

**THE GIFTS THAT (SHOULD)
KEEP ON GIVING:
A PRIMER ON THE LAW OF
ENDOWMENTS AND CY PRES**

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 PPGNY: 2016 Planned
Giving Day



PPGGNY Planned Giving Day 2016

Overview

- **Part I:** Endowments and the problem of perpetuity
- **Part II:** Law governing endowments
 - Endowment spending
 - Management and investment
 - Release of restrictions
 - Donor standing
- **Part III:** Specific issues
 - Donor control
 - Naming
 - Scholarships

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Part I: Endowments and the Problem of Perpetuity

- **Endowments of ages past: Henry VIII and Reformation England**



Henry VII



Glastonbury Abbey

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Part I: Endowments and the Problem of Perpetuity

- **Modern endowments**
 - Under New York law, “endowment fund” means an **institutional fund** or part thereof that, under the terms of a gift instrument, **is not wholly expendable by the institution on a current basis**
 - “**Institutional fund**” is defined very broadly

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Part I: Endowments and the Problem of Perpetuity

- **What are the consequences of gifts in perpetuity?**
 - Change in use
 - Naming restriction
 - Management restriction
 - Naming restriction
 - Administrative restriction



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Part I: Endowments and the Problem of Perpetuity

- What are the consequences of gifts in perpetuity?

Change in use



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The slide features a teal header with the text 'PPGGNY Planned Giving Day 2016'. Below the header, the title 'Part I: Endowments and the Problem of Perpetuity' is centered. A bullet point asks 'What are the consequences of gifts in perpetuity?'. Underneath, the text 'Change in use' is centered above a photograph of the NYU Polytechnic Institute building. The photo shows a modern glass and steel structure with a large, curved, white architectural element in the foreground. A sign above the entrance reads 'NYU poly POLYTECHNIC INSTITUTE OF NYU'. At the bottom of the slide, the date 'May 2016', the title 'The Gifts that (Should) Keep on Giving', and the number '7' are displayed.

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Part I: Endowments and the Problem of Perpetuity

- What are the consequences of gifts in perpetuity?

Naming restriction



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The slide features a teal header with the text 'PPGGNY Planned Giving Day 2016'. Below the header, the title 'Part I: Endowments and the Problem of Perpetuity' is centered. A bullet point asks 'What are the consequences of gifts in perpetuity?'. Underneath, the text 'Naming restriction' is centered above a photograph of a Confederate battle flag waving on a pole. A small white logo is visible in the top left corner of the photo. At the bottom of the slide, the date 'May 2016', the title 'The Gifts that (Should) Keep on Giving', and the number '8' are displayed.

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Part I: Endowments and the Problem of Perpetuity

- What are the consequences of gifts in perpetuity?

Naming Restriction



Lincoln Center

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This slide features a dark teal header with the text 'PPGGNY Planned Giving Day 2016'. Below the header, the title 'Part I: Endowments and the Problem of Perpetuity' is centered. A bullet point asks 'What are the consequences of gifts in perpetuity?'. The main content area is titled 'Naming Restriction' and contains a photograph of the Lincoln Center fountain at night. A blue speech bubble with the text 'Lincoln Center' is overlaid on the top left of the fountain image. At the bottom of the slide, the text 'May 2016', 'The Gifts that (Should) Keep on Giving', and the number '9' are displayed.

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Part I: Endowments and the Problem of Perpetuity

- What are the consequences of gifts in perpetuity?

Administrative restriction



BARNES

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This slide features a dark teal header with the text 'PPGGNY Planned Giving Day 2016'. Below the header, the title 'Part I: Endowments and the Problem of Perpetuity' is centered. A bullet point asks 'What are the consequences of gifts in perpetuity?'. The main content area is titled 'Administrative restriction' and contains a photograph of a gallery filled with framed pictures. A red and white 'BARNES' logo is overlaid on the top left of the gallery image. At the bottom of the slide, the text 'May 2016', 'The Gifts that (Should) Keep on Giving', and the number '10' are displayed.

Part I: Endowments and the Problem of Perpetuity

- What are the consequences of gifts in perpetuity?

