

Not-For-Profit Corporation

§ 715. Related party transactions.

(a) No corporation shall enter into any related party transaction unless the transaction is determined by the board, or an authorized committee thereof, to be fair, reasonable and in the corporation's best interest at the time of such determination. Any director, officer or key person who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest.

(b) With respect to any related party transaction involving a charitable corporation and in which a related party has a substantial financial interest, the board of such corporation, or an authorized committee thereof, shall:

(1) Prior to entering into the transaction, consider alternative transactions to the extent available;

(2) Approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and

(3) Contemporaneously document in writing the basis for the board or authorized committee's approval, including its consideration of any alternative transactions.

(c) The certificate of incorporation, by-laws or any policy adopted by the board may contain additional restrictions on related party transactions and additional procedures necessary for the review and approval of such transactions, or provide that any transaction in violation of such restrictions shall be void or voidable.

(d) Unless otherwise provided in the certificate of incorporation or the by-laws, the board shall have authority to fix the compensation of directors for services in any capacity.

(e) The fixing of compensation of officers, if not done in or pursuant to the by-laws, shall require the affirmative vote of a majority of the entire board unless a higher proportion is set by the certificate of incorporation or by-laws.

(f) The attorney general may bring an action to enjoin, void or rescind any related party transaction or proposed related party transaction that violates any provision of this chapter or was otherwise not reasonable or in the best interests of the corporation at the time the transaction was approved, or to seek restitution, and the removal of directors or officers, or seek to require any person or entity to:

(1) Account for any profits made from such transaction, and pay them to the corporation;

(2) Pay the corporation the value of the use of any of its property or other assets used in such transaction;

(3) Return or replace any property or other assets lost to the corporation as a result of such transaction, together with any income or appreciation lost to the corporation by reason of such transaction, or account for any proceeds of sale of such property, and pay the proceeds to the corporation together with interest at the legal rate; and

(4) Pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.

(g) The powers of the attorney general provided in this section are in addition to all other powers the attorney general may have under this chapter or any other law.

(h) No related party may participate in deliberations or voting relating to a related party transaction in which he or she has an interest; provided that nothing in this section shall prohibit the board or authorized committee from requesting that a related party present information as background or answer questions concerning a related party transaction at a board or committee meeting prior to the commencement of deliberations or voting relating thereto.

(i) In an action by any person or entity other than the attorney general, it shall be a defense to a claim of violation of any provisions of this section that a transaction was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction.

(j) In an action by the attorney general with respect to a related party transaction not approved in accordance with paragraphs (a) or (b) of this section at the time it was entered into, whichever is applicable, it shall be a defense to a claim of violation of any provisions of this section that (1) the transaction was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction and (2) prior to receipt of any request for information by the attorney general regarding the transaction, the board has: (A) ratified the transaction by finding in good faith that it was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction; and, with respect to any related party transaction involving a charitable corporation and in which a related party has a substantial financial interest, considered alternative transactions to the extent available, approving the transaction by not less than a majority vote of the directors or committee members present at the meeting; (B) documented in writing the nature of the violation and the basis for the board's or committee's ratification of the transaction; and (C) put into place procedures to ensure that the corporation complies with paragraphs (a) and (b) of this section as to related party transactions in the future.