

6383--A

2013-2014 Regular Sessions

I N A S S E M B L Y

March 26, 2013

Introduced by M. of A. BRENNAN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Paragraphs (a) and (i) of section 1506 of the not-for-profit corporation law, paragraph (a) as added by chapter 871 of the laws of 1977 and paragraph (i) as amended by chapter 292 of the laws of 1999, are amended to read as follows:
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5 (a) Purchase of land; notice to CEMETERY board [and court approval]. No cemetery corporation, in purchasing real property hereafter, shall pay or agree to pay more than the fair and reasonable market value thereof. The terms of the purchase, including the price to be paid and the method of payment, shall be subject[, upon notice] to NOTICE AND APPROVAL OF the cemetery board[, to approval by the supreme court in a district where any portion of the land is located]. In determining the fair and reasonable market value, the [court] CEMETERY BOARD may take into consideration the method by which the purchase price is to be paid.
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14 (i) Sale or disposition of cemetery lands. (1) No cemetery corporation may sell or dispose of the fee of all or any part of its lands dedicated to cemetery use, unless it shall prove to the satisfaction of the supreme court in the district where any portion of the cemetery lands is located OR THE CEMETERY BOARD, THAT either: (A) [that] all bodies have been removed from each and every part of the cemetery, that all the lots in the entire cemetery have been reconveyed to the corporation and are not used for burial purposes, and that it has no debts and liabilities, or (B) [that] the land to be sold or disposed of is not used or is not

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

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

25 S 2. Paragraph (e) and subparagraph 2 of paragraph (e-1) of section
26 1507 of the not-for-profit corporation law, paragraph (e) as added by
27 chapter 871 of the laws of 1977 and subparagraph 2 of paragraph (e-1) as
28 amended by chapter 111 of the laws of 2000, are amended to read as
29 follows:

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] PARAGRAPH (b), of this
37 section, the permanent maintenance of such cemetery pursuant to [subdi-
38 vision] PARAGRAPH (a) of this section, and for special purposes pursuant
39 to [subdivision] PARAGRAPH (f) of this section. Such corporate trustee
40 shall be designated by a resolution duly adopted by the board of direc-
41 tors or trustees and approved by a justice of the supreme court of the
42 judicial district in which the cemetery of said corporation is located
43 OR THE CEMETERY BOARD; and the directors or trustees of such cemetery
44 corporation may, with the approval of the justice of the supreme court,
45 revoke such trust, and either take over such trust fund or name another
46 trustee to handle the same, but if not so revoked, such trust shall be
47 perpetual. Any bank or trust company accepting any such cemetery fund
48 shall keep the same separate from all other funds, except that it may,
49 irrespective of any provision contained in this article invest the same
50 in a legal common trust fund or in shares of a mutual trust investment
51 company organized under the banking law, and shall pay over the net
52 income to the directors or trustees of the cemetery corporation by whom
53 it shall be expended and applied to the purpose for which such trust
54 fund was paid to the cemetery corporations and accounted for in accord-
55 ance with such [subdivisions] PARAGRAPHS (a), (b) and (f) of this
56 section.

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

11 S 3. Paragraph (c) of section 1513 of the not-for-profit corporation
12 law, as added by chapter 871 of the laws of 1977, is amended to read as
13 follows:

14 (c) Resale by lot owner. Before any burial shall have been made in any
15 such lot, plot or part thereof, or, if all the bodies therein have been
16 lawfully removed, the lot owner may sell or convey such lot, plot or
17 part thereof [subject to the prior approval of the cemetery board. Such
18 approval shall not be granted unless] UPON NOTICE TO THE CEMETERY. SUCH
19 SALE SHALL ONLY OCCUR IN THOSE INSTANCES WHERE the owner of such lot,
20 plot or part thereof shall have offered it to the cemetery corporation
21 within [two years] ONE YEAR prior to the [application for such approval]
22 SALE, in writing by registered or certified mail, at the price paid
23 therefor by said lot owner, together with simple interest at the rate of
24 four per centum per annum, and the cemetery corporation shall have
25 failed to accept such offer within thirty days after the making thereof.
26 [In the event the lot owner shall have acquired the lot, plot or part
27 thereof other than by purchase, and provided the cemetery corporation
28 and the lot owner cannot agree upon a price, the cemetery board shall
29 fix a price therefor. In arriving at the price the cemetery board shall
30 take into consideration the original price for which the cemetery corpo-
31 ration sold the lot, plot or part thereof, and any other circumstances
32 or factor which equitably relates to the price. The] SUBSEQUENT TO THE
33 RECEIPT OF NOTICE OF SALE OF SUCH LOT, PLOT OR PART THEREOF, THE secre-
34 tary of the cemetery corporation shall file and record in its books all
35 instruments of transfer. An owner may convey or devise to the corpo-
36 ration his right and title in and to any such lot, plot or part thereof.

37 S 4. This act shall take effect immediately.