash and in an amount not less than 100% of the face amount of the benefit that the member was entitled to under the certificate of membership in the burial association.
- e) The owner of the policy shall have the exclusive right to the name of the beneficiary of his choice, and may change said beneficiary at his option in writing.
- f) The insurance provider shall not require the policyholder to select either services or merchandise from particular provider of such services or merchandise in order that the 100% of the face amount of the policy, issued in lieu of membership certificates, be payable.
- g) The funds in the mortuary reserve fund will be disbursed as follows:
 - 1. All just claims, debts and obligations of the burial bssociation will be paid.
 - 2. A pro-rata distribution will be made to the policyholders opting out of the assumption.
 - 3. The Reserve amount, **35.2 (b)**, as determined by the independent actuarial study, will be paid to the assuming insurance company.
 - 4. After all required disbursements are made, any funds remaining in the mortuary reserve shall be returned to the policyholders.
- h) All holders of membership certificates in a burial association shall be assumed by the insurance company, in the same amount and at the same

premium rate as under the membership certificate, without being required to submit proof of insurability.

- 35.3.** Insurance companies wishing to assume a burial association shall submit the following documents to the Board , at least ninety (90) days prior to the proposed effective date of the assumption:
- a) The Plan of Liquidation, which shall specifically state the amount of assets owned by the association, the amount of claims, debts, and other obligations and the amounts each association member is expected to receive under the pro-rata distribution; amount of premiums paid by each member. Plan shall include an outline; including but not limited to:
 - 1. List of outstanding claims owed to any entity;
 - 2. Real property plan of distribution if any;
 - 3. List of all debts owed by the association;
 - 4. Consulting fees;
 - 5. Accounting fees;
 - 6. Attorney fees;
 - 7. Any and all other costs related to the assumption
 - b) Notice of the Assumption;
 - c) List of members choosing to opt out;
 - d) The efforts the association made at placing those members opting out into another association. There shall be statement concerning the placement of members transferring into another burial association.
 - e) The Assumption Agreement
 - f)
1. Upon receipt of the documents from both the burial association, and the assuming insurance company, the Executive Secretary shall review the documents submitted for compliance with this Rule. Additionally, copies shall be submitted to the Arkansas Insurance Department for comment regarding the petitioners' compliance with the Insurance Department Regulations. The Executive Secretary shall provide each Board member with copies of the documents as soon as practical, but no later than the next scheduled Board meeting. The Board will then consider the matter at its next scheduled meeting.

2. The Board shall approve or deny a petition for assumption, within sixty (60) days of the meeting at which it is presented. Upon approval the association shall submit a final schedule of distribution at least seven (7) days prior to any payment.

35.4. Plan of Liquidation. The Plan of Liquidation shall include:

- a) The effective date of the planned liquidation.
- b) The transfer of the rights held under the membership certificate to the insurance company and that the burial association shall have no liabilities as of the effective date of the liquidation.
- c) A plan to transfer the assets of the association as provided for in **35.2 g**.
- d) The date of the closing of the burial association.
- e) A statement that the insurance company accepts cession of the burial association membership certificates and that it assumes all liabilities of the membership certificates, together with all debts and obligations of the association being assumed, and further that the liabilities, debts and obligations of the association shall not be greater than the association had prior to the assumption, except that there shall be no less than 100% of the face amount of the policy payable, in cash.
- f) That policies shall be issued by the insurance company stating the name of the insurance company, the names of the insured, the amount of coverage for each individual and the premium rates for each individual covered by the policy.

35.5. Assumption Agreement. The Assumption Agreement shall include:

- a) That the benefits formerly contemplated under the membership certificates are now payable through the insurance company and that such benefits are payable in cash only.
- b) That the insurance company shall have the right to assume those assets of the burial association as provided for in **35.2g**, in exchange for the liabilities of the association.
- c) That if the holder of a membership certificate in a burial association does not desire to be assumed by the insurance company “wishes to opt out”, he/she may, within sixty (60) days, return the Assumption Notice

and request this “opt” out pro rata share of the associations reserves as computed and certified by the assuming insurance company. Continued payment of premiums constitutes acceptance of the assumption.

