

*Managing Donor Restricted Gifts Posted on April 14, by Ellis Carter € 1 Comment Giving donors the power to restrict their gifts for a specific purpose or program or to restrict the timing and amount of expenditures can be a powerful giving incentive.*

This comment briefly provides an incomplete educational overview of donor restricted gifts. Always consult an experienced attorney and tax accountant in all charity and gifting matters. All charities need a thoughtfully created gift solicitation, acceptance, and acknowledgment policy. The following several paragraphs briefly mention only a few of many possible concerns. Is there any potential misrepresentation in the solicitation materials and stated purposes? When soliciting funds for specific purposes a charity must plan carefully before approaching a potential donor. Will the issue of redirecting or unrestricting the gift be discussed? Avoid public relations problems and more serious claims of fraud. What types of property will the charity never accept and what restrictions are unacceptable? Exotic forms of property and collections that the donor wants displayed or preserved may be of no value to the charity. How much will it cost the charity to manage and maintain the gift? Some donors have unrealistic estimates of the fair market value of their gifts or view gifting as a way to salvage a tax deduction from otherwise unsellable property. Other potential donors may idealistically view their potential gifts as providing a transformative opportunity for the charity that financial due diligence and market research proves to be incorrect. For example, old and remote campgrounds or campuses may be costly to modernize and maintain and their isolation or marketplace competition will result in few new clients for the charity. These gifts may also be conditioned upon unacceptable restrictions. Some gifts may come with hidden potential liabilities. Especially exercise environmental due diligence if land is being donated to avoid liability for clean-up expenses. Additionally, a charity must consider the possible issues related to a donor that provides stolen or embezzled funds, makes gifts from her or his corporation that were not properly authorized, or files for bankruptcy after making significant gifts. Unwinding gifts and addressing these events is difficult. Once accepted, every gift, however small, should be processed in a uniform manner so that the donor will be acknowledged and thanked. Uncashed or cashed but unacknowledged checks display bad accounting and poor manners. Carelessness damages donor relations and confidence. The basic rule is that gift restrictions are legally binding on the charity. Properly segregate restricted and unrestricted gifts. State law often views charities as "trusts" with a high duty of care and accountability. Only when the document language is ambiguous will a court look to external sources such as conversations, etc. Contested interpretations may require a declaratory judgment action in court. Hence, donor restrictions should be carefully and thoughtfully written. Termination of a program may allow the charity to redirect program funds to other uses that resemble to original intention cy pres doctrine. A related legal rule, equitable deviation, allows modifications to the administrative terms of gifts if those provisions become impossible, unlawful, or substantially impede the purposes of the donation. Virtually all states have enacted the "Uniform Prudent Investor Act" and the "Uniform Prudent Management of Institutional Funds Act" that regulates investment and spending decisions related to trust funds and charitable and nonprofit endowments. Additionally, state property codes, trust codes, and nonprofit corporation legislation may contain relevant requirements. The details of these legislative acts are not discussed in this brief comment. Financial managers must be informed concerning these requirements and should obtain professional advice. In general, in the absence of written consent from a donor, modifying donor restrictions may require court action based upon unanticipated changed circumstances, etc. A charity should lawfully and carefully undertake any restriction changes as sloppiness may impose personal civil and criminal liability on the board of directors of the charity. Allegations of breach of fiduciary duty or charity fraud, even if ultimately dismissed, are a public relations and legal nightmare. A variety of state and federal officials, especially the state Attorney General, may be authorized to take action. Another source of restrictions are those found in the basic organizational documents of the charity such as Article of Incorporation, Bylaws, and the application for tax exempt status filed with the Internal Revenue Service. Does the donation and its restrictions fall within the stated purposes of the charity? Note, for example, that tax

