

**RULES OF THE
ARKANSAS CEMETERY BOARD**

**PROPOSED - Marked-up Version
May 6, 2010**



**ARKANSAS CEMETERY BOARD
HERITAGE WEST BUILDING, SUITE 300
201 EAST MARKHAM
LITTLE ROCK, ARKANSAS 72201**

ARKANSAS CEMETERY BOARD RULES

RULE 1. CEMETERY ACT FOR PERPETUALLY MAINTAINED CEMETERIES. **TITLE.**

These Rules shall be known as the Rules of the Arkansas Cemetery Board.

~~1.01 When referred to in these Rules, the Act shall mean Act 352 of 1977 which became effective March 3, 1977 and which supersedes Act 250 of 1953, as amended.~~

RULE 2. DEFINITIONS.

When the terms listed below are used in the Act, the Grant Fund Act, any rules or forms promulgated under the Act or Grant Fund Act, or any order of the Cemetery Board under the Act or Grant Fund Act the following definitions shall apply, unless a contrary definition is expressly provided or clearly required by the context, to the extent that they do not conflict with the definitions set forth in the Act or Grant Fund Act.

2.01 **Act** means the Cemetery Act for Perpetually Maintained Cemeteries, Ark. Code Ann. § 20-17-1001 et seq., as the same may be codified and amended from time to time.

2.02 **Deed** means an instrument of bond, contract, or conveyance used to convey an interest in real property.

2.03 **Grant Fund Act** means the Insolvent Cemetery Grant Fund Act, Act 429 of 2009 effective July 31, 2009, codified as Ark. Code Ann. § 20-17-1301 et seq. as amended.

2.04 **Grant Funds** means the money granted by the Board to an insolvent cemetery from the Insolvent Cemetery Grant Fund as established by Act 429 of 2009.

2.05 **Insolvent Cemetery** means a cemetery that has been declared insolvent by a state or federal court.

~~2.01~~ 2.06 **Mausoleum.** Mausoleum as used in Section 12 of the Act as defined in section 20-17-1002(10) of the Act shall not mean a small family mausoleum constructed by an individual lot owners, placed on lots owned by the individuals, and used exclusively for the lot owners or family.

2.07 **Project** means the intended use of the grant funds in relation to the care, maintenance, and operation of the insolvent cemetery as described by the applicant on the application.

2.08 **Recipient** means the insolvent cemetery that receives a grant from the Board within the meaning of the Act.

2.09 **Secretary** means the Secretary of the Cemetery Board.

RULE 3. APPLICATION OF ACT -

[RESERVED]

RULE 4. ~~ORGANIZATION OF CEMETERY BOARD.~~ ARKANSAS CEMETERY BOARD - CREATION - MEMBERS.

[RESERVED]

RULE 5. ~~AUTHORITY OF THE BOARD.~~ ARKANSAS CEMETERY BOARD - PROCEEDINGS.

~~4.01~~ 5.01 MEETINGS.

A. (a) The Board shall meet at least quarterly and such regular quarterly meetings shall be public ~~hearings~~. The meetings shall be governed by the Arkansas Administrative Procedures Act as codified in Ark. Code Ann. § 25-15-201 et seq.

(b) The Board shall fix the date, time, and place of ~~such hearing~~ each meeting and shall publish notice thereof at least fifteen (15) calendar days before the ~~time~~ date set for the ~~hearing~~ meeting.

~~B.~~ (c) The Board shall meet at special meetings subject to the call of the Chairman or the written demand of any two (2) members. Such special meetings shall be public ~~hearings~~ ~~subject to~~ and governed by the Arkansas Administrative Procedure Act as codified in Ark. Code Ann. §§ 25-15-201 et seq.

~~4.02~~ 5.02 APPEARANCES BEFORE THE BOARD. Any applicant, ~~any~~ protestant, ~~and any~~ cemetery company, or other party ~~who~~ that has an interest in a matter set for a ~~hearing~~ meeting before the Board shall be entitled in person and by attorney to be heard, ~~to~~ introduce evidence, and ~~to~~ examine and cross-examine witnesses.

~~4.03~~ 5.03 ORDERS OF THE BOARD.

~~A.~~ (a) Upon conclusion of any ~~hearing~~ meeting, the Board shall make its findings and ~~shall, as promptly as possible after such hearing,~~ execute an order setting forth such findings.

~~B.~~ (b) An order signed by one ex officio member of the Board, or his the ex officio member's designated deputy, and one appointed member of the Board who attended the Board meeting shall be considered executed. The date of the order shall mean the date the last of the two (2) signatures is placed on the order.

~~4.04~~ 5.04 RECORD OF THE MEETINGS. A transcript of each ~~hearing~~ meeting shall be maintained by the Board.

RULE 5. 6 AUTHORITY OF THE BOARD. ARKANSAS CEMETERY BOARD - POWERS AND DUTIES.

~~5.01~~ 6.01 EXAMINATIONS. Representatives of the Securities Department shall have delegated authority from the Board to conduct ~~the~~ examinations.

~~5.02~~ 6.02 LEGAL PROCEEDINGS. Representatives of the Securities Department shall have delegated authority from the Board to represent the Board in legal proceedings and advise the Board during its ~~hearings~~ meetings.

~~5.03~~ 6.03 ISSUANCE, SUSPENSION, AMENDMENT, OR REVOCATION OF PERMIT. If, after a public ~~hearing~~ meeting held in accordance with ~~Section 4 of the Act~~ section 20-17-1005 of the Act and ~~Rule 4, Rule 5,~~ the Board determines that a permit should be issued, suspended, amended, or revoked, the Board shall so order. If a permit is issued, suspended, revoked, or amended, a copy of such ~~revocation or amended~~ permit shall be filed by the permit holder in ~~with the Court in the County~~ County Clerk in the county in which the

cemetery is located, and a copy sent to the ~~State Health Department~~ Department of Health. The date of the permit shall be the same date as the date of the order set forth in Rule 5.03.

~~RULE 6. PUBLICATION OF NOTICE TO MAKE APPLICATION.~~

~~6.01~~ Proof of the publication of the notice required by Section 6 of the Act must be attached to and made a part of the application to the Board.

