

§194-B. Definitions

As used in this section and sections 194-C to 194-K, unless the context otherwise indicates, the following terms have the following meanings. [PL 2001, c. 550, Pt. A, §2 (NEW).]

1. Control. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, including but not limited to situations in which the power is the result of an official position with the person or a corporate office held by an individual. [PL 2001, c. 550, Pt. A, §2 (NEW).]

2. Conversion transaction. "Conversion transaction" means the sale, transfer, lease, exchange, transfer by exercise of an option, conveyance, conversion, merger or other disposition or the transfer of control or governance of the assets or operations of a public charity to a person other than a public charity incorporated or domiciled in this State. A disposition or transfer constitutes a conversion transaction regardless of whether it occurs directly or indirectly and whether it occurs in a single transaction or a related series of transactions. If exercise of an option constitutes a conversion transaction, any consideration received for the granting of the option must be considered part of the transaction for purposes of applying the review criteria in section 194-G. "Conversion transaction" does not include a transaction that supports or continues the charitable activities of the public charity, including but not limited to:

A. Granting of encumbrances in the ordinary course of business, such as security interests or mortgage deeds with respect to assets owned by the public charity or any wholly owned subsidiary to secure indebtedness for borrowed money, the net proceeds of which are paid solely to the public charity or its wholly owned subsidiaries or are applied to the public charity's charitable mission, and the foreclosing or other exercise of remedies permitted with respect to such encumbrances; [PL 2001, c. 550, Pt. A, §2 (NEW).]

B. Sales or transfers for fair market value of:

(1) Any interest in property owned by the public charity or any wholly owned subsidiary, the net proceeds of which are paid solely to the public charity or any wholly owned subsidiary; or

(2) Money or monetary equivalents owned by a public charity or any wholly owned subsidiary in exchange for an interest in property, including securities as defined in Title 32, section 16102, subsection 28, to be held by the public charity or any wholly owned subsidiary; [PL 2005, c. 65, Pt. C, §2 (AMD).]

C. Awards, grants or payments to or on behalf of intended beneficiaries, consistent with the public charity's charitable purpose; and [PL 2001, c. 550, Pt. A, §2 (NEW).]

D. A change in the membership of the board of directors or officers of a public charity. [PL 2001, c. 550, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. C, §2 (AMD).]

3. Fair market value. "Fair market value" means the most likely value or range of values that assets, tangible or intangible, being sold would have in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and in their own best interest and a reasonable time being allowed for exposure in the open market. If the value of the assets being converted is \$500,000 or more, the appraisal must include a value representing volunteer efforts and tax exemptions, if any, received during the operation of the public charity. [PL 2001, c. 550, Pt. A, §2 (NEW).]

4. Independent appraisal of the fair market value. "Independent appraisal of the fair market value" means an appraisal conducted by persons independent of all parties to a proposed conversion

transaction and experienced and expert in the area of appraisal of the type and form of property being valued. The appraisal must be conducted using professionally accepted standards for the type and form of property being valued. The appraisal must contain a complete and detailed description of the elements that make up the appraisal values produced and detailed support for the conclusions reached in the appraisal.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

5. Person. "Person" means an individual, partnership, trust, estate, corporation, association, joint venture, joint stock company or other organization.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

6. Public charity. "Public charity" has the same meaning as in section 194.

[PL 2001, c. 550, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2001, c. 550, §A2 (NEW). PL 2005, c. 65, §C2 (AMD).

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