regulations generally restrict political action by a tax exempt nonprofit entity. The IRS has information on its Website. Again, this is a detailed topic beyond the scope of this brief comment. Tax issues abound in all charitable giving and require detailed professional analysis. If the donor receives something in return for the gift, the charitable deduction is reduced accordingly and may be eliminated altogether. The basic rule is that a tax deduction is allowable as a "charitable contribution" if the gift is "to or for the use of" an IRS recognized tax exempt charity [26 U. From this basic concept comes broad standards that prevent the taxpayer or a taxpayer designated individual from personally benefiting from the gift. For example, one might donate money to a college to pay the tuition of a grandchild. This form of earmarked gift with the donor seeking to make the charity or nonprofit a conduit is generally not tax deductible. In contrast, if the nonprofit, through the unimpeded exercise of discretion, selects the recipient of the donated funds, this may be allowable. The charity itself risks its tax exempt status if it operates for private benefit. Earmarking problems may also occur when the gift is to be transferred by the charity to a non-charitable entity. The charity must have complete discretion and control over the use of all donated funds for the donor to receive a charitable tax deduction. Best practice is for the charity to have a preexisting relationship with the non-charitable entity, perhaps, for example, providing funds for educational seminars. In like manner, a variety of tax questions surround partial transfers of ownership or a contribution of property that a taxpayer retains a right to use. Additionally, without reversionary language in documents such as deeds or contracts, the gift may be irrevocable. In fact, simply returning an irrevocable gift may in itself create tax issues for both the charity and the original donor. Consult a tax expert. Conditioning a gift upon a future event may prevent a charitable tax deduction unless the possibility that the gift transfer will not occur is "so remote as to be negligible" [26 C. Restrictions generally may reduce the fair market value of the gifted property and hence the amount of the allowable charitable deduction. Note that IRS rules address the deductibility of gifts to a U. Such actions may trigger both tax exemption and anti-terrorism legal issues. Violations of criminal law may occur. A properly structured "friends of" organization must not merely be a conduit for the foreign entity. Independent control and discretion by the U. This area, as do all tax matters, requires expert consultation. Private foundations must consider tax issues when making grants to individuals for travel, scholarship, and study. Does the granting process have objective standards that are followed in a nondiscriminatory manner? A variety of reporting is required. A donor advised fund allowing a donor to make non-binding recommendations, or a provision in the granting document that specifies another charity to receive the gift under specified circumstances a gift over provision may allow some measure of donor control while preserving tax deductions. Special tax considerations surround "deputized fundraising" under which a religious organization may make staff members responsible to raise support for their ministries. In broad and incomplete overview, the IRS requires that the religious body control the donated funds in a budget process and that salaries be paid without reference to amount of money that an individual raises. Be alert to conduit issues and obtain expert advice. Crowdfunding has similar issues and must be carefully structured if donors desire a charitable donation tax deduction. This comment provides a brief and incomplete educational overview of a complex topic and is not intended to provide legal advice. Always consult experienced legal, tax, and accounting professionals in specific situations.

**Chapter 2 : The Catholic Foundation > Home**

*This comment briefly provides an incomplete educational overview of donor restricted gifts. Always consult an experienced attorney and tax accountant in all charity and gifting matters.*

Leslie Professor of Law, Benjamin N. The introduction to the article is available below: The donated art was part of a larger collection amassed by her late husband, Alfred Stieglitz, a prominent artist and collector. The donation to Fisk, a small university with no museum experience, was unusual. Instead, she imposed a series of restrictions designed to ensure both the proper display and care of the art work and the creation of a perpetual memorial to Alfred Stieglitz. She also required that the Collection be housed in as safe a building as possible and kept under surveillance at all times when the room was not locked. Like many donors who make restricted gifts, she failed to imagine how life might change in the years following her death. She gave no guidance as to how Fisk should respond to changed circumstances or as to which of her objectives “benefitting Fisk, creating a perpetual memorial in honor of Stieglitz, keeping the Collection together, prohibiting sale of the Collection, and ensuring the Collection remained in the South” should be given priority in the event that changed circumstances should cause them to come into conflict. Fisk was on the brink of insolvency, and had to choose whether to close the University and relinquish the Collection, or find a way to replenish its endowment and properly care for the Collection. Fisk decided to sell two paintings “including Radiator Building. The Tennessee Attorney General approved of the sale, subject to certain conditions, and Fisk, seeking court approval, filed an action for a declaratory judgment. After six years of litigation and two appeals, a chancery court granted Fisk permission to sell a fifty percent interest in the Collection to the Crystal Bridges Museum in Arkansas for thirty million dollars. The deal allows Fisk to exhibit the Collection six months of every year. The payment of thirty million dollars will ensure both that Fisk will survive and that it will be able to afford to properly care for and exhibit the artwork. Why did resolution of this conflict require six years of litigation and the expenditure of enormous amounts of charitable and public dollars? The blame lies with the law itself: The fact-specific cy pres standard also enabled the Tennessee Attorney General to make it extraordinarily difficult for Fisk to craft a solution involving entities located outside the state of Tennessee. Yet what the law giveth, it taketh away: Instead, enforcement power is given to the attorneys general of each state. I show how application of certain UTC provisions to the Fisk case would have reduced the length of the litigation and the corresponding waste of charitable assets, to some degree. I then argue that further reforms are necessary. I suggest that perhaps the time has come to consider limiting the duration of restrictions on charitable gifts. To offset any chilling effect that such a time limit might have on charitable giving, we might allow donors and their heirs to enforce restrictions during the period of enforceability.

