

7610

2013-2014 Regular Sessions

I N A S S E M B L Y

May 28, 2013

Introduced by M. of A. FAHY -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the religious corporations law, in relation to the reacquisition of abandoned cemetery plots

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

1 Section 1. The religious corporations law is amended by adding a new  
2 section 8-a to read as follows:

3 S 8-A. REACQUISITION OF A LOT, PLOT OR PART THEREOF BY A CEMETERY. A  
4 RELIGIOUS CEMETERY CORPORATION MAY, UPON APPLICATION AND APPROVAL BY A  
5 SUPREME COURT, REACQUIRE, RESUBDIVIDE, AND RESELL A LOT, PLOT OR PART  
6 THEREOF UNDER THE FOLLOWING CIRCUMSTANCES:

7 (A)(I) IF THE RECORDS OF THE CORPORATION DEMONSTRATE THAT THE LOT,  
8 PLOT OR PART THEREOF WAS PURCHASED MORE THAN SEVENTY-FIVE YEARS PRIOR TO  
9 THE APPLICATION OF THE CORPORATION; AND (II) IF NO BURIALS HAVE BEEN  
10 MADE IN THE LOT, PLOT OR PART THEREOF OR ALL THE BODIES THEREIN HAVE  
11 BEEN LAWFULLY REMOVED; AND (III) IF NEITHER THE OWNER OR OWNERS OF THE  
12 LOT, PLOT OR PART THEREOF NOR ANY PERSON HAVING A CREDIBLE CLAIM TO  
13 OWNERSHIP WHO HAS VISITED, MADE PAYMENTS IN RESPECT OF OR ENGAGED IN ANY  
14 OTHER PROPRIETARY ACTIVITIES WITH RESPECT TO THE LOT, PLOT OR PART THER-  
15 EOF CAN BE IDENTIFIED AFTER A REASONABLE SEARCH CONDUCTED BY THE RELI-  
16 GIOUS CEMETERY CORPORATION, IT SHALL BE CONCLUSIVELY PRESUMED THAT THE  
17 OWNER OR OWNERS OF THE LOT, PLOT OR PART THEREOF HAVE ABANDONED THEIR  
18 BURIAL RIGHTS. A REASONABLE SEARCH CONSISTS OF A SEARCH OF: (1) ALL  
19 CEMETERY RECORDS TO DETERMINE THE NAME OF THE OWNER OR OWNERS OF THE  
20 LOT, PLOT OR PART THEREOF, THEIR LAST KNOWN ADDRESSES AND ALL INFORMA-  
21 TION AVAILABLE TO THE CEMETERY RELATING TO ANY PERSON BURIED IN THE LOT,  
22 PLOT OR PART THEREOF AND THE NAMES AND LAST KNOWN ADDRESSES OF ANY  
23 PERSONS MAKING INQUIRY ABOUT OR VISITING THE LOT, PLOT OR PART THEREOF;  
24 (2) A SEARCH FOR THE DEATH CERTIFICATES AND THE PROBATED WILLS OF THE  
25 OWNER OR OWNERS OF THE LOT, PLOT OR PART THEREOF; (3) THE POSTING OF

