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Cal. No. 248

2013-2014 Regular Sessions

I N S E N A T E

May 10, 2013

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the not-for-profit corporation law, in relation to cemetery trust funds

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

1 Section 1. Subparagraph 2 of paragraph (a) of section 1507 of the
2 not-for-profit corporation law, as amended by chapter 679 of the laws of
3 2004, is amended to read as follows:
4 (2) The permanent maintenance fund is hereby declared to be and shall
5 be held by the corporation as a trust fund, for the purpose of maintain-
6 ing and preserving the cemetery, including all lots, crypts, niches,
7 plots, and parts thereof. The principal of such fund shall be invested
8 in such securities as are permitted for the investment of trust funds by
9 section 11-2.3 of the estates, powers and trusts law. The income in the
10 form of interest and ordinary dividends therefrom shall be used solely
11 for the maintenance and preservation of the cemetery grounds. In addi-
12 tion, the governing board of the corporation may appropriate for expend-
13 iture solely for the maintenance and preservation of the cemetery
14 grounds a portion of the net appreciation, [realized (with respect to
15 all assets) and unrealized (with respect only to readily marketable
16 assets),] in the fair market value of the principal of the trust [in
17 excess of its adjusted historic dollar value, as defined in this subpar-
18 agraph], as is prudent under the standard established by [section seven
19 hundred seventeen of this chapter (duty of directors and officers) and
20 as limited by the maximum annual appropriation defined in this subpara-

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

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1 graph. For the purposes of this subparagraph, the adjusted historic
2 dollar value of the trust principal shall be the market value of the
3 principal three full calendar years prior to the effective date of the
4 amendments made to this subparagraph, plus all subsequent additions
5 thereto, minus all allowable deductions therefrom, adjusted by the rate
6 of inflation as measured by the applicable consumer price index. The
7 maximum annual appropriation shall be sixty percent of the average of
8 the net appreciation in the fund for the immediately preceding three
9 years, but only to the extent that it exceeds the adjusted historical
10 dollar value of the fund in the current year. Cemetery corporations
11 shall keep complete records of the adjusted historic dollar value of the
12 permanent maintenance fund] ARTICLE FIVE-A OF THIS CHAPTER, THE PRUDENT
13 MANAGEMENT OF INSTITUTIONAL FUNDS ACT. In the event that a cemetery
14 corporation seeks to appropriate any percentage of its net appreciation
15 in its permanent maintenance fund in accordance with this subparagraph,
16 the cemetery corporation shall [send a notice] PROVIDE NOTICE of such
17 proposed appropriation by certified mail to the cemetery board NOT LESS
18 THAN SIXTY DAYS IN ADVANCE OF SUCH PROPOSED APPROPRIATION AND SHALL
19 DISCLOSE SUCH APPROPRIATION AS PART OF AND IN ADDITION TO THEIR ANNUAL
20 REPORTING REQUIREMENTS AS DEFINED IN SECTION FIFTEEN HUNDRED EIGHT OF
21 THIS ARTICLE, setting forth the amount of funds to be appropriated for
22 such expenditure and its effect on the permanent maintenance fund[, and
23 certifying that such amount does not exceed the maximum annual appropri-
24 ation defined in this subparagraph]. Such proposed appropriation shall
25 become effective sixty days after receipt of such notice, unless the
26 cemetery board within such sixty-day period notifies the cemetery corpo-
27 ration that the board objects to the proposed appropriation. Notwith-
28 standing the foregoing provisions of this subparagraph, all principal of
29 the permanent maintenance fund shall remain inviolate, except that, upon
30 application to the supreme court in a district where a portion of the
31 cemetery grounds is located, the court may make an order permitting the
32 principal or a part thereof to be used for the purpose of current main-
33 tenance and preservation of the cemetery or otherwise. Such application
34 may be made by the cemetery board on notice to the corporation or by the
35 corporation on notice to the cemetery board. Unless the cemetery can
36 clearly demonstrate that it lacks sufficient future revenue to make
37 repayment, any such allowance from the permanent maintenance fund shall
38 be in the form of a loan, and the court shall determine the method for
39 repayment of such a loan by the cemetery to the fund. [Any loan from the
40 permanent maintenance fund shall be ignored for the purpose of computing
41 the adjusted dollar value of the fund. In the event that the court
42 determines that an outright grant of principal from the permanent main-
43 tenance fund is necessary, the amount of such grant shall be deducted
44 from the adjusted historic dollar value of the trust principal for the
45 purposes of this subparagraph.]

46 S 2. Subparagraph 2 of paragraph (c) of section 1507 of the not-for-
47 profit corporation law, as amended by chapter 111 of the laws of 2000,
48 is amended to read as follows:

49 (2) The principal of such funds, whether kept in the perpetual care
50 fund or otherwise, and unless already so invested when received, shall
51 be invested within a reasonable time after receipt thereof, and kept
52 invested, in such securities as are permitted for the investment of
53 trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and
54 trusts law. The income arising therefrom shall be used solely for the
55 perpetual care and maintenance of the lot or plots or parts thereof for
56 which such income has been provided. IN ADDITION, THE GOVERNING BOARD OF

1 THE CORPORATION MAY APPROPRIATE FOR EXPENDITURE SOLELY FOR THE PERPETUAL
2 CARE AND MAINTENANCE OF THE LOT OR PLOTS OR PARTS THEREOF FOR WHICH SUCH
3 INCOME HAS BEEN PROVIDED, A PORTION OF THE NET APPRECIATION IN THE FAIR
4 MARKET VALUE OF THE PRINCIPAL OF THE TRUST AS IS PRUDENT UNDER THE STAN-
5 DARD ESTABLISHED BY ARTICLE FIVE-A OF THIS CHAPTER, THE PRUDENT MANAGE-
6 MENT OF INSTITUTIONAL FUNDS ACT. IN THE EVENT THAT A CEMETERY CORPO-
7 RATION SEEKS TO APPROPRIATE ANY PERCENTAGE OF ITS NET APPRECIATION IN
8 ITS PERPETUAL CARE FUND IN ACCORDANCE WITH THIS SUBPARAGRAPH, THE CEME-
9 TERY CORPORATION SHALL PROVIDE NOTICE OF SUCH APPROPRIATION TO THE CEME-
10 TERY BOARD NOT LESS THAN SIXTY DAYS IN ADVANCE OF SUCH PROPOSED APPRO-
11 PRIATION AND SHALL DISCLOSE SUCH APPROPRIATION AS PART OF AND IN
12 ADDITION TO THEIR ANNUAL REPORTING REQUIREMENTS AS DEFINED IN SECTION
13 FIFTEEN HUNDRED EIGHT OF THIS ARTICLE SETTING FORTH THE AMOUNT OF FUNDS
14 APPROPRIATED FOR SUCH EXPENDITURE AND ITS EFFECT ON THE PERPETUAL CARE
15 FUNDS. SUCH PROPOSED APPROPRIATION SHALL BECOME EFFECTIVE SIXTY DAYS
16 AFTER RECEIPT OF SUCH NOTICE, UNLESS THE CEMETERY BOARD WITHIN SUCH
17 SIXTY DAY PERIOD NOTIFIES THE CEMETERY CORPORATION THAT THE BOARD
18 OBJECTS TO THE PROPOSED APPROPRIATION.

19 S 3. This act shall take effect immediately.