**Chapter 3 : The Unraveling of Donor Intent: Lawsuits and Lessons | Planned Giving Design Center**

*As explained in previous issues of Professional Notes, NYPMIFA brought many changes to the NPCL. 12 Among other changes was a re-codification and fairly substantial revision of the doctrines of cy pres and equitable deviation as applied to restricted gifts held by New York's not-for-profit corporations (including when they are serving as.*

Cy Pres and Equitable Deviation Download PDF Almost as long as there have been gifts to charity, there have been donor-imposed restrictions that either fail or become outdated in some other way. The reasons for this are many: In the future, it is possible that technological breakthroughs, climate change, terrorism, political upheaval, and other developments will create changed circumstances that few today would imagine. If a donor is able and willing to consent to changes in a gift restriction in order to address these developments, no legal issue is presented. But when the donor has died or is a corporation that has gone out of business, or if the donor refuses to agree to a change, a legal remedy is usually needed in order to deal with an outdated restriction. Board-restricted funds are not covered in this issue, because unilateral board action is ordinarily sufficient to lift or modify a board-imposed restriction. Evolution of the Standard. Impossibility, Illegality, Impracticability, and Wastefulness. For example, if the donor specified that a charitable trust fund was to support the Department of Home Economics at a university, and the university eliminates not only the department but also any specialized area of study focused on home economics, then adherence to the charitable purpose has become impossible. It will be of interest to see whether courts apply an economic or efficiency analysis. It is the doctrine fashioned by courts of equity to deal with administrative or procedural restrictions imposed by a donor, rather than restrictions on charitable purpose. Equitable deviation is most often used to modify or remove restrictions that a donor placed on the sale or investment of donated property. In , a Pennsylvania court applied the doctrine of equitable deviation as the basis for approving a release from certain restrictions on the loan of artwork by the Barnes Foundation. The court found that the restrictions disallowing the lending and removal of paintings from the premises of the Barnes were administrative only, and therefore the doctrine of equitable deviation could be applied to lift them. However, it may be possible in some cases for an organization and its legal counsel to arrive at a construction of the terms of a charitable gift that allows flexibility without need of going to court. However, it probably would not be possible to interpret such a gift to cover the funding of soup kitchens outside the specified city or the funding of a homeless shelter. The systems are similar but different. It does not mention illegality as a predicate for relief, although illegality is arguably subsumed within the concepts of impossibility and impracticability. Notice to the donor is limited to the actual donor and anyone he may have designated in the gift instrument to act in his place; executors, heirs, successors, assigns, transferees, and distributees are expressly excluded. In the past, the NPCL expressly prohibited the use of its provisions for the purpose of converting an endowment fund into a non-endowment fund, which made it necessary to invoke EPTL Section Invocation of the EPTL was also needed in order to seek a modification rather than a mere release of a restriction. But resort to the EPTL for either purpose now seems needless. As with any litigation, there are risks: For a donor concerned about the impact of changing circumstances, one alternative is a community foundation such as The New York Community Trust.

