

§25.14. Uniform Risk Ratings.

(a) In general. All prepaid funeral benefit permit holders are subject to periodic examination. As a result of the examination, the permit holder will be assigned a confidential uniform risk rating of 1 to 5 as further described in this section. The uniform risk rating represents a judgment of the overall risk profile presented by the permit holder in relation to the purposes of regulation. In general, a rating of 1 indicates the highest level of compliance and the least degree of supervisory concern, and a rating of 5 indicates the lowest level of compliance and the highest degree of supervisory concern. A rating of 3, 4 or 5 is considered less than satisfactory for purposes of Finance Code §154.053(b)(1)(A).

(b) Overall risk profile. Evaluation of the overall risk profile of the permit holder can be described as involving three interrelated attributes or components, although these attributes are not separately rated.

(1) Management. This attribute or portion of the evaluation involves judgment of the ability, skill, and motivation of management and staff of the permit holder to identify, measure, monitor, and control potential problems and risks. Competent management should be able to develop and apply management practices and procedures suitable to the size of the permit holder and the nature and complexity of its activities. In addition, the willingness and ability of management to comply with applicable laws and regulations are important considerations.

(2) Compliance. This attribute or portion of the evaluation involves judgment of the degree to which the permit holder administers prepaid funeral contracts in accordance with governing instruments and applicable laws and regulations and the degree to which the permit holder adheres to sound fiduciary principles. The examiner will consider the extent and nature of violations discovered during the examination, and will assess the manner and methods by which the permit holder discovers and corrects violations. Correction of violations cited in previous examinations will also be considered.

(3) Financial condition. This attribute or portion of the evaluation involves judgment of the overall financial condition of the permit holder in relation to the risks imposed by its size and the nature and complexity of its activities. An important consideration is the extent of the financial resources available to the permit holder for the purpose of fulfilling its responsibilities and obligations over the life of the prepaid funeral contracts under its control, including those currently outstanding and those reasonably anticipated to exist in the future. Availability of financial resources can be demonstrated through or enhanced by undertakings of a parent company or associated holding company.

(c) Uniform risk ratings. The uniform risk rating is a single number, 1 to 5, that is based upon a qualitative analysis of the overall risk profile of the permit holder. The rating is not determined through application of a mathematical formula, but is instead based upon a judgment that balances an assessment of the attributes described in subsection (b) of this section in light of all other relevant factors, such as the size of the permit holder and the complexity of its operations.

(1) Rating "1" (Strong Overall Condition). Permit holders assigned a uniform risk rating of 1 are sound in every respect; any adverse findings or comments are of a minor nature and can be resolved in the normal course of business by management. Permit holders in this group give no cause for supervisory concern.

(A) Management.

(i) Consistently and effectively identifies, measures, monitors, and controls potential problems and risks. Demonstrates the ability to promptly and successfully address existing and potential problems and risks.

(ii) Demonstrates strong management practices and procedures relative to the size of the permit holder and the nature and complexity of its activities.

(iii) Demonstrates a willingness and ability to comply with applicable laws and regulations.

(B) Compliance.

(i) Administers prepaid funeral contracts in accordance with governing instruments and applicable laws and regulations.

(ii) Demonstrates adherence to sound fiduciary principles.

(iii) Any noted violations are isolated, technical in nature and easily correctable.

(iv) Corrects any violations in a timely manner and correction may occur after self evaluation.

(C) Financial condition.

(i) The overall financial condition of the permit holder is strong in relation to the risks imposed by its size and the nature and complexity of its activities.

(ii) Demonstrates more than sufficient financial resources available for the purpose of fulfilling the permit holder's responsibilities and obligations over the life of the prepaid funeral contracts under its control, including those currently outstanding and those reasonably anticipated to exist in the future.

(2) Rating "2" (Satisfactory Overall Condition). Permit holders assigned a uniform risk rating of 2 are generally satisfactory but may reflect a few weaknesses. To the extent that deficiencies are correctable in the normal course of business, supervisory concern is not warranted.

(A) Management.

(i) In general, effectively identifies, measures, monitors, and controls potential problems and risks. Minor weaknesses may exist, but are not material to the soundness of the permit holder and are being addressed.

(ii) Demonstrates satisfactory management practices and procedures relative to the size of the permit holder and the nature and complexity of its activities.

(iii) Demonstrates a willingness and ability to comply with applicable laws and regulations.

(B) Compliance.

(i) Administers prepaid funeral contracts in substantial compliance with governing instruments and applicable laws and regulations.

(ii) Demonstrates adherence to sound fiduciary principles.

(iii) Any noted violations are generally technical in nature and few in number.

(iv) Corrects violations in a timely manner.

(C) Financial condition.

(i) The overall financial condition of the permit holder is satisfactory in relation to the risks imposed by its size and the nature and complexity of its activities.

