

ARKANSAS BURIAL ASSOCIATION BOARD

NEW PROPOSED RULE, CO INSURANCE OF BURIAL ASSOCIATIONS BY  
INSURANCE COMPANIES  
MARKED UP COPY  
2009

RULE 48, CO INSURANCE OF BURIAL ASSOCIATIONS BY INSURANCE  
COMPANIES

**3. Mortuary Fund.** Except as to Burial Associations which have been authorized to enter into co-insurance with regard to Act 443, the following applies: (A) At least seventy-five percent (75%) of the receipts of each association must be allocated to the Mortuary Fund, and, when so allocated can be used for no purpose other than to meet its losses. The associations may invest any portion of such seventy-five percent (75%) of the collections not needed for the immediate payment of benefits, or not needed for the reasonable anticipated payment of benefits as authorized by Act 91 of 1953 as amended by Act 360 of 1981. (B) At least seventy-five percent (75%) of all interest derived from investments of burial association funds must be allocated to the Mortuary Fund and cannot be used for the payment of operating expenses. (Amended BY Act 360 of 1981)

**4. Expenses.** Necessary expenses, including but not limited to printing, stationery, postage, office supplies, clerical hire, and statutory fees may be paid by the association. No organization or promotional expense may be charged and in no event may expenses for any year exceed twenty-five percent (25%) of the gross receipts of dues/assessments and interest of the association for such year.

Burial Associations shall not be entitled to utilize any portion of collections or interest for operating expenses (25%) when such utilization would reduce the balance of monies available in the mortuary fund to such a level that the association would be unable to pay benefits which accrue to the members of the association.

In the event the entire sum equaling such twenty-five (25%) is not expended as aforesaid, then the amount remaining unexpended shall be converted into the Mortuary Fund at the end of such year and shall not thereafter be used for expenses. Statutory Fees (Annual License Fees) are not considered operating expenses. (Amendment by Act 360 of 1981).

Assessment payments forwarded to an insurance company pursuant to a co-insurance agreement that has been approved by the Board shall not be considered an expense for purposes of this Rule.

**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.

Books and records of Burial Associations for which there is a co-insurance agreement in place shall be maintained in the office of the Burial Association and the co-insurer subject to inspection of any member of the Association or representative of the Board.

**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 Burial Association Board. (Effective July 1, 1985).

Where the Board has approved a co-insurance agreement the Secretary-Treasurer may transfer funds from the Burial Association mortuary fund to the co-insurer as provided in the co-insurance agreement.

#### **48 Co-Insurance of Burial Associations by Insurance Companies**

A Burial Association and an insurance company may petition the Board for the approval of a co-insurance agreement with regard to the offering of Act 443 Business by the Burial Association. This option is available to Burial Association's which have Act 443 business in force and those which have not previously sold Act 443 certificates of membership.

##### **48.1 The petitioning Burial Association must submit the following documents at least 90 days prior to the proposed effective date of the Co-insurance agreement.**

a) The proposed co-insurance agreement.

- b) A notarized copy of the minutes of the meeting of the Burial Association membership at which the co-insurance agreement was approved.
- c) A copy of the Public Notice announcing the meeting to discuss the co-insurance agreement.

**48.2 The petitioning insurance company must submit the following documents at least 90 days prior to the proposed effective date of the co-insurance agreement;**

- a) The proposed co-insurance agreement;
- b) Proof of the applicant's history and financial stability, including the assets, capital and surplus, held by the insurance company.
- c) A written agreement that the Burial Associations Board's Auditor Shall have unlimited access to the records of the insurance company related to all co-insurance of burial association business.
- d) A copy of a letter or order, as appropriate, issued by the Arkansas Insurance Commissioner approving the co-insurance agreement.

**48.3 The proposed co-insurance agreement must contain the following:**

- a) A provision guaranteeing that the insurance company will pay the face amount due under the co-insured membership certificate to the beneficiary upon the death of the covered member.
- b) provision setting out that at least 75% of the amount transferred from the Burial Association Mortuary Fund will be maintained as reserves for the payment of death claims.
- c) A provision that states that reserves not needed for claims will only be invested consistently with ACA 23-78-122.

**48.4 Agreement of Co-insurance.**

The Co-insurance Agreement shall include the following:

- a) The effective date of the agreement;
- b) A statement that both the Burial Association and the Insurance Company remain obligated to pay the claims and debts of the Burial Association related to the co-insurance agreement. Claims will be paid, in cash, at not less than 100% of the face amount of the membership certificate unless the member's age is misstated in which event the amount payable shall be the amount due based upon the member's actual age.
- c) That those responsible for making funeral arrangements for the deceased policy holder shall have 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.

**48.5 Notice to Current Membership**

Because there is no change to the way assessments are received or claims are made, the applicants are not required to provide notice to current members of the burial association.

#### **48.6 Board Review of Petition**

Upon the receipt of the petitions received from both the Burial Association and the Insurance Company, the Executive Secretary shall review the submittals for compliance with the Rule. Additionally, a copy of the Arkansas Insurance Commissioner's letter or order approving the co-insurance agreement shall be submitted to the Board. The Executive Secretary shall provide each Board member with copies of the documents at the next regularly Board Meeting. At that meeting, the Board will table the petitions and take the matter under advisement for consideration at its next regularly meeting.

#### **48.7 Board Order**

If after thorough review the Board determines that the petitions should be granted, it will enter an order approving the co-insurance agreement.