**Chapter 4 : The Continuing Problem of Cy Pres | Pennsylvania Fiduciary Litigation**

*The conflict regarding enduring donor control over property gifted for charitable uses implicates issues of current relevance to donors and nonprofit charitable organizations, and to those who represent them. Not surprisingly, these issues, and the possible ways of both addressing and accounting for.*

The purposes of the gift are no longer appropriate X It is also important to note some of the common triggers prompting the donor lawsuits. These concerns were apparently largely ignored. Can that donor or descendants take action? Effectively pursuing relief will likely require three things: A Written Document Donor intent is a malleable concept; a written document provides clarity for that concept. Without clear written gift terms, intent is difficult to interpret several years down the road when the parties to the transaction are unavailable and the charitable environment has changed. The written document may include a written directive accompanying the transfer of the gift, a gift through will or other recorded document, or a formal gift agreement signed by both parties. Even documents have limitations. Since the documents are generally prescriptive and direct how the gift will be managed rather than expressing the charitable outcomes from the operation, the written instructions may not be sufficient to provide absolute guidance to charities, courts, or descendants. The document is, however, an essential starting point. Standing to Sue Next the party bringing suit against the charity to compel compliance with gift terms must have standing to sue. Standing to sue, in the broadest terms, means the individual or entity bringing a lawsuit against another must have a nexus to the action or stake harm or potential harm in its outcome. Without this nexus, the suit will not advance, which is why many of the cases cited above focus on the issue of standing. Donors and their descendants do not necessarily have standing. For many years, the rule in most state courts has been that a donor does not have standing to sue a charitable organization to enforce a gift restriction. This principal, arising from the common law, is based on the premise the donor relinquishes all rights in the property when the gift is made. In the leading case on this point, *Carl J. The nursing school closed*, the funds were diverted to another purpose, and the donor filed suit seeking a temporary injunction, an accounting, a reestablishment of the fund in accordance with the gift agreement, or, a gift over to the Bridgeport Area Foundation. The trial court ruled the donors had no standing to sue. The sole issue in the appeal was whether or not the Connecticut Uniform Management of Institutional Funds Act established standing for a donor to bring suit to enforce a gift restriction. *Harrington and the Amarillo Area Foundation* appointed by Ms. Harrington had created a significant endowment with the Metropolitan Opera to fund traditional opera, and the suit alleged they had applied the funds for purposes outside that scope. In a New York case, *Smithers v. On the facts*, the Court concluded the donor or his family was often in a better position than the Attorney General to enforce gift intent. In those facts, the L. In October, L. Research Foundation used the UCLA Foundation and the Regents of the University of California for specific performance of the gift agreement alleging the funds had been used for purposes other than those specified in the gift agreement. The UCNLA Foundation and the Regents answered alleging the gift created a charitable trust which only the California Attorney General had standing to enforce, moving for judgment that the donor lacked standing to bring the action. The Robertson case is a perfect example. Few donor families have such resources, and imaging state Attorneys General in states with tight budgets to allocate such funds is unlikely. Issues for Charities in Addressing Change of Purpose or Function It is almost inevitable that charities will experience a need to make changes to long-term gifts. The need for change may result for a variety of reasons. When problems arise, charities should understand the options for resolution. In order of facility, those include: Negotiating change of purpose with living donors. While donors who make gifts relinquish all control over contributed property, the provisions of UMIFA and UPMIFA allow charities to negotiate a change of purpose in long-term gift agreements with living donors. This means charities with living-donor gift may have the opportunity to examine existing documents renegotiate gift terms to provide flexibility over time, a moderation of purpose, or an alternative purpose if they act in a timely manner. It is also the option with the lowest expense ratio. Making changes pursuant to terms of the gift agreement. If possible, gift agreements should contain flexibility to make non-judicial changes with an emphasis on the triggers for change and clear