Rule 7. EXAMINATION OF A CEMETERY.

7.01 FEES. The fee for every examination conducted by the Board or its representative shall be sixty dollars (\$60) per examiner, per day plus reimbursement for actual travel, meal, and lodging expenses incurred by the examiner.

~~RULE 7. RULE 8. APPLICATION FOR NEW CEMETERY OR EXTENSION OF BOUNDARIES OF EXISTING CEMETERY. PERMIT - APPLICATION.~~

~~8.01~~ PROOF OF PUBLICATION. Proof of the publication of the notice required by section 20-17-1008(a)(1) of the Act must be attached to and made a part of the application to the Board. Publication of such notice shall be made within ninety (90) calendar days of the date of the application.

~~7.01~~ 8.02 FORM OF APPLICATION. ~~Applications~~ An application filed pursuant to the Act shall include the information required by section 20-17-1008 of the Act and Rule 8.07. ~~need not be in any A specific form is not required, but the application must be made in writing and under oath in not less than eight (8) copies. Applications shall have attached the information, designated as exhibits, required by Section 7 of the Act and Rule 6.01. signed in the presence of a notary. The original application shall be accompanied by not less than ten (10) copies.~~

~~7.02~~ 8.03 DATE OF FILING. ~~Applications~~ An application must be filed with the Secretary at least twenty (20) calendar days prior to the ~~regular quarterly~~ Board meeting at which ~~they~~ are it is to be considered.

~~7.03~~ 8.04 FEES. The applicant shall submit fees as set for in

Section 20-17-1008 of the Act.

A. ~~The fee for filing an application for a new cemetery shall be \$200~~

B. ~~The fee for filing an application for an extension of the boundaries of an existing cemetery shall be \$100.00 as long as the existing cemetery for which the application for extension is being made holds a current permit from the Board. If the existing cemetery is not subject to the provisions of the Act, the fee for the application for the extension shall be \$200.00.~~

7.04 8.05 SURVEY AND MAP. In lieu of filing a survey and map with the Board, the applicant may file a survey and map with the ~~State Health Department~~ Department of Health, in a form satisfactory to the ~~State Health Department~~ Department of Health, as a part of the investigation set forth in ~~Section 9 of the Act~~ section 20-17-1009 of the Act, and upon proof of such filing, shall be accepted by the Board.

7.05 ~~8.05 EXHIBITS FILED BY REFERENCE.~~ If the application is for ~~extending the boundaries of an existing cemetery which holds a current permit from the Board and the proposed rules and regulations for the use, care and management of the cemetery or the proposed method of establishing a permanent maintenance fund is the same as for the existing cemetery, the applicant may incorporate such information by reference in the application in lieu of attaching the full exhibit.~~

7.06 8.06 PROTEST TO APPLICATION. Whenever any person desires to protest the issuance of a permit, ~~he~~ the protestant shall file with the Board a written protest setting forth ~~his~~ any objections. Any such protest must be filed at least seven (7) calendar days before the Board meeting at which the application is to be heard. A copy of the protest shall be sent to the cemetery company making the application by the protestant. Protestants shall be entitled to appear before the Board as set forth in ~~Rule 4.02.~~ 5.02

~~**RULE 8. ADDITIONAL INFORMATION REQUIRED BY BOARD.**~~

8.01 8.07. (a) In addition to the information required by the Act, any application filed pursuant to section 20-17-1008 of the Act shall contain the following information:

~~A. Any application filed pursuant to Section 7 of the Act shall contain the following additional information:~~

- (1) The applicant's form of business organization, ~~i.e.,~~ e.g. corporation, partnership, sole proprietorship, limited liability company, etc. If the form of business is a corporation or limited liability company, the applicant must ~~state if it is organized under the laws of the State of Arkansas or advise under which State law it is organized.~~ identify under which State law the entity is incorporated or organized.
- (2) If the ~~cemetery corporation~~ applicant is a foreign corporation or limited liability company, its resident agent for service of process, the address of its home office, and a statement that it has been registered with the Secretary of State as a foreign corporation or limited liability company, respectively, doing business in the State of Arkansas.
- (3) The names and addresses of applicant's managing officers and Board of Directors; or if a partnership, the names and addresses of all partners and their respective share of the business.
- (4) The outstanding capital stock of the applicant and a list of the stockholders. The list of stockholders must indicate if a stockholder of record holds the stock as trustee or agent for someone other than himself.
- (5) A copy of the Articles of Incorporation, Articles of Organization, ~~or~~ Bylaws, or similar founding charter of the applicant duly authenticated and certified by the proper authority, or if a partnership, a partnership agreement.
- (6) A statement that the corporation or limited liability company is or is not a subsidiary of another corporation or limited liability company, and if it is, the name of the parent organization, the percentage of voting securities owned by the parent, or any other basis of control by the parent.

- (7) A description of all property held by the ~~corporation or other form of business organization~~ applicant. If any such property is not held in fee or is subject to any encumbrance, so state and briefly describe how held.
- (8) A statement as to whether applicant is the owner or operator of any other cemetery in this or any other state and the name and address of said cemetery (cemeteries).
- (9) A statement briefly describing the nature of ~~If there are~~ any pending legal proceedings against the ~~corporation~~ applicant; ~~or one~~ any of its owners, officers, agents, or employees; ~~or against~~ the partners of a partnership; or owner of a proprietorship, ~~a statement briefly describing the nature of these proceedings filed within the last ten (10) years, as well as any final judgments or orders against the same.~~
- (10) A ~~consolidate~~ consolidated balance sheet and a profit and loss statement prepared by an independent certified public accountant showing the financial condition of the applicant as of thirty (30) calendar days before the filing of the application.
- (11) ~~Applicant must show as a separate exhibit~~ A statement showing an estimate of the volume of sales which he expects ~~expected to produce be produced~~ in the first five (5) years of operation. ~~This~~ The estimate should be based upon such things criteria such as the projected population growth in the area and population make-up of the area, the number of cemeteries in the area, the condition of these cemeteries, and any other relevant facts. ~~The exhibit should include a statement concerning the method of sales promotion which applicant intends to employ, i.e., a promotional program with a full time salesman or a sales contract with some promotional sales company.~~
- (12) Any other evidence which would show a public need for the cemetery.

