



WHY ILLINOIS CHARITIES SHOULD CARE ABOUT UPMIFA

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The Uniform Prudent Management of Institutional Funds Act (UPMIFA) is a model state law drafted by the National Conference of Commissioners on Uniform State Laws, a distinguished group of legal experts. Completed in 2006, it is designed to replace the 1972 Uniform Management of Institutional Funds Act (UMIFA). Like UMIFA, UPMIFA regulates investment decisions and endowment expenditures for the charitable organizations within its scope.

In order for UPMIFA to become the law of a particular state, it must be passed by that state's legislature. To date, UPMIFA has been enacted in a total of 42 states and the District of Columbia. Only three states (Florida, Louisiana and Pennsylvania) did not consider UPMIFA in 2009. On June 30, 2009, UPMIFA became the law in Illinois.

Q. WHICH CHARITIES AND ASSETS ARE SUBJECT TO THE INVESTMENT PROVISIONS OF UPMIFA?

A. The investment rules of UPMIFA potentially apply to any charity organized as a nonprofit corporation. Assets that are held primarily for investment are covered by UPMIFA; in contrast, operating assets used directly to accomplish a charitable purpose (e.g. buildings and equipment) are not.

Q. WHAT INVESTMENT STANDARDS DOES UPMIFA IMPOSE?

A. UPMIFA provides more detailed investment standards than its predecessor, requiring, for example, a charity and its investment managers to consider not only "general economic conditions" and "the possible effect of inflation or deflation," but also "expected tax consequences," "the role that each investment plays within the overall investment portfolio," "the expected total return from income and the appreciation of investments," "other resources" of the charity, the needs of the charity "to make distributions and to preserve capital," and "an asset's special relationship or special value, if any, to the charitable purposes" of the organization. In general, those responsible for investment management must act "in good faith" and with the care of a prudent investor. Consistent with these standards, asset diversification is generally required.

Q. DO THE ENDOWMENT EXPENDITURE RULES OF UPMIFA AUTOMATICALLY APPLY TO MY ORGANIZATION?

A. No, funds are an "endowment" only if the governing document restricts their current expenditure. A community foundation, for example, might hold funds that are intended to be perpetual, with a restriction in the gift instrument that limits current expenditures. In this situation, the funds would be an endowment, and the UPMIFA endowment expenditure rules would apply, assuming that the charity is a nonprofit corporation.

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Q. HOW DO THE ENDOWMENT EXPENDITURE STANDARDS OF UPMIFA DIFFER FROM UMIFA?

A. Under UMIFA, prudent expenditures from an endowment were permitted to the extent the value of the fund exceeded “historic dollar value.” Now UPMIFA authorizes expenditure under comprehensive prudent standards that require consideration of the permanent nature of the fund and respect the donor’s intent.

In particular, UPMIFA directs charities subject to its rules to consider seven enumerated factors before making an expenditure from a restricted fund: (1) duration and preservation of the fund; (2) the purposes of the charity and the fund; (3) general economic conditions; (4) effect of deflation and inflation; (5) the expected total return from income and the appreciation of investments; (6) other resources of the charity; and (7) investment policy of the charity.

Q. NOT ALL DONOR RESTRICTIONS RELATE TO ENDOWMENT EXPENDITURES. DOES UPMIFA HAVE A GENERAL PROVISION ABOUT RELEASING OR MODIFYING DONOR RESTRICTIONS?

A. UPMIFA recognizes that a restriction imposed by a donor may become impracticable or wasteful or may impair the management of the fund. If alive, the donor may consent to the release of the restriction. If the donor is not available, the foundation can ask the court for approval of a modification of the restriction, provided that the modification is consistent with the donor’s probable intent and that the state attorney general is notified. In contrast, under UMIFA, the only option available to the court was to release the restriction. As adopted in Illinois, UPMIFA also permits the foundation to modify a restriction without court approval if the fund is less than \$50,000 and over 20 years old, provided that appropriate notice is given to the state attorney general and the foundation uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

For further information, including a current list of states in which UPMIFA has been enacted, visit www.upmifa.org.

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