direction on how that decision is made. For planners, this adds an extraordinary drafting challenge since it is difficult to take the gift through a period of 10, 25, 50 or even years without knowing the environmental, cultural, and economic changes that will occur over that time. The alternatives may include secondary uses for the gift at the same institution, a gift over transferring proceeds to a succeeding charitable institution, or other creative alternatives. The document should designate individuals responsible for making changes to the gift purpose. This group may be the same group set out in the paragraph above who determine it is time to make a change or it may be a different group. The document should also designate the type of changes that are appropriate without court approval, and what to do if there is conflict among the appointed group. Placing discretion in a group qualified to make those decisions based on the facts and circumstances at the time is a principal used in multi-generational trusts and makes those trusts effective long after the grantor is there to make decisions. The Attorney General must be notified and allowed to be heard. These hearings may not only be costly, but unpredictable. The Lessons The current cases “ and the stream of donor intent clashes reported in the media “ offer many valuable lessons for donors and charities involved in creating and managing long-term gifts. As with most good lessons, these principles are more practical than legal since the legal outcomes vary depending on states courts and case facts. Five Lessons for Donors The following five principles should offer guidance to donors who want to create permanent gifts for charitable institutions. Planning is essential for the long-term effectiveness of gifts. The donor and the charity should make sure they understand donor intent, and the long-and short-term purposes of a gift. The exercise is not natural. Most of us shape our thinking by events, facts, and circumstances of today rather than attempting to envision changes of the future. For example, it might have been difficult for a donor in the s who wanted to create an endowment to fund homes for unwed mothers to envision the social and cultural changes that would occur by the s that eliminated the need for such hideaways for unwed mothers. Execute a clear written document governing the gift. If the gift is made through bequest, consider executing a gift agreement during life and incorporating that document by reference under the document governing the bequest. Remember, perpetuity is a long time. Many gifts “ especially those created in endowment form “ are doomed to outlast their gift purposes and terms. The best gift agreement will anticipate the impossible to imagine. What if the program is discontinued? What if the charity is dissolved? What if the charity merges with another charity? What if the fund produces more than is required by the original gift purpose? What if the funds are no longer needed for that purpose? Who will make the decisions about how changes are to be made? Under what circumstances does the donor want changes made without judicial intervention? Every donor may have different answers to these questions, but they should be asked and answered. Advisors should begin this process with donors. What does the donor hope to achieve? What are the measurable outcomes? Consider accountability, measurement of results, and reporting to the community to ensure the charity remains focused on the outcomes. There is one caveat. Consider including a gift over or reverter to provide a solid legal platform to enforce the gift. While it is clear state courts are moving away from the common law rule denying a donor standing to sue, and towards a rule giving donors and their descendants the ability to enforce gift terms, results may vary from state to state. Five Lessons for Charities Charities also have much to learn about the management of long-term gifts. Change in the effectiveness of a long-term gift is inevitable, although it is always less clear how that need for change will manifest. The best approach for charities is to plan for change and manage those changes wisely. Consider these five recommendations: The standard gift agreement should include either term-limits on donor gift restrictions or make provision for change in the document subject to certain triggers. This seems obvious, but too many charities are unable to put their hands on key donor documents even 20 years after the gift “ and have little chance of finding those documents after 50 or years. Gift purposes become more a matter of folk lore than legal reality. Institutional policies are the smartest way to ensure consistency. Also keep records of planning sessions and donor conversations. These contemporary recorded observations may be valuable to later generations in interpreting donor intent. Some charities include these records as a part of board minutes when the gift is reported and accepted because these records are retained as a matter of law. Stewardship involves engaging in regular communication with donors and their families about the use and outcomes of the gift. Engaging with lower generations helps build relationships that may later avoid conflict. In fact, they

rarely do. The policies should also create an internal committee to that provides oversight of long-term gift management, and identifies problems early. When things begin to go bad – either because of disagreements with family members or an unanticipated turn in the road – address the issues early. In most cases, it will be beneficial to involve family or original advisors to provide input about options. Problems generally grow worse – and relationships deteriorate – when no action is taken. Just deal with it. Final Thoughts Good gifts are a matter of planning. Donors need to carefully express their goals and objectives and think long-term in the impact of their gifts. Advisors should encourage donors to explore the long-term use of the gift, design flexibility into the document, and discuss plans with the charity before making the gift final. And charities should develop standards with which to review long-term gifts, should encourage the use of gift agreements providing a format to advisors and donors, and should remaining in ongoing communication with donors and their families.

