

§873. Directors' action

1. Action regarding transaction. Directors' action regarding a director's conflicting-interest transaction is effective for purposes of section 872, subsection 2, paragraph A if the transaction has been authorized by the affirmative vote of a majority, but no fewer than 2, of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by those qualified directors, or after modified disclosure in compliance with subsection 2-A, except that action by a committee is effective under this section only if:

A. The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and [PL 2007, c. 289, §29 (AMD).]

B. When the action has been taken by a committee, all members of the committee were qualified directors and either:

(1) The committee was composed of all the qualified directors on the board of directors; or

(2) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board. [PL 2007, c. 289, §29 (AMD).]

[PL 2007, c. 289, §29 (AMD).]

2. Disclosure; conflicting interest.

[PL 2007, c. 289, §29 (RP).]

2-A. Disclosure; conflicting interest. Notwithstanding subsection 1, when a transaction is a director's conflicting-interest transaction only because a related person described in section 871, subsection 3, paragraph F or G is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality or a professional ethics rule, as long as the conflicted director discloses to the qualified directors voting on the transaction:

A. All information required to be disclosed that would not violate a duty or obligation of the director; [PL 2007, c. 289, §29 (NEW).]

B. The existence and nature of the director's conflicting interest; and [PL 2007, c. 289, §29 (NEW).]

C. The nature of the conflicted director's duty not to disclose the confidential information. [PL 2007, c. 289, §29 (NEW).]

[PL 2007, c. 289, §29 (NEW).]

3. Quorum. A majority, but no fewer than 2, of all the qualified directors on the board of directors or on a committee, constitutes a quorum for purposes of action that complies with this section.

[PL 2007, c. 289, §29 (AMD).]

4. Qualified director.

[PL 2007, c. 289, §29 (RP).]

5. Authorization when qualified director's action not taken. When directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

[PL 2007, c. 289, §29 (NEW).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §§B70,71 (AMD).
PL 2007, c. 289, §29 (AMD).

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