~~B.~~ (b) If any of the information required by Rule ~~8.01~~ 8.07 is already on file with the Board, the applicant may incorporate the previous filings by reference in the application.

~~C.~~ Cemetery corporations making application after the date of the adoption of these rules will be required to place a minimum of 20% of the gross sales price of each lot into the permanent maintenance fund, unless they can show cause why the Board should allow them it to place a lower percentage than 20% into said fund. In no case shall the Board allow a cemetery to place less than the minimum statutory 10% into the permanent maintenance fund.

~~D.~~ (c) The Board may require a cemetery an applicant to submit such other information it deems necessary.

RULE 9. ~~STATE HEALTH DEPARTMENT INVESTIGATION~~ PERMIT - INVESTIGATION BY DEPARTMENT OF HEALTH.

[RESERVED]

RULE 10. ~~ISSUANCE OR DENIAL OF PERMIT FOR NEW CEMETERY OR EXTENSION OF BOUNDARY OF EXISTING CEMETERY.~~ PERMIT - ISSUANCE.

~~10.01 PUBLIC HEARING.~~ The Board shall consider all applications for a new cemetery or extension of the boundaries of an existing cemetery at a regular quarterly meeting or a special meeting of the Board in accordance with Section 4 of the Act and Rule 4.

~~10.02~~ 10.01 ISSUANCE OF PERMIT. If the application for a new perpetual care cemetery or extension of boundaries of an existing perpetual care cemetery holding a permit under the Act is approved, the Board shall issue a permit to the cemetery company setting forth the legal description of the property to be used as a cemetery. The date of the permit shall be the same date as the date of the order as set forth in Rule ~~4.03~~ 5.03.

~~10.03~~ SUSPENSION OR REVOCATION OF THE PERMIT. If the cemetery corporation company fails to commence operation of

~~the cemetery within two years from the date of the issuance of the permit, a public hearing shall be held by the Board to determine whether the permit should be revoked in the public interest. At the hearing, the Board shall revoke the permit unless the cemetery corporation shows good cause for its failure to commence operation. The Board may impose such reasonable requirements on the cemetery corporation as it may deem proper as a condition to not revoking its permit, including, but not limited to, the requirement that it must commence operation within a specified period.~~

~~10.04~~ 10.02 FILING OF PERMIT. The ~~Board~~ cemetery company shall file a copy of each newly issued permit with the County Clerk of the County county in which the cemetery is located and shall send a copy of each newly issued permit to the State Health Department Department of Health.

RULE 11. OWNERSHIP CHANGE IN CEMETERY COMPANY. PERMIT - AMENDMENT.

11.01 FORM OF APPLICATION. An application to modify an existing permit shall be filed pursuant to the Act and shall include the information required by section 20-17-1011 of the Act. A specific form is not required, but the application must be in writing and signed in the presence of a notary. The original application shall be accompanied by not less than ten (10) copies.

11.02 DATE OF FILING. An application must be filed with the Secretary at least (20) calendar days prior to the Board meeting at which it is to be considered.

11.03 FEES. The applicant shall submit fees as required in Section 20-17-1011 of the Act.

11.04 EXHIBITS FILED BY REFERENCE. If the proposed rules and regulations for the use, care, and management of the cemetery or the proposed method of establishing a permanent maintenance fund are already on file with the Board, the applicant may incorporate such information by reference in the application in lieu of attaching the full exhibit.

11.05 MODIFICATIONS DETERMINED BY BOARD. If the Board, or its representatives, determines that the facts set forth in an application which resulted in the issuance of a permit under this Act have changed or an amendment to the permit

may be necessary, the Board may consider whether the present permit needs to be amended. The cemetery company presently holding the permit shall be notified of the Board's decision to review the existing permit and shall be given an opportunity at the meeting to present evidence.

11.06 PUBLIC MEETING. The Board shall consider all applications filed pursuant to section 20-17-1011 of the Act at a regular or special meeting.

11.07 ISSUANCE OF PERMITS. If the Board determines that an existing permit should be amended, the Board shall issue a new permit. The new permit shall supersede the previous permit. The new amended permit shall be filed by the cemetery company with the County Clerk in the county in which the cemetery is located and a copy sent to the Department of Health.

RULE 12. PERMIT - TRANSFER OF OWNERSHIP.

~~11.01~~ 12.01 FORM OF APPLICATION. An Applications application filed to transfer ownership of a cemetery shall include the information required by section 20-17-1012 of the Act. need not be in any A specific form but is not required, but the application must be made in writing under oath and in not less than eight (8) copies. and signed in the presence of a notary. The original application shall be accompanied by not less than ten (10) copies. Applications shall have attached the information, designated as exhibits, required by Section 11 of the Act.

12.02 DATE OF FILING. Applications must be filed with the Secretary at least twenty (20) calendar days prior to the Board meeting at which it is to be considered.

12.03 Fees. The applicant shall submit the fees as required in Section 20-17-1012 of the Act.

~~11.02~~ 12.04 ADDITIONAL INFORMATION REQUIRED BY THE BOARD.

~~A.~~ (a) The cemetery company proposing to acquire the ownership of or a controlling interest in a cemetery company currently holding a permit shall file the information set forth in Rule 8.01A(1) through Rule 8.01A(10) Rule 8.07(a)(1) through 8.07(a)(10) unless

upon proper showing the Board waives one or more of the requirements.

B. (b) If any of the information required by this Rule is already on file with the Board, the applicant may incorporate the previous filings by reference in the application.

C. (c) The Board may require the cemetery company proposing to acquire or the cemetery company proposing to dispose of the ownership of a cemetery to submit such other information as it deems necessary.

