



# Can You Modify Restrictions on Charitable Funds?

**Must you always use restricted funds as donors prescribe? A new law gives you more flexibility.**

By Harry W. Drozdowski

Many donors place restrictions on the funds they contribute. These restrictions limit the way you, the nonprofit, can invest and spend the funds (for example, endowment funds from which you can only spend the income), or the purposes or programs toward which you can apply them. You're bound by these restrictions in the same way that a trustee is bound by the restrictions in a trust instrument.

Restrictions on charitable funds usually align with the nonprofit's programs. Over time, however, priorities and programs can change and fall out of sync with restrictions on some funds. In such cases it may be necessary, as a matter of good stewardship and fiduciary responsibility, to explore ways to modify or release these restrictions.

## What Are the Problems with Restricted Funds?

While restricted funds are common, their usefulness is occasionally questionable. Some nonprofits have restricted funds dedicated to projects that have been canceled, leaving them with money they can't use. Other organizations risk having to close their doors unless they can find money for general rather than specialized purposes. Others possess funds subject to impractical

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restrictions (such funds to support students with a major no longer offered by the college).

It can be difficult to persuade a court to release or modify these restrictions, especially if donors aren't available to grant their consent. However, due to the Uniform Prudent Management of Institutional Funds Act (UPMIFA), recently adopted in most jurisdictions, nonprofits now have much more flexibility in dealing with restricted funds.

## What Is UPMIFA?

At its annual meeting in 2006, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and recommended it for enactment by state legislatures to replace the existing Uniform Management of Institutional Funds Act (UMIFA). UPMIFA has subsequently been approved by all states except Florida, Mississippi, and Pennsylvania. (Florida and Mississippi adopted UMIFA, while Pennsylvania hasn't adopted either

of the uniform acts.)

UPMIFA gives boards more clarity in investing and managing assets than UMIFA. It requires the board (and others responsible for managing and investing) to act in good faith and with the care of an ordinary prudent person and notes that the nonprofit may incur only appropriate and reasonable costs. In addition to this update, UPMIFA also added Section 6, which sets forth circumstances in which a nonprofit may modify or release restrictions on funds or endowments.

## How Can You Use UPMIFA to Loosen Restrictions?

First, in Section 6(a), UPMIFA lets you release or modify restrictions on a fund by obtaining donor consent, as long as the fund continues to be used for a "charitable purpose of the institution." This is a big improvement over the predecessor UMIFA, which allowed restrictions to be *released* but not modified. You don't need to get such restrictions approved by the court. You can simply contact the donor and request permission to use the fund for a different purpose or to eliminate the restriction entirely.

In Section 6(b), UPMIFA lets you petition the court to amend restrictions on a fund or endowment without donor consent. You can modify or release a restriction's *administrative* provisions (how assets may be invested and held) if "the restriction has become impracticable or wasteful, if it impairs the manage-

This provision lets you petition the court for permission to invest the funds differently.

ment or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.” For example, if you have a fund that can only be invested in subprime mortgage bonds (which may have seemed like a good idea at the time), this provision lets you petition the court for permission to invest the funds differently.

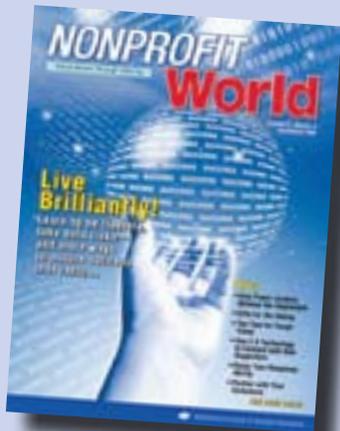
Through Section 6(c), you can modify or release restrictions held on a *particular charitable purpose* if the restrictions have become “unlawful, impracticable, impossible to achieve, or wasteful.” This

application of UPMIFA is perhaps the most useful of all. It gives you the option of petitioning to use restricted funds for general purposes if necessary to stay afloat in tough economic times.

In petitioning for a release or modification described above, the quality and persuasiveness of the petition is crucial. You must convince a judge that modifying or releasing the restriction on a fund is consistent with the donor’s intent and that the charitable purpose of the gift will continue after the modification or release is granted. Every restricted fund has a different story behind it. Be sure to tailor your petition to your organization’s unique story. ■

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