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## Conflicting Interest Transactions Georgia Nonprofit Corporation Code § 14-3-860. Definitions

As used in this part, the term:

1. **“Conflicting interest”** with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) if:
  - a. Whether or not the transaction is brought before the board of directors of the corporation for action, to the knowledge of the director at the time of commitment the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that it would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or
  - b. The transaction is brought (or is of such character and significance to the corporation that it would in the normal course be brought) before the board of directors of the corporation for action, and to the knowledge of the director at the time of commitment any of the following persons is either a party to the transaction or has a beneficial financial interest so closely linked to the transaction and of such financial significance to that person that it would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) an entity (other than the corporation) of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in division (i) of this subparagraph or an entity that is controlled by, or is under common control with, one or more of the entities specified in division (i) of this subparagraph; or (iii) an individual who is a general partner, principal, or employer of the director.
2. **“Director's conflicting interest transaction”** with respect to a corporation means a transaction effected or proposed to be effected by the corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) respecting which a director of the corporation has a conflicting interest.
3. **“Related person”** of a director means:

- a. The spouse (or a parent or sibling thereof) of the director or a child, grandchild, sibling, parent (or spouse of any thereof), or an individual having the same home as the director, or a trust or estate of which an individual specified in this subparagraph is a substantial beneficiary; or
  - b. A trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.
4. **“Required disclosure”** means disclosure by the director who has a conflicting interest of (A) the existence and nature of the director’s conflicting interest, and (B) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment as to whether or not to proceed with the transaction.
  5. **“Time of commitment”** respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation (or its subsidiary or the entity in which it has a controlling interest) becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

## § 14-3-861. Judicial action

- a. A transaction effected or proposed to be effected by a corporation (or by a subsidiary of the corporation or by any other entity in which the corporation has a controlling interest) that is not a director’s conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action under the laws of this state by a member or by or in the right of the corporation or any other person who otherwise has standing, on the ground of an interest in the transaction of a director or any person with whom or which he or she has a personal, economic, or other association.
- b. A director’s conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action under the laws of this state by a member or by or in the right of the corporation or any other person who otherwise has standing, on the ground of an interest in the transaction of the director or any person with whom or which he or she has a personal, economic, or other association, if:
  1. Directors’ action respecting the transaction was at any time taken in compliance with Code Section 14-3-862;
  2. Members’ action respecting the transaction was at any time taken in compliance with Code Section 14-3-863;
  3. Action by the superior court respecting the transaction was at any time taken in compliance with Code Section 14-3-864; or
  4. The transaction, judged in the circumstances at the time of commitment, is established to have been fair to the corporation.

## § 14-3-862. Directors’ action

- a. Directors’ action respecting a transaction is effective for purposes of paragraph (1) of subsection (b) of Code Section 14-3-861 if the transaction received the affirmative vote of a majority (but not less than two) of those qualified directors on the board of directors or on a duly empowered committee thereof who voted on the transaction after either required disclosure to them (to the extent the information was not known by them) or compliance with subsection (b) of this Code section.

- b. If a director has a conflicting interest respecting a transaction, but neither he or she nor a related person of the director specified in subparagraph (A) of paragraph (3) of Code Section 14-3-860 is a party thereto, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director cannot, consistent with that duty, make the disclosure contemplated by subparagraph (B) of paragraph (4) of Code Section 14-3-860, then disclosure is sufficient for purposes of subsection (a) of this Code section if the director:
  - 1. Discloses to the directors voting on the transaction the existence and nature of his or her conflicting interest and informs them of the character of and limitations imposed by that duty prior to their vote on the transaction; and
  - 2. Plays no part, directly or indirectly, in their deliberations or vote.
- c. A majority (but not less than two) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this Code section. Directors' action that otherwise complies with this Code section is not affected by the presence or vote of a director who is not a qualified director.
- d. For purposes of this Code section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either (1) a conflicting interest respecting the transaction or (2) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

## § 14-3-863. Members' action

- a. Members' action respecting a transaction is effective for purposes of paragraph (2) of subsection (b) of Code Section 14-3-861 if a majority of the votes entitled to be cast by all qualified members were cast in favor of the transaction after (1) notice to members describing the director's conflicting interest transaction, (2) provision of the information referred to in subsection (d) of this Code section, and (3) required disclosure to the members who voted on the transaction (to the extent the information was not known by them).
- b. For purposes of this Code section, "qualified members" means any members entitled to vote with respect to a director's conflicting interest transaction except the director and members that, to the knowledge, before the vote, of the secretary (or other officer or agent of the corporation authorized to tabulate votes) are a related person of the director.
- c. A majority of the votes entitled to be cast by all qualified members constitutes a quorum for purposes of action that complies with this Code section. Subject to the provisions of subsection (d) of this Code section, members' action that otherwise complies with this Code section is not affected by the presence of, or the voting by, members that are not qualified members.
- d. For purposes of compliance with subsection (a) of this Code section, a director who has a conflicting interest respecting the transaction shall, before the members' vote, inform the secretary (or other officer or agent of the corporation authorized to tabulate votes) of the identity of all members that to the knowledge of the director are related persons of the director.
- e. If a members' vote does not comply with subsection (a) of this Code section solely because of a failure of a director to comply with subsection (d) of this Code section, and if the director establishes that this failure did not determine and was not intended by him or her to influence the outcome of the vote, the court may, with or without further proceedings respecting paragraph (3) of subsection (b) of Code Section 14-3-861,

take such action respecting the transaction and the director, and give such effect, if any, to the members' vote, as it considers appropriate in the circumstances.

## § 14-3-864. Certain transactions effective without directors' or members' action

In a case involving a corporation described in paragraph (2) of subsection (a) of Code Section 14-3-1302, a transaction that was not the subject of either directors' action under Code Section 14-3-862 or members' action under Code Section 14-3-863 is effective for purposes of paragraph (3) subsection (b) of Code Section 14-3-861 if the transaction is approved by the superior court, in an action in which the Attorney General is joined as a party.

## § 14-3-865. Officers' conflicting interest transactions

- a. As used in this Code section, the term:
  1. **"Officer"** means a person who is not a director and who is holding an office described in the bylaws of the corporation or appointed by the board of directors in accordance with the bylaws of the corporation.
  2. **"Officer's conflicting interest transaction"** means any transaction, other than a director's conflicting interest transaction as defined in paragraph (2) of Code Section 14-3-860, between a corporation (or a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) and one or more of its officers or between a corporation and a related person of an officer.
  3. **"Related person"** of an officer shall have the same meaning with respect to an officer that this term has with respect to a director in paragraph (3) of Code Section 14-3-860.
  4. **"Required disclosure"** with respect to an officer shall have the same meaning as this term has with respect to a director in paragraph (4) of Code Section 14-3-860.
  5. **"Time of commitment"** shall have the same meaning as in paragraph (5) of Code Section 14-3-860.
- b. No officer's conflicting interest transaction shall be void or voidable solely because the officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction.
- c. An officer's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action by a member or by or in the right of the corporation, on the ground of an interest in the transaction of the officer or any person with whom or which he or she has a personal, economic, or other association, if:
  1. The transaction was approved by the board of directors after required disclosure;
  2. The transaction was approved by the members after required disclosure;
  3. The action was approved by the superior court in an action to which the Attorney General was a party; or
  4. The transaction, judged in the circumstances at the time of commitment, is established to have been fair to the corporation.