

**NONPROFIT CORPORATION ACT (EXCERPT)**  
**Act 162 of 1982**

**450.2345 Distributions to shareholders or members.**

Sec. 345. (1) A board may authorize and the corporation may make distributions to its shareholders or members that are permitted in section 301, subject to subsection (3) and any restriction in the articles of incorporation.

(2) If the board does not fix the record date for determining shareholders or members entitled to a distribution, other than a distribution involving a purchase, redemption, or acquisition of the corporation's shares or memberships, the record date is the date the board authorizes the distribution.

(3) A corporation shall not make a distribution if after giving it effect the corporation would not be able to pay its debts as the debts become due in the usual course of business, or the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders or members whose preferential rights are superior to those that receive the distribution.

(4) The board may base a determination that a distribution is not prohibited under subsection (3) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, on a fair valuation, or on any other method that is reasonable.

(5) The effect of a distribution under subsection (3) is measured at the following times:

(a) Except as provided in subsection (7), for distributions by purchase, redemption, or other acquisition of the corporation's shares or memberships, as of the earlier of the date money or other property is transferred or debt incurred by the corporation, or the date the shareholder or member ceases to be a shareholder or member with respect to the acquired shares or ceases to be a member.

(b) For any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization or the date the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(c) For any other purpose, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder or member that is incurred by reason of a distribution made under this section is at parity with the corporation's indebtedness to its general, unsecured creditors, except as otherwise agreed.

(7) If a corporation acquires its shares or memberships in exchange for an obligation to make future payments, and distribution of an obligation would otherwise be prohibited under subsection (3) at the time it is made, the corporation may issue the obligation and all of the following apply:

(a) The portion of the obligation that could have been distributed without violating subsection (3) is treated as indebtedness as described in subsection (6).

(b) All of the following apply to the portion of the obligation that exceeds the amount treated as indebtedness under subdivision (a):

(i) At any time before the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section.

(ii) At any time on or after the due date, the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (6) to the extent that a distribution may be made at that time under this section.

(iii) Unless otherwise provided in the agreement for the acquisition of the shares, the obligation is a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made with respect to shares that have preferential rights superior to those of shares acquired in exchange for the obligation.

(8) The enforceability of a guaranty or other undertaking by a third party that relates to a distribution is not affected by the prohibition of the distribution under subsection (3).

(9) If a claim is made to recover a distribution that violates subsection (3), or if a violation of subsection (3) is raised as a defense to a claim based on a distribution, this section does not prevent the person that received the distribution from asserting a right of rescission or other legal or equitable rights.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.