~~11.03~~ 12.05 PUBLIC HEARING MEETING. The Board shall consider all applications filed pursuant to ~~Section 11 of the Act~~ Section 20-17-1012 of the Act at a regular quarterly meeting or at a special meeting. ~~in accordance with Section 4 of the Act.~~

~~11.04~~ 12.06 DATE OF FILING. Applications must be filed with the Secretary at least twenty (20) calendar days prior to the regular quarterly Board meeting at which they are it is to be considered.

~~11.05~~ 12.07 SELLER OR TRANSFEROR ~~VENDOR~~ FILINGS WITH BOARD.

A. (a) Prior to the sale, or transfer of ownership the seller or transferor shall notify the Board of the proposed sale or transfer. Such notification ~~shall be made under oath~~ need not be in any specific form but must be in writing and signed in the presence of a notary. The original notification and in not shall be accompanied by not less than eight (8) ten (10) copies. ~~Vendor~~

(b) The seller shall attach as exhibits to the ~~notification~~ filing at least the following:

- (1) Report disclosing balances as reported on last previous annual report, the amounts of sales for which payment has been made in full since the annual report, the corresponding deed numbers which have been issued, the amounts and dates of each deposit made to the permanent maintenance fund, and such other information necessary to show that all amounts due to be paid into the permanent maintenance fund have been satisfied.

- (2) Listings detailing each house account receivable and each discounted note showing the name of the lot purchaser, the gross amount of the lot sales price, and the outstanding balance.
- (3) Report of the trustee disclosing the date and amount of all deposits to the trust fund since the annual report, the dates and amounts of income earned and disbursed since the annual report, and a listing of all assets of the permanent maintenance fund delineating between principal assets and income assets.
- (4) All reports and listings required by ~~Rule 11.05A~~ Rule 12.05(a) shall be as of the same date, which date shall not be more than forty-five (45) calendar days prior to the date of the Board meeting at which the application shall be heard, and shall be filed at least seven (7) calendar days prior to such meeting date.

B. (c) If such application ~~be~~ is approved by the Board, the seller or transferor shall, within seven (7) calendar days after the sale or transfer date, submit a statement, under oath, proving of the ~~currency~~ assets of the permanent maintenance fund as of the sale or transfer date.

~~11.06~~ 12.07 ISSUANCE OF PERMIT TO VENDEE PURCHASER. If the Board finds that the ~~vendor~~ seller or transferor and the ~~vendee~~ purchaser or transferee have complied with the Act and Rules, the Board shall order the issuance of a new permit to the ~~vendee~~ purchaser. The new permit shall supersede the previous permit. The date of the new permit shall coincide with the date of sale. The ~~Board~~ permit holder shall file a copy of the ~~new~~ newly issued permit with the County Clerk of the county in which the cemetery is located and shall send a copy of the new permit to the ~~State Health Department~~ Department of Health.

RULE 12. ~~MODIFICATION OF PERMITS.~~

~~12.01~~ APPLICATION BY PERMIT HOLDER. ~~Applications to the Board for modification of a permit filed pursuant to~~

~~Section 12 of the Act need not be in any specific form but must be in writing and under oath in not less than eight (8) copies and contain the information and exhibits required by Section 12 of the Act.~~

~~12.02 — MODIFICATIONS DETERMINED BY BOARD. If the Board, or its representatives, determines that the facts set forth in an application which resulted in the issuance of a permit under this Act have changed or an amendment to the permit may be necessary, the Board may consider whether the present permit needs to be amended. The cemetery company presently holding the permit shall be notified of the Board's decision to review the existing permit and shall be given an opportunity at the hearing to present evidence.~~

~~12.03 — PERCENTAGE OF CONTRIBUTION TO TRUST. The amount or percentage to be placed in the permanent maintenance fund for mausoleum crypts, columbariums, or niches shall be determined and fixed by the Board when permits are issued or amended. In no event shall the contribution per mausoleum crypt be less than \$40.00.~~

~~12.04 — PUBLIC HEARING. The Board shall consider a modification or amendment to an existing permit at a regular or special meeting of the Board in accordance with Section 4 of the Act and Rule 4.~~

~~12.05 — ISSUANCE OF PERMITS. If the Board determines that an existing permit should be amended, the Board shall issue a new permit. The new permit shall supersede the previous permit. The new amended permit shall be filed with the County Clerk in the county in which the cemetery is located and a copy sent the State Health Department.~~

RULE 13. ESTABLISHMENT OF PERMANENT MAINTENANCE FUND — PERMANENT MAINTENANCE FUND GENERALLY.

13.01 TRUST AGREEMENT. Each permanent maintenance fund established pursuant to section 20-18-1013 of the Act shall have a written trust agreement governing the operation of the fund. A copy of the trust agreement shall be filed with the Board.

13.02 NOTIFICATION OF CHANGE OF TRUSTEES. The Board shall be notified prior to any change in the ~~type of~~ trustee arrangement or in the trustee(s) by either the cemetery company or the trustee(s).

13.02 ~~PERCENTAGE OF CONTRIBUTION TO TRUST. Any cemetery company holding a permit from the Board on March 4, 1997, the effective date of the Act, shall continue to deposit the same percentage of gross proceeds of each sale of lots, or grave spaces, or mausoleum crypts into the permanent maintenance fund that was being deposited prior to the adoption of the Act. As set forth in Rule 8.01(C), cemetery companies filing an application for a new cemetery or an extension of the boundaries of an existing cemetery shall deposit not less than 20% of the gross proceeds of each sale for the cemetery and covered by the application unless the cemetery company can show cause why the Board should allow a lesser percentage. Cemetery companies filing an application to amend a permit to construct a mausoleum shall deposit not less than \$40.00 per crypt into the permanent maintenance fund. The Board may require larger deposit contribution rates if it finds that the amounts being deposited into the permanent maintenance fund will not earn sufficient income to provide care and maintenance of the cemetery.~~

