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

3027

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. CYMBROWITZ -- read once and referred 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:

Section 1. Section 1502 of the not-for-profit corporation law is amended by adding a new paragraph (q) to read as follows:

(Q) THE TERM "BURIAL SOCIETY" MEANS A CORPORATION OR UNINCORPORATED ASSOCIATION OR SOCIETY HAVING AMONG ITS ACTIVITIES OR ITS FORMER ACTIVITIES THE PROVISION OF BURIAL BENEFITS FOR ITS MEMBERS.

S 2. Paragraphs (d) and (f) of section 1513-a of the not-for-profit corporation law, as added by chapter 478 of the laws of 2003, are amended and four new paragraphs (i), (j), (k) and (l) are added to read as follows:

(d) Upon the sale of a lot, plot or part thereof reacquired by the corporation under the provisions of paragraph (a), (b), or (c) of this section, thirty-five percent of the net proceeds shall be placed in the permanent maintenance fund and sixty-five percent shall be placed in the current maintenance fund. PROVIDED, HOWEVER, THAT IF THEIR PROPERTY WAS REACQUIRED UNDER PARAGRAPH (I) OF THIS SECTION, TEN PERCENT OF THE NET PROCEEDS SHALL BE PLACED IN THE PERMANENT MAINTENANCE FUND, FIFTY-SEVEN PERCENT SHALL BE PLACED IN THE CURRENT MAINTENANCE FUND AND THIRTY-THREE PERCENT SHALL BE PLACED IN A PERPETUAL CARE FUND WHICH THE CEMETERY SHALL ESTABLISH IN THE NAME OF THE DEFUNCT SOCIETY FOR THE EXCLUSIVE PURPOSE OF MAINTENANCE OF THE GROUNDS ON WHICH THE GRAVES WERE REACQUIRED. IF, HOWEVER THE NUMBER OF GRAVES RECLAIMED BY THE CEMETERY IS LESS THAN ONE HUNDRED, FROM ANY ONE BURIAL SOCIETY THEN THIRTY-FIVE PERCENT OF THE NET PROCEEDS SHALL BE PLACED IN THE PERMANENT MAINTENANCE

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

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FUND AND SIXTY-FIVE PERCENT SHALL BE PLACED IN THE CURRENT MAINTENANCE FUND.

(f) The provisions of this section shall not apply to [a lot, plot or part thereof whose record owner is a corporation or unincorporated association or society having among its activities or its former activities the provision of burial benefits for its members] INCORPORATED OR UNINCORPORATED RELIGIOUS ASSOCIATIONS OR SOCIETIES.

(I) A CEMETERY CORPORATION MAY, UPON APPLICATION AND APPROVAL BY THE CEMETERY BOARD, REACQUIRE, RESUBDIVIDE, AND RESELL A LOT, PLOT OR PART THEREOF FORMERLY OWNED BY A BURIAL SOCIETY UNDER THE FOLLOWING CIRCUMSTANCES:

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

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

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

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

(2) SEND BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO EACH INDIVIDUAL WHO HAS A GRAVE RESERVED OR DEEDED TO THEM A LETTER SEEKING THE NAMES AND ADDRESSES OF ANY CURRENT OFFICERS OF THE BURIAL SOCIETY AND INFORMING SUCH INDIVIDUALS OF THE CEMETERY CORPORATION'S INTENTIONS OR REACQUIRING THE UNUSED GRAVES ON THE GROUNDS OF THE BURIAL SOCIETY;

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

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

(5) PREPARE AND SUBMIT AN AFFIDAVIT AS PROVIDED IN CLAUSE SIX OF PARAGRAPH (A) OF THIS SECTION; AND

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

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

AS A RESERVE IN THE EVENT AN INDIVIDUAL OR INDIVIDUALS ARE IDENTIFIED WHO HAVE A VALID CLAIM FOR BURIAL ON THE GROUNDS OF THE BURIAL SOCIETY.

(L) AT THE TIME THE GRAVES THAT HAVE BEEN REACQUIRED BY A CEMETERY CORPORATION FROM A BURIAL SOCIETY ARE SOLD, THE CONTRACT OF SALE SHALL CONTAIN A CLAUSE IN BOLD TYPE WHICH SPECIFIES THE SIZE, STYLE, AND TYPE OF MONUMENTS PERMITTED IN THE SECTION IN WHICH SUCH GRAVES ARE LOCATED.

S 3. This act shall take effect immediately.