

1248--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

Introduced by M. of A. FAHY -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 THEREOF CAN BE IDENTIFIED AFTER A REASONABLE SEARCH CONDUCTED BY THE RELIGIOUS CEMETERY CORPORATION, IT SHALL BE CONCLUSIVELY PRESUMED THAT THE OWNER OR OWNERS OF THE LOT, PLOT OR PART THEREOF HAVE ABANDONED THEIR BURIAL RIGHTS. A REASONABLE SEARCH CONSISTS OF A SEARCH OF: (1) ALL CEMETERY RECORDS TO DETERMINE THE NAME OF THE OWNER OR OWNERS OF THE LOT, PLOT OR PART THEREOF, THEIR LAST KNOWN ADDRESSES AND ALL INFORMATION AVAILABLE TO THE CEMETERY RELATING TO ANY PERSON BURIED IN THE LOT, PLOT OR PART THEREOF AND THE NAMES AND LAST KNOWN ADDRESSES OF ANY PERSONS MAKING INQUIRY ABOUT OR VISITING THE LOT, PLOT OR PART THEREOF;

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

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

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

51 (C) IF THE OWNER OR OWNERS OF A LOT, PLOT OR PART THEREOF CAN BE IDEN-
52 TIFIED, THE RELIGIOUS CEMETERY CORPORATION, WITH THE CONSENT OF THE
53 OWNER OR OWNERS OF THE LOT, PLOT OR PART THEREOF, THE LOT, PLOT OR PART
54 THEREOF MAY BE RESUBDIVIDED, AND THE RESUBDIVIDED LOT, PLOT OR PART
55 THEREOF WHICH DOES NOT CONTAIN THE REMAINS OF DECEASED PERSONS MAY BE
56 RESOLD BY THE RELIGIOUS CEMETERY CORPORATION, PROVIDED, HOWEVER, IF NO

1 BURIAL HAS BEEN MADE IN THE LOT, PLOT OR PART HEREOF, IN THE TWENTY-FIVE
2 YEAR PERIOD PRECEDING SUCH APPLICATION, THE OWNER OF A LOT, PLOT OR PART
3 THEREOF HAS NOTIFIED HIS OR HER PARENTS, SPOUSE, ISSUE, BROTHERS,
4 SISTERS, GRANDPARENTS, AND GRANDCHILDREN, IF ANY, OF THE APPLICATION TO
5 THE SUPREME COURT, AND PROVIDED FURTHER, HOWEVER, IF A BURIAL HAS BEEN
6 MADE IN THIS LOT, PLOT OR PART THEREOF DURING SUCH TWENTY-FIVE YEAR
7 PERIOD, THE SPOUSE AND ISSUE OF SUCH DECEASED PERSON ARE ALSO NOTIFIED,
8 AND PROVIDED FURTHER, IN EITHER CASE THE OWNER OF THE LOT, PLOT OR PART
9 THEREOF SATISFIES THE SUPREME COURT THAT NONE OF THE PERSONS NOTIFIED
10 HAVE AGREED WITHIN FORTY-FIVE DAYS OF NOTIFICATION TO PURCHASE THE LOT,
11 PLOT OR PART THEREOF AT THE PRICE WHICH THE RELIGIOUS CEMETERY CORPO-
12 RATION SHALL CERTIFY UNDER PENALTY OF LAW SHALL BE THE PRICE AT WHICH
13 THE LOT, PLOT OR PART THEREOF SHALL BE SOLD FOR AFTER REACQUISITION.
14 ANY PERSONS NOTIFIED PURSUANT TO THIS SUBDIVISION BY THE IDENTIFIED
15 OWNER OR OWNERS OF THE LOT, PLOT OR PART THEREOF MUST AGREE TO ERECT A
16 MONUMENT OF REASONABLE UNIFORMITY TO THE IMMEDIATELY SURROUNDING MONU-
17 MENTS AS PROVIDED IN SUBDIVISION (F) OF THIS SECTION BEFORE THE PERSONS
18 NOTIFIED MAY ENTER INTO AN AGREEMENT TO PURCHASE THE LOT, PLOT OR PART
19 THEREOF.

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

24 (E) IF THE OWNER OF THE LOT, PLOT OR PART THEREOF IS SUBSEQUENTLY
25 IDENTIFIED, THE RELIGIOUS CEMETERY CORPORATION SHALL: (I) RETURN ALL
26 UNSOLD LOTS, PLOTS OR PARTS THEREOF IF ANY, TO THE OWNER IF SO
27 REQUESTED; AND (II) WITH RESPECT TO ANY LOTS, PLOTS OR PARTS THEREOF
28 THAT HAVE BEEN SOLD PURSUANT TO THIS SECTION, AT THE OPTION OF THE OWNER
29 OF THE LOT, PLOT OR PART THEREOF, EITHER (1) PROVIDE THE OWNER, AT NO
30 COST TO THE OWNER, WITH A LOT, PLOT OR PART THEREOF COMPARABLE TO ANY
31 LOT, PLOT OR PART THEREOF THAT WAS SOLD BY THE RELIGIOUS CEMETERY CORPO-
32 RATION OR (2) PROVIDE THE OWNER WITH THE PROCEEDS FROM THE SALE OF THE
33 LOT, PLOT OR PART THEREOF REACQUIRED UNDER THIS SECTION WITH INTEREST
34 THEREON FROM THE DATE OF THE SALE AT SIX PERCENT PER ANNUM.

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

40 (G) NO CORPORATION SHALL UTILIZE THE REACQUISITION PROVISIONS OF THIS
41 SECTION IN VIOLATION OF SUCH CORPORATION'S SECTARIAN BURIAL REQUIRE-
42 MENTS.

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