13.03 ~~INSTALLMENT SALES CONTRACTS.~~

- A. ~~A cemetery company who maintains house accounts receivable in accordance with Section 13 of the Act and deposits the required percentage when the contract is paid in full or as each installment is received, shall make such deposit not later than the 45th day after receipt of payment. A cemetery company who makes a monthly contribution to the permanent maintenance fund shall make the deposit no later than the 15th day of the month following the month in which the cemetery company received payment from the purchaser.~~
- B. ~~A cemetery company which elects to discount installment sales contracts shall first file with the Secretary of the Cemetery Board a copy of the agreement with the financial institution which agreement shall set forth the terms under which the escrow account is restricted. Should the Secretary of the Cemetery Board determine that the agreement does not adequately proved the safeguards provided by Section 13 of the Act, the Secretary shall ask the Board to review the agreement at a public hearing held~~

~~in accordance with Section 4 of the Act and Rule 4.~~

~~13.04 FIDELITY BONDS.~~

~~A. If a fidelity bond is required pursuant to Section 13(A) (2) of the Act the bond shall indemnify the insured permanent maintenance fund against loss of money or property which the fund shall sustain through fraudulent or dishonest acts committed by trustees having disbursement authority. The bond shall remain in full force and effect from the effective date of the bond until it is terminated by the surety thereon, and such bond shall provide that thirty (30) days notice must be given to the State Securities Commissioner by the surety prior to the effective date of termination. Any modification to the bond must likewise be filed with the Board.~~

~~13.05 PROOF OF FEDERAL INSURANCE AND RESTRICTION ON~~

~~ACCOUNTS. Should the cemetery company elect to establish a permanent maintenance fund in accordance with Section 13(A) (3) of the Act, each bank or savings and loan association into whose accounts the permanent maintenance funds are to be deposited shall furnish the Board with a letter setting forth that all funds deposited shall be federally insured, that the funds except the interest earned thereon will be restricted so that they may not be pledged, withdrawn or otherwise encumbered without written authorization of the Secretary of the Board, and the name of the trustee who may withdraw the interest. Permanent maintenance funds deposited in any one bank or savings and loan association in excess of the maximum Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation insurance shall be deemed to be federally insured if the bank or savings and loan association pledges specific securities which are direct obligations of the United States government, or agencies whose securities are guaranteed by the United States government, as collateral for the funds in excess of the FDIC or FSLIC insurance coverage.~~

~~13.06 CEMETERY PLANS FOR CARE AND MAINTENANCE OF CEMETERY.~~

~~Each cemetery company shall file with the Board a copy of the rules and regulations and any changes thereto regulating the general care and maintenance of the cemetery within 45 days after adoption.~~

~~13.07~~ PAYMENT OF PENALTY FOR FAILURE TO MAKE REQUIRED CONTRIBUTIONS TO FUND. If the Board finds that a cemetery company must pay a penalty as provided in ~~Section 13 of the Act~~ section 20-17-1016(c) of the Act, the cemetery company must submit proof to the Board from the trustee(s) ~~of payment of such penalty to the Board.~~ that the penalty has been deposited into the cemetery company's permanent maintenance fund.

RULE 14. PERMANENT MAINTENANCE FUND IS A TRUST FUND. PERMANENT MAINTENANCE FUND - TRUSTEES.

~~14.01~~ TRUST AGREEMENT. Each permanent maintenance fund shall have a written trust agreement governing the operation of the fund. A copy of the trust agreement shall be filed with the Board. Prior to an amendment of the agreement, the cemetery company or the trustee(s) shall submit to the Board a copy of the proposed amended agreement amendment. The amendment may not be effected until the Secretary of the Board or deputy designated by the Secretary approves the amendment in writing.

MINUTES OF TRUSTEE MEETINGS. If ~~the~~ a permanent maintenance fund is established in accordance with ~~Section 13(A)(2)~~ section 20-17-1014(2) of the Act, minutes of trustees' meetings must be maintained. The minutes must be signed by all three trustees, ~~and must show~~ reflect the authorization of all purchases and sales of investments, and reflect the authorization of all disbursements of income. If the trust agreement provides that only one trustee shall have sole disbursement authority, minutes must be prepared by that one trustee and submitted to the remaining trustees for ratification at least twice a year.

~~14.02~~ FIDELITY BONDS.

~~A.~~ (a) If a fidelity bond is required pursuant to 20-17-1014(2) of the Act, the bond shall indemnify the insured permanent maintenance fund against loss of money or property which the fund shall sustain through fraudulent or dishonest acts committed by trustees having disbursement authority. The fidelity bond shall remain in full force and effect from the effective date of the bond until it is terminated or modified by the corporate surety thereon, and such fidelity bond shall provide that thirty (30) calendar days notice must be given to the Secretary by the corporate surety prior to the effective date of termination. Any

modification to the fidelity bond must likewise be filed with the Board.

- ~~B.~~ (b) If a fidelity bond required pursuant to section 20-17-1014(2) of the Act includes a deductible, an appropriate deposit of cash or securities, in a form approved by the Board, shall be accepted to meet the deductible.

14.03 PROOF OF FEDERAL INSURANCE AND RESTRICTION ON ACCOUNTS.

- (a) A cemetery company that elects to establish a permanent maintenance fund in accordance with section 20-17-1014(3) of the Act, each bank or savings and loan association that will receive deposits for the permanent maintenance fund, furnish the Board with a letter setting forth that:
- (1) All funds deposited shall be federally insured;
 - (2) All funds, except the interest earned thereon, will be restricted so that it may not be pledged, withdrawn, or otherwise encumbered without written authorization of the Secretary, and
 - (3) The name of the trustee who may withdraw the interest.
- (b) Permanent maintenance funds deposited in any one bank or savings and loan association in excess of the maximum FDIC insurance shall be deemed to be federally insured if the bank or savings and loan association pledges specific securities which are direct obligations of the United States government, or agencies whose securities are guaranteed by the United States government, as collateral for the funds in excess of the FDIC insurance coverage.

RULE 15. ~~OTHER CONTRIBUTIONS TO THE PERMANENT MAINTENANCE FUND.~~
PERMANENT MAINTENANCE FUND - ANNUAL REPORT.

[RESERVED]

RULE 16. ~~ANNUAL REPORT OF TRUSTEE~~ PERMANENT MAINTENANCE FUND - REQUIRED DEPOSITS.

