

BUREAU OF BANKING

Department of Professional and Financial Regulation

State of Maine

February 6, 2001

Bulletin #29: Mortuary Trust Accounts:

To the Chief Executive Officer Addressed:

Laws enacted in the past two sessions of the Maine State Legislature provide consumers with important and helpful information on establishing mortuary trust accounts with funeral practitioners. PL1999, c.258 and PL 1999, c. 590, effective September 18, 1999 and March 28, 2000 respectively, have refined the methods with which mortuary trust funds are transmitted to, maintained or disbursed by banks and credit unions authorized to do business in this State.:

Title 32 MRSA §1401 governs the establishment and maintenance of mortuary trust accounts by funeral practitioners and places certain requirements on banks and credit unions for the maintenance of those accounts and distribution of the funds contained therein. Each bank or credit union should familiarize itself with the requirements of this statute and establish or refine programs to ensure compliance. The Maine State Board of Funeral Service , located within the Office of Licensing & Registration, Department of Professional & Financial Regulation, is responsible for administering these laws as they relate to funeral practitioners. The Bureau of Banking will review banks and credit unions for compliance with Title 32 §1401, at the time of its examination. The following summarizes the provisions of §1401 as they apply to banks and credit unions.:

1. Funds collected by a funeral practitioner for a mortuary trust contract must be deposited by the funeral practitioner within 10 days after receipt in a separate account in a bank or a credit union authorized to do business in this State, as defined in Title 9-B MRSA § 131, sub§ 12-A and 17-A.:
 - a. The account must be in the name of the funeral practitioner as mortuary trustee for the person for whose benefit the payment is made. (i.e., "Joe Jones Funeral Home as mortuary trustee for the benefit of Jane Smith"):
 - b. Funds remitted by check, share draft or money order must be made payable to the bank or credit union into which the check, share draft or money order is to be deposited and must include, as a notation on the instrument, the name of the funeral practitioner as mortuary trustee and the person for whose benefit the payment is made.:

2. Funds deposited into a deposit or share account must be in an account that is insured by either the Federal Deposit Insurance Corporation or the National Credit Union Administration. Funds that are placed in a trust account may be invested in, or used to purchase, only the following:
 - a. Federally insured deposit or share accounts;:
 - b. Securities issued, insured or guaranteed by the United States or by an agency or corporate or other instrumentality of the United States;:
 - c. Municipal securities that are exempt from registration under Title 32, § 10502, sub§ 1, paragraph A; and:
 - d. Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of Title 24-A, chapter 27.:
3. Within 30 days after the deposit of funds by the funeral practitioner, the bank or credit union must provide, by mail or otherwise, a written confirmation of the deposit to the person for whom the account is established or that person's legal representative. Such notice must confirm the amount deposited.:
4. Funds in a mortuary trust may be directed by the funeral practitioner to another bank or credit union. The funds must be transferred directly from one institution to the other and the bank or credit union receiving the funds must provide written confirmation of the deposit, including the amount deposited, to the person for whom the account is established or that person's legal representative, within 30 days after the transfer.:
5. A mortuary trust agreement may be revocable or irrevocable. A copy of the mortuary trust agreement must be furnished to the bank or credit union into which the money is to be deposited by the person for whom the account is established or that person's legal representative. If the agreement is revocable, funds may be returned to the person for whom the account is established or that person's legal representative upon written instructions by the person for whom the account is established or that person's legal representative. If the agreement is irrevocable, there must be a provision, in the agreement, to allow for the transfer of the account by the appointment of successor trustees.:
6. Funds in a mortuary trust account may only be withdrawn by the funeral practitioner upon presentation of a certified copy of the death certificate of the person for whose benefit the funds were paid, in which event they must be used in accordance with the agreement.:
7. Title 32 §1401 provides that a bank or credit union that disburses funds from a mortuary trust account in accordance with its provisions is discharged from liability for payment of said funds.:

Note: The Maine State Board of Funeral Service is currently finalizing proposed rules and sample contracts. These documents may contain additional consumer

protections that banks and credit unions should consider when establishing or maintaining mortuary trust accounts. A public hearing and comment period on these rules will be announced by the Board sometime in early 2001. Should you wish to receive notice of these proposed rules, you may do so by contacting Ms. Elaine M. Thibodeau, Health Board Administrator, 35 State House Station, Augusta, Maine 04333 or by e-mail at elaine.m.thibodeau@state.me.us..

This Bulletin replaces Bulletin #29 issued January 27, 1982.:

/s/ Howard R. Gray, Jr.:
Superintendent:

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties or privileges nor is it intended to provide legal advice. Readers are encouraged to consult applicable statutes and regulations and to contact the Bureau of Banking if additional information is needed.