

5370

2011-2012 Regular Sessions

I N S E N A T E

May 13, 2011

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and
when printed to be committed to the Committee on Corporations, Author-
ities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to regu-
lation of cemetery trust funds and finances by the cemetery board

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraphs (a) and (i) of section 1506 of the not-for-pro-
2 fit corporation law, paragraph (a) as added by chapter 871 of the laws
3 of 1977 and paragraph (i) as amended by chapter 292 of the laws of 1999,
4 are amended to read as follows:
5 (a) Purchase of land; notice to CEMETERY board [and court approval].
6 No cemetery corporation, in purchasing real property hereafter, shall
7 pay or agree to pay more than the fair and reasonable market value ther-
8 eof. The terms of the purchase, including the price to be paid and the
9 method of payment, shall be subject[, upon notice] to NOTICE AND
10 APPROVAL OF the cemetery board[, to approval by the supreme court in a
11 district where any portion of the land is located]. In determining the
12 fair and reasonable market value, the [court] CEMETERY BOARD may take
13 into consideration the method by which the purchase price is to be paid.
14 (i) Sale or disposition of cemetery lands. (1) No cemetery corporation
15 may sell or dispose of the fee of all or any part of its lands dedicated
16 to cemetery use, unless it shall prove to the satisfaction of the
17 [supreme court in the district where any portion of the cemetery lands
18 is located] CEMETERY BOARD, either: (A) that all bodies have been
19 removed from each and every part of the cemetery, that all the lots in
20 the entire cemetery have been reconveyed to the corporation and are not
21 used for burial purposes, and that it has no debts and liabilities, or
22 (B) that the land to be sold or disposed of is not used or is not phys-
23 ically adaptable for burial purposes and that the sale or disposition
24 will benefit the cemetery corporation and the owners of plots and graves

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 in the cemetery, and (C) that the sale or disposition is not to a funer-
2 al entity as defined in paragraph (c) of section fifteen hundred six-a
3 of this article. (2) If the sale or disposition is made pursuant to
4 subparagraph (A) of subdivision one of this paragraph, the cemetery
5 shall satisfy the [court] CEMETERY BOARD that it is in the public inter-
6 est to dispose of such cemetery land in the manner proposed; that the
7 subject land is not suitable for cemetery purposes or is no longer need-
8 ed by the community for such cemetery uses or purposes; and that the
9 subject land is being sold for its current market value. (3) If the sale
10 or disposition of the land is made pursuant to subparagraph (B) of
11 subdivision one of this paragraph, the [court] CEMETERY BOARD shall
12 order that the consideration received by the cemetery corporation, less
13 the necessary expenses incurred, shall be deposited into the permanent
14 maintenance fund established by the cemetery corporation pursuant to
15 paragraph (a) of section fifteen hundred seven of this article. (4)
16 Notice of any application hereunder shall be given IN ADDITION to the
17 cemetery board, to the holders of certificates of indebtedness and land
18 shares of the cemetery corporation, and to any person [interested]
19 HAVING INFORMED THE CEMETERY BOARD BY PETITION OR NOTICE OF INTEREST in
20 the proceeding [pursuant to section five hundred eleven of this chapter
21 (Petition for leave of court)].

22 S 2. Subparagraph 2 of paragraph (a), paragraph (e) and subparagraph 2
23 of paragraph (e-1) of section 1507 of the not-for-profit corporation
24 law, subparagraph 2 of paragraph (a) as amended by chapter 679 of the
25 laws of 2004, paragraph (e) as added by chapter 871 of the laws of 1977
26 and subparagraph 2 of paragraph (e-1) as amended by chapter 111 of the
27 laws of 2000, are amended to read as follows:

28 (2) The permanent maintenance fund is hereby declared to be and shall
29 be held by the corporation as a trust fund, for the purpose of maintain-
30 ing and preserving the cemetery, including all lots, crypts, niches,
31 plots, and parts thereof. The principal of such fund shall be invested
32 in such securities as are permitted for the investment of trust funds by
33 section 11-2.3 of the estates, powers and trusts law. The income in the
34 form of interest and ordinary dividends therefrom shall be used solely
35 for the maintenance and preservation of the cemetery grounds. In addi-
36 tion, the governing board of the corporation may appropriate for expend-
37 iture solely for the maintenance and preservation of the cemetery
38 grounds a portion of the net appreciation, realized (with respect to all
39 assets) and unrealized (with respect only to readily marketable assets),
40 in the fair market value of the principal of the trust in excess of its
41 adjusted historic dollar value, as defined in this subparagraph, as is
42 prudent under the standard established by section seven hundred seven-
43 teen of this chapter (duty of directors and officers) and as limited by
44 the maximum annual appropriation defined in this subparagraph. For the
45 purposes of this subparagraph, the adjusted historic dollar value of the
46 trust principal shall be the market value of the principal three full
47 calendar years prior to the effective date of the amendments made to
48 this subparagraph, plus all subsequent additions thereto, minus all
49 allowable deductions therefrom, adjusted by the rate of inflation as
50 measured by the applicable consumer price index. The maximum annual
51 appropriation shall be sixty percent of the average of the net appreci-
52 ation in the fund for the immediately preceding three years, but only to
53 the extent that it exceeds the adjusted historical dollar value of the
54 fund in the current year. Cemetery corporations shall keep complete
55 records of the adjusted historic dollar value of the permanent mainte-
56 nance fund. In the event that a cemetery corporation seeks to appropri-