16.01 PROOF OF FILING REPORT WITH COUNTY CLERK. Within

~~fifteen (15) days after the trustee(s) have filed the annual report with the Board, the trustee(s) shall submit proof to the Board that a copy of the annual report was filed with the County Clerk in the county in which the cemetery is located.~~

A cemetery company that elects to discount installment sales contracts shall first file with the Secretary a copy of the agreement including the terms under which the escrow account is restricted. Should the Secretary determine that the agreement does not adequately provide the safeguards established by section 20-17-1016(b)(2)(B) of the Act, the Secretary shall ask the Board to review the agreement at a public meeting held in accordance with section 20-17-1005 of the Act and Rule 5.

RULE 17. BOOKS AND RECORDS OF CEMETERY COMPANY PERMANENT MAINTENANCE FUND - VOLUNTARY CONTRIBUTION.

[RESERVED]

RULE 18. CONVEYANCE OF OWNERSHIP.

RULE 18. PERMANENT MAINTENANCE FUND - PENALTIES.

[RESERVED]

RULE 19. ANNUAL REPORT OF CEMETERY COMPANY.

RULE 19. CONVEYANCE OF LOTS.

[RESERVED]

RULE 20. EXAMINATION OF CEMETERY COMPANY.

~~20.01 FEES. The fee for every examination conducted by the Cemetery Board or its representatives shall be \$60.00 per examiner per day or \$30.00 per half day or part thereof, and in addition thereto, the cemetery company shall pay the actual travel, meal and lodging expenses of such examiner(s) from Little Rock and return.~~

RULE 20. UNLAWFUL ACT.

[RESERVED]

~~RULE 21. ADDITIONS TO CIVIL PROVISIONS~~

~~{ RESERVED }~~

RULE 21. DISPOSITION OF CONTRIBUTIONS AND FEES.

21.01 Proof of any contribution to the permanent maintenance fund required by order of the Board shall be filed with the Board within thirty (30) calendar days after the contribution is made.

~~RULE 22. FILING OF INFORMATION BY EXISTING CEMETERIES WHO HAVE NOT PREVIOUSLY FILED ANNUAL REPORTS.~~

~~22.01 FEES. The fee for filing such information shall be \$100.00.~~

~~22.02 Any application filed under Section 22 of this Act shall contain the following additional information:~~

- ~~(1) The applicant's form of business organization, i.e., corporation, partnership, sole proprietorship, etc. If the form of business is a corporation, the applicant must state if it is organized under the laws of the State of Arkansas or advise under which State law it is organized.~~
- ~~(2) If the cemetery corporation is a foreign corporation, its resident agent for service of process, the address of its home office, and a statement that it has been registered with the Secretary of State as a foreign corporation doing business in Arkansas.~~
- ~~(3) The names and addresses of applicant's managing officers and Board of Directors; or if a partnership, the names and addresses of all partners and their respective share of the business.~~
- ~~(4) The outstanding capital stock of the applicant and a list of the stockholders. The list of stockholders must indicate if a stockholder of record holds the stock as trustee or agent for someone other than himself.~~

- ~~(5) A copy of the Articles of Incorporation or Bylaws duly authenticated and certified by the proper authority, or if a partnership, a partnership agreement.~~
- ~~(6) A statement that the corporation is or is not a subsidiary of another corporation, and if it is, the name of the parent organization, the percentage of voting securities owned by the parent or any other basis of control by the parent.~~
- ~~(7) A description of all property held by the corporation or other form of business organization. If any such property is not held in fee or is subject to any encumbrance, so state and briefly describe how held.~~
- ~~(8) A statement as to whether applicant is the owner or operator of any other cemetery in this or any other state and the name and address of said cemetery (cemeteries).~~
- ~~(9) If there are any pending legal proceedings against the corporation or one of its officers, agents or employees, or against the partners of a partnership or owner of a proprietorship, a statement briefly describing the nature of these proceedings.~~
- ~~(10) A consolidated balance sheet and a profit and loss statement prepared by an independent certified public accountant showing the financial condition of the applicant as of thirty (30) days before the filing of the application.~~
- ~~(11) The percentage of gross sales that are placed in the perpetual care fund or other method by which contributions are made to the perpetual care fund.~~
- ~~(12) The cemetery company shall file a copy of its sales contract and deed of conveyance.~~

~~22.02 SURVEY AND MAP. In lieu of filing a survey and map with the Board, the applicant may file a survey and map with the State Health Department, in a form satisfactory to the State Health Department as a part of the investigation set forth in Section 9 of the Act and such filing shall be accepted by the Board.~~

~~22.03 Upon receipt of the above listed information, the~~

~~Board will hold a public hearing. If the filing is in compliance with the Act and Rules, then the Board will issue an initial Letter of Compliance and the cemetery company shall thereafter operate under an annual operating permit in the same manner as cemeteries covered by the prior Cemetery Act. (Act 250 of 1953).~~

RULE 22. RECORDS REQUIRED.

~~17.01~~ 22.01 CASH RECEIPTS AND DISBURSEMENTS. All cemetery ~~corporations~~ companies must keep a book, journal, or comparable record of cash receipts and disbursements ~~book or journal or other comparable records~~ showing the date, amount, person from who received or to whom disbursed, and the purpose of each receipt or disbursement. This record ~~will show, amount other things,~~ shall reflect amounts disbursed and deposited to the permanent maintenance ~~funds,~~ fund and any other ~~receipt and~~ disbursement of funds by the cemetery company.

~~17.02~~ 22.02 SALES CONTRACTS.

A. (a) All sales contracts must be numbered consecutively after ~~they~~ a sales contract ~~are~~ is executed by the cemetery ~~corporation~~ company and must contain at least the following:

- (1) date of contract,
- (2) total ~~purchaser~~ purchase price,
- (3) terms of sale,
- (4) description of plot or plots purchased,
- (5) signature of buyer,
- (6) address of buyer,
- (7) date when paid in full,
- (8) deed number issued, and
- (9) acknowledgment that the purchaser has received a copy of the ~~Rules~~ rules and ~~Regulations~~ regulations of the cemetery.