- d) That the coverage provided through the insurance company shall be in the same amount and at the same premium rate as that held under the certificate of membership in the association.
- e) That those responsible for making funeral arrangements for the deceased policyholder shall have the freedom to choose a funeral home or other funeral service and/or merchandise provider of their choice, and further that such choice shall not diminish the face amount of the policy of such.

35.6. Assumption Notice. The Assumption Notice shall be mailed/provided to each member of the association being assumed. Said Notice of Assumption shall be provided to each member in good standing, on the effective date of the assumption, without proof of insurability. The Assumption Notice shall provide the following:

- a) Effective date of the Assumption.
- b) Information regarding the assumption including:
 - 1. Uninterrupted insurance coverage without proof of insurability,
 - 2. Continued, same premium rate,
 - 3. Proceeds payable in 100% of the face amount, in cash,
 - 4. Exclusive right of the policyholder to name the beneficiary of his/her choice and right to change said beneficiary at his/her option, in writing.
- c) Information regarding the opting out provisions, including:
 - 1. Policyholders right to a pro rata share of the mortuary fund reserves as determined by **35.2g**.

35.7. Audit of Burial Association. The Board shall conduct an audit of the burial association being assumed by the insurance company within seven (7) days of the effective date of the assumption.

35.8. All costs associated with the assumption of a burial association shall be paid by the assuming Insurance Company. **36. Board Meeting.** The

Board shall meet when business dictates. at such time and/or place designated by the Board. (Effective July 1, 1985)

37. All burial association memberships written on or after the effective date of this rule, July 1, 1987 shall be reserved on the basis of the actuarial table approved by the Board. Collections and interest derived from Act 443 new business must not be used in any manner to pay claims on old business. The excess revenue or mortuary fund derived from old business shall likewise not be used to pay claims on Act 443 new business.

* Those associations with revenue insufficient to pay old business claims are required to conduct a fifth assessment each year, pay the contract funeral home a maximum of 50% of face amount of each certificate and take no expenses until the revenue reaches the point that no claims are written off and the Burial Association Board rules that the extra assessment, 50% settlement and forfeiture of expenses is no longer necessary.

38. In addition to the requirement of Article 12 of the Board by-laws, burial associations shall complete the following applications on each prospective burial association member and shall comply with the underwriting guidelines established by the Board. (Included) Violation of any rule may result in sanctions as provided for Act 91 of 1953 and the rules and regulations promulgated pursuant to its enforcement by the Board.

38.1. Only a burial association licensed by the Board may write certificates of membership up to a maximum of \$2,500.00. All certificates must comply with the minimum rates, reserve requirements contained in the Burial Association Board Rule 45 and the underwriting guidelines established by the Burial Association Board Rule 42.

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46. PENALTY RULE. The Secretary/Treasurer of the burial association shall file the December semi-annual report, all other required documents, and pay the annual fee on or before February 15th. The June semi-annual report must be filed by on or before August 15th. Reports and fees not

received in the board office by these dates will be delinquent and a \$100.00 per day delinquent fee, for a maximum period of ten (10) days (\$1,000) will be levied. If the report is not received within ten (10) days of the due date, the Board Auditor will be sent to procure the report. The Board shall recover the fees associated pursuant to Ark. Code Ann. 23-78-120. The association cannot pay the delinquent fees or the cost to procure the report from the Mortuary Fund.

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48. Mergers/Acquisitions. Burial associations may petition the Board for approval of their merger and shall submit the following documents to the Board at least 90 days prior to the proposed effective date of the merger/acquisition.

- a) Proof that the Notice of Merger/Acquisition was published in the local paper having general circulation in the city and/or county in which the association is located. That the notice was published at least two weeks prior to the date of the public meeting of the said association and not less than one week prior to the meeting
- b) A notarized copy of the minutes of the meeting at which the merger was approved, including the names of all members present during the meeting.
 - 1. Approval of the merger/acquisition shall be made by majority of those members actually participating either in person and/or via proxy. Members participating in person or by affirmative proxy shall be no less than twenty-six percent (26%) of the total membership. This applies to each association separately.
 - 2. The Secretary-Treasurer(s) shall exercise via proxy no more than twenty-five percent (25%) of the remaining votes of the total membership .

