

**Extracts from the Laws of the State of New York  
relating to**

**PROTESTANT EPISCOPAL CHURCHES**

***The Religious Corporations Law***

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#### **Section 1. Short Title**

This chapter shall be known as the "Religious Corporations Law."

#### **Section 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.

### **Section 2-a. Application**

This chapter applies (a) to every corporation heretofore or hereafter formed under this chapter, and (b) to every corporation formed under any other statute or special act of this state which would, if it were to be formed currently under the laws of this state, be formed under this chapter, and (c) to every corporation formed under laws other than the statutes of this state which is authorized to conduct or which conducts activities in this state and which would, if it were to be formed currently under the laws of this state, be formed under this chapter.

### **Section 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 [Actions or Special Proceedings Maintained by Attorney General], section one hundred thirteen [Certificate of Type of Not-For-Profit Corporation], section one hundred fourteen [Visitation of Supreme Court], section two hundred one [Corporate Purposes], section three hundred three [Reservation of Name], section three hundred four [Secretary of State as Agent for Service of Process for Foreign Corporations], section three hundred five [Registered Agent for Service of Process], section three hundred six [Service of Process], article four except section four hundred one [Formation of Corporations], section five hundred fourteen [Transfer of Corporate Property to a Trustee], 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" [Release of Restrictions on Use or Investment], section six hundred five [Notice of Meeting of Members], section six hundred seven [List or Record of Members at Meetings], section six hundred nine [Proxies], section eight hundred four [Approvals and Effect of Certificate of Amendment], article nine except section nine hundred ten [Merger or Consolidation], article ten except as provided in section eleven hundred fifteen [Non-Judicial Dissolution], section eleven hundred two [Judicial Dissolution], and article fifteen except paragraph (c) of section fifteen hundred seven [Public Cemetery Corporations].

(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.

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.

### **Section 3. Filing and recording certificates of incorporation of religious corporations**

The certificate of incorporation of a religious corporation shall be acknowledged or proved before an officer authorized to take the acknowledgment or proof of deeds or conveyances of real estate, to be recorded in the county in which the principal office or place of worship of said corporation is or is intended to be situated, and shall be filed and recorded in the office of the clerk of said county. If there is not, or is not intended to be, any such office or place of worship, the certificate shall be filed and recorded in the office of the secretary of state. Where a religious corporation removes to another county within the state a duplicate copy of its certificate of incorporation together with a

statement of such removal duly signed and acknowledged by the directors and officers of said corporation may be filed in the office of the clerk of said county to which it has removed.

The recording of any certificate of a religious corporation organized under provisions of "An act to provide for the incorporation of religious societies," passed April fifth, eighteen hundred and thirteen, and of the acts amending the same, in the office of a clerk of a county prior to the passage of chapter thirty-five of the laws of eighteen hundred and ninety-seven, instead of in the office of the register of such county, shall be regarded and construed and such recording is hereby declared to be of the same validity, force and effect as would have been the recording of such certificate in the proper office. And every act, deed, matter and thing done or performed by every such religious society or corporation since the recording of its certificate in the office of said county clerk is hereby ratified, confirmed and declared to be as valid in all respects as if the said certificate has been properly and appropriately recorded in the office of the register of the county in which said religious society or corporation was organized; but this section shall not affect any suit or proceeding already commenced arising out of such original mistake.

#### **Section 4. Property of unincorporated society transferred by its incorporation**

All the temporalities and property of an unincorporated church, or of any unincorporated religious society, body, association or congregation, shall, on the incorporation thereof, become the temporalities and property of such corporation, whether such temporalities or property be given, granted or devised directly to such unincorporated church, society, body, association or congregation, or to any other person for the use or benefit thereof.

#### **Section 4-a. Age qualifications of voters**

To vote at a corporate meeting of a corporation to which this chapter applies, persons, otherwise qualified to vote, shall be of full age unless (1) the age qualifications for voting at corporate meetings are fixed by or pursuant to an applicable provision in articles three through nineteen of this chapter, or (2) in the absence of such provision, the certificate of incorporation or a by-law adopted by the members of such corporation specifies an age, less than full age but not less than the age of sixteen years, at which persons otherwise qualified to vote at corporate meetings, shall be entitled to vote for all purposes or as to particular types or classes of matters to be acted on at such meetings.

#### **Section 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. 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.

#### **Section 5-a. Investment of funds**

Subject to the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject and subject to the limitations and conditions contained in any gift, devise or bequest, and subject to any applicable provisions of law with respect to the investment of funds for the perpetual care and maintenance of cemetery lots, the trustees of every religious corporation, created by or under a general or special law, may invest the funds of such corporation in such securities, investments or other property, real or personal, located within or without the State of New York, as to them shall seem advisable without being restricted to those classes of securities which are lawful for the investment of trust funds under the laws of this state.

### **Section 5-b. Investments prior to March 28, 1950**

Any investment of the funds of any religious corporation heretofore made by the trustees thereof shall not be deemed to have been restricted to securities which are lawful for the investment of trust funds.

### **Section 6. Acquisition of property by religious corporations for branch institutions; establishment, maintenance and management thereof**

Any religious corporation may acquire property for associate houses, church buildings, chapels, mission-houses, school-houses for Sunday or parochial schools, or dispensaries of medicine for its ministers, their wives, husbands and dependent children and for the poor, or property for the residence of its ministers, their wives, husbands and dependent children, teachers or employees, or property for a home for the aged or nursery school or day care center. The persons attending public worship in any such associate house, mission-house, church building, or chapel connected therewith shall not by reason thereof have any rights as members of the parent corporation. The persons stately worshipping in any such house, mission-house, church building or chapel may, with the consent of the trustees of such corporation, become separately incorporated as a church, and the parent corporation may, in pursuance of the provisions of law regulating the disposition of real property by religious corporations, rent or convey to the new corporation, with or without consideration, any such associate house, church building, chapel, mission-house, school-house or dispensary and the lot connected therewith, subject to such regulations as the trustees of the parent corporation may make. Any religious corporation shall have power to establish, maintain and manage by its trustees or other officers as a part of its religious purpose a home for the aged or nursery school or day care center, and may take and hold by conveyance, donation, bequest or devise real and personal property for such purpose, and may purchase and may erect suitable buildings therefor. Any such corporation may take and hold any grant, donation, bequest or devise of real or personal property heretofore or hereafter made upon trust, and apply the same, or the income thereof, under the direction of its trustees or other officers, for the purpose of establishing, maintaining and managing such a home, school or center and for the erection, preservation, repair or extension of any building or buildings for such purpose.

