

# McKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED

## RELIGIOUS CORPORATIONS LAW CHAPTER 51 OF THE CONSOLIDATED LAWS

### § 2. Definitions

A "Religious Corporations Law corporation" is a corporation created for religious purposes to which this chapter applies under section two-a of this chapter. Unless the context otherwise requires, whenever "religious corporation" or "corporation" is used in this chapter, such term shall mean a "Religious Corporations Law corporation".

An "incorporated church" is a religious corporation created to enable its members to meet for divine worship or other religious observances.

An "unincorporated church" is a congregation, society, or other assemblage of persons who are accustomed to stately meet for divine worship or other religious observances, without having been incorporated for that purpose.

The term "clergyman" and the term "minister" include a duly authorized pastor, rector, priest, rabbi, and a person having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue.

The term "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

(As amended L.1998, c. 560, § 6, eff. Sept. 4, 1998.)

### § 2-b. Applicability of not-for-profit corporation law

1. The not-for-profit corporation law applies to every corporation to which this chapter applies, provided that:

(a) If any provision of the not-for-profit corporation law conflicts with any provision of this chapter, the provision of this chapter shall prevail and the

conflicting provision of the not-for-profit corporation law shall not apply in such case. If any provision of this chapter relates to a matter embraced in the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply.

(b) A corporation to which the not-for-profit corporation law is made applicable by this section shall be treated as a "corporation", "domestic corporation", or "foreign corporation" as such terms are used in the not-for-profit corporation law, except that the purposes for which any such corporation has been or may be formed under this chapter shall not thereby be extended.

(c) The following provisions of the not-for-profit corporation law shall not apply to religious corporations: subparagraphs (7) and (8) of paragraph (a) of section one hundred twelve, section one hundred thirteen, section one hundred fourteen, section two hundred one, section three hundred three, section three hundred four, section three hundred five, section three hundred six, article four except section four hundred one, section five hundred fourteen, that portion of section five hundred twenty-two (b) which reads "The attorney general shall be notified of the application and shall be given an opportunity to be heard", section six hundred five, section six hundred seven, section six hundred nine, section eight hundred four, article nine except section nine hundred ten, article ten except as provided in section eleven hundred fifteen, section eleven hundred two, and article fifteen except paragraph (c) of section fifteen hundred seven.

(d) Any reference in the not-for-profit corporation law to the delivery of any certificate or other instrument to the department of state for filing refers to the filing or recording thereof in the office of the clerk of the county in which the corporation has its principal office or place of worship or otherwise as provided in this chapter.

(d-1) Notwithstanding any provision of this chapter or the not-for-profit corporation law, any church referred to in subdivision two, three, four, five, five-a, five-b, five-c, or six of section twelve of this chapter shall not be required to give notice to the attorney general of any application required by subdivision one of section twelve of this chapter or any application or petition required under section five hundred ten or section five hundred eleven of the not-for-profit corporation law.

(e) No action shall be taken by the trustees of an incorporated Roman Catholic church, or of a Ruthenian Greek Catholic church, under section five hundred twenty-two of the not-for-profit corporation law (Release of restrictions on use or investment) without the consent of the archbishop or bishop of the diocese to which such church belongs or in case of their absence or inability to act, without the consent of the vicar general or administrator of such diocese.

2. Every corporation to which the not-for-profit corporation law is made applicable by this section is a type B corporation for all purposes of that law.

3. From and after the effective date of this section the general corporation law shall not apply to any corporation to which this chapter applies.

4. For the purpose of this section and elsewhere in this chapter the effective date of the not-for-profit corporation law as to corporations to which the not-for-profit corporation law is made applicable by this section shall be September first, nineteen hundred seventy-two.

(As amended L.1992, c. 623, § 2.)

