STATE OF NEW YORK

470

2017-2018 Regular Sessions

IN ASSEMBLY

January 9, 2017

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

AN ACT to amend the estates, powers and trusts law and the not-for-profit corporation law, in relation to authorizing cemetery corporations to designate a community foundation as the trustee of a trust for the perpetual care, maintenance, improvement and embellishment of cemetery property

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The estates, powers and trusts law is amended by adding a new section 1-2.1-a to read as follows:

§ 1-2.1-a Community foundation

A community foundation is a tax-exempt public charity, in accordance with internal revenue code section 501(c)(3); that is organized and operated for the long term benefit of a defined geographic area.

§ 2. Section 8-1.5 of the estates, powers and trusts law, as renumbered by chapter 686 of the laws of 1967, is amended to read as follows:

§ 8-1.5 Trusts for cemetery purposes

Dispositions of property in trust for the purpose of the perpetual care, maintenance, improvement or embellishment of cemeteries or private burial lots in cemeteries, and the roadways, lawns, hedges, walks, fences, monuments, structures and tombs in such cemeteries or on such private burial lots are permitted and shall be deemed to be for charitable and benevolent purposes. Such dispositions are not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries, nor shall they be invalid as violating any existing rule against perpetuities. Nothing herein contained shall affect any existing authority of the courts to determine the reasonableness of the amount of such disposition. Any cemetery association **or cemetery corporation subject to the provisions of article fifteen of the not-for-profit corporation law** may act as trustee**, or designate a bank, banking insti-**

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

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tution or community foundation to act as trustee, of and execute any such trust with respect to lots, roadways, lawns, hedges, walks, fences, monuments, structures and tombs both within its own cemetery limits and outside of any cemetery under its control but within the county where such cemetery is located, whether or not such power is included among its corporate powers.

§ 3. Section 8-1.6 of the estates, powers and trusts law, as amended by chapter 686 of the laws of 1967, is amended to read as follows:

§ 8-1.6 Deposit of money in trust by owner of lots in private unincorporated cemetery

The owner of lots in any private unincorporated cemetery may deposit in trust for the care of such lots a sum not exceeding four hundred dollars for each lot so owned with any bank [~~or~~], banking institution or community foundation located [~~in a city, town or village~~] conveniently near such private unincorporated cemetery, provided such bank [~~or~~], banking institution or community foundation is willing to accept such money in trust and agrees to apply the proceeds of the interest thereon to the care and upkeep of such lots. Such banks [~~or~~], banking institutions and community foundations are hereby authorized to accept such money for the purpose described herein and to apply the proceeds of the interest thereon to the care and upkeep of any such lots. The provisions of this section do not apply to savings banks.

§ 4. Section 1502 of the not-for-profit corporation law is amended by adding a new paragraph (r) to read as follows:

(r) The term "community foundation" means any tax-exempt public charity, in accordance with internal revenue code section 501(c)(3), that is organized and operated for the long term benefit of a defined geographic area.

§ 5. Subdivision 7 of paragraph (a) of section 1506-a of the not-for-profit corporation law, as added by chapter 560 of the laws of 1998, is amended to read as follows:

(7) have, enter into or perform a management contract with any entity other than a not-for-profit cemetery corporation; provided, however, that this subdivision shall not be deemed to prohibit a cemetery corporation from depositing moneys in trust with a bank, banking institution or community foundation for the purpose of the perpetual care, maintenance, improvement and embellishment of cemetery property.

§ 6. Paragraph (e) of section 1507 of the not-for-profit corporation law, as amended by chapter 539 of the laws of 2015, is amended to read as follows:

(e) Designation of fiduciary corporation by directors or trustees of cemetery corporation to act as custodians of funds. Notwithstanding the provisions of any other law, the directors or trustees of cemetery corporations are hereby authorized to designate a bank [~~or~~], trust company, or community foundation to act as custodian and trustee of any or all of the respective funds of such cemetery corporation received by it for the perpetual care of lots in the cemetery thereof pursuant to paragraph (b)[~~,~~] of this section, the permanent maintenance of such cemetery pursuant to paragraph (a) of this section, and for special purposes pursuant to paragraph (f) of this section. Such corporate trustee shall be designated by a resolution duly adopted by the board of directors or trustees and approved by a justice of the supreme court of the judicial district in which the cemetery of said corporation is located or the cemetery board; and the directors or trustees of such cemetery corporation may, with the approval of the justice of the supreme court, revoke such trust, and either take over such trust fund

or name another trustee to handle the same, but if not so revoked, such trust shall be perpetual. Any bank [~~or~~], trust company**, or community foundation** accepting any such cemetery fund shall keep the same separate from all other funds, except that it may, irrespective of any provision contained in this article invest the same in a legal common trust fund or in shares of a mutual trust investment company organized under the banking law, and shall pay over the net income to the directors or trustees of the cemetery corporation by whom it shall be expended and applied to the purpose for which such trust fund was paid to the cemetery corporations and accounted for in accordance with such paragraphs (a), (b) and (f) of this section.

§ 7. This act shall take effect immediately.