### **Section 7. Acquisition of property by religious corporations for cemetery purposes; management thereof**

A religious corporation may take and hold, by purchase, grant, gift or devise, real property for the purposes of a cemetery; or such lot or lots in any cemetery connected with it, as may be conveyed or devised to it, with or without provisions limiting interments therein to particular persons or classes of persons; and may take and hold any property granted, given, devised or bequeathed to it in trust to apply the same or the income or proceeds thereof, under the direction

of the trustees of the corporation, for the improvement or embellishment of such cemetery or any lot therein, including the erection, repair, preservation or removal of tombs, monuments, gravestones, fences, railings or other erections, or the planting or cultivation of trees, shrubs, plants, or flowers in or around any such cemetery or cemetery lots.

A religious corporation may erect upon any property held by it for cemetery purposes, a suitable building for religious services for the burial of the dead, or for the use of the keepers or other persons employed in connection therewith, and may sell and convey lots in such cemetery for burial purposes, subject to such conditions and restrictions as may be imposed by the instrument by which the same was acquired, or by the rules and regulations adopted by such corporation. Every such conveyance of a lot or plat for burial purposes, signed, sealed and acknowledged in the same manner as a deed to be recorded, may be recorded in like manner and with like effect as a deed of real property.

Notwithstanding the provisions of section four hundred fifty-one of the real property law or any other provision of law to the contrary, a religious corporation that prior to January first, nineteen hundred eighty-four received a special permit from the zoning board of appeals for the use of certain real property as a cemetery and which actually used such real property for cemetery purposes, may use such real property for cemetery purposes without the consent of the county legislative body for the county in which such real property is situated.

#### **Section 7-a. Deeds for cemetery purposes; presumption**

Every deed of conveyance of real property to a religious corporation used for cemetery purposes, whether heretofore or hereafter recorded, shall be presumptive evidence that the conveyance vested in the grantee and its successors a fee simple absolute in the premises therein described, subject to the limitations and conditions therein prescribed, and that all proceedings prior thereto, including the consent of the court, if required, were regular and in accordance with all the provisions of law relating thereto. At the expiration of twenty years from the date of record of any such conveyance, heretofore or hereafter recorded, such presumption shall be conclusive.

#### **Section 8. Lot owners' rights**

Lots in such cemeteries shall be held indivisible, and upon the decease of a proprietor of such lot the title thereto shall descend to his heirs-at-law or devisees, subject, however, to the following limitations and conditions: If he leaves a widow and children, they shall have in common the possession, care and control of such lot during her life. If he leaves a widow and no children, she shall have the possession, care and control of such lot during her life. If he leaves children and no widow, they, or the survivor of them, shall in common have the possession, care and control of such lot during the life of the survivor of

them. The parties having such possession, care and control of such lot during the term thereof, may erect a monument and make other permanent improvements thereon. The widow shall have the right of interment, for her own body in such lot, or in a tomb in such lot and a right to have her body remain permanently interred or entombed therein, except that her body may be removed therefrom to some other family lot or tomb with the consent of her heirs. At any time when more than one person is entitled to the possession, care or control of such lot, the persons so entitled thereto shall designate in writing to the religious corporation which of their number shall represent the lot, and on their failure to designate, the board of trustees or directors of the corporation shall enter of record which of said parties shall represent the lot, while such failure continues. The widow may at any time release her right in such lot, but no conveyance or devise by any other person shall deprive her of such right.

**Section 9. Removal of human remains from one cemetery of a religious corporation to another cemetery owned by it**

A religious corporation, notwithstanding the restrictions contained in any conveyance or devise to it, may remove the human remains buried in a cemetery owned by it, or when such church corporation is situated within or outside of a city in the grounds surrounding the church belonging to such corporation, to another cemetery owned by it, or to a plot or lot acquired by it in any other cemetery located in the same county, or in any town adjoining the town or city in which the cemetery wherein such human remains are buried is located, if the trustees thereof so determine, and if either three-fourths of the members of such corporation, qualified to vote at its corporate meetings, sign and acknowledge and cause to be recorded in the office of the clerk of the county in which such cemetery or a part thereof is situated, a written consent thereto, or if approval thereof be given by the vote of three-fourths of those members of such corporation qualified to vote, who shall be present and vote thereon, at a corporate meeting of such corporation, specially called for that purpose, a quorum of at least eight qualified voters being present. Provided, however, that in lieu of such removal by such religious corporation it shall be lawful for the surviving spouse or any heir of any decedent, upon obtaining permission of the county court of the county, or of the supreme court in the district, where the cemetery from which the removal is proposed, is situated, at his own expense to cause the removal of such remains and tombstones, monuments or other erections and the reinterment of such remains and the replacement of such tombstones, monuments or other erections in some other cemetery selected by the applicant, the notice of which application for permission to be given in the manner and to those designated by the court. But if such corporation be a church, previous notice of the object of such meeting shall be published once each week for at least four successive weeks in a newspaper of the town, village or city in which the cemetery from which the removal is proposed, is situated, or if no newspaper is published therein, then in a newspaper designated by the county judge of such county. Such removal shall be made in an appropriate manner and in accordance with such directions as to the manner thereof, as may

be given by the board of health of the town, village or city in which the cemetery from which the removal is made, is situated. All tombstones, monuments or other erections at or upon any grave from which any remains are removed, shall be properly replaced or raised at the grave where the remains are reinterred. Such religious corporation may, in its discretion, erect one or more tombstones, monuments or other suitable markers appropriately inscribed as a memorial for all those decedents whose remains shall not be found for removal or reinterment, but the said religious corporation shall make a certificate setting forth an exact copy of all inscriptions on each tombstone, monument, or other erection which shall not be replaced or raised because of failure to find remains for removal and reinterment, and shall file the same in the cemetery office or in the office of the town or city clerk of the town or city in which the cemetery from which removal is proposed, is situated; all tombstones, monuments or other erections not so replaced or raised shall be disposed of by such religious corporation as it shall determine and such certificate, in addition to such inscriptions, shall state the disposition so made.

