

## §721. Misapplication of funds or assets of public benefit corporation

**1. Prohibited transaction.** The funds or assets of a public benefit corporation may not be transferred or applied and a director or officer of a public benefit corporation may not authorize the transfer or application of funds or assets of the public benefit corporation if:

A. The transfer constitutes a conflict-of-interest transaction that is neither fair nor properly approved as determined under section 718; [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

B. The transfer misapplies the funds or assets in violation of statute, including conversion transactions in violation of Title 5, sections 194-C to 194-H; [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

C. The transfer is to a director or officer of the public benefit corporation or to another person in a position to exercise substantial influence over the affairs of the corporation and constitutes private inurement or excess benefits that exceed the fair market value of the property or services received in return; or [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

D. The transfer of funds or assets is to a subsidiary or joint venture organized as a for-profit entity, unless the board of the public benefit corporation determines in good faith under the facts and circumstances at the time of transfer or commitment to transfer that:

(1) The organization and operations of the for-profit entity will serve, further or support a charitable purpose of the public benefit corporation;

(2) The transfer or the commitment to transfer is fair to the public benefit corporation;

(3) Distributions of net income by the for-profit entity to owners and investors will be proportionate to their investment interests; and

(4) The articles of incorporation, bylaws or similar organizational documents require that compensation transactions between the for-profit entity and investors in the entity or directors or officers of the entity or others in a position to exercise substantial influence over the affairs of the entity be established in amounts that do not exceed the fair market value of services or property to be provided to the entity. [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

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**2. Conversion transactions.** If a transfer under this section constitutes a conversion transaction as defined in Title 5, section 194-B, subsection 2, the provisions of Title 5, sections 194-B to 194-K may apply and nothing in this section is intended to supersede those provisions applicable to such transactions.

[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

### SECTION HISTORY

PL 2001, c. 550, §C18 (NEW). PL 2001, c. 550, §C29 (AFF).

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