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### § 5. General powers and duties of trustees of religious corporations

The trustees of every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with the provisions of law relating thereto, for the support and maintenance of the corporation, or, providing the members of the corporation at a meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object conducted by said corporation or in connection with it, or with the denomination, if any, with which it is connected; and they shall not use such property or revenues for any other purpose or divert the same from such uses. They may transfer all or any part of the real or personal estate of such corporation to such bank or trust company organized or existing under the laws of the state of New York, or to a national banking association whose principal office is located in the state of New York as may be designated by them or to a holding company, organized under the laws of the state of New York, of the same religious denomination, such property to be held in trust or in safekeeping or custody, to collect the income thereof and pay over the same to the trustees of such religious corporation at such times and in such manner as shall be agreed upon, and they may also, in their discretion, delegate and grant to the trustee or custodian designated by them all or any portion of the powers, responsibilities and discretionary authority possessed by them with respect to the retention and the investment and reinvestment of such property or any part thereof, and may from time to time modify such powers delegated by them or designate successor or different trustees or custodians within the limits and subject to the regulations and restrictions contained in this section. The trustees of an incorporated Roman Catholic Church, or of a Ruthenian Greek Catholic Church, shall not transfer any property as herein provided without the consent of the archbishop or bishop of the diocese to which such church belongs or in case of their absence or inability to act, without the consent of the vicar general or administrator of such diocese. By-laws may be adopted or amended, by a two-thirds vote of the qualified voters present and voting at the meeting for incorporation or at any subsequent meeting, after written notice, embodying such by-laws or amendment, has been openly given at a previous meeting, and also in the notices of the meeting at which such proposed by-laws or amendment is to be acted upon. By-laws thus adopted or amended shall control the action of the trustees. But this section does not give to the trustees of an incorporated church, any control over the calling, settlement, dismissal or removal of its minister, or the fixing of his salary; or any power to fix or change the times, nature or order of the public or social worship of such church.

(L.1909, c. 53; amended L.1925, c. 459, § 1; L.1955, c. 90, § 1.)

#### Historical and Statutory Notes

**Derivation.** Section derived from the Religious Corporations Law of 1895, c. 723, § 5, as amended by L.1896, c. 336, § 3; L.1897, c. 144, § 1; L.1897, c. 621, § 1; originally revised from L.1813, c. 60, § 4; L.1822, c. 187, § 1; L.1835, c. 90, § 8; L.1875, c. 79, § 4; L.1876, c. 176, § 1; L.1876, c. 329, § 6.

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deeds in such office, and indexed as a deed from the grantee as named in such instrument or in such conveyance to such corporation. The register or clerk, as the case may be, shall note the recording of such statement on the margin of the record of such conveyance, and for his services shall be entitled to receive the fees allowed for recording deeds. Such statement so recorded shall be presumptive evidence that such matters therein stated are true, and that such corporation was the grantee in the original instrument or conveyance. All conveyances heretofore made, or by any instrument intended to be made, to a religious corporation of real property appropriated to the use of such corporation, or entitled to be so appropriated, are hereby confirmed and declared valid and effectual, notwithstanding any defect in the form of the conveyance or the description of the grantee therein.

(L.1909, c. 53.)

**Historical and Statutory Notes**

**Derivation.** Section derived from the 336, § 4; originally revised from L.1863, Religious Corporations Law of 1895, c. c. 45, § 1(5); L.1871, c. 12, § 1(5); 723, § 10, as amended by L.1896, ch. L.1888, c. 459.

**Library References****American Digest System**

Property and funds of religious societies; mode of acquiring, see Religious Societies ¶17.

**Encyclopedia**

Property and funds of religious societies; mode of acquisition, see C.J.S. Religious Societies §§ 52 to 55.

**WESTLAW Research**

Religious societies cases: 332k[add key number].

**§ 12. Sale, mortgage and lease of real property of religious corporations**

1. A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court therefor pursuant to section five hundred eleven of the not-for-profit corporation law as that section is modified by paragraph (d-1) of subsection one of section two-b of this chapter, except that a religious corporation may execute a purchase money mortgage or a purchase money security agreement creating a security interest in personal property purchased by it without obtaining leave of the court therefor.