#### **Section 10. Acquisition of property by two or more religious corporations for a common parsonage**

Two or more religious corporations may acquire such real property as may be necessary for use as a parsonage, and the right, title and interest of each corporation therein shall be in proportion to its contribution to the cost of such property. The trustees of each corporation shall, from time to time, appoint one of their number to be a trustee of such common parsonage property, to hold office during the pleasure of the appointing trustees or until his successor be appointed. The trustees so appointed shall have the care and management of such property and may make such improvements thereupon as they deem necessary, and determine the proportion of the expense of the maintenance thereof which each corporation shall bear. If at any time either of such corporations acquires or desires to acquire for its own exclusive use as a parsonage other real property, it may, in pursuance of the provisions of law, relating to the disposition of real property by religious corporations, sell and convey its interest in such common parsonage property to any one or more of the other corporations having an interest therein.

#### **Section 11. Correction and confirmation of conveyances to religious corporations**

If, in a conveyance of real property, or in any instrument intended to operate as such, heretofore or hereafter made to a religious corporation, its corporate name is not stated or is not correctly stated, but such conveyance or instrument indicates the intention of the grantor therein to convey such property to such corporation, and such corporation has entered into possession and occupation of such property, any officer of the corporation authorized so to do by its trustees may record in the office where such conveyance or instrument is recorded a statement, signed and acknowledged by him or proved, setting forth

the date of such conveyance or instrument, the date of record and the number and page of the book of record thereof, the name of the grantor, a description of the property conveyed or intended to be conveyed, the name of the grantee as expressed in such conveyance or instrument, the correct name of such corporation, the fact of authorization by the trustees of the corporation, to make and record such statement, and that the grantor in such conveyance or instrument intended thereby to convey such property to such corporation as the said officer verily believes, with the reason for such belief. Such statement so signed and acknowledged or proved shall be recorded with the records of 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.

## **Section 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 therefore 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 therefore.

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

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 or 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 Business Corporation Law, a proposed 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 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,

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

### **Section 13. Consolidation of incorporated churches**

Two or more incorporated churches may enter into an agreement, under their respective corporate seals, for the consolidation of such corporations, setting forth the name of the proposed new corporation, the denomination, if any, to which it is to belong, and if the churches of such denomination have more than one method of choosing trustees, by which of such methods the trustees are to be chosen, the number of such trustees, the names of the persons to be the first trustees of the new corporation, and the date of its first annual corporate meeting. Such agreement shall not be valid unless approved in the case of Protestant Episcopal churches by the bishop and standing committee of the diocese in which such churches are situated and in the case of churches of other denominations by the governing body of the denomination, if any, to which each church belongs, having jurisdiction over such church. Each corporation shall thereupon make a separate petition to the supreme court for an order consolidating the corporations, setting forth the denomination, if any, to which the church belongs, that the consent of the governing body to the consolidation, if any, of that denomination having jurisdiction over such church has been obtained, the agreement therefore, and a statement of all the property and liabilities and the amount and sources of the annual income of such petitioning corporation. In its discretion the court may direct that notice of the hearing of such petition be given to the parties interested therein in such manner and for such time as it may prescribe. After hearing all the parties interested, present and desiring to be heard, the court may make an order for the consolidation of the corporations on the terms of such agreement and such other terms and conditions as it may prescribe, specifying the name of such new corporation and the first trustees thereof, and the method by which their successors shall be chosen and the date of its first annual corporate meeting. When such order is made and duly entered, the persons constituting such corporations shall become an incorporated church by, and said petitioning churches shall become consolidated under, the name designated in the order, and the trustees therein named shall be the first trustees thereof, and the future trustees thereof shall be chosen by the method therein designated, and all the estate, rights, powers and property of whatsoever nature belonging to either corporation shall without further act or deed be vested in and transferred to the new corporation as effectually as they were vested in or belonging to the former corporations; and the said new corporation shall be liable for all the debts and liabilities of the former corporations in the same manner and as effectually as if said debts or liabilities had been contracted or incurred by the new corporation. A certified copy of such order shall be recorded in the book for recording certificates of incorporation in each county clerk's office in which the certificate of incorporation of each consolidating church was recorded; or if no such certificate was so recorded, then in the clerk's office of the county in which the principal place of worship or principal office of the new corporation is, or is intended to be, situated.

#### **Section 14. Judicial investigation of amount of property of religious corporations**

The supreme court at a special term, held in the judicial district in which the principal place of worship or of holding corporate meetings of a religious corporation is situated, may require such corporation to make and file an inventory of its property, verified by its trustees or a majority of them, on the written application of the attorney-general, stating that, from his knowledge, or on information and belief, the value of the property held by such corporation exceeds the amount authorized by law. On presentation of such application, the court shall order that a notice of at least eight days, together with a copy of the application, be served upon the trustees of the corporation, requiring them to show cause at a time and place therein specified why they should not make and file such inventory and account. If, on the hearing of such application, no good cause is shown to the contrary, the court may make an order requiring such inventory or account to be filed, and may also proceed to take and state the amount of property held by the corporation, and may appoint a referee for that purpose; and when such account is taken and stated, after hearing all the parties appearing on the application, the court may enter an order determining the amount of property so held by the corporation and its annual income, from which order an appeal may be taken by any party aggrieved as from a judgment of the supreme court in an action tried therein before a court without a jury. No corporation shall be required to make and file more than one inventory and account in any one year, or to make a second account and inventory while proceedings are pending for the statement of an account under this section.

#### **Section 15. Corporations with governing authority over, or advisory relations with, churches or synods, or both**

1. An unincorporated diocesan convention, presbytery, classis, synod unless otherwise provided, annual or biennial conference or convention, or other governing or advisory body having jurisdiction over or relations with several or a number of churches or synods, or synods and churches, some or all of which are located in this state, may at a meeting thereof duly held, determine to become incorporated by a designated name, and may by a plurality vote, elect not less than three nor more than fifteen persons to be the first trustees of such corporation. The presiding officer and clerk of such governing or advisory body shall execute and acknowledge a certificate stating that such proceedings were duly taken as herein provided, the name by which such corporation is to be known, and the names of such first trustees. On filing such certificate the members of such governing or advisory body and their successors shall be a corporation by the name stated in the certificate, and the persons named as trustees therein shall be the first trustees thereof.

