

7802--A

2013-2014 Regular Sessions

I N A S S E M B L Y

June 4, 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 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 subpara-
18 graph], 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-
21 graph. For the purposes of this subparagraph, the adjusted historic
22 dollar value of the trust principal shall be the market value of the

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

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

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

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

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