2. The trustees of an incorporated Protestant Episcopal church shall not vote upon any resolution or proposition for the sale,

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mortgage or lease of its real property, unless the rector of such church, if it then has a rector, shall be present, and shall not make application to the court for leave to sell or mortgage any of its real property without the consent of the bishop and standing committee of the diocese to which such church belongs, or execute and deliver a lease of any of its real property for a term exceeding five years without similar consent of the bishop and standing committee of the diocese to which such church belongs; but in case the see be vacant, or the bishop be absent or unable to act, the consent of the standing committee with their certificate of the vacancy of the see or of the absence or disability of the bishop shall suffice.

3. The trustees of an incorporated Roman Catholic church shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent of the archbishop or bishop of the diocese to which such church belongs or in case of their absence or inability to act, without the consent of the vicar-general or administrator of such diocese.

4. The trustees of an incorporated Ruthenian Catholic church of the Greek rite shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent in writing of the Ruthenian Greek Catholic bishop of the diocese to which such church belongs, or, in case of his absence or inability to act, without the consent of the vicar-general of such bishop or of the administrator of such diocese.

5. The trustees of an incorporated African Methodist Episcopal Zion church shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent of the bishop of the diocese to which said church belongs, or in case of his absence or inability to act, without the consent of the annual conference having jurisdiction over such church.

5-a. The trustees of an incorporated Presbyterian church in connection with the General Assembly of the Presbyterian Church (U.S.A.) shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent in writing of the particular Presbytery with which said church is connected.

5-b. The trustees of an incorporated United Methodist church shall not make application to the court for leave to mortgage, lease, or sell any of its real property without the written consents of the district superintendent and the preacher in charge and the authorization of the charge conference by a majority of those present and

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voting at a meeting of the charge conference, provided that not less than ten days' notice of such meeting and proposed action shall have been given from the pulpit of the charge, or, if no regular services are held, by mail to the members of the charge conference.

5-c. The trustees of an incorporated Reformed Church in connection with the General Synod of the Reformed Church in America, shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent in writing of the trustees of the Classis with which said church is connected.

6. The petition of the trustees of an incorporated Protestant Episcopal church or Roman Catholic church shall, in addition to the matters required by article five of the not-for-profit corporation law to be set forth therein, set forth that this section has also been complied with. The petition of the trustees of an incorporated African Methodist Episcopal Zion church shall in addition to the matters required by article five of the not-for-profit corporation law to be set forth therein, set forth that this section has also been complied with. The petition of the trustees of an incorporated Presbyterian church in connection with the General Assembly of the Presbyterian Church (U.S.A.), shall, in addition to the matters required by article five of the not-for-profit corporation law to be set forth therein, set forth that this section has also been complied with. The petition of the trustees of an incorporated United Methodist church shall, in addition to the matters required by article five of the not-for-profit corporation law to be set forth therein, set forth that this section has also been complied with.

7. Lots, plots or burial permits in a cemetery owned by a religious corporation may, however, be sold, also all or part of such cemetery may be conveyed to a cemetery corporation, without applying for or obtaining leave of the court. No cemetery lands of a religious corporation shall be mortgaged while used for cemetery purposes.

8. Except as otherwise provided in this chapter in respect to a religious corporation of a specified denomination, any solvent religious corporation may, by order of the court, obtained as above provided in proceedings to sell, mortgage or lease real property, convey the whole or any part of its real property to another religious corporation, or to a membership, educational, municipal or other non-profit corporation, for a consideration of one dollar or other nominal consideration, and for the purpose of applying the provisions of article five of the general corporation law,<sup>1</sup> a proposed

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conveyance for such consideration shall be treated as a sale, but it shall not be necessary to show, in the petition or otherwise, nor for the court to find that the pecuniary or proprietary interest of the grantor corporation will be promoted thereby; and the interests of such grantor shall be deemed to be promoted if it appears that religious or charitable objects generally are conserved by such conveyance, provided, however, that such an order shall not be made if tending to impair the claim or remedy of any creditor.

