

3313

2011-2012 Regular Sessions

I N S E N A T E

February 16, 2011

Introduced by Sens. KLEIN, HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to the reacquisition of a lot, plot, or part thereof owned by a burial society or by a cemetery corporation; and in relation to the definition of a burial society

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

1 Section 1. Section 1502 of the not-for-profit corporation law is
2 amended by adding a new paragraph (q) to read as follows:
3 (Q) THE TERM "BURIAL SOCIETY" MEANS A CORPORATION OR UNINCORPORATED
4 ASSOCIATION OR SOCIETY HAVING AMONG ITS ACTIVITIES OR ITS FORMER ACTIV-
5 ITIES THE PROVISION OF BURIAL BENEFITS FOR ITS MEMBERS.
6 S 2. Paragraphs (d) and (f) of section 1513-a of the not-for-profit
7 corporation law, as added by chapter 478 of the laws of 2003, are
8 amended and four new paragraphs (i), (j), (k) and (l) are added to read
9 as follows:
10 (d) Upon the sale of a lot, plot or part thereof reacquired by the
11 corporation under the provisions of paragraph (a), (b), or (c) of this
12 section, thirty-five percent of the net proceeds shall be placed in the
13 permanent maintenance fund and sixty-five percent shall be placed in the
14 current maintenance fund. PROVIDED, HOWEVER, THAT IF THEIR PROPERTY WAS
15 REACQUIRED UNDER PARAGRAPH (I) OF THIS SECTION, TEN PERCENT OF THE NET
16 PROCEEDS SHALL BE PLACED IN THE PERMANENT MAINTENANCE FUND, FIFTY-SEVEN
17 PERCENT SHALL BE PLACED IN THE CURRENT MAINTENANCE FUND AND THIRTY-THREE
18 PERCENT SHALL BE PLACED IN A PERPETUAL CARE FUND WHICH THE CEMETERY
19 SHALL ESTABLISH IN THE NAME OF THE DEFUNCT SOCIETY FOR THE EXCLUSIVE
20 PURPOSE OF MAINTENANCE OF THE GROUNDS ON WHICH THE GRAVES WERE REAC-
21 QUIRED. IF, HOWEVER THE NUMBER OF GRAVES RECLAIMED BY THE CEMETERY IS
22 LESS THAN ONE HUNDRED, FROM ANY ONE BURIAL SOCIETY THEN THIRTY-FIVE

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

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1 PERCENT OF THE NET PROCEEDS SHALL BE PLACED IN THE PERMANENT MAINTENANCE
2 FUND AND SIXTY-FIVE PERCENT SHALL BE PLACED IN THE CURRENT MAINTENANCE
3 FUND.

4 (f) The provisions of this section shall not apply to [a lot, plot or
5 part thereof whose record owner is a corporation or unincorporated asso-
6 ciation or society having among its activities or its former activities
7 the provision of burial benefits for its members] INCORPORATED OR UNIN-
8 CORPORATED RELIGIOUS ASSOCIATIONS OR SOCIETIES.

9 (I) A CEMETERY CORPORATION MAY, UPON APPLICATION AND APPROVAL BY THE
10 CEMETERY BOARD, REACQUIRE, RESUBDIVIDE, AND RESELL A LOT, PLOT OR PART
11 THEREOF FORMERLY OWNED BY A BURIAL SOCIETY UNDER THE FOLLOWING CIRCUM-
12 STANCES:

13 (1) IF THE CEMETERY CORPORATION HAS RECEIVED A REQUEST TO MAKE A BURI-
14 AL ON THE GROUNDS OF A BURIAL SOCIETY AND THE PROVISIONS OF PARAGRAPH
15 (H) OF SECTION FIFTEEN HUNDRED TWELVE OF THIS ARTICLE HAD TO BE INVOKED
16 TO MAKE THE BURIAL THEN THE CEMETERY CORPORATION MAY, AT ITS DISCRETION,
17 COMMENCE THE PROCESS OF REACQUIRING THE UNUSED GRAVES ON THE GROUNDS OF
18 THE BURIAL SOCIETY, EXCEPT THAT ANY GRAVES THAT HAVE BEEN RESERVED FOR
19 INDIVIDUALS WHERE SUCH RESERVATIONS HAVE BEEN RECORDED ON THE BOOKS AND
20 RECORDS OF THE CEMETERY CORPORATION SHALL BE EXEMPT FROM RECLAMATION; OR

