

§194-G. Review criteria

1. Required determinations. The Attorney General may not approve or recommend that a court approve and the court may not approve a proposed conversion transaction unless the Attorney General or the court, as appropriate, finds that:

- A. The public charity will receive fair market value for its charitable assets. The fair market value must be based upon an appraisal conducted in accordance with subsection 3 and must use the projected closing date of the conversion transaction as the valuation date; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- B. The proposed distribution of proceeds of the transaction complies with section 194-H; and [PL 2001, c. 550, Pt. A, §2 (NEW).]
- C. The public charity considered the proposed conversion as the best alternative in carrying out its mission and purposes. [PL 2001, c. 550, Pt. A, §2 (NEW).]
[PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Considerations. In determining whether the criteria in subsection 1 are met, the Attorney General or the court, as appropriate, shall consider, as applicable, whether:

- A. The public charity will receive fair market value for its charitable assets; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- B. The terms and conditions of the agreement or transaction are fair and reasonable to the public charity; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- C. The fair market value of the public charity's assets to be transferred has been manipulated by the actions of the parties in a manner that causes the fair market value of the assets to decrease; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- D. The agreement or transaction will result in inurement to any private person or entity; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- E. The proposed conversion transaction will result in a breach of fiduciary duty or violate any statutory or common-law duty or obligation on the part of the directors, trustees or other parties involved in the transaction, including but not limited to conflicts of interest related to payments or benefits to officers, directors, board members, executives and experts employed or retained by the parties; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- F. The governing body of the public charity exercised due diligence in deciding to dispose of the public charity's assets, selecting the acquiring entity and negotiating the terms and conditions of the disposition; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- G. The Attorney General has been provided with sufficient information and data by the public charity to evaluate adequately the agreement or transaction and the effects of the agreement or transaction on the public; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- H. The proceeds of the conversion of the public charity are distributed to either an existing or new public benefit corporation or foundation pursuant to section 194-H; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- I. The proceeds of the proposed conversion transaction will be used in accordance with the rules of any trust under which the assets were held by the public charity and the proceeds will be controlled as funds independent of the acquiring entity or entities related to the acquiring entity; [PL 2001, c. 550, Pt. A, §2 (NEW).]
- J. The entity surviving after the conversion transaction will be financially viable and competently managed; [PL 2001, c. 550, Pt. A, §2 (NEW).]

K. The transaction will diminish the availability and accessibility of services to the affected community; and [PL 2001, c. 550, Pt. A, §2 (NEW).]

L. The conversion plan and transaction complies with all applicable laws including the Maine Nonprofit Corporation Act and state tax code provisions. [PL 2001, c. 550, Pt. A, §2 (NEW).]
[PL 2001, c. 550, Pt. A, §2 (NEW).]

3. Valuation. A public charity shall submit to the Attorney General and the court an independent appraisal of the fair market value of assets to be converted under subsection 1. To the extent that the appraisal is based on a capitalization of the pro forma income of the converted assets, the appraisal must indicate the basis for determination of the income to be derived from any proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made regarding future earnings growth.

A. To the extent that an appraisal under this subsection is based on the comparison of the capital stock of the converted entity with outstanding capital stock of existing stock entities offering comparable products, the existing stock entities must be reasonably comparable to the converting entity in terms of such factors as size, market area, competitive conditions, profit history and expected future earnings. [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. If the value of assets being converted is \$500,000 or more, the appraisal must include any element of value arising from the accomplishment or expectation of the conversion transaction, including any value attributable to projected operating efficiencies to result from the conversion, net of the cost of changes to produce such efficiencies. [PL 2001, c. 550, Pt. A, §2 (NEW).]

C. If the Attorney General or the court determines that an appraisal under this subsection is materially deficient or substantially incomplete, the Attorney General or the court may deem the entire conversion plan materially deficient or substantially incomplete and reject or decline to further process the application for conversion. [PL 2001, c. 550, Pt. A, §2 (NEW).]

D. A converting entity shall submit to the Attorney General and the court information demonstrating to the satisfaction of the Attorney General or the court the independence and expertise of any person preparing the appraisal or related materials under this subsection. [PL 2001, c. 550, Pt. A, §2 (NEW).]

E. An appraiser under this subsection may not serve as an underwriter or selling agent under the same conversion plan and an affiliate of an appraiser may not act as an underwriter or selling agent unless procedures are followed and representations and warranties made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way have an impact on the appraisal. [PL 2001, c. 550, Pt. A, §2 (NEW).]

F. An appraiser may not receive any other fee except the fee for services rendered in connection with the appraisal. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW).

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