1 ate any percentage of its net appreciation in its permanent maintenance
2 fund in accordance with this subparagraph, the cemetery corporation
3 shall send a notice of such proposed appropriation by certified mail to
4 the cemetery board, setting forth the amount of funds to be appropriated
5 for such expenditure and its effect on the permanent maintenance fund,
6 and certifying that such amount does not exceed the maximum annual
7 appropriation defined in this subparagraph. Such proposed appropriation
8 shall become effective sixty days after receipt of such notice, unless
9 the cemetery board within such sixty-day period notifies the cemetery
10 corporation that the board objects to the proposed appropriation.
11 Notwithstanding the foregoing provisions of this subparagraph, all prin-
12 cipal of the permanent maintenance fund shall remain inviolate, except
13 that, upon application to the [supreme court in a district where a
14 portion of the cemetery grounds is located, the court] CEMETERY BOARD,
15 THE CEMETERY BOARD may make an order permitting the principal or a part
16 thereof to be used for the purpose of current maintenance and preserva-
17 tion of the cemetery or otherwise. Such application may be made by the
18 cemetery board on notice to the corporation or by the corporation on
19 notice to the cemetery board. Unless the cemetery can clearly demon-
20 strate that it lacks sufficient future revenue to make repayment, any
21 such allowance from the permanent maintenance fund shall be in the form
22 of a loan, and the court shall determine the method for repayment of
23 such a loan by the cemetery to the fund. Any loan from the permanent
24 maintenance fund shall be ignored for the purpose of computing the
25 adjusted dollar value of the fund. In the event that the [court] CEME-
26 TERY BOARD determines that an outright grant of principal from the
27 permanent maintenance fund is necessary, the amount of such grant shall
28 be deducted from the adjusted historic dollar value of the trust princi-
29 pal for the purposes of this subparagraph.

30 (e) Designation of fiduciary corporation by directors or trustees of
31 cemetery corporation to act as custodians of funds. Notwithstanding the
32 provisions of any other law, the directors or trustees of cemetery
33 corporations are hereby authorized to designate a bank or trust company
34 to act as custodian and trustee of any or all of the respective funds of
35 such cemetery corporation received by it for the perpetual care of lots
36 in the cemetery thereof pursuant to subdivision (b), of this section,
37 the permanent maintenance of such cemetery pursuant to subdivision (a)
38 of this section, and for special purposes pursuant to subdivision (f) of
39 this section. Such corporate trustee shall be designated by a resolution
40 duly adopted by the board of directors or trustees [and approved by a
41 justice of the supreme court of the judicial district in which the ceme-
42 tery of said corporation is located]; and the directors or trustees of
43 such cemetery corporation may[, with the approval of the justice of the
44 supreme court,] revoke such trust, and either take over such trust fund
45 or name another trustee to handle the same, but if not so revoked, such
46 trust shall be perpetual. NOTICE OF SUCH A CHANGE IN DESIGNATION SHALL
47 BE PROVIDED TO THE CEMETERY BOARD WITHIN SIXTY DAYS OF SUCH DESIGNATION
48 BY THE BOARD OF DIRECTORS OR TRUSTEES OF THE CEMETERY CORPORATION. Any
49 bank or trust company accepting any such cemetery fund shall keep the
50 same separate from all other funds, except that it may, irrespective of
51 any provision contained in this article invest the same in a legal
52 common trust fund or in shares of a mutual trust investment company
53 organized under the banking law, and shall pay over the net income to
54 the directors or trustees of the cemetery corporation by whom it shall
55 be expended and applied to the purpose for which such trust fund was

1 paid to the cemetery corporations and accounted for in accordance with
2 such subdivisions (a), (b) and (f) of this section.
3 (2) The principal of the fund shall be invested in securities permit-
4 ted for the investment of trust funds by sections 11-2.2 and 11-2.3 of
5 the estates, powers and trusts law. The principal of such fund shall
6 remain inviolate, except that upon application to the [supreme court in
7 a district where a portion of the cemetery grounds is located, the
8 court] CEMETERY BOARD, WHICH may make an order permitting the principal
9 or a part thereof to be used for the purpose of restoring monuments
10 damaged or defaced by an act of vandalism. The income arising from such
11 investment shall be used solely for the costs and expenses resulting
12 from an act of vandalism against monuments in such cemetery.
13 S 3. This act shall take effect immediately.