



This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Honoring Donor's Intent: A Legal and Ethical Obligation

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Gifts to charitable organizations come in many flavors. Most frequently, donors give without stipulating any restriction on the gift, instead trusting that their gifts will be used in furtherance of the organization's mission, and that the organization is in the best position to make the determination as to how to effectuate that purpose. Some gifts, though, come with strings attached. Understanding whether and how a gift is restricted is of utmost importance to charitable organizations as donor restrictions are not advisory - they are binding, legal prohibitions on expending the gifts in any manner outside of the expressly allowed purposes.

Types of Restrictions

Gifts can be restricted as to time, restricted as to a specific purpose, or both. Time restrictions on gifts require that an organization hold a gift for some period of time, or more commonly, in perpetuity. Endowment funds are a subset of time-restricted funds that are expendable only in a set amount each year. This amount is typically determined under an organization's spending policy and most commonly is between 2% and 4% of the fund's value each year. An organization may not always be aware that a gift is meant to be an endowment fund when receiving a gift from an estate or trust. It is important to review the granting language of the gift. If it contains phrases like "to be held in perpetuity" or if the amount to be used each year is limited to the "income" from the fund, such gifts are time-restricted endowments.

Note that endowment is often used colloquially to mean a "rainy day fund." It also often refers to funds that a board has set aside or segregated to maintain the long-term health of an organization. These funds that are not restricted by donors but are restricted by the board are more properly termed "board-restricted endowment" or "quasi-endowment." Board-restricted endowment funds are not legal endowment funds under the Uniform Prudent Management of Institutional Funds Act (UPMIFA), and can be freely "unrestricted" by the organization's Board of Directors.

Purpose restrictions are more straightforward. A donor will indicate a specific purpose for the gift - for example, perhaps a donor would like to make a gift to the donor's alma mater to be used to provide scholarships, or the survivor of a medical condition may wish to make a gift to a hospital or other charity to support research efforts about that medical condition.

Some gifts are both time and purpose restricted - for example, in the scholarship example, instead of providing a scholarship once, the donor may wish that the scholarship exist in perpetuity.



Concerns with Restricted Gifts

It is important for organizations holding restricted gifts to be aware that the restrictions are legally bind on the organization. In other words, the organization must honor the restriction or risk adverse legal action. Legal action can be brought against a charitable organization by an unhappy donor, or in some states, by the donor's family if the donor is deceased, or by the state attorney general (in most states, the state attorney general serves as a charitable watchdog to protect residences of the state).

So what happens if a restriction is no longer viable? For example, a medical research fund restricted to research about an eradicated disease like smallpox or a largely eradicated one like polio makes less sense in today's world. Similarly, restrictions that allow that a fund may only be expended to provide scholarships for female students to study home economics would be difficult to fulfill at most educational institutions. **An organization may not unilaterally modify a fund restriction even if the fund's use is impossible to achieve** absent an agreement allowing the organization to do so. Instead, an organization must follow the applicable provisions of UPMIFA as adopted in the organization's state, which often requires the involvement of the state attorney general.

Best Practices

As in many other circumstances, an ounce of prevention is worth a pound of cure. All charitable organizations should consider the following best practices when it comes to maintaining their restricted funds:

- Develop a restricted gift agreement that clearly delineates how a gift will be used and the organization's rights to modify any restrictions should the restrictions become impossible or impracticable to achieve.
- Review granting language for any estate or trust gift closely. Organizations that receive gifts are entitled to a copy of the Will or Trust in many states, or at the very least the provisions of the Will or Trust under which the organization receives the gift. If an organization chooses to accept an estate gift, it comes with the strings attached in the granting language, whether the organization likes them or not.
- Note any restrictions in the organization's files and make sure to track the restrictions carefully. Thorough records are an organization's best friend should the organization need to seek a modification or removal of a restriction on a fund held for its benefit.
- Adopt a spending policy if the organization does not currently have one, or if it does, revisit every few years to confirm that the spending policy matches the needs of the organization and complies with UPMIFA as adopted in the state of formation for the organization.



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An earlier version of this article was published to Taft's website on March 3, 2022. That version may be accessed at: <https://www.taftlaw.com/news-events/law-bulletins/honoring-donor-s-intent-a-legal-and-ethical-obligation>