

NCPG September Primer Program

UPMIFA, Endowments and Restricted Gifts

*(Forever is a Long Time: Issues in
Endowment Administration)*

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Overview

Endowments through the Ages

- Endowments as Trusts
- UMIFA
- UPMIFA

Drafting New Agreements and Dealing with Old Agreements



Endowments as Charitable Trusts

*Funds or Property
Donated as a Source
of Income*

- in Perpetuity

English Common Law

*Harvard v. Amory
(1830)*



“Typical” Endowment Language

*“ to The Regents of the
University of California, to
be held in trust...the income
therefrom used to support...in
perpetuity...”*



Endowments as Trusts

Historical Context

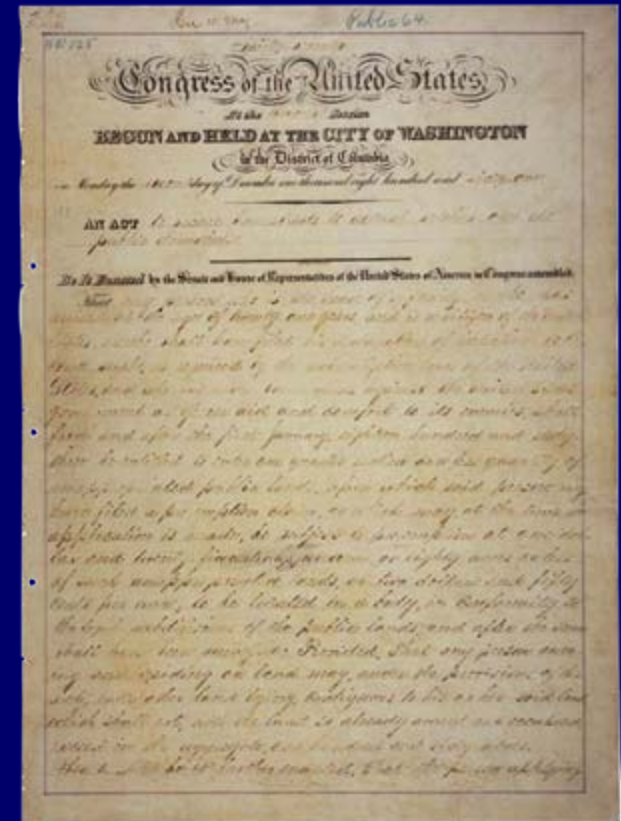


Regents policy on gifts and endowments

The Regents, in their fiduciary capacity as trustees of Endowment Funds, reiterate their long-standing policy that endowment funds and income therefrom should be used for the enrichment of University programs and not for programs for which state funds are deemed requisite for the necessary educational activities of the University

Historical Context – UC Perspective

- UC's First Endowment
- Endowed Chair
- Agassiz (1872)
- Creation GEP (1933)
- Campus Foundations



Endowments under Trust Law - Issues

- **Endowment Investment Practices --**
Many institutions invest to generate “ordinary income” since payout is limited to “ordinary income.”
- **Changing Restrictive Terms --Donor could NOT release a restriction**
 - **UPMIFA (Statute)**

Release of Restrictions –

Percentage of Restricted Funds – Higher Ed

- **Private Institutions – 55% average**
- **Public Institutions – 80% average**
- **University of California - 90-95%**

In recent years, virtually all gifts to all educational institutions are restricted to specific purposes.

UMIFA

(Uniform Management of Institutional Funds Act)

Ford Foundation Study

William L. Cary and Craig B. Bright, *The Law and Lore of Endowment Funds*,

- **Focus on “Total Return”**
- **Spending Policy – reasonable amount of unrealized/ realized gains, as long as historic dollar value maintained**
- **Donor Release Restrictions**

Passage of UMIFA (1972)

California UMIFA expands (1990)

UMIFA - Endowment Expenditure Rate

$$S_i = \alpha E_i \text{ and } E_{i+1} = (1+p) E_i - \alpha E_i$$

- **UC Regents GEP – 4.75% of 60-month moving average**
- **NACUBO Study**
 - **4.4% if > \$1 billion**
 - **4.5% Public Institutions; 4.7% Private Institutions**
 - **5% of a 3-yr moving average**
- **Cambridge Study**

UMIFA - Issues

- **Investment Standards**

- **Conform to UPIA, UTC, Non-profit Corporate law**

- **Distinction w/out a difference?**

- **Release of Restrictions**

- **Still problematic**

- **Underwater endowments**



"Underwater Endowments"

Example 1 - \$ 1 million gift

- Current value- \$950,000
- Share of income
 - Payout - \$40,000
 - *Ordinary* - \$25,000

Example 2

- Old Gift appreciated to \$1 million
 - Payout - \$40,000

Pool or Fund by Fund?



UPMIFA

- **Model Act (NCCUSL)**
- **California – Uniform *Prudent* Management of Institutional Funds Act**
 - **SB 1329 (*2009)**
 - **Prudent investor standards; expenditure rules; overly restrictive funds**
 - **Special payout rule for Certain Charities**



UPMIFA - Details

- Investments
- Endowment Payout/Expenditure
 - No Historic Dollar Value
 - 7% Presumption of Imprudence
- Release of Restrictions
 - Old and Small Funds
 - 20-year
 - \$100,000
 - “Unlawful, Impracticable, Impossible to Achieve or Wasteful”

Working in a post-UPMIFA World

- **UPMIFA – Greater flexibility to determine payout**
 - **Gift Agreements should be broad to encompass changes**
 - **Ascertain what is sustainable and ensure “intergenerational equity”**
- **Administrative Costs**
 - **Focus on appropriate methodology**

Endowment Administration – Donor Role

- Clarity as to “advisory” role
- Limit the role of “heirs, successors, and assigns”
- Emphasize appropriate reporting and “stewardship”
- The enduring role of the Institution



Endowment – Purposes

Example: Restricted Scholarship Funds

- **Court Action Required if Unable to Award**
- **Dollar Amounts Specified**
- **Narrow range of potential recipients**
- **Potential that law may change again (ex. Prop 209)**
- ***Award in accordance w/ Policy...**



Court Actions

Petition for Instructions to interpret gift terms

- Library - Exhibits
- “Use” of a musical instrument (or artwork)
- How broad is “research”?
- Distribute “too much”

UPMIFA – Simplified Process

- \$100,000 and 20-years
- “Wasteful”?

Changed Circumstances/ Planning for Change

Fixed Period of Time:

- Academic/Charitable Purpose
- Facilities – Useful Life

Contingency Clause:

If circumstances change...related use...keeping in mind donor's original intent...

Summary and Questions