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

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1 NOTICE BY THE CEMETERY AT THE ENTRANCE TO THE CEMETERY AND IN THE CEME-  
2 TERY OFFICE, IF ANY, OF ITS INTENTION TO DECLARE THE LOT, PLOT OR PART  
3 THEREOF ABANDONED; (4) THE MAILING OF SUCH NOTICE CERTIFIED MAIL WITH  
4 RETURN RECEIPT REQUESTED TO THE OWNER OR OWNERS OF THE LOT, PLOT OR PART  
5 THEREOF AND EACH PERSON IDENTIFIED DURING THE REASONABLE SEARCH AT THEIR  
6 LAST KNOWN ADDRESSES; (5) PUBLICATION OF SUCH NOTICE ONCE IN EACH WEEK  
7 FOR THREE SUCCESSIVE WEEKS, IN TWO NEWSPAPERS OF REGULAR COMMERCIAL  
8 CIRCULATION BY SUBSCRIPTION AND/OR NEWSSTAND SALE, TO BE DESIGNATED BY  
9 THE COUNTY CLERK OF THE COUNTY WHERE THE CEMETERY IS LOCATED WHICH IN  
10 HIS OR HER JUDGMENT, GIVEN THE ETHNIC, RELIGIOUS, GEOGRAPHIC OR OTHER  
11 RELATED DEMOGRAPHIC CHARACTERISTICS OF THE OWNER OR OWNERS OF THE LOT,  
12 PLOT OR PART THEREOF AND EACH PERSON IDENTIFIED THROUGH THE REASONABLE  
13 SEARCH AND THE PREDOMINANT READERSHIP OF SUCH NEWSPAPERS ARE BEST CALCU-  
14 LATED TO INFORM THE OWNER OR OWNERS OF THE LOT, PLOT OR PART THEREOF AND  
15 EACH PERSON IDENTIFIED THROUGH THE REASONABLE SEARCH OF ANY APPLICATION  
16 PURSUANT TO THE PROVISIONS OF THIS SECTION; AND (6) THE PREPARATION OF  
17 AN AFFIDAVIT DESCRIBING THE STEPS TAKEN BY THE RELIGIOUS CEMETERY CORPO-  
18 RATION TO ASCERTAIN THE IDENTITY OF AND TO CONTACT THE CURRENT OWNER OR  
19 OWNERS OF THE LOT, PLOT OR PART THEREOF OR NEXT-OF-KIN THEREOF OR ANY  
20 OTHER PERSONS IDENTIFIED IN THE COURSE OF THE REASONABLE SEARCH WHO  
21 MIGHT HAVE RELEVANT INFORMATION AND THE RESULTS OF SUCH STEPS. AFTER THE  
22 FILING WITH THE SUPREME COURT OF PROOF OF COMPLIANCE WITH THE ABOVE  
23 REQUIREMENTS IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO SUCH  
24 SUPREME COURT AND UPON APPROVAL BY THE SUPREME COURT, THE LOT, PLOT OR  
25 PART THEREOF MAY BE RESOLD BY THE CEMETERY TO ANY PARTY IN COMPLIANCE  
26 WITH THE CEMETERY RULES AND REGULATIONS PROVIDED, HOWEVER, THAT ANY  
27 MONUMENT SUBSEQUENTLY PLACED ON SUCH LOT, PLOT OR PART THEREOF SHALL  
28 CONFORM TO THE GENERAL APPEARANCE OF ANY EXISTING MONUMENTS IN SAID  
29 SECTION OF LOTS, PLOTS OR PARTS THEREOF, IF ANY.

30 (B) IF (I) THE CIRCUMSTANCES DESCRIBED IN SUBDIVISION (A) OF THIS  
31 SECTION EXIST EXCEPT THAT ONE OR MORE BURIALS HAVE BEEN MADE IN A LOT,  
32 AND THE LAST BURIAL WAS MADE MORE THAN SEVENTY-FIVE YEARS PRIOR TO THE  
33 APPLICATION, (II) THE LOT, PLOT OR PART THEREOF CAN BE SUBDIVIDED TO  
34 CREATE NEW GRAVES, (III) THE BODIES HAVE NOT BEEN LAWFULLY REMOVED, AND  
35 (IV) THE CEMETERY SUBMITS AN APPLICATION TO THE SUPREME COURT WHICH  
36 COMPLIES WITH THE REQUIREMENTS SET FORTH IN SUBDIVISION (A) OF THIS  
37 SECTION, IT SHALL BE CONCLUSIVELY PRESUMED THAT THE LOT OWNER HAS ABAN-  
38 DONED THE RIGHT TO MAKE FURTHER BURIALS IN THE LOT, THE LOT MAY BE  
39 SUBDIVIDED, AND THE RESUBDIVIDED LOT, PLOT OR PARTS THEREOF WHICH DO NOT  
40 CONTAIN THE REMAINS OF THE DECEASED PERSONS MAY BE RESOLD BY THE RELI-  
41 GIOUS CEMETERY CORPORATION AS PROVIDED IN THIS SECTION. NOTHING IN THIS  
42 SECTION SHALL PERMIT A RELIGIOUS CEMETERY CORPORATION TO DECLARE ABAN-  
43 DONED A LOT, PLOT OR PART THEREOF, WHERE SUCH LOT, PLOT OR PART THEREOF  
44 WAS PURCHASED FOR MULTIPLE DEPTH BURIALS AND WHERE ONE OR MORE BURIALS  
45 HAS OCCURRED OR AUTHORIZED A RELIGIOUS CEMETERY CORPORATION TO REMOVE A  
46 MONUMENT OR OTHER EMBELLISHMENT TO FACILITATE THE RESALE OF SUCH LOT,  
47 PLOT OR PART THEREOF.