The trustees of every incorporated governing or advisory body and their

successors shall hold their offices during the pleasure of such body, which may remove them and fill vacancies in accordance with its rules and regulations. Such corporation may hold its meetings and elect its trustees annually or biennially, and may hold its first and any other meetings outside this state if any of the churches or synods governed or advised by it are located outside of this state. Such corporation may take, administer and dispose of real and personal property in and outside this state for the benefit of such governing or advisory body or of any parish, congregation, society, church, mission, synod, religious, benevolent, charitable or educational institution existing or acting under or related to it, or of any religious work or activity. Such corporation may elect the members of unincorporated or incorporated boards to carry on particular lines of religious work or activity. Such corporation may have in addition to its by-laws, a constitution; and such constitution may be adopted or amended in such manner as the corporation will determine.

2. The trustees of every incorporated governing body of the Protestant Episcopal Church in the State of New York, shall consist of the bishop of the diocese, who shall be ex-officio president of the corporation; the bishop coadjutor, should there be one, who shall be ex-officio vice-president of the corporation; and not less than three nor more than nine other persons, residents of the diocese, to be elected by the diocesan convention, and who shall hold their office for such term as shall be decided by the said convention.

Vacancies in the board of trustees, occurring by reason of death, resignation, or removal from the diocese, may be filled by the remaining trustees, until the next diocesan convention.

### **Section 16. Property of extinct churches**

Such incorporated governing body may decide that a church, parish or society in connection with it or over which it has ecclesiastical jurisdiction, has become extinct, if it has failed for two consecutive years next prior thereto, to maintain religious service according to the discipline, customs and usages of such governing body, or has had less than thirteen resident attending members paying annual pew rent, or making annual contributions towards its support, or in case of a parish of the Protestant Episcopal Church, if such parish has ceased for two consecutive years next prior thereto, to have a sufficient number of men qualified to elect or to serve as wardens and vestrymen therein, and may take possession of the temporalities and property belonging to such church, parish or religious society, and manage the same; or may, in pursuance of the provisions of law relating to the disposition of real property by religious corporations, sell or dispose of the same and apply the proceeds thereof to any of the purposes to which the property of such governing religious body is devoted, and it shall not divert such property to any other object. And for the purpose of obtaining a record title to the land and the church edifice, or other buildings thereon, by such incorporated governing body, the surviving trustee or trustees of said extinct church, or if there be no surviving trustee then a surviving member of said extinct

church, may, without a consideration being paid therefore by such incorporated governing body, convey to it said land and church edifice, or other buildings thereon, subject, however, to an order of the supreme or county court based upon a petition reciting that said church has become extinct; the names of its surviving trustee or trustees, and the names of its members, who must have given their consent to the making of said conveyance. Upon the recital of said facts in said petition the court shall have jurisdiction to grant an order allowing said conveyance to be made without a consideration; and should there be no surviving members, as well as no surviving trustees of said extinct church, said petition may be made by an officer of such incorporated governing body, in which event the court, upon a recital of said fact, shall have jurisdiction to appoint a suitable person as trustee for the purpose of making said conveyance. And in case of the Protestant Episcopal Church, should either of such surviving members or such surviving trustee of said extinct church refuse to act and sign said petition after request by an officer of said governing body of said last-named churches personally made by such officer, then said petition may be made by an officer of such incorporated governing body and in that event the court shall have jurisdiction and may appoint a suitable person as trustee for the purpose of making said conveyance. And in the case of a parish of the Protestant Episcopal Church, the trustees of any such extinct church, the treasurer thereof or any person acting in either of said capacities may be required to show cause before the supreme court at a special term thereof held in the judicial district in which said church shall be located why they should not be required to give an account of all moneys and property of said church which they shall have in their hands or under their control and in case of their failure to show such causes they be required to account before said court for all the properties and moneys of the said church which shall be in their hands or under their control, and after the payment of all the claims against such church, if any, and the expenses of such proceeding, if it shall further appear that none of such property in the hands of said persons is required for the further support or maintenance of said church, said money and proceeds thereof shall be directed to be paid and turned over to said governing religious body to apply to the purposes to which the property of such governing body is devoted. An application or such order to show cause shall be made by a verified petition, which petition may be made by said governing body of said church or any officer thereof. Where a proceeding is instituted under this section for the sale of the real property of an extinct religious corporation, compliance with paragraphs five, six, seven and eight of section five hundred eleven of the not-for-profit corporation law shall be unnecessary, and such proceedings shall be in all respects valid without a compliance with said subdivisions.

### **Section 18. Dissolution of religious corporations**

Whenever any religious corporation shall cease to act in its corporate capacity and keep up the religious services; it shall be lawful for the supreme court of this state, upon the application of a majority of the trustees thereof, in case said court shall deem it proper so to do, to order and decree a dissolution of

such religious corporation, and for that purpose to order and direct a sale and conveyance of any and all property belonging to such corporation, and after providing for the ascertaining and payment of the debts of such corporation, and the necessary costs and expenses of such sale and proceedings for dissolution, so far as the proceeds of such sale shall be sufficient to pay the same; such court may order and direct any surplus of such proceeds remaining after paying such debts, costs and expenses, to be devoted and applied to any such religious, benevolent, or charitable objects or purposes as the said trustees may indicate by their petition and the said court may approve.

Such application to said court shall be made by petition, duly verified by said trustees, which petition shall state the particular reason or causes why such sale and dissolution are sought; the situation, condition and estimated value of the property of said corporation, and the particular object or purposes to which it is proposed to devote any surplus of the proceeds of such property; and such petition shall, in all cases, be accompanied with proof that notice of the time and place of such intended application to said court, has been duly published once in each week for at least four weeks successively, next preceding such application, in a newspaper published in the county where such corporation is located.

In case there shall be no trustees of such religious corporation residing in the county in which such corporation is located, such application may be made, and such proceedings taken, by a majority of the members of such religious corporation residing in such county.

In case such corporation is under the jurisdiction of an incorporated ecclesiastical governing body such application may be made and such proceedings taken by such incorporated ecclesiastical governing body provided the trustees or other officers or surviving members of the local church shall refuse to act after request has been duly made by the governing body, and in such case the proceeds shall be turned over to said governing body.