B. (b) The cemetery company must maintain a copy of each contract in a numerical file or must maintain a numerical listing of each contract with ~~a sufficient amount of the above details,~~ referenced in Rule 22.02(a). All voided or cancelled contracts must be so marked and retained in the files in accordance with

Rule 22.08.

- ~~C.~~ (c) The original or a manually signed duplicate of the original of each contract must be retained by the cemetery company.
- ~~D.~~ (d) Cemetery ~~corporations which~~ companies that enter into sales contracts in which one basic contract is drawn for the sale of cemetery lots and other items, such as memorial and burial vaults, must specifically set out in such contract the purchase price of each item being purchased and the total sales contract price. If such contract is paid for ~~on the~~ with an installment plan, the payments must be pro-rated among the respective items so that full payment of any or all of the items can be readily identified. Only the portion of the sales contract which is for the purchase of the cemetery lot shall be subject to the trust fund deposit requirements of the Act. ~~÷~~
- (e) Sales contracts which include a calendar or fiscal year prefix, and are numbered consecutively within said prefix, shall be considered to be numbered consecutively under section 20-17-1022(b) of the Act, and these Rules.

~~17.03~~ 22.03 INSTALLMENT SALES.

- ~~A.~~ (a) The cemetery company must retain accounts receivable ~~cards~~ records on all contracts not yet paid in full. ~~They~~ The records must be maintained on contracts where the cemetery company receives installment payments directly as well as discounted contracts. ~~as well as house accounts.~~ All accounts must be posted currently (at least once a month), either by the cemetery company or ~~by~~ the bank, financial institution, or other person discounting the note, ~~or by the cemetery.~~
- ~~B.~~ (b) Prior to discounting ~~their~~ sales contracts with a bank or other financial institution, ~~the~~ a cemetery ~~corporation~~ company must verify that ~~this~~ the institution will provide the cemetery with monthly statements showing the status of each discounted note. Such monthly status reports must be maintained in the cemetery file.

- ~~E.~~ (c) If the sales contracts provide for installment payments which include interest, ~~or~~ credit life insurance, or similar items, the cemetery must comply with ~~the disclosure provisions of the Federal Truth in Lending Act~~ all applicable Federal and State regulations.

~~17.04~~ 22.04 DEEDS.

- ~~A.~~ (a) Each cemetery company shall issue deeds and maintain a record of all deeds issued (deed record book) as set forth in ~~Section 18 of the Act~~ section 20-17-1019(a) of the Act.

- ~~B.~~ (b) All deeds must be prenumbered and either the stubs of the deeds or a deed record book shall be kept ~~showing~~ reflecting:

- (1) a corresponding contract number,
- (2) the name of purchaser, and
- (3) the date and amount of deposit to the Trust Fund.

- ~~C.~~ ~~The cemetery corporation shall not maintain or use any deeds that are not prenumbered.~~

~~17.05~~ 22.05 CEMETERY MAP. The cemetery company must maintain on a current basis a cemetery map, plot plan, or comparable record ~~showing~~ reflecting all interments, lots paid-in-full, and lots under contract but not yet fully paid.

~~17.06~~ 22.06 RULES AND REGULATIONS GOVERNING CEMETERY CARE AND MAINTENANCE. ~~Cemetery companies may promulgate plans for the care and maintenance of the cemetery in accordance with Section 13 of the Act.~~ The cemetery company must have ~~their~~ its current rules and regulations providing for the general care and maintenance of the cemetery in accordance with section 20-17-1013(f) of the Act on file with at the cemetery for the use of the public.

22.07 CEMETERY PLANS FOR CARE AND MAINTENANCE OF CEMETERY. Each cemetery company shall file with the Board a copy of the rules and regulations, and any changes thereto, providing the general care and maintenance of the cemetery within forty-five (45) calendar days after adoption by the

cemetery company.

~~17.07~~ 22.08 RETENTION OF RECORDS. Records required for deeds, contracts, and plot maps must be kept indefinitely. All other books and records shall be kept for at least five (5) years. Deed record and books and cemetery maps must be kept indefinitely.

RULE 23. DEPOSITING CONTRIBUTIONS AND PAYING FEES.

~~23.01~~ ~~Proof of contribution to the perpetual care fund shall be filed with the Arkansas Cemetery Board within thirty (30) days after the contribution is made.~~

RULE 23. ANNUAL REPORT OF CEMETERY COMPANY.

~~19.01~~ 23.01 FEES.

(a) The fees fee for filing an annual report shall be \$50.00 as set forth in Section 20-17-1023 of the Act.

(b) The burial sale contract fee shall be as set forth in section 20-17-1023(b) of the Act. with an additional charge of \$25.00 for each of the following:

~~A. \$50,000.00 and over in assets.~~

~~B. Trustee other than state or national bank with trust powers.~~

~~C. The use of discounted notes.~~

~~The maximum fee shall not exceed \$100.00.~~

~~19.02~~ 23.02 DISPLAY OF ANNUAL OPERATING PERMIT. Upon receipt of an annual operating permit, the cemetery company shall prominently display the permit in a clear, weatherproof container at the main entrance to the cemetery. Cost of the container shall be ~~born~~ borne by the cemetery company.

23.03 INCOME STATEMENT. The annual report of the cemetery company shall include an income statement for the previous calendar year prepared according to the generally accepted

accounting principles.

RULE 24. [RESERVED].

RULE 25. PROTECTION OF CEMETERIES - POWER TO LEND.

[RESERVED]

RULE 26. ANNUAL PERMIT FEE.

[RESERVED]

RULE 27. DUTIES OF THE STATE SECURITIES DEPARTMENT.

[RESERVED]

RULE 28. CONTRACTS WITH MUNICIPALITIES OR COUNTY WHERE A
CEMETERY IS LOCATED.

[RESERVED]

RULE 29. CEMETERY ADVISORY BOARDS - MEMBERSHIP - ORGANIZATION -
AUTHORITY.

[RESERVED]

RULE 30. INSOLVENT CEMETERY GRANT FUND RULES.

