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Restricted Gifts and Endowment Funds

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RESTRICTED GIFTS AND ENDOWMENT FUNDS
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I. Introduction.

This article is intended to provide an overview of the basic rules and issues related to restricted gifts and endowment funds. The article will focus primarily on the state of the law in Texas, but it will occasionally note key differences in other states as well.

II. Uniform Prudent Management of Institutional Funds Act.

A. Purpose. The Uniform Prudent Management of Institutional Funds Act (the “*Uniform Act*”) was approved in 2006 by the National Conference of Commissioners on Uniform State Laws (“*NCCUSL*”) and recommended for enactment by the states. The Uniform Act was intended to provide necessary updates to the outdated investment, management, and spending standards of the prior act, the Uniform Management of Institutional Funds Act or “*UMIFA*”.¹ The Uniform Act aimed to remove the uncertainty regarding applicable prudence standards, adopt a modern prudence standard, modernize the expenditure rules in order to provide more guidance and flexibility to institutions, and update provisions related to the release and modification of fund restrictions.

B. Adoption. At the time of this writing, the Uniform Act has been adopted in 49 states, with Pennsylvania being the only state that has not adopted at this time.² Texas adopted the Uniform Act with a few changes in 2007, and it is located in Chapter 163 of the Texas Property Code.³ UPMIFA went into effect in Texas on September 1, 2007. The discussion in this article will focus on the Uniform Act as adopted in Texas (“*UPMIFA*”). All future references to UPMIFA in this article will refer to the Texas Uniform Prudent Management of Institutional Funds Act unless otherwise noted.

C. Application. In Texas, UPMIFA applies to institutions that are managing institutional funds or endowment funds. The effect of UPMIFA depends on whether an organization manages one or more institutional funds or endowment funds, as defined by UPMIFA. Certain management and investment rules apply to all institutional funds, and additional expenditure and spending rules apply only to endowment funds.

D. Donor Intent. Any conversation about restricted gifts and endowment funds necessarily brings up the issue of donor intent. The drafters of the Uniform Act intended to give special importance to a donor’s intent as it is expressed in a gift instrument. Many UPMIFA provisions are “subject to the intent of the donor expressed in the gift

¹ See Unif. Prudent Mgmt. of Institutional Funds Act with Prefatory Note and Comments (2006), which is attached as Exhibit A to this article and available on the National Conference of Commissioners on Uniform State Laws website at <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=d7b95667-ae72-0a3f-c293-cd8621ad1e44&forceDialog=0>; see also Tex. Prop. Code § 163.002.

² See Uniform Law Commission, Prudent Management of Institutional Funds Act Enactment Map, <https://www.uniformlaws.org/committees/community-home?communitykey=043b9067-bc2c-46b7-8436-07c9054064a3&tab=groupdetails> (last visited Jan. 2, 2019).

³ Chapter 163 of the Texas Property Code is attached as Exhibit B to this article.

instrument,” leaving most UPMIFA provisions as default provisions. To the extent the gift instrument conflicts with UPMIFA, the instrument will typically control.⁴

The question of donor intent is an extremely important consideration from an institution’s point of view. Questions about donor intent have been in the public eye frequently over the last number of years due to a growing number of law suits and media stories in which a variety of institutions have been accused of disregarding or misconstruing a donor’s intentions regarding the use or treatment of funds or donated assets. Conflicts related to donor intent can have significant implications for a charity from a legal and financial perspective, but—perhaps even more importantly—can have disastrous implications for both donor and public relations.

For example, in 2008, Princeton University settled a long legal battle over accusations that the university’s use of an endowment providing funding for the Woodrow Wilson School of International and Public Affairs was contrary to the donor’s intent. The suit attracted significant media attention. A settlement was reached in which the university agreed to pay out almost \$100 million in combined legal costs and funds to a new organization created to carry out the specific intentions of the donor.⁵ While both sides in the Princeton case claimed victory following the settlement, and the university claimed that annual giving had increased since the suit began,⁶ a number of universities have received negative press related to a growing concern that universities are increasingly and particularly likely to disregard donor intent as they feel inclined.⁷

Conflicts related to donor intent are not exclusive to university endowment funds. A variety of charitable organizations, such as museums, parks, and centers for the arts, have had to navigate donor intent issues in recent years.⁸ It is important to note that donor intent

⁴ Certain duties enumerated by UPMIFA, such as the duty of care, are mandatory and cannot be altered or eliminated by a gift instrument or donor. See Unif. Prudent Mgmt. of Institutional Funds Act § 3 cmt. on purpose and scope, *supra* note 1.

⁵ See Princeton University Robertson Lawsuit Overview, www.princeton.edu/robertson/documents/docs/Robertson_Settlement_Agreement-Executed.pdf.

⁶ See W. Raymond Ollwerther, *Robertson Lawsuit Settled*, PRINCETON ALUMNI WEEKLY, Jan. 28, 2009, <https://paw.princeton.edu/article/robertson-lawsuit-settled>.

⁷ See, e.g., Anne D. Neal, *Will Hopkins Respect Its Donor’s Wishes?*, THE BALTIMORE SUN, Oct. 16, 2013, <https://www.baltimoresun.com/news/opinion/bs-xpm-2013-10-16-bs-ed-university-donations-20131016-story.html>; Kelsey Bray, *Donor Aims to Block Ranch Sale by UW, CSU*, WYOMING EAGLE TRIBUNE, Oct. 18, 2012; Katherine Mangan, *Tulane U. Wins Donor-Intent Lawsuit Over Closing of Women’s College*, THE CHRONICLE OF HIGHER EDUCATION, Feb. 21, 2011, <https://www.chronicle.com/article/Tulane-U-Wins-Donor-Intent/126465>; Charles Huckabee, *Ray Charles Foundation Wants \$3-Million Back From Albany State U.*, THE CHRONICLE OF HIGHER EDUCATION, Feb. 15, 2012, <https://www.chronicle.com/blogs/ticker/ray-charles-foundation-wants-3-million-back-from-albany-state-u/40535>.

⁸ See, e.g., Patricia Cohen, *Museums Grapple With the Strings Attached to Gifts*, N.Y. TIMES, Feb. 4, 2013, <https://www.nytimes.com/2013/02/05/arts/design/museums-grapple-with-onerous-restrictions-on-donations.html>; Robin Pogrebin, *Lincoln Center to Rename Avery Fisher Hall*, N.Y. TIMES, Nov. 13, 2014, <https://www.nytimes.com/2014/11/14/arts/music/lincoln-center-to-rename-avery-fisher-hall.html>; Lisa Foderaro, *A Monument to Roosevelt, on the Eve of Dedication, Is Mired in a Dispute With Donors*, N.Y. TIMES, Oct. 15, 2012, <https://www.nytimes.com/2012/10/16/nyregion/fdr-monument-mired-in-a-legal-dispute-over-placement-of-donors-names.html?mtref=www.google.com&gwh=279E728A12AC6B6B4420DE8A79CADF64&gwt=pay>;

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