### **Section 19. Corporations for organizing and maintaining mission churches and Sunday schools**

Ten or more members of two or more incorporated churches may become a corporation for the purpose of organizing and maintaining mission churches and Sunday schools, and of acquiring property therefor, by executing a certificate stating the name of such corporation, the city in which its principal office or church or school is or is intended to be located; the number of trustees to manage its affairs, which shall be three, six or nine, and the names of the trustees for the first year of its existence, which certificate shall be acknowledged or proved and filed as hereinbefore provided. Whenever a mission church established by such corporation becomes self-sustaining, such mission church may become incorporated and shall be governed under the provisions of this chapter for the incorporation and government of a church of the religious denomination to which such mission church belongs, and thereon such parent

corporation may convey to such incorporated church the property connected therewith.

### **Section 22. Establishing and maintaining a home for aged poor**

An incorporated church or congregation in this state, either by itself or in conjunction with other incorporated churches or congregations, shall have power to establish and maintain by its or their trustees or other officers, as part of its or their regular church and charitable work, a home for the aged poor of its or their membership or congregation and may take and hold as joint tenants, tenants in common or otherwise, by conveyance, donation, bequest or devise, real and personal property for such purpose, and may purchase or erect suitable buildings therefore. Any such church or congregation, either by itself or in conjunction with other incorporated churches or congregations may take and hold any grant, donation, bequest or devise of real or personal property heretofore made, upon trust, and apply the same or the income thereof under the direction of the trustees or other officers having charge of the temporalities of such church, or churches, or congregation, or congregations, for the purpose of establishing or maintaining such a home, and for the erection, preservation, repair or extension of any buildings for such purpose, upon such terms and conditions and subject to such conditions, limitations and restrictions as shall be contained in the deed, will or other instrument or conveyance by which the property is given, transferred or conveyed.

### **Section 23. Powers of churches created by special laws**

If a church be incorporated by special law, it and its trustees shall have, in addition to the powers conferred on it by such law, all the powers and privileges conferred on incorporated churches and the trustees thereof respectively by the provisions of this article, and also all the powers and privileges conferred by this chapter on churches of the same denomination or of the like character, and on the trustees thereof respectively.

### **Section 24. Government of churches incorporated prior to January first, eighteen hundred and twenty-eight**

Any provision of this chapter shall not be deemed to apply to any church incorporated under any general or special law, prior to January first, eighteen hundred and twenty-eight, if such provision is inconsistent with or in derogation of any of the rights and privileges of such corporation as they existed under the law by or pursuant to which such corporation was formed, unless such corporation subsequent to such date, shall have lawfully reincorporated under a law enacted since the first day of January, eighteen hundred and twenty-eight, or unless the trustees of such corporation shall, by resolution, determine that the provisions of this chapter applying to churches of the same denomination and to the trustees thereof shall apply to such church, and unless such resolution shall be submitted to the next ensuing annual meeting of such church, and ratified by

a majority of the votes of the qualified voters present and voting thereon. Notice of the adoption of such resolution and of the proposed submission thereof for ratification, shall be given with the notice of such annual meeting, and in addition thereto, mailed to each member of such church corporation at his last known post-office address, at least two weeks prior to such annual meeting, and published once a week for two successive weeks immediately preceding such meeting in a newspaper, if any, published in the city, village or town in which the principal place of worship of such corporation is located, and otherwise in a newspaper published in an adjoining town. If such resolution is so ratified, the trustees of such church shall cause a certificate setting forth a copy of such resolution, its adoption by the board of trustees and its due ratification by the members of such corporation, to be filed in the office of the clerk of the county in which the principal place of worship of such corporation is located. Such county clerk shall cause such certificate to be recorded in the book in which certificates of incorporation of religious corporations are recorded in pursuance of law.

### **Section 25. Pastoral relation**

No provision of this chapter authorizes the calling, settlement, dismissal or removal of a minister, or the fixing or changing of his salary, and a meeting of a church corporation for any such purpose shall be called, held, moderated, conducted, governed and notice of such meeting given and the person to preside thereat ascertained and the qualification of voters thereat determined, not as required by any provision of this chapter but only according to the aforesaid laws and regulations, practice, discipline, rules and usages of the religious denomination or ecclesiastical governing body, if any, with which the church corporation is connected.

### **Section 26. Worship**

No provision of this chapter authorizes the fixing or changing of the times, nature or order of public or social or other worship of any church, in any other manner or by any other authority than in the manner and by the authority provided in the laws, regulations, practice, discipline, rules and usages of the religious denomination or ecclesiastical governing body, if any, with which the church corporation is connected.

### **Section 28. Limited liability of parents or certain legal guardians having custody of an infant for malicious and destructive acts of such infant**

3. Notwithstanding any other provision of law to the contrary, a parent or legal guardian, other than the state or a local social services department or a foster parent, having custody of an infant over ten and less than eighteen years of age, shall, if such infant knowingly, willfully and without authority breaks, defaces, defiles or otherwise damages any house of religious worship or any portion thereof, or any appurtenances thereto, or any religious vestment, book,

scroll, art, furniture, ornament, musical instrument, article of silver or plated ware, or any other chattel or property used in connection with religious worship or instruction by a religious corporation, be held liable for such damage or destruction in a civil action brought in a court of competent jurisdiction. In no event shall such liability under this section be in excess of five thousand dollars. It shall be a defense to any action brought hereunder that restitution has been made pursuant to section seven hundred fifty-eight-a of the family court act or paragraph (f) of subdivision two of section 65.10 of the penal law. It shall also be a defense to such an action brought under this section that such a child has become emancipated from his parent or legal guardian prior to the occurrence of such damage.

In lieu of such liability or in combination therewith, the court may order such infant to perform services for the public good to pay off such damage or destruction.

4. In any action brought hereunder, wherein a verdict for damages was rendered against a parent or legal guardian in an amount of one thousand dollars or more, the court wherein such verdict was returned shall, upon the application of the parent or legal guardian, review the financial ability of the parent or legal guardian to pay the amount of such damages in excess of one thousand dollars. In making such review, the court shall allow the parent or legal guardian the right to present evidence of financial hardship establishing the inability of such parent or legal guardian to pay any or all of the amount of such verdict in excess of one thousand dollars. Subsequent to the completion of such review the court may modify the amount of damages to be paid by a parent or legal guardian as returned in such verdict to an amount within the financial capacity of such parent or legal guardian, provided that no such modification shall reduce the amount of damages to be paid below the amount of one thousand dollars.

