S T A T E O F N E W Y O R K

4163

2009-2010 Regular Sessions

I N S E N A T E

April 15, 2009

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

AN ACT to amend the religious corporations law, in relation to the sale, mortgage and lease of real property of a religious corporation

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

Section 1. Subdivisions 1 and 9 of section 12 of the religious corporations law, subdivision 1 as amended by chapter 244 of the laws of 1981 and subdivision 9 as amended by chapter 962 of the laws of 1969, are amended to read as follows:

1. (A) A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court therefor pursuant to section five hundred eleven of the not-for-profit corporation law as that section is modified by paragraph (d-1) of [subsection] SUBDIVISION one of section two-b of this chapter, except that a religious corporation may execute a purchase money mortgage or a purchase money security agreement creating a security interest in personal property purchased by it without obtaining leave of the court therefor.

(B) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION, ANY SOLVENT RELIGIOUS CORPORATION MAY SELL ANY OF ITS REAL PROPERTY WITHOUT A COURT ORDER IN THE FOLLOWING CIRCUMSTANCES:

(I) THE RELIGIOUS CORPORATION SHALL HAVE AND MAINTAIN IN ITS RECORDS AN APPRAISAL REPORT PREPARED BY A PROFESSIONAL APPRAISER AND DATED OR UPDATED WITHIN NINETY DAYS OF THE SALE SHOWING THE FAIR MARKET VALUE TO BE LESS THAN TWO HUNDRED THOUSAND DOLLARS;

(II) THE SALE SHALL BE AN ARM'S LENGTH TRANSACTION FOR A CASH CONSIDERATION AT THE FAIR MARKET VALUE OF THE PROPERTY WHICH SHALL BE WITHIN TEN PERCENT OF THE APPRAISED VALUE;

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

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(III) THE GOVERNING BODY OF THE RELIGIOUS CORPORATION SHALL HAVE GIVEN NOTICE FOR NOT LESS THAN THIRTY DAYS TO THE MEMBERS OF THE CONGREGATION SERVED BY THE RELIGIOUS CORPORATION IN A MANNER LIKELY TO BE SEEN BY A MAJORITY OF SUCH MEMBERS INCLUDING BUT NOT LIMITED TO PUBLICATION IN ANY BULLETIN, NEWSLETTER, OR SIMILAR DOCUMENT NORMALLY DISTRIBUTED TO SUCH MEMBERS; AND

(IV) A CERTIFICATE OF COMPLIANCE WITH THE REQUIREMENTS OF THIS PARAGRAPH EXECUTED BY THE PERSON OR PERSONS EXECUTING THE DEED ON BEHALF OF THE RELIGIOUS CORPORATION UNDER THE PENALTIES OF PERJURY SHALL BE ATTACHED TO AND RECORDED WITH THE DEED; AND WITH RESPECT TO RELIGIOUS CORPORATIONS SUBJECT TO SUBDIVISION TWO, THREE, FOUR, FIVE, FIVE-A, FIVE-B, OR FIVE-C OF THIS SECTION, SUCH CERTIFICATE SHALL HAVE ENDORSED THEREON THE CONSENT OF THE CHURCH AUTHORITY OR AUTHORITIES WHOSE CONSENT WOULD BE REQUIRED UNDER SUCH SUBDIVISIONS OF THIS SECTION BEFORE THE FILING OF AN APPLICATION TO THE COURT.

(C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION, ANY SOLVENT RELIGIOUS CORPORATION MAY MORTGAGE ANY OF ITS REAL PROPERTY WITHOUT A COURT ORDER IN THE FOLLOWING CIRCUMSTANCES:

(I) THE RELIGIOUS CORPORATION SHALL HAVE AND MAINTAIN IN ITS RECORDS AN APPRAISAL REPORT PREPARED BY A PROFESSIONAL APPRAISER AND DATED OR UPDATED WITHIN NINETY DAYS OF THE MORTGAGE SHOWING THE FAIR MARKET VALUE TO BE LESS THAN TWO HUNDRED THOUSAND DOLLARS;

(II) THE MORTGAGE SHALL BE AN ARM'S LENGTH TRANSACTION WITH A MORTGAGEE LICENSED TO MAKE MORTGAGE LOANS IN THE STATE FOR AN ADVANCE OF CASH IN A PRINCIPAL AMOUNT NOT MORE THAN TWO HUNDRED THOUSAND DOLLARS;

(III) THE GOVERNING BODY OF THE RELIGIOUS CORPORATION SHALL HAVE GIVEN NOTICE FOR NOT LESS THAN THIRTY DAYS TO THE MEMBERS OF THE CONGREGATION SERVED BY THE RELIGIOUS CORPORATION IN A MANNER LIKELY TO BE SEEN BY A MAJORITY OF SUCH MEMBERS INCLUDING BUT NOT LIMITED TO PUBLICATION IN ANY BULLETIN, NEWSLETTER, OR SIMILAR DOCUMENT NORMALLY DISTRIBUTED TO SUCH MEMBERS; AND

(IV) A CERTIFICATE OF COMPLIANCE WITH THE REQUIREMENTS OF THIS PARAGRAPH EXECUTED BY THE PERSON OR PERSONS EXECUTING THE DEED ON BEHALF OF THE RELIGIOUS CORPORATION UNDER THE PENALTIES OF PERJURY SHALL BE ATTACHED TO AND RECORDED WITH THE MORTGAGE; AND WITH RESPECT TO RELIGIOUS CORPORATIONS SUBJECT TO SUBDIVISION TWO, THREE, FOUR, FIVE, FIVE-A, FIVE-B, OR FIVE-C OF THIS SECTION, SUCH CERTIFICATE SHALL HAVE ENDORSED THEREON THE CONSENT OF THE CHURCH AUTHORITY OR AUTHORITIES WHOSE CONSENT WOULD BE REQUIRED UNDER SUCH SUBDIVISIONS OF THIS SECTION BEFORE THE FILING OF AN APPLICATION TO THE COURT.

9. If a sale, mortgage or lease for a term exceeding five years of any real property of any such religious corporation WITH RESPECT TO WHICH A COURT ORDER WAS REQUIRED UNDER SUBDIVISION ONE OF THIS SECTION has been heretofore or shall be hereafter made and a conveyance or mortgage executed and delivered without the authority of a court of competent jurisdiction, obtained as required by law, or not in accordance with its directions, the court may, thereafter, upon the application of the corporation, or of the grantee or mortgagee in any such conveyance or mortgage or of any person claiming through or under any such grantee or mortgagee upon such notice to such corporation, or its successor, and such other person or persons as may be interested in such property, as the court may prescribe, confirm said previously executed conveyance or mortgage, and order and direct the execution and delivery of a confirmatory deed or mortgage, or the recording of such confirmatory order in the office where deeds and mortgages are recorded in the county in which the property is located; and upon compliance with the said order such

original conveyance or mortgage shall be as valid and of the same force and effect as if it had been executed and delivered after due proceedings had in accordance with the statute and the direction of the court. But no confirmatory order may be granted unless the consents required in the first part of this section for a Protestant Episcopal, Roman Catholic, Presbyterian church or an incorporated African Methodist Episcopal Zion church or an incorporated United Methodist church have first been given by the prescribed authority thereof, either upon the original application or upon the application for the confirmatory order.

S 2. This act shall take effect immediately and shall apply to sales and mortgages of real property occurring on or after the effective date of this act.