9. If a sale, mortgage or lease for a term exceeding five years of any real property of any such religious corporation has been heretofore or shall be hereafter made and a conveyance or mortgage executed and delivered without the authority of a court of competent jurisdiction, obtained as required by law, or not in accordance with its directions, the court may, thereafter, upon the application of the corporation, or of the grantee or mortgagee in any such conveyance or mortgage or of any person claiming through or under any such grantee or mortgagee upon such notice to such corporation, or its successor, and such other person or persons as may be interested in such property, as the court may prescribe, confirm said previously executed conveyance or mortgage, and order and direct the execution and delivery of a confirmatory deed or mortgage, or the recording of such confirmatory order in the office where deeds and mortgages are recorded in the county in which the property is located; and upon compliance with the said order such original conveyance or mortgage shall be as valid and of the same force and effect as if it had been executed and delivered after due proceedings had in accordance with the statute and the direction of the court. But no confirmatory order may be granted unless the consents required in the first part of this section for a Protestant Episcopal, Roman Catholic, Presbyterian church or an incorporated African Methodist Episcopal Zion church or an incorporated United Methodist church have first been given by the prescribed authority thereof, either upon the original application or upon the application for the confirmatory order.

10. The provisions of this section shall not apply to real property heretofore or hereafter acquired on a sale in an action or proceeding for the foreclosure of a mortgage owned by a religious corporation or held by a trustee for or in behalf of a religious corporation or to real property heretofore or hereafter acquired by a religious corporation or held by a trustee for or in behalf of a religious corporation by deed in lieu of the foreclosure of a mortgage owned,

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either in whole or in part, whether in certificate form or otherwise, by a religious corporation.

(L.1909, c. 53; amended L.1912, c. 290, § 1; L.1913, c. 128, § 1; L.1917, c. 353, § 1; L.1918, c. 458; L.1921, C. 266; L.1925, c. 458; L.1931, c. 175; L.1935, c. 496; L.1937, c. 237, § 2; L.1942, c. 524; L.1943, c. 368, §§ 1, 2; L.1949, c. 660, §§ 1, 2; L.1953, c. 722; L.1954, c. 476, § 1; L.1954, c. 578, §§ 1 to 3; L.1958, c. 600; L.1960, c. 489, §§ 1, 2; L.1962, c. 552, § 84; L.1969, c. 962, §§ 1 to 3; L.1971, c. 956, § 4; L.1973, c. 715, § 1; L.1981, c. 244, § 3; L.1985, c. 193, § 2; L.1985, c. 381, §§ 1, 2.)

<sup>1</sup> Now Business Corporation Law.

### Historical and Statutory Notes

**1985 Amendments.** Subd. 5-a. L.1985, c. 381, § 1, eff. July 19, 1985, substituted "General Assembly of the Presbyterian Church (U.S.A.)" for "general assembly of the United Presbyterian church in the United States of America".

Subd. 5-c. L.1985, c. 193, § 2, eff. July 11, 1985, added subd. 5-c.

Subd. 6. L.1985, c. 381, § 2, eff. July 19, 1985, in sentence beginning "The petition of the trustees of an incorporated Presbyterian" substituted "General Assembly of the Presbyterian Church (U.S.A.)" for "general assembly of the United Presbyterian church in the United States of America".

**1981 Amendment.** Subd. 1. L.1981, c. 244, § 3, eff. on the 90th day after June 15, 1981, substituted "(d-1)" for "(c)".