RULE 30.01 PURPOSE

It is the purpose of this rule to formalize a process and set
reasonable guidelines to make assistance available to address
the care, maintenance, and operation of an insolvent perpetual
care cemetery and more specifically, to establish standards for
distributing available Grant Funds administered by the Arkansas
Cemetery Board.

RULE 30.02 APPLICATION FORM.

- (a) An application for funds or an application to make a
change in an approved grant filed pursuant to section
20-17-1306 of the Grant Fund Act need not be in any
specific form, but must be made in writing and signed

in the presence of a notary. The original application shall be accompanied by no less than ten (10) copies.

(b) The application shall contain at a minimum the following information:

(1) Name of applicant.

(i) The applicant must demonstrate that it meets the eligibility requirements of the Grant Fund Act.

(ii) The applicant must demonstrate that it is in good standing with all applicable federal, state, and local agencies that govern the applicant.

(2) Name of the individual or individuals principally responsible for the care, maintenance, and operation of the insolvent cemetery.

(i) This individual(s) must be primarily responsible for the non-profit company that controls the cemetery, and has the authority to bind the non-profit company.

(ii) This individual(s) will be held responsible to complete the required reports to the Board, if the grant application is approved.

(3) Amount requested by applicant.

(4) A project synopsis for the use of the grant fund monies, which shall include:

(i) The specific use of the funds;

(ii) An itemized list of specific needs to be addressed;

(iii) Projected costs for each item; and

(iv) A detailed plan for implementing and completing the project.

(5) The goals and objectives of the project.

- (6) The duration of the project.
- (7) Implementation timeline for use of the funds;
- (8) A budget summary containing a detailed summary of the proposed budget and information of other financial resources utilized.
- (9) The policy and procedures of the applicant detailing the administration and oversight of the funds.
- (c) The Board reserves the right to request additional information as needed for evaluation of the request for funds.
- (d) Date of Filing. Applications must be filed with the Board at least twenty (20) calendar days prior to the Board meeting at which the grant application is to be considered.

RULE 30.03 POWERS AND DUTIES OF THE CEMETERY BOARD

- (a) Criteria for grant applications and awards.
 - (1) The applicant must demonstrate to the Board that it has the resources available to ensure that the proposed use of the funds occurs.
 - (2) The Board reserves the right to determine funding priorities and amounts based on the overall needs of an insolvent cemetery.
- (b) Oversight for all grant expenditures.
 - (1) At the time of the grant application, the applicant must demonstrate to the Board that the applicant has sufficient mechanisms in place to ensure the grant expenditures are used for their intended purpose.
 - (2) The applicant shall appoint an institutional custodian of the grant fund monies.

- (3) The applicant shall satisfy the Board that it has obtained all applicable federal, state, and local permits required to disburse any granted funds.
 - (4) A copy of the original application, and all project expenditures with invoices attached will remain on the books and records of the cemetery.
- (c) Criteria for reporting and maintaining all grant moneys and expenditures.
 - (1) Recipients shall submit timely quarterly reports of the progress of the project, end of the year financial reports, and a final report when the project is completed or work on the project has ended.
 - (2) The grant fund recipient shall submit in writing any request for changes of the approved project.
 - (3) The books and recordkeeping shall comply with the generally accepted accounting principles.
- (d) Criteria for the review of grant awards and expenditure to prevent misuse or abuse of grant money.
 - (1) Projects will be monitored through site visits, required project reports, and fiscal review.
 - (2) An examination of the books and records of the grant fund recipient shall be reviewed annually to determine compliance with the Grant Fund Act.
 - (i) The examination shall include, but is not limited to:
 - (A) Review of the books and records of the grant fund money;
 - (B) Review of the expense reports, invoices and receipts, bank statements; and
 - (C) Review of the projects detailed in the application to ensure compliance with the project summary as described in the application.

- (ii) A report of the examination shall be submitted to the Board after completion of the examination report.

(3) Conflict of Interest.

- (i) No Board member or employee of a Board member for the purpose of personal gain shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of the Board in connection with the grant fund program.
- (ii) It shall not be a conflict of interest for the Board to permit any cemetery with which a Board member is affiliated to participate in the grant fund program provided that such Board member shall promptly disclose the nature of the affiliation to the Board.

RULE 30.04 REPORTS

(a) Quarterly Reports.

- (1) The quarterly reports are due thirty (30) calendar days from the end of each calendar quarter.
- (2) The quarterly reports shall include:
 - (A) financial statements in accordance with generally accepted accounting principles;
 - (B) expense reports; and
 - (C) project status reports.
- (3) Failure to submit timely reports shall provide grounds for the Board to withhold disbursement of grant funds for subsequent grant requests.

(b) End of the year Reports.

- (1) The end of the year reports shall be due sixty (60) calendar days from the end of the calendar year. The report shall contain:

- (A) financial statements;
 - (B) project summary statements;
 - (C) proof of expenditures from the grant award, including but not limited to:
 - (i) expense itemization for each grant;
 - (ii) date of purchase of items or services;
 - (iii) items or services purchased;
 - (iv) vendor;
 - (v) purchase price; and
 - (vi) invoice or purchase order number.
- (2) Estimated completion dates of the on-going project(s).
- (3) Failure to submit an end of the year report shall provide grounds for the Board to withhold disbursement of grant funds for subsequent grant requests.
- (c) Project Summary.
- (1) Upon completion of a project the recipient shall supply the Board with a copy of a final report.
 - (2) The final report shall contain:
 - (A) Financial statements;
 - (B) Expense reports; and
 - (C) Proof of completion of the project.
- (d) Tax Returns. The recipient shall provide to the Board a copy of the recipient's federal and state tax returns within thirty (30) calendar days after submission of the federal and state tax returns.

- (e) Failure to submit timely reports shall provide grounds for the Board to withhold disbursement of grant funds for subsequent grant requests.

RULE 30.07 USE OF GRANT AWARDS:

The applicant shall use the grant fund money solely for the purpose described in the grant fund application. Failure to comply with these guidelines will result in a permanent bar of the insolvent cemetery from receiving grant fund money from the Board.

