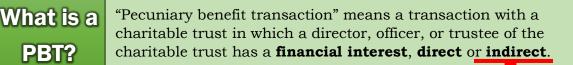
Pecuniary Benefit Transactions

New Hampshire Law has specific rules for handling certain types of conflicts of interest referred to as "Pecuniary Benefit Transactions" or "PBTs." <u>RSA 7:19-a</u>. The boards of directors of all charitable nonprofit organizations must understand and comply with these statutes.



Put simply, whenever a financial benefit may flow \underline{from} your charitable organization \underline{to}

- 1. A board member;
- 2. the family member of a board member; or
- 3. an entity of which 1 or 2 above is a proprietor, partner, employee, or officer.

An "indirect" financial interest

arises where the transaction involves a person or entity of which a director, officer, or trustee, or a member of the immediate family of a director, officer, or trustee, is a proprietor, partner, employee, or officer.

Why do PBTs Matter? Directors of nonprofit organizations owe a **fiduciary duty of loyalty** to the organization and its mission. PBTs test the director's loyalty because the director or their family stands to gain financially from the transaction.

Which transactions are PBTs?

Here are some **examples** of transactions that qualify as PBTs under New Hampshire law and transactions that do not.

PBTS	NOT PBTs
 ✓ A board member owns a stationery store that sells office supplies to the 	 Transactions totaling less than \$500 to a board member in a fiscal year.
organization. ✓ A board member is employed by a	 Reasonable compensation for one executive director.
nonprofit that receives a grant from the organization.	 Expenses incurred in connection with the official duties of a board member (e.g., travel, reimbursement of fundraising expense).
 ✓ A board member's spouse is a bookkeeper who is paid to manage the organization's accounts. 	 Benefits provided to a board member on the same basis as the public and
✓ A board member's family member is a paid employee of the organization.	subject to eligibility criteria.A continuing transaction from before
✓ A board member leases property to the organization.	the interested board member's election to the board.
	 Donations and contributions from a board member to the organization.

Can my organization engage in PBTs?

Some PBTs are strictly prohibited:

- Loans from the organization to a board member. RSA 7:19-a, V.
- Leases by an organization from a board member for a term greater than 5 years and sales of real estate from a board member to the organization, unless approved by the probate court. RSA 7:19-a, VI.
- The presiding officer of a New Hampshire nonprofit corporation cannot be a paid employee. RSA 292:6-a.

Other PBTs are allowed <u>only if all of the following</u> are satisfied:

- \checkmark The transaction is in the best interest of the organization.
- ✓ The transaction is for goods or services purchased in the ordinary course of business for reasonable or discounted value.
- ✓ 2/3 of disinterested board members vote in favor of the transaction after full disclosure of all material facts.
- ✓ NO board member who has engaged in a PBT in the fiscal year is present or participates in the vote or discussion.
- ✓ The vote is recorded in the minutes of the meeting, including who was present. *See example on next page.
- ✓ The organization notifies the Director of Charitable Trusts of all PBTs that occurred in the fiscal year on Schedule C of its annual report.

In addition, if the transaction <u>exceeds \$5,000 in a fiscal year</u>, the organization must:

- ✓ Publish notice of the transaction in a local newspaper. *See example on next page.
- ✓ Notify the Director of Charitable Trusts before consummating the transaction.



This document is provided as a convenient reference. It does not address every scenario in which the PBT statute may apply. Board members should read and understand RSA 7:19-a in its entirety and refer to our <u>Guidebook for New Hampshire Charitable Organizations</u> for additional information. Discuss questions with your organization's attorney or contact our office at <u>CharitableTrustsUnit@doj.nh.gov</u> or (603) 271-3591.

Examples

	The following is a sample board resolution including the minimum required elements for a PBT vote. If applicable, the minutes must also reflect any additional requirements imposed on the organization by its bylaws, conflict of interest policy, or other governing document or policy.		
Meeting Minutes	RESOLVED: AYE: NAY: ABSTAIN: RECUSED:	That the board hereby authorizes charity name, pursuant to RSA 7:19- a:II(b), to enter into a pecuniary benefit transaction with director name in the amount of amount for purpose. The board authorizes this transaction based upon findings that the transaction is in the organization's best interests; that the transaction involved goods or services purchased or benefits provided in the ordinary course of the organization's business; that the transaction was for a reasonable or discounted price based upon basis for determination; that the material facts of the transaction were disclosed to the board; and that no member of the board who has engaged in a pecuniary benefit transaction in the current fiscal year participated in, voted on, or was present for the discussion of this transaction. Board member(s) voting in favor Board member(s) abstaining Board member(s) abstaining	