**Chapter 5 : Some Legal Aspects of Donor Restricted Charitable Gifts | HuffPost**

*] RESTRICTED CHARITABLE GIFTS pres. Cy pres doctrine empowers courts to modify or release donor restrictions when compliance with those restrictions becomes.*

Summary More and more donors of charitable gifts are specifying the exact use to be made of the gift. In this substantive article, Noblesville, Indiana attorney Eric A. Manterfield answers this and other questions about perfecting donor intent. Published in Jun By Eric A. Manterfield More and more donors of charitable gifts are specifying the exact use to be made of the gift. It satisfied a need of the charity and it fulfilled a wish of the donor. But times change, of course. A gift made in perpetuity for a particular purpose may, in time, no longer make any sense. The needs of the charitable organization will also change over time; may the charity use the donation for its greater need beyond the restrictions imposed by the donor? What steps can be taken to avoid these problems? The donor may have a general or even specific purpose in mind for the gift. The charity knows why it needs the money. The donor knows the purpose for which the gift will be made. The donor no longer has any legal right to direct how the funds are to be used. Who has standing to change the restrictions imposed by the donor? May the charity unilaterally change the restrictions? Must approval be obtained from someone before the change can be implemented? What could go wrong? Here are several cautionary tales: Albert Barnes in to house his extensive impressionist, post-impressionist and early modern art collection. Barnes housed his collection in a modest structure in Merion, Pennsylvania and specified that it could not be moved nor could any art be sold or even loaned to other museums. The trustees of the Foundation filed a lawsuit in , asking permission to move the collection to a new building to be constructed in downtown Philadelphia. Finally, the Friends of the Barnes Foundation and the local government decided in June of not to appeal this decision, ending the litigation. Research and Education Foundation The L. After judgment on the pleadings was entered in favor of UCLA, the issue on appeal was whether the gift agreement created a contract subject to a condition subsequent or a charitable trust. While the parties argued that the answer to this question would determine whether the Foundation had standing to enforce the agreement, the California Court of Appeals held that the Foundation had standing regardless of the resolution of that question. The Court of Appeals ruled that the agreement was a contract subject to a condition subsequent and that the Foundation had standing to bring suit to enforce the contract. While Princeton has devoted a substantial portion of the donation to fund the operating budget of the Woodrow Wilson School, it has also devoted significant dollars to other purposes. Following the death of Mrs. Robertson in , Mr. Robertson wrote to Princeton to express his displeasure at the low number of foreign service graduates. The school responded by saying the world had changed. New Jersey is one of the few states which have granted the right to sue to donors and their representatives. Shortly before the trial was set to begin on January 20, , the litigation was settled. Maddox were killed in a boating accident. One year after their deaths, the trustees moved the Foundation to Mississippi, where it was reincorporated as a Mississippi charity. It subsequently invested the assets in two sports teams and engaged in other non-traditional expenditures. Not surprisingly, the court ruled that the Foundation had no power to remove itself from Tennessee. Thereafter, the Attorney General of Mississippi was granted a temporary restraining order to prevent the assets from leaving Mississippi. The litigation was finally settled by dividing the assets between the two organizations. Eli Lilly, the grandson of the founder of Eli Lilly and Company in Indianapolis, created a charitable trust of which Earlham College was named as trustee, to own and operate Conner Prairie, an early history museum. Obviously, Earlham had a conflict of interest as the party which decided how much income was not needed by Conner Prairie, which could then use the unneeded money for its own purposes. The Attorney General of Indiana stepped in and eventually negotiated a settlement between the parties under which the College resigned as trustee and the endowment created by Mr. Lilly was divided between Earlham and a newly independent Conner Prairie. The fund may produce more income than is needed for the restricted purpose. Three constitutional requirements must be met: The plaintiff must individually have an actual or imminent injury. The lawsuit cannot be filed to protect the rights of third parties. The graduates did not have standing. Does the donor have standing to enforce the gift