- c) A copy of the Notice announcing the meeting to discuss the merger and shall include a copy of the agenda with the following items to be discussed:
 - 1. How the merger will affect their specific association in which they are a member.
 - 2. The benefit to the members to approve the merger.
 - 3. The amount of claims, debts, and obligations of the association to be satisfied out of the association's assets.
- d) A notarized copy of the letter to be sent to all the association members stating the date, time, and place of the public meeting, as well as the particulars of the merger, including but not limited:
 - 1. How the merger will affect their specific association in which they are a member.
 - 2. The benefit to the members to approve the merger.
 - 3. The amount of claims, debts, and obligations of the association to be satisfied out of the association's assets.
- e) A list of all policy holders including addresses receiving the notarized letter announcing the public meeting.
- f) An affidavit by the Secretary-Treasurer and/or counsel for the Association verifying that the Association has identified members and/or attempted in good faith to identify members that may be adversely affected by any dissolution and that a separate notice to those individuals to that effect has been sent along with any other required Notices.

48.1 The Board may grant or deny mergers based on:

- a) The financial condition of each association,
- b) The membership of each association,
- c) The benefits/detriments to the individual associations,
- d) The consensus of the association members as demonstrated by a public meeting.

- e) Any other reason the Board deems necessary to protect association members.
- f)

48.2 The burial association shall submit the following documents to the Board, at least ninety (90) days prior to the proposed effective date of the voluntary merger:

- a) The Plan of Merger/Acquisitions, which shall specifically state the amount of assets owned by each association, the amount of claims, debts, and other obligations of each association, and the amounts each association member is expected to receive. Plan shall include an outline; including but not limited to:
 - 1. List of outstanding claims owed to any entity;
 - 2. Real property plan of distribution if any;
 - 3. List of all debts owed by the association;
 - 4. Consulting fees;
 - 5. Accounting fees;
 - 6. Attorney fees;
 - 7. Any and all other costs related to the merger/acquisitions
- b) The Notice of Merger/Acquisitions;

Upon receipt of the documents from the burial association, the Executive Secretary shall review the documents submitted for compliance with this Rule. The Secretary shall provide each Board member with copies of the documents as soon as practical, but no later than the next regularly scheduled Board Meeting. The Board will then take the matter up at its next regularly scheduled meeting.

The Board shall approve or deny a petition for merger/acquisitions within sixty (60) days of the meeting at which it is presented.

48.3 Plan of Merger/Acquisitions. The Plan of Merger/Acquisitions shall include:

- a) Authorization for Board of Directors to take necessary actions to voluntarily merge/acquire the burial associations.
- b) The effective date of the planned merger/acquisition.
- d) The date of the closing of the burial association.

48.4. Notice of Merger/Acquisition. The Notice of Merger/Acquisition shall be mailed to each member of the association being voluntarily merged/acquired. Said Notice of merger/acquisition shall be provided to each member in good standing, on the effective date of the merger/acquisition. The Merger/Acquisition Notice shall provide the following:

- a) Effective date of the merger/acquisition.
- b) Information regarding the merger/acquisition including:
 - 1. Name of association
 - 2. Address of association
 - 3. Identity of officers, Board of Directors, Secretary-Treasurer
 - 4. Any and all other changes

48.5 Audit of Burial Association. The Board shall conduct an audit of the burial association within seven (7) days of the effective date of the merger/acquisition.

48.6 All costs associated with the merger/acquisition of burial associations as described in 48.2 a) shall be paid by the burial association upon approval by the Board.

48.7 Winding up the Affairs of the Burial Association. Winding up and termination of a burial association must proceed with in accordance with the following rules:

- a) All known debts and liabilities must be paid or adequately provided for.
- b) Any property subject to a condition to return to the person designated by the donor must be transferred to that person.
- c). Any property subject to a trust or distribution to any beneficiary must be distributed in accordance with the trust agreement or beneficiary designation.
- d) Any remaining property must be distributed as follows:
 - 1. In accordance with the burial association's governing principles or,
 - 2. In the absence of applicable governing principles, to the members of the burial association pro rata.
- e) All the above will need the Board's approval

If the Board approves the merger/acquisition of two or more associations, **each association shall continue to remit the annual fee.**

49. Annual License Fees.

- a) The annual fee of six hundred dollars (\$600.00) will be due with the December 31st Semi-Annual Report payable no later than February 1st.
- b) Annual membership fees based on the total actual membership count as of December 31st will be twenty-five cents (\$0.25) per member and will be due with the December 31st Semi-Annual Report payable no later than February 1st.

