

## ***Two Sides of the Same Coin:* Legal and Practical Issues in Endowment Investing and Spending**

Carrie Trowbridge  
General Counsel  
The New York Community Trust



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## **About Me**



I am the General Counsel of The New York Community Trust.

Prior to joining The Trust, I served as Associate General Counsel and Director of Nonprofit Practice at New York University.

Previously, I was an associate in the tax-exempt organizations practice group at Patterson Belknap Webb & Tyler LLP, which I joined after serving as a law clerk to the Honorable Charles S. Haight, Jr. in the U.S. District Court for the Southern District of New York.

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## UPMIFA

- ——— **U**niform
- ——— **P**rudent
- ——— **M**anagement of
- ——— **I**nstitutional
- ——— **F**unds
- ——— **A**ct

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### 2009 University Endowment Study Showed...

- 38% of endowment pools underwater as of 12/31/2008
- 26.8% suspending distributions from funds at or below HDV
- 9.5% only distributing interest and dividends

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## Investing under UPMIFA

- **What is an “institutional fund”?**
  - *Not* program-related assets
  - *Not* a fund held for institution by trustee that is not an institution
  - *Not* a fund in which beneficiary that is not an institution has an interest
- **Prudence standard:** “manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.”

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## Investing under UPMIFA

- May incur only **costs that are appropriate and reasonable** in relation to the assets, the purposes of the institution, and the skills available to the institution
- Must make reasonable effort to **verify facts** relevant to the management and investment of the fund

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