#### **Section 40. Meeting for incorporation**

Notice of a meeting for the purpose of incorporating an unincorporated Protestant Episcopal parish or congregation, and of electing the first church wardens and vestrymen thereof, shall specify the object, time and place of such meeting, and shall be made public for at least two weeks prior to such meeting, either by open reading of such notice in time of divine service, at the usual place of worship of such parish or congregation, or by posting the same conspicuously on the outer door of such place of worship. Only persons of full age who have been regular attendants at the worship of such parish or congregation and contributors to the support thereof for one year next prior to such meeting, or since the establishment of such parish or congregation, shall be qualified to vote at such meeting. The presence of at least six persons qualified to vote thereat shall be necessary to constitute a quorum of such meeting. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon, a quorum being present. The officiating minister,

or, if there be none, or if he shall be necessarily absent, any other person qualified to vote at the meeting, who is called to the chair, shall preside thereat. Such presiding officer shall receive the votes, be the judge of the qualifications of voters, and declare the result of the votes cast at such meeting. The polls of the meeting shall remain open for one hour or longer, in the discretion of the presiding officer, or if required, by a vote of a majority of the voters present. The meeting shall decide whether such unincorporated parish or congregation shall become incorporated. If such decision be in favor of incorporation, such meeting shall decide upon the name of the proposed corporation; what day, either a Sunday or secular day, shall be the date of the regular annual election; whether the vestrymen thereof shall be three, six, nine, twelve, fifteen, eighteen, twenty-one or twenty-four; and shall elect by ballot from the persons qualified to be voters thereat, who have been baptized, one-third of the number of vestrymen so decided upon to hold office until the first annual election to be held thereafter, one-third of such number, to hold office until one year after such annual election, and one-third of such number to hold office until two years after such annual election; and shall elect from such qualified voters who are communicants in the Protestant Episcopal church, two persons to be church wardens thereof, one to hold office until such annual election, and one to hold office until one year after such annual election.

#### **Section 41. Certificate of incorporation**

If such meeting shall decide in favor of incorporation and comply with the next preceding section, the presiding officer of such meeting and at least two other persons present and voting thereat, shall execute and acknowledge a certificate of incorporation setting forth:

1. The fact of the calling and holding of such meeting;
2. The name of the corporation as decided upon thereat;
3. The county, and the town, city or village, in which principal place of worship is, or is intended to be located;
4. The day, either on Sunday or a secular day, upon which the annual election shall be held;
5. The number of vestrymen decided upon at such meeting;
6. The names of the vestrymen elected at such meeting and the term of office of each;
7. The names of the church wardens elected at such meeting and the term of office of each.

Such certificate, when accompanied by a certificate of the bishop of the diocese within which the principal place of worship of the proposed corporation is, or is intended to be located, to the effect that he consents to the incorporation of such church, shall be filed in the office of the clerk of the county specified in the certificate of incorporation; 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.

On filing such certificate in the office of the clerk of the county so specified therein the church wardens and vestrymen so elected and their successors in office, together with the rector, when there is one, shall form a vestry and shall be the trustees of such church or congregation; and they and their successors shall thereupon, by virtue of this chapter, be a body corporate by the name or title expressed in such certificate, and shall have power, from time to time, to adopt by-laws for its government. Such corporation shall be an incorporated church, and may be termed also an incorporated parish.

#### **Section 42. Corporate trustees; vestry; powers and duties thereof**

No meeting of the vestry or trustees of any incorporated Protestant Episcopal parish or church shall be held unless either all the members thereof are present, or three days' notice thereof shall be given to each member thereof, by the rector in writing either personally or by mail, or, if there be no rector or he be incapable of acting, by one of the church wardens; except that twenty-four hours' notice of the first meeting of the vestry or trustees after an annual election shall be sufficient, provided such meeting be held within three days after the election. In the event of the rector of a parish or church refusing or neglecting to call a meeting of the vestry or trustees of any incorporated Protestant Episcopal church, on the written request of two-thirds of all the wardens and vestrymen of the parish, the clerk of the vestry shall call a meeting of the same by giving at least fifteen days' written notice to be served on each member of the vestry personally; if personal service cannot be had, then upon such member by mailing the notice to his last known place of residence. To constitute a quorum of the vestry or board of trustees there must be present either:

1. The rector and at least a majority of the whole number of wardens and vestrymen, or
2. One church warden and one more than a majority of vestrymen or both church wardens and a majority of the vestrymen, or
3. If the rector be absent from the diocese and shall have been so absent for over four calendar months, or if the meeting be called by the rector and he be absent there from or be incapable of acting, one church warden and a majority of the vestrymen, or both church wardens and one less than a majority of the vestrymen. But if there be a rector of the parish, no measure shall be taken, in his absence, in any case, for effecting the sale or disposition of the real property of the corporation, nor for the sale or disposition of the capital or principal of the personal property of the corporation, nor shall any act be done which shall impair the rights of such rector. The presiding officer of the vestry or trustees shall be the rector, or if there be none, or he be absent, the church warden who shall be called to the chair by a majority of the votes, if both the church wardens be present; or the church warden present, if but one be present.

At each meeting of the vestry or trustees each member thereof shall be entitled to one vote. The vestry shall have power to fill a vacancy occurring in the office of a church warden or vestryman by death, resignation or otherwise than by expiration of term, until the next annual election, at which, if such vacancy would continue thereafter, it shall be filled for the remainder of the unexpired term. If vacancies exist in the offices of church wardens or vestrymen in such number that a quorum of the vestry or board of trustees is not in office at any time, the rector shall forthwith call a special election for the filling of such vacancies. If there be no rector, the church warden longest in office shall call such special election. Notice of such special election shall be read by the rector, or if there be none, or he be absent, by the officiating minister or by one of the church wardens on the Sunday next preceding such election, in the time of divine service. If for any reason the usual place of worship of the parish be not open for divine service on such Sunday such notice shall be posted conspicuously on the outer door of the place of worship for one week next preceding the election. Such notice shall conform to that required for an annual election. The provisions of section forty-three of this chapter relating to annual elections shall apply to such special election, except as inconsistent herewith. Such vacancies shall be filled at such election for the remainder of the unexpired terms. The vestry may, subject to the canons of the Protestant Episcopal Church in the United States, and of the diocese in which the parish or church is situated, by a majority vote, elect a rector to fill a vacancy occurring in the rectorship of the parish, and may fix the salary or compensation of the rector.