(ii) Demonstrates sufficient financial resources available for the purpose of fulfilling the permit holder's responsibilities and obligations over the life of the prepaid funeral

contracts under its control, including those currently outstanding and those reasonably anticipated to exist in the future.

(3) Rating "3" (Marginal Overall Condition). Permit holders assigned a uniform risk rating of 3 exhibit operating and compliance weaknesses ranging from moderate to marginally severe. Permit holders in this group require more than normal supervision to assure correction of deficiencies and are considered less than satisfactory.

(A) Management.

(i) May inadequately identify, measure, monitor, or control potential problems and risks. The capabilities or resources of management may be insufficient to address existing and potential problems and risks.

(ii) Management practices and procedures need improvement or are less than satisfactory in relation to the size of the permit holder and the nature and complexity of its activities.

(iii) May demonstrate a reluctance to take all necessary steps to comply with applicable laws and regulations.

(B) Compliance.

(i) Compliance practices are less than satisfactory. Contract administration may be in substantial noncompliance with governing instruments, and applicable laws.

(ii) May fail to consistently adhere to sound fiduciary principles.

(iii) Violations may be in evidence, some of which may be repeat criticisms.

(iv) May fail to correct violations in a timely manner.

(C) Financial condition.

(i) The overall financial condition of the permit holder is less than satisfactory in relation to the risks imposed by its size and the nature and complexity of its activities.

(ii) Financial resources may not be sufficient for the purpose of fulfilling the permit holder's responsibilities and obligations over the life of the prepaid funeral contracts under its control, including those currently outstanding and those reasonably anticipated to exist in the future. The permit holder's financial condition needs to be improved.

(4) Rating "4" (Poor Overall Condition). Permit holders assigned a uniform risk rating of 4 exhibit poor operating and compliance weaknesses. Permit holders in this group require increased supervisory attention to assure prompt corrective action.

(A) Management.

(i) The level of problems and risk exposure is excessive. Problems and risks are inadequately identified, measured, monitored, or controlled and require immediate action by management to preserve the soundness of the permit holder. Identified criticisms are not being addressed or resolved.

(ii) Management practices and procedures are inadequate relative to the size of the permit holder and the nature and complexity of its activities.

(iii) May demonstrate an unwillingness or inability to take all necessary steps to comply with applicable laws and regulations.

(B) Compliance.

(i) The level of compliance problems is significant. Contract administration may be notably deficient and in substantial noncompliance with governing instruments, and applicable laws.

(ii) May fail to consistently adhere to sound fiduciary principles.

(iii) Substantive violations exist and may remain uncorrected from previous examinations.

(iv) May fail to correct violations in a timely manner.

(C) Financial condition.

(i) The overall financial condition of the permit holder is deficient or deteriorating in relation to the risks imposed by its size and the nature and complexity of its activities.

(ii) Demonstrates insufficient financial resources available for the purpose of fulfilling the permit holder's responsibilities and obligations over the life of the prepaid funeral contracts under its control, including those currently outstanding and those reasonably anticipated to exist in the future. The permit holder's financial condition needs to be improved.

(5) Rating "5" (Critically Deficient Overall Condition). Permit holders assigned a uniform risk rating of 5 exhibit performance or conditions which are critically deficient in numerous major respects. Permit holders in this group are of the greatest supervisory concern and as such, require ongoing supervisory attention.

(A) Management.

(i) Problems and risks are inadequately identified, measured, monitored, or controlled and now threaten the continued viability of the permit holder or the ability to perform as contracted. Incompetent or neglectful administration and inadequate resources may have contributed to existing problems. Management has not demonstrated the ability to promptly and successfully address existing and potential problems and risks.

(ii) Management practices and procedures are critically deficient relative to the size of the permit holder and the nature and complexity of its activities, and may evidence a flagrant disregard for the interests of contract purchasers and beneficiaries.

(iii) May demonstrate an unwillingness or inability to take all necessary steps to comply with applicable laws and regulations.

(B) Compliance.

(i) The level of compliance problems is critically deficient. Contract administration may be critically deficient or incompetent and there is a flagrant disregard for the terms of the governing instruments, and interests of contract beneficiaries.

(ii) May frequently engage in transactions that compromise its duties and sound fiduciary principles.

(iii) Numerous substantive violations exist and may be flagrant or repeated.

(iv) Fails to correct violations in a timely manner.

(C) Financial condition.

(i) The overall financial condition of the permit holder is critically deficient in relation to the risks imposed by its size and the nature and complexity of its activities.

(ii) Demonstrates insufficient financial resources available for the purpose of fulfilling the permit holder's responsibilities and obligations over the life of the prepaid funeral contracts under its control, including those currently outstanding and those reasonably

anticipated to exist in the future. The continued viability of the permit holder is threatened.