

## **Private Benefit Cheat Sheet adapted and edited from Andrew C. Dana, Esq**

**Private Inurement:** A land trust cannot confer any benefits (“net earnings”) to land trust “insiders.” Insiders are defined fairly broadly to include employees, directors, officers, spouses and immediate family of the foregoing folks, and potentially significant donors. This is a bright line rule: Do not confer any special treatment on insiders.

**Private Benefit Rules:** The I.R.S. does not allow tax-exempt organizations to confer “private benefits” on unrelated third parties – including donors – so-called “disqualified persons.”

Any private benefit arising from a particular activity must be "**incidental**" in both a **qualitative** and **quantitative** sense to the overall public benefit achieved by the activity if the organization is to remain exempt. To be **qualitatively incidental**, a private benefit must occur as a necessary component of the activity that benefits the public at large; in other words, the benefits to the public cannot be achieved without necessarily benefiting private individuals. Such benefits might also be characterized as indirect or unintentional. To be **quantitatively incidental**, a benefit must be insubstantial when viewed in relation to the public benefit conferred by the activity. The test is applied to **individual transactions**, not the overall good accomplished by the organization.

**Penalties:** In egregious cases, **loss of tax-exempt status**. I.R.C. §4958 also allows “**intermediate sanctions**” which are penalties and fines assessed on the non-profit organization, including Board members and officers and on the disqualified person who received the benefit.

### **Questions to ask to help determine if there is private benefit or private inurement**

- ✓ Who is asking the land trust to do something? A major donor, a board member, the spouse of a staff member? If yes, be especially careful.
- ✓ What will that person gain and why is she asking?
- ✓ If we do this, will the public benefit? If yes, how much?
- ✓ If we do this, what will the other person gain? If yes, how much compared to the public benefit?
- ✓ If the other person gains, is that gain significant?
- ✓ Can the other person achieve his or her goals without land trust involvement?
- ✓ If we will benefit from this transaction, are the benefits that the other person gains relatively insignificant?
- ✓ If I can't answer these questions, who can? An appraiser?

Trust your instincts. If you feel that the requesting party is somehow using the land trust, be careful. If you can't be sure of the relative public and private benefits gained from the action, be very careful. If whoever asks is a land trust friend or insider, be very, very careful.

**BUT REMEMBER:** A land trust can confer some private benefits, it just may not confer “more than incidental” private benefits.

Where the degree of private benefit is difficult to determine, a land trust may want to consider obtaining a ruling from the IRS, or pay for a written opinion from a recognized legal expert on federal taxation. The land trust could also obtain an appraisal to determine the financial extent of any possible benefit.