#### **Section 42-a. Additional powers of the corporate trustees and vestry**

Notwithstanding and in addition to the provisions of section five of this chapter, and subject always to the trust in which all real and personal property is held for the Protestant Episcopal Church and the Diocese thereof in which the parish, mission or congregation is located, the vestry or trustees of any incorporated Protestant Episcopal parish or church, the trustees of every incorporated governing body of the Protestant Episcopal Church and each diocese are authorized to administer the temporalities and property, real and personal, belonging to the corporation, for the support and maintenance of the corporation and, provided it is in accordance with the discipline, rules and usages of the Protestant Episcopal Church and with the provisions of law relating thereto, for the support and maintenance of other religious, charitable, benevolent or educational objects whether or not conducted by the corporation or in connection with it or with the Protestant Episcopal Church.

#### **Section 43. Annual election and special meetings of incorporated Protestant Episcopal parishes**

1. The annual election of a Protestant Episcopal parish, hereafter incorporated, shall be held on the day, either a Sunday or a secular day, designated in its certificate of incorporation.

2. The annual election of an incorporated Protestant Episcopal parish or church heretofore incorporated shall be held on the day fixed for such annual election, by or in pursuance of law, or if no such date be so fixed, then on such day, either a Sunday or a secular day, as may be determined by vote of the vestry.

3. Special meetings of any Protestant Episcopal parish or church heretofore or hereafter incorporated may be held on any Sunday or secular day fixed by the vestry.

4. Notice of such annual election or special meeting shall be read by the rector of the parish, or if there be none, or he be absent, by the officiating minister or by a church warden thereof, on each of the two Sundays next preceding such election or special meeting, in the time of divine service, or if, for any reason, the usual place of worship of the parish be not open for divine service, the notice shall be posted conspicuously on the outer door of the place of worship for two weeks next preceding the election or special meeting. Such notice shall specify the place, day and hour of holding the election or special meeting. The notice of the annual election shall also specify the number and terms of office of each church warden and the vestrymen whose terms of office shall then expire, or whose office shall then be vacant for any cause, and the office for which each such officer is to be then elected. The notice of a special meeting shall specify the matter or question to be brought before such meeting, and no matter or question not specified in such notice shall be acted on at such meeting.

5. The presiding officer of such annual or special meeting shall be the rector of the parish, if there be one, or if there be none, or he be absent, one of the church wardens elected for the purpose by a majority of the duly qualified voters present, or if no church warden be present, a vestryman elected in like manner. Such presiding officer shall be the judge of the qualifications of the voters; shall receive the votes cast; and shall declare the result of the votes cast. The presiding officer of such annual or special meeting shall enter the proceedings of the meeting in the book of the minutes of the vestry, sign his name thereto, and offer the same to as many qualified voters present as he shall think fit to be also signed by them.

6. Persons of full age belonging to the parish, who have been baptized and are regular attendants at its worship and contributors to its support for at least twelve months prior to such election or special meeting or since the establishment of such parish, shall be qualified voters at any such election or special meeting. Whenever so permitted by the canons of the diocese, persons of less than full age, but of the age of eighteen years or more, and having like qualifications except as to age, may vote at the annual elections and special meetings of any parish of such diocese, whenever such parish shall so determine in the manner provided in said section forty-six.

7. The action of an annual or special meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon. The polls of an election shall continue open for one hour and longer, in the discretion of the presiding officer, or if required, by a vote of a majority of the qualified voters present and voting. The church wardens and vestrymen shall be elected by ballot from persons qualified to vote at such election, and no person shall be eligible for election as church warden, unless that person also be a confirmed communicant in the Protestant Episcopal church, nor be eligible for election as vestryman, unless that person shall have been baptized. Whenever so permitted by the canons of the diocese persons of less than full age but of the age of eighteen years or more and having like qualifications except as to age, shall be eligible for election as church warden or vestryman in any parish, whenever such parish shall so determine in the manner provided in said section forty-six.

8. At each annual election of an incorporated Protestant Episcopal parish hereafter incorporated, one church warden shall be elected to hold office for two years; and one-third of the total number of vestrymen of the parish shall be elected to hold office for three years.

9. At each annual election of an incorporated Protestant Episcopal parish or church heretofore incorporated, two church wardens and the total number of its vestrymen shall be elected to hold office for one year thereafter, unless the term of office of but one church warden or of but one-third of its vestrymen shall then expire, in which case one church warden shall be elected to hold office for two years, and one-third of the total number of its vestrymen shall be elected to hold office for three years.

10. Each church warden and vestryman shall hold office after the expiration of his term until his successor shall be chosen.

#### **Section 44. Changing the number of vestrymen of Protestant Episcopal parishes hereafter incorporated**

If the vestry of a Protestant Episcopal parish, hereafter incorporated, shall, by resolution, recommend that the number of vestrymen of such parish be changed to either three, six, nine, twelve, fifteen, eighteen, twenty-one or twenty-four vestrymen, notice of such recommendation shall be included in the notice of the next annual election of such parish, or in the notice of a special meeting to be held not less than six months before the time fixed for holding the next annual election thereafter, and be submitted to such annual or special meeting. If such recommendation be ratified by such meeting, the presiding officer thereof, and at least two qualified voters present thereat, shall execute and acknowledge a certificate setting forth such resolution of the vestry, the fact that notice thereof had been given with the notice of such annual election, or with the notice of such special meeting as the case may be; that the meeting had ratified the same; and

the number of vestrymen so decided on. Such certificate shall be filed in the office of the clerk of the county in which the original certificate of incorporation is filed and recorded, and such change in the number of vestrymen shall take effect at the time of the next annual election thereafter. If the number of vestrymen be thereby increased, then, in addition to the number of vestrymen to be elected at such annual election, one-third of such increased number of vestrymen shall be elected to hold office for one year thereafter, one-third of such increased number shall be elected to hold office for two years thereafter, and one-third of such increased number shall be elected to hold office for three years thereafter. If the number of vestrymen by such change be reduced, such reduction shall not affect the term of office of any vestryman duly elected, and at such next annual election and at each annual election thereafter, one-third of such reduced number of vestrymen shall be elected to hold office for three years.