restrictions? Before the donor can take an income tax deduction for the gift, the donor must meet six conditions: The donor, in order to obtain the charitable income tax deduction, must irrevocably give control of the asset to the charity. The donor has arguably no standing thereafter to bring a lawsuit against the charity that has used the donation for an impermissible purpose. For example, the Carl H. Herzog Foundation filed suit against the University of Bridgeport, alleging that the University had used the funds for an impermissible purpose. The Supreme Court of Connecticut ruled that the Foundation had no standing to enforce the gift restrictions: Where property is given to a charitable corporation and it is directed by the terms of the gift to devote the property to a particular one of its purposes, it is under a duty, enforceable at the suit of the attorney general, to devote the property to that purpose. As a matter of common law, when a settlor of a trust or a donor of property to charity fails specifically to provide for a reservation of rights in the trust or gift instrument, neither the donor nor his heirs have any standing in court in a proceeding to compel the proper execution of the trust. The court ruled that the plaintiffs had no standing to enforce the gift restrictions. The widow of R. Brinkley Smithers filed suit after his death in 1987, alleging that St. Modification of gift restrictions short of litigation To overcome the uncertainty about standing, The Prudent Management of Institutional Funds Act was adopted at the annual meeting of the National Conference of Commissioners on Uniform State Laws. The new Act permits the release or modification of donor restrictions under four circumstances: What procedures might be followed by a charitable organization which wishes to modify restrictions which may have been imposed upon a charitable gift years previously? Explain the new circumstances which lead the charitable organization to seek a modification. Were these new circumstances foreseeable when the gift was made and the restrictions were imposed? If the donor is still living and capable, it may be relatively easy to obtain the consent of the donor to the proposed modification. With whom does the charity consult? I recommend you err on the side of casting a wide net when answering that question. Certainly, the spouse of the donor should be consulted. Encourage the spouse to permit consultation with the adult children of the donor. Does the court have the power to modify the restriction in spite of the objections of the family? How can the cy pres doctrine be utilized? Recall that application of the cy pres doctrine requires the court to determine the overriding goal of the donor. If the donor really wished to support a particular program and if the charity could still carry out that program even though it does not really want to do that any more, I submit that the doctrine is inapplicable. The owner of the old English Hotel in downtown Indianapolis, for example, donated the Hotel to the City of Indianapolis when he died; he specified that the property was to be used to house Indianapolis charitable organizations. English specified that the City could not sell nor demolish the Hotel. Unfortunately, the Hotel was in deplorable condition when Mr. The court determined that his overriding goal was to provide a central location in which Indianapolis charities could be located. Because the sale prohibition inhibited the accomplishment of that goal, the court removed the restriction and the Hotel was sold and demolished. The proceeds were then used to purchase a building which houses Indianapolis charities. Could the City of Indianapolis have successfully sought application of the cy pres doctrine to sell the building, so it could use the proceeds to build an NFL stadium simply because that was a higher priority? Could a charity seek application of the cy pres doctrine to remove restrictions on a planned gift so it could use those funds for an entirely new purpose, even though the old purpose was still capable of achievement? Negotiating New Restricted Gifts The Act makes it easier to obtain a release or modification of donor restrictions; however, the procedures outlined in UPMIFA cannot take the place of a thoughtful gift agreement between the donor and the charitable organization. Each brings a different perspective to the process. The donor undoubtedly has a specific program in mind when considering a gift. It is the immediacy of the result which may be foremost in the mind of the donor. The donor may not be thinking as much about the long-term use of the gift in perpetuity. The charity may have an immediate need and the donor wishes to satisfy that need. However, if the gift is restricted to that immediate need in perpetuity, the horizon of the donor and of the charity may need to be expanded. Another example is a gift made in the 1800s to support a home for unwed mothers. Because society viewed these women as social pariahs at the time, these homes existed around the country to shelter them from public view during the pregnancy. As the perception of unwed mothers changed over time, however, most of these homes went out of existence. This change in society was undoubtedly not

anticipated by donors fifty or more years ago. What happens to those restricted funds? Other donors may seek to impose their own opinions on a charitable organization by restricting the use of the donation to white males or may seek to restrict the use of the donation by those people viewed by the donor as undesirable. The charitable organization needs to educate its volunteers, its donors and their advisors about its standards and policies about the acceptance of restricted gifts. Its staff must be fully trained in these standards and policies before they approach prospective donors. The charity should consider ethical standards for its dealings with prospective donors, should educate its own Board of Directors to become ambassadors for the charity within these guidelines and should educate and train its own staff.