21 (2) IF ROUTINE MAILINGS OR PROXY MAILINGS ARE SENT TO THE OFFICERS OF
22 RECORD OF A BURIAL SOCIETY AND SUCH MAILINGS ARE RETURNED BY THE POST
23 OFFICE, THE CEMETERY CORPORATION MAY, AT ITS DISCRETION, MAKE A SECOND
24 MAILING BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO EACH OFFICER OF
25 RECORD OF THE BURIAL SOCIETY AS RECORDED ON THE CEMETERY'S BOOKS AND
26 RECORDS AND, IF EACH OF THESE MAILINGS IS RETURNED BY THE POST OFFICE,
27 THE CEMETERY CORPORATION MAY, AT ITS DISCRETION, COMMENCE THE PROCESS OF
28 REACQUIRING THE UNUSED GRAVES ON THE GROUNDS OF THE BURIAL SOCIETY,
29 EXCEPT THAT ANY GRAVES THAT HAVE BEEN RESERVED FOR INDIVIDUALS WHERE
30 SUCH RESERVATIONS HAVE BEEN RECORDED ON THE BOOKS AND RECORDS OF THE
31 CEMETERY CORPORATION SHALL BE EXEMPT FROM REACQUISITION.

32 (J) IF A CEMETERY CORPORATION HAS DECIDED TO COMMENCE THE PROCESS OF
33 REACQUIRING GRAVES OWNED BY A BURIAL SOCIETY IT SHALL:

34 (1) SEND BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO EACH INDIVIDUAL
35 WHO HAS ENGAGED IN PROPRIETARY ACTIVITIES IN CONNECTION WITH GRAVES ON
36 THE GROUNDS OF A BURIAL SOCIETY, SEEKING THE NAMES AND ADDRESSES OF ANY
37 CURRENT OFFICERS OF THE BURIAL SOCIETY AND INFORMING THOSE INDIVIDUALS
38 OF THE CEMETERY CORPORATION'S INTENTIONS OF REACQUIRING THE UNUSED
39 GRAVES ON THE GROUNDS OF THE BURIAL SOCIETY;

40 (2) SEND BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO EACH INDIVIDUAL
41 WHO HAS A GRAVE RESERVED OR DEEDED TO THEM A LETTER SEEKING THE NAMES
42 AND ADDRESSES OF ANY CURRENT OFFICERS OF THE BURIAL SOCIETY AND INFORM-
43 ING SUCH INDIVIDUALS OF THE CEMETERY CORPORATION'S INTENTIONS OR REAC-
44 QUIRING THE UNUSED GRAVES ON THE GROUNDS OF THE BURIAL SOCIETY;

45 (3) POST A NOTICE AS PROVIDED IN CLAUSE THREE OF PARAGRAPH (A) OF THIS
46 SECTION;

47 (4) PUBLISH A NOTICE AS PROVIDED IN CLAUSE FIVE OF PARAGRAPH (A) OF
48 THIS SECTION;

49 (5) PREPARE AND SUBMIT AN AFFIDAVIT AS PROVIDED IN CLAUSE SIX OF PARA-
50 GRAPH (A) OF THIS SECTION; AND

51 (6) UPON THE SALE OF ANY GRAVE OR GRAVES ON THE GROUNDS OF THE BURIAL
52 SOCIETY WHICH HAVE BEEN REACQUIRED BY THE CEMETERY CORPORATION, THE
53 CEMETERY CORPORATION SHALL DISTRIBUTE THE NET PROCEEDS OF THE SALE AS
54 PROVIDED IN PARAGRAPH (D) OF THIS SECTION.

55 (K) THE CEMETERY CORPORATION SHALL HOLD OFF THE SALE OF TEN PERCENT OF
56 THE GRAVES IT REACQUIRES FROM THE BURIAL SOCIETY FOR TWENTY-FIVE YEARS

1 AS A RESERVE IN THE EVENT AN INDIVIDUAL OR INDIVIDUALS ARE IDENTIFIED
2 WHO HAVE A VALID CLAIM FOR BURIAL ON THE GROUNDS OF THE BURIAL SOCIETY.
3 (L) AT THE TIME THE GRAVES THAT HAVE BEEN REACQUIRED BY A CEMETERY
4 CORPORATION FROM A BURIAL SOCIETY ARE SOLD, THE CONTRACT OF SALE SHALL
5 CONTAIN A CLAUSE IN BOLD TYPE WHICH SPECIFIES THE SIZE, STYLE, AND TYPE
6 OF MONUMENTS PERMITTED IN THE SECTION IN WHICH SUCH GRAVES ARE LOCATED.
7 S 3. This act shall take effect immediately.