**Section 45. Changing date of annual election, number and terms of vestrymen and terms of office of church wardens in Protestant Episcopal churches heretofore incorporated**

If the vestry of a Protestant Episcopal parish, heretofore incorporated, shall, by resolution, recommend that the date of the annual election be changed to another day, either a Sunday or a secular day, or that the number of vestrymen be changed to three, six, nine, twelve, fifteen, eighteen, twenty-one or twenty-four, and that the terms of office of the church wardens be changed so that one warden shall be elected annually, notice of such recommendation shall be included in the notice of the next annual election of such parish, or in the notice of a special meeting to be held not less than six months before the time fixed for holding the next annual election thereafter, and be submitted to such annual or special meeting. If such recommendation be ratified by such meeting, the presiding officer thereof and at least two qualified voters present thereat, shall execute and acknowledge a certificate setting forth such resolution of the vestry; the fact that notice thereof had been given with the notice of the annual election, or with the notice of the special meeting as the case may be; that such meeting had ratified the same; the date determined upon for the annual election of the parish; the number of vestrymen so decided on; and the fact that the meeting determined to thereafter elect church wardens, so that the term of one warden shall expire annually. Such certificate shall be filed in the office of the clerk of the county in which the original certificate of incorporation is filed and recorded. If the meeting determine to change the date of the annual election, the next annual election shall be held on the day determined on at such meeting, and the terms of the vestrymen and church wardens which, pursuant to law, would expire at the next annual election shall expire and their successors shall be elected on such day. If the meeting determine to change the number of vestrymen and the manner of electing wardens and vestrymen, there shall be elected at the first annual election thereafter, one-third of the number of vestrymen so determined on, to hold office for three years; one-third thereof to hold office for two years; and one-third thereof to hold office for one year; and one church warden to hold office for one year, and one to hold office for two

years; and thereafter at the annual election there shall be elected one-third of the number of vestrymen determined on at such meeting and one church warden. Any Protestant Episcopal parish, heretofore incorporated, which has changed the number of its vestrymen and the manner of electing wardens and vestrymen pursuant to the provisions of this section, may make further changes in the number of its vestrymen in the manner provided in section forty-four of this chapter.

#### **Section 46. Changing the qualifications of voters and the qualifications of wardens and vestrymen**

If the vestry of a Protestant Episcopal parish heretofore incorporated shall by resolution recommend that the qualifications of voters and the qualifications of wardens and vestrymen be changed to conform in both cases to the requirements of section forty-three of this chapter, notice of such recommendation shall be included in the notice of the next annual election of such parish, and be submitted to the meeting. If such recommendation be ratified by such meeting the presiding officer thereof and at least two qualified voters present thereat shall execute and acknowledge a certificate setting forth such resolution of the vestry, the fact that notice thereof had been given with the notice of such annual election, and that the meeting had ratified the same. Such certificate shall be filed in the office of the clerk of the county in which the original certificate of incorporation is filed and recorded.

#### **Section 47. Free churches in communion with the Protestant Episcopal church**

Whenever the trustees of any free church in communion with the Protestant Episcopal church heretofore or hereafter organized under the provisions of article nine of this act shall desire to change the management of its affairs and the form of government of the corporation by substituting a vestry in place of such trustees, such change may be made in the following manner: The trustees of any free church having first obtained the written consent of the ecclesiastical authority of the diocese to such change may by an affirmative vote of not less than two-thirds determine by resolution reciting the consent of such ecclesiastical authority and duly recorded in the minutes of such church to change the management of its affairs by substituting a vestry in place of such trustees to manage the affairs of such corporation and free church with the same powers, duties and privileges as are now possessed and exercised by church wardens and vestrymen in churches of the Protestant Episcopal church organized under this article, but subject to the provisions of section one hundred and eighty-three of this chapter and for the purposes set forth in the certificate of incorporation of such free church and for no other purposes; such resolution shall fix the day, either a Sunday or a secular day, upon which the annual election shall be held, the number to constitute such vestry, which shall be two church wardens and either three, six, nine, twelve, fifteen, eighteen, twenty-one or twenty-four vestrymen as may be determined, and shall also designate the persons to be such church wardens, and vestrymen, to act until the annual

election, and copies of such resolution, together with a statement of the vote of the trustees adopting the same certified under the seal of the corporation and verified by the president and secretary thereof, shall be filed in the office of the secretary of state and also in the office of the clerk of the county in which such church or corporation is located. Upon and after the filing of such certificate, the church wardens and vestrymen named in said resolution and their successors in office, together with the rector when there shall thereafter be one, shall form the vestry and shall be the vestry and shall constitute the corporation; and at the first annual election the church wardens and vestrymen shall be divided into classes and their respective terms of office fixed and shall be elected by the persons qualified to vote for the church wardens and vestrymen in churches or congregations of the Protestant Episcopal church and the provisions of this article shall govern such election and all future elections and all acts of such vestry, subject to the provisions of section one hundred and eighty-three of this chapter.

#### **Section 48. Legacies**

Any devise or bequest of real or personal property to an unincorporated parish, mission congregation, chapel or religious society under the jurisdiction of or in communion with the Protestant Episcopal church, for the purposes of such gift, may be taken, held and administered for the benefit of such devisee or legatee by the diocesan corporation of the diocese in which such devisee or legatee is situate, and such diocesan corporation shall have the power, subject to the provisions of article five of the not-for-profit corporation law and of section twelve of this chapter, to lease, improve, mortgage, sell, convey and transfer any property so held.

#### **Section 49. Eligibility of certain minors as lay delegates and to vote and hold office**

Whenever the constitution or canons of a diocese of the Protestant Episcopal church in the state of New York so permit persons of less than full age but of the age of eighteen years or more shall be eligible to serve as lay delegates to and to vote at any convention of the diocese, when duly chosen by the parish or mission and shall also be eligible for election to or appointment to any lay office of the diocese.