**Chapter 6 : Donor Restrictions Archives | CharityLawyer**

*involving donor-restricted charitable gifts, there do not appear to be any published materials that provide one source dealing with all of the various legal issues. This article is not meant to be a comprehensive.*

Restrictions give donors comfort that their gift will be used as they envision. Donor restricted funds are created when gifts are received subject to donor stipulations or a binding understanding with the donor. Donor restricted funds are similar to an irrevocable gift subject to conditions. By agreeing to accept the gift on the terms and conditions specified by the donor, the charity essentially enters into a contract with the donor to adhere to the stated terms and conditions of the gift. Where there is no written gift agreement, the terms of the solicitation material may serve as the gift instrument. For example, the designation of a fund to support scholarships is a restriction on the use of the funds; whereas, a designation of a fund as an endowment fund is a restriction on the timing and amount of the expenditures from the fund. The terms of the Act are subject to the intent of the donor as expressed in a gift instrument. Thus, the Act is a default rule that is only effective when the donor has failed to express an intention in a gift instrument. For example according to the comments to UPMIFA, an e-mail, a jotted down note clipped to the check, a statement in the memo portion of the check or even the text of the solicitation letter can serve as part of a gift instrument that will override the Act. In addition to the Act, certain gift restrictions can be enforced by donors on the principles of contract law. While contract actions raise questions of donor standing, many foundation grants are specifically drafted to be enforceable contracts that require a reversion of funds upon breach of the terms of the grant. Charities that accept donor restricted gifts need to understand that they are legally required to use restricted gifts as specified by the donor. If the violation is significant, the Attorney General may bring an action to enforce the restriction or object to an attempt to seek a court order permitting a modification of a restriction. To avoid misunderstandings with donors and potential legal violations and to demonstrate good stewardship of its funds, charitable organizations soliciting or managing restricted gifts should take the following steps: Ensure there is a gift agreement or letter detailing the gift restriction for all significant restricted gifts. Consider including the option for the Board to modify the restriction to the closest use that achieves the donors intent in the event the stated use becomes impracticable or is no longer necessary. Consider drafting a more detailed agreement for gifts with significant responsibilities on the charities part such as naming rights gifts. For campaigns that are designed attract a large number of donations, ensure the solicitation language is clear and remains consistent throughout the campaign. For endowment gifts, be sure to include language that gives the charity a reasonable amount of flexibility under the law. Finally, for dormant gifts that can no longer be used for their original purpose, the charity has the option to ask the donor to consent to a modification of the restriction. Alternatively, the charity can petition the court to approve of a modification of a restriction that no longer makes sense for the organization. In such cases, the charity is required to notice the Attorney General. If there are no objections and the charity can state a reasonable case for its request, the charity has a good case of having the modification approved. To take advantage of this process, the charity merely has to notify the Arizona Attorney General of its intent and wait 60 days. If the Attorney General does not object, the modification is automatically approved. While its important to understand the legal implications of gift restrictions, the larger issues is gift stewardship. Charities that fail to adhere to the wishes of their donors will have difficult time attracting follow on gifts. Ellis advises tax-exempt clients on federal tax matters nationwide. If you are seeking legal advice, contact info carternonprofitlaw.

**Chapter 7 : Table of contents for Nonprofit resources**

*This use of a surrogate donor would allow for specific representation of donor interests in hypothetical cy pres proceedings. Establish a Foundation Establishing a private foundation that allocates the bequest over time can provide assurance that donations are spent in accordance with the donors' wishes.*

**Chapter 8 : Managing Donor Restricted Gifts | CharityLawyer**

*purposes without donor approval or a cy pres authorization, the donor may want to challenge the charity's actions in court, but may not have standing to do so. 4 Issues involving donor intent and.*

**Chapter 9 : Changing Donor-Imposed Restrictions: Cy Pres and Equitable Deviation | The New York Com**

*to Cy Pres Reform: Principled Practice to Remove Dead Hand Control of Charitable Assets, 58 CASE W. RES. L. REV. 97, () ("All three [cy pres] requirements are fact-specific and, therefore, subject to a measure of.*