

4324

2013-2014 Regular Sessions

I N   S E N A T E

March 21, 2013

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Introduced by Sen. RANZENHOFER -- 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 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].  
6 No cemetery corporation, in purchasing real property hereafter, shall  
7 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  
8 method of payment, shall be subject[, upon notice] to NOTICE AND  
9 APPROVAL OF the cemetery board[, to approval by the supreme court in a  
10 district where any portion of the land is located]. In determining the  
11 fair and reasonable market value, the [court] CEMETERY BOARD may take  
12 into consideration the method by which the purchase price is to be paid.  
13  
14     (i) Sale or disposition of cemetery lands. (1) No cemetery corporation  
15 may sell or dispose of the fee of all or any part of its lands dedicated  
16 to cemetery use, unless it shall prove to the satisfaction of the  
17 [supreme court in the district where any portion of the cemetery lands  
18 is located] CEMETERY BOARD, either: (A) that all bodies have been  
19 removed from each and every part of the cemetery, that all the lots in  
20 the entire cemetery have been reconveyed to the corporation and are not  
21 used for burial purposes, and that it has no debts and liabilities, or  
22 (B) that the land to be sold or disposed of is not used or is not physically  
23 adaptable for burial purposes and that the sale or disposition  
24 will benefit the cemetery corporation and the owners of plots and graves

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

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

22 S 2. Subparagraph 2 of paragraph (a), paragraph (e) and subparagraph 2  
23 of paragraph (e-1) of section 1507 of the not-for-profit corporation  
24 law, subparagraph 2 of paragraph (a) as amended by chapter 679 of the  
25 laws of 2004, paragraph (e) as added by chapter 871 of the laws of 1977  
26 and subparagraph 2 of paragraph (e-1) as amended by chapter 111 of the  
27 laws of 2000, are amended to read as follows:

28 (2) The permanent maintenance fund is hereby declared to be and shall  
29 be held by the corporation as a trust fund, for the purpose of maintain-  
30 ing and preserving the cemetery, including all lots, crypts, niches,  
31 plots, and parts thereof. The principal of such fund shall be invested  
32 in such securities as are permitted for the investment of trust funds by  
33 section 11-2.3 of the estates, powers and trusts law. The income in the  
34 form of interest and ordinary dividends therefrom shall be used solely  
35 for the maintenance and preservation of the cemetery grounds. In addi-  
36 tion, the governing board of the corporation may appropriate for expend-  
37 iture solely for the maintenance and preservation of the cemetery  
38 grounds a portion of the net appreciation, realized (with respect to all  
39 assets) and unrealized (with respect only to readily marketable assets),  
40 in the fair market value of the principal of the trust in excess of its  
41 adjusted historic dollar value, as defined in this subparagraph, as is  
42 prudent under the standard established by section seven hundred seven-  
43 teen of this chapter (duty of directors and officers) and as limited by  
44 the maximum annual appropriation defined in this subparagraph. For the  
45 purposes of this subparagraph, the adjusted historic dollar value of the  
46 trust principal shall be the market value of the principal three full  
47 calendar years prior to the effective date of the amendments made to  
48 this subparagraph, plus all subsequent additions thereto, minus all  
49 allowable deductions therefrom, adjusted by the rate of inflation as  
50 measured by the applicable consumer price index. The maximum annual  
51 appropriation shall be sixty percent of the average of the net appreci-  
52 ation in the fund for the immediately preceding three years, but only to  
53 the extent that it exceeds the adjusted historical dollar value of the  
54 fund in the current year. Cemetery corporations shall keep complete  
55 records of the adjusted historic dollar value of the permanent mainte-  
56 nance fund. In the event that a cemetery corporation seeks to appropri-

1 ate any percentage of its net appreciation in its permanent maintenance  
2 fund in accordance with this subparagraph, the cemetery corporation  
3 shall send a notice of such proposed appropriation by certified mail to  
4 the cemetery board, setting forth the amount of funds to be appropriated  
5 for such expenditure and its effect on the permanent maintenance fund,  
6 and certifying that such amount does not exceed the maximum annual  
7 appropriation defined in this subparagraph. Such proposed appropriation  
8 shall become effective sixty days after receipt of such notice, unless  
9 the cemetery board within such sixty-day period notifies the cemetery  
10 corporation that the board objects to the proposed appropriation.  
11 Notwithstanding the foregoing provisions of this subparagraph, all prin-  
12 cipal of the permanent maintenance fund shall remain inviolate, except  
13 that, upon application to the [supreme court in a district where a  
14 portion of the cemetery grounds is located, the court] CEMETERY BOARD,  
15 THE CEMETERY BOARD may make an order permitting the principal or a part  
16 thereof to be used for the purpose of current maintenance and preserva-  
17 tion of the cemetery or otherwise. Such application may be made by the  
18 cemetery board on notice to the corporation or by the corporation on  
19 notice to the cemetery board. Unless the cemetery can clearly demon-  
20 strate that it lacks sufficient future revenue to make repayment, any  
21 such allowance from the permanent maintenance fund shall be in the form  
22 of a loan, and the court shall determine the method for repayment of  
23 such a loan by the cemetery to the fund. Any loan from the permanent  
24 maintenance fund shall be ignored for the purpose of computing the  
25 adjusted dollar value of the fund. In the event that the [court] CEME-  
26 TERY BOARD determines that an outright grant of principal from the  
27 permanent maintenance fund is necessary, the amount of such grant shall  
28 be deducted from the adjusted historic dollar value of the trust princi-  
29 pal for the purposes of this subparagraph.

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 and the directors or trustees of such cemetery corporation may[, with  
44 the approval of the justice of the supreme court,] revoke such trust,  
45 and either take over such trust fund or name another trustee to handle  
46 the same, but if not so revoked, such trust shall be perpetual. NOTICE  
47 OF SUCH A CHANGE IN DESIGNATION SHALL BE PROVIDED TO THE CEMETERY BOARD  
48 WITHIN SIXTY DAYS OF SUCH DESIGNATION BY THE BOARD OF DIRECTORS OR TRUS-  
49 TEES OF THE CEMETERY CORPORATION. Any bank or trust company accepting  
50 any such cemetery fund shall keep the same separate from all other  
51 funds, except that it may, irrespective of any provision contained in  
52 this article invest the same in a legal common trust fund or in shares  
53 of a mutual trust investment company organized under the banking law,  
54 and shall pay over the net income to the directors or trustees of the  
55 cemetery corporation by whom it shall be expended and applied to the  
56 purpose for which such trust fund was paid to the cemetery corporations

1 and accounted for in accordance with such [subdivisions] PARAGRAPHS (a),  
2 (b) and (f) of this section.

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

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

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

39 S 4. This act shall take effect immediately.