48 (C) IF THE OWNER OR OWNERS OF A LOT, PLOT OR PART THEREOF CAN BE IDEN-  
49 TIFIED, THE RELIGIOUS CEMETERY CORPORATION, WITH THE CONSENT OF THE  
50 OWNER OR OWNERS OF THE LOT, PLOT OR PART THEREOF, THE LOT, PLOT OR PART  
51 THEREOF MAY BE RESUBDIVIDED, AND THE RESUBDIVIDED LOT, PLOT OR PART  
52 THEREOF WHICH DOES NOT CONTAIN THE REMAINS OF DECEASED PERSONS MAY BE  
53 RESOLD BY THE RELIGIOUS CEMETERY CORPORATION, PROVIDED, HOWEVER, IF NO  
54 BURIAL HAS BEEN MADE IN THE LOT, PLOT OF PART HEREOF, IN THE TWENTY-FIVE  
55 YEAR PERIOD PRECEDING SUCH APPLICATION, THE OWNER OF A LOT, PLOT OF PART  
56 THEREOF HAS NOTIFIED HIS OR HER PARENTS, SPOUSE, ISSUE, BROTHERS,

1 SISTERS, GRANDPARENTS, AND GRANDCHILDREN, IF ANY, OF THE APPLICATION TO  
2 THE SUPREME COURT, AND PROVIDED FURTHER, HOWEVER, IF A BURIAL HAS BEEN  
3 MADE IN THIS LOT, PLOT OR PART THEREOF DURING SUCH TWENTY-FIVE YEAR  
4 PERIOD, THE SPOUSE AND ISSUE OF SUCH DECEASED PERSON ARE ALSO NOTIFIED,  
5 AND PROVIDED FURTHER, IN EITHER CASE THE OWNER OF THE LOT, PLOT OR PART  
6 THEREOF SATISFIES THE SUPREME COURT THAT NONE OF THE PERSONS NOTIFIED  
7 HAVE AGREED WITHIN FORTY-FIVE DAYS OF NOTIFICATION TO PURCHASE THE LOT,  
8 PLOT OF PART THEREOF AT THE PRICE WHICH THE RELIGIOUS CEMETERY CORPO-  
9 RATION SHALL CERTIFY UNDER PENALTY OF LAW SHALL BE THE PRICE AT WHICH  
10 THE LOT, PLOT OF PART THEREOF SHALL BE SOLD FOR AFTER REACQUISITION.

11 (D) UPON THE SALE OF A LOT, PLOT OR PART THEREOF REACQUIRED BY RELI-  
12 GIOUS CEMETERY CORPORATION UNDER THE PROVISIONS OF SUBDIVISION (A), (B),  
13 OR (C) OF THIS SECTION, THE NET PROCEEDS SHALL BE PLACED IN A TRUST  
14 DESIGNATED TO PROVIDE FUTURE MAINTENANCE OF THE CEMETERY.

15 (E) IF THE OWNER OF THE LOT, PLOT OR PART THEREOF IS SUBSEQUENTLY  
16 IDENTIFIED, THE RELIGIOUS CEMETERY CORPORATION SHALL: (I) RETURN ALL  
17 UNSOLD LOTS, PLOTS OR PARTS THEREOF IF ANY, TO THE OWNER IF SO  
18 REQUESTED; AND (II) WITH RESPECT TO ANY LOTS, PLOTS OR PARTS THEREOF  
19 THAT HAVE BEEN SOLD PURSUANT TO THIS SECTION, AT THE OPTION OF THE OWNER  
20 OF THE LOT, PLOT OR PART THEREOF, EITHER (1) PROVIDE THE OWNER, AT NOT  
21 COST TO THE OWNER, WITH A LOT, PLOT OR PART THEREOF COMPARABLE TO ANY  
22 LOT, PLOT OR PART THEREOF THAT WAS SOLD BY THE RELIGIOUS CEMETERY CORPO-  
23 RATION OR (2) PROVIDE THE OWNER WITH THE PROCEEDS FROM THE SALE OF THE  
24 LOT, PLOT OR PART THEREOF REACQUIRED UNDER THIS SECTION WITH INTEREST  
25 THEREON FROM THE DATE OF THE SALE AT SIX PERCENT PER ANNUM.

26 (F) MONUMENTS TO BE ERECTED ON A LOT, PLOT OR PART THEREOF, FOLLOWING  
27 THE RESALE OF A LOT, PLOT OR PART THEREOF, SHALL CONFORM TO THE RULES  
28 AND REGULATIONS OR OTHER REQUIREMENTS OF THE RELIGIOUS CEMETERY CORPO-  
29 RATION AND SHALL CONFORM TO THE SIZE, STYLE, AND TYPE OF MONUMENTS IN  
30 THE SECTION OF THE CEMETERY WHERE SUCH RESALE OCCURS.

31 S 2. This act shall take effect on the thirtieth day after it shall  
32 have become a law.