

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.” [RSA 7:19-a](#). The boards of directors of all charitable nonprofit organizations must understand and comply with these statutes.



What is a PBT?

“Pecuniary benefit transaction” means a transaction with a charitable trust in which a director, officer, or trustee of the charitable trust has a **financial interest, direct or indirect**.



Put simply, whenever a financial benefit may flow **from** your charitable organization **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
<ul style="list-style-type: none"> ✓ A board member owns a stationery store that sells office supplies to the organization. ✓ A board member is employed by a nonprofit that receives a grant from the organization. ✓ A board member’s spouse is a bookkeeper who is paid to manage the organization’s accounts. ✓ A board member’s family member is a paid employee of the organization. ✓ A board member leases property to the organization. 	<ul style="list-style-type: none"> ✗ Transactions totaling less than \$500 to a board member in a fiscal year. ✗ Reasonable compensation for one executive director. ✗ Expenses incurred in connection with the official duties of a board member (e.g., travel, reimbursement of fundraising expense). ✗ Benefits provided to a board member on the same basis as the public and subject to eligibility criteria. ✗ A continuing transaction from before 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?

It depends...



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 only if all of the following are satisfied:

- ✓ 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 exceeds \$5,000 in a fiscal year, 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.



CHARITABLE TRUSTS UNIT
NH DEPARTMENT OF JUSTICE

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 [Guidebook for New Hampshire Charitable Organizations](#) for additional information. Discuss questions with your organization's attorney or contact our office at CharitableTrustsUnit@doj.nh.gov or (603) 271-3591.

Examples



Meeting Minutes

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.

RESOLVED: 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.

AYE: **Board member(s) voting in favor**

NAY: **Board member(s) opposing**

ABSTAIN: **Board member(s) abstaining**

RECUSED: **Board members not present for or participating in discussion or vote**



Newspaper Notice

Under RSA 7:19-a, II(d), notice of PBTs exceeding \$5,000 in a fiscal year must be printed in a newspaper of general circulation in the community in which the charity's principal New Hampshire office is located. If there is no such office, the notice must be published in a newspaper of general circulation throughout the state. At minimum, the notice must include:

- That the notice is provided in accordance with RSA 7:19-a, II (d);
- The name of the charity;
- The name of any director, officer, or trustee involved in the pecuniary benefit from the transaction;
- The nature of the transaction; and
- The specific dollar amount of the transaction.

Public Notice re: RSA 7:19-a, II(d)

Pursuant to the requirements of NH RSA 7:19-a, II(d), notice is hereby given that a pecuniary benefit transaction that exceeds \$5,000 in a fiscal year will occur between **charity name** and **name and title of involved officer(s)/director(s)** in the amount of **amount**, the nature of said transaction(s) being more particularly described as follows: **description**.

ATTEST: **Name and address of charity**

BY: **Name of president or secretary**

DATE: **Date**