**Derivation.** Section derived from the Religious Corporations Law of 1895, c. 723, § 11, as amended by L.1896, c. 336, § 5; L.1900, c. 521, § 1; L.1901, c. 222, § 1; L.1902, c. 208, § 1, and L.1908, c. 363; originally revised from L.1813, c. 60, § 1(15), as amended by L.1868, c. 803; L.1813, c. 60, § 11, as amended by L.1890, c. 424; L.1842, c. 215, § 1; L.1879, c. 310, § 1.

### Cross References

Cemetery corporations, see N-PCL § 1401.

Jurisdiction of County court—

Coextensive with Supreme court, see CPLR 190-b.

Disposition of real property of domestic corporations, see CPLR 190.

Lands used for cemetery purposes not to be sold or mortgaged, see Real Property Law § 450.

Power to sell, mortgage or lease property devised to Protestant Episcopal Church, see section 48.

Purchase money security interest, definition of, see UCC § 9-107.

Purchase, sale, mortgage or lease of real property of non-profit corporations, see N-PCL § 509.

Transfer of property—

Baptist churches, see § 140.

Congregational churches, see § 171.

### West's McKinney's Forms

The following forms appear in Selected Consolidated Law Forms under section 12 of the Religious Corporations Law:

Order to show cause why real property of religious corporation should not be sold, see Form 1.



**§ 69. Trustees, their meetings, vacancies and filling thereof, their powers**

1. Two trustees of an incorporated church, to which this article is applicable, may call a meeting of such trustees by giving at least twenty-four hours' notice thereof personally or by mail to the other trustees. A majority of the trustees lawfully convened shall constitute a quorum for the transaction of business. In case of a tie vote at a meeting of the trustees, the presiding officer of such meeting shall, notwithstanding he has voted once, have an additional casting vote.

2. If any trustee of an incorporated church to which this article is applicable, declines to act, resigns or dies, or ceases to be such member, his office shall be vacant. Such vacancy may be filled at a duly called special meeting of the corporation.

3. Subject to the authority of the session, the trustees of an incorporated church to which this article is applicable shall have the custody and control of all the temporalities and property belonging to the corporation and of the revenues from such property and shall administer the same in accordance with the constitution of the Presbyterian Church (U.S.A.), and with the provisions of law relating thereto, for the support and maintenance of the church corporation or, providing the members thereof at a corporate meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object conducted by such church or connected with it or with the denomination with which it is connected, and they shall not use such property or revenue for any other purpose or divert the same from such uses.

4. The words "temporalities," "property," "revenue" and "revenues," as used in this section, or elsewhere in this article, shall not be construed to include the contributions in such church or elsewhere for benevolent or other purposes, which shall be contributed and paid to the pastor or pastors, ruling elders, the church session, or the deacons of any such church, either in the church services or otherwise, to be distributed, or used, or administered, by them, or any, or either of them, nor to any funds or property devised, bequeathed or contributed, to be administered or expended by such pastor or pastors, ruling elders, church session, deacons or other spiritual officers of such church.

5. The trustees of any such church shall have no power, without the consent of a corporate meeting, to incur debts beyond what is necessary for the care of the property of the corporation.

(L.1909, c. 53; amended L.1962, c. 53, §§ 7, 8; L.1985, c. 381, § 10.)

**Historical and Statutory Notes**

**1985 Amendment.** Subd. 3. L.1985, c. 381, § 10, eff. July 19, 1985, deleted a comma after "from such property", substituted "Presbyterian Church (U.S.A.)" for "United Presbyterian Church in the United States of America", and deleted a

comma after "church corporation or", "religious, charitable, benevolent", "by such church" and "connected with it".

**Derivation.** Section derived from the Religious Corporations Law of 1895, c. 723, § 46, as added by L.1902, c. 97, § 6.

**§ 70. Definitions**

The words "spiritual officers," as used in this article, include the pastor or pastors, the ruling elders, and the deacons, of any church to which this article is applicable.

(L.1909, c. 53.)