Management restriction



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Part II: Law of Endowments / Endowment Spending

- **Before NYPMIFA**, charities were not allowed to spend below the “**historic dollar value**” of any individual endowment fund unless the gift instrument permitted spending below that amount.
- **After NYPMIFA**, spending is determined in accordance with a statutory prudence analysis (as well as specific donor restrictions).

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Part II: Law of Endowments / Endowment Spending

- **Prudent Person Standard (N-PCL Section 553(a)):**
 - Act in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances
- **Prudence factors:**
 - Must consider, if relevant, the following factors:
 1. the **duration and preservation** of the endowment fund;
 2. the **purposes** of the institution and the endowment fund;
 3. general **economic conditions**;
 4. the possible **effect of inflation or deflation**;
 5. the **expected total return** from income and the appreciation of investments;
 6. the **other resources of the institution**;
 7. where appropriate and circumstances would otherwise warrant, **alternatives to expenditure of the endowment fund**, giving due consideration to the effect that such alternatives may have on the institution; and
 8. the **investment policy** of the institution.



Part II: Law of Endowments / Endowment Spending

- **Special Provisions in New York Law**
 - 7% Presumption of Imprudence(N-PCL Section 553(d))
 - Required Opt-Out Notification (N-PCL Section 553(e))
- **Practical implications of the spending rules**
 - Role of the institutional spending rate
 - Burden of tailor-made arrangements

Part II: Law of Endowments / Investment Management

- **Language of the law**

- Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall **consider the purposes of the institution and the purposes of the institutional fund.**
- Each person responsible for managing and investing an institutional fund shall 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.**
- Decisions must be made in the context of the institutional fund's portfolio of investments as a whole and as a part of an **overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.**

Part II: Law of Endowments / Investment Management

- **Language of the Law (con't)**

- In managing and investing an institutional fund, the following factors, if relevant, must be considered:
 1. general **economic conditions**;
 2. the possible **effect of inflation or deflation**;
 3. the **expected tax consequences**, if any, of investment decisions or strategies;
 4. the role that each investment or course of action plays **within the overall investment portfolio of the fund**;
 5. the **expected total return** from income and the appreciation of investments;
 6. the **other resources** of the institution;
 7. the **needs of the institution** and the fund to make distributions and to preserve capital; and
 8. an asset's **special relationship or special value**, if any, to the purposes of the institution.



Part II: Law of Endowments / Investment Management

- **Practical considerations**

- Who is going to invest the endowment? How often are they going to review investments?
- How to preserve liquidity while also maximizing return?
- Should fees be allocated to the endowments?
- Are we going to let donors have any say in how the endowment is invested?



Part II: Law of Endowments / Release of Restrictions

- *Cy pres* versus equitable deviation
- Interpretive wiggle room?
- Donor consent



Part II: Law of Endowments / Release of Restrictions

- **Pre-NYPMIFA**
 - N-PCL Section 522
 - not available to convert endowment fund to non-endowment fund.
 - Common law *cy pres* (codified in EPTL Section 8-1.1) is always available



Part II: Law of Endowments / Release of Restrictions

- **Post-NYPMIFA:**
 - N-PCL 555(b) - *Statutory version of equitable deviation:*
 - Court may modify a restriction on the “management or investment” of an institutional fund if the restriction has become “**impracticable or wasteful, if it impairs the management 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.**”
 - N-PCL 555(c) – *Statutory version of cy pres:*
 - If a particular purpose or a restriction becomes “**unlawful, impracticable, impossible to achieve, or wasteful**,” the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund “in a manner consistent with the purposes expressed in the gift instrument.”



Part II: Law of Endowments / Release of Restrictions

- **Process**

- Draw up petition
 - Submit to surrogate's court or supreme court
- Give notice to the donor
- Give notice to the AG
 - In practice, this is the first step



Part II: Law of Endowments / Release of Restrictions

- **Post-NYPMIFA (con't)**

- N-PCL 555(d):
 - Applies to funds that are
 - > 20 years old; and
 - < \$100,000
 - Give 90 days' notice to the AG
 - May release or modify a restriction on the "management, investment, or purpose" of an institutional fund that the institution determines to be "unlawful, impracticable, impossible to achieve, or wasteful," so long as "the institution uses the property in a manner consistent with the purposes expressed in the gift instrument."

Part II: Law of Endowments / Donor Standing

- Historic rule: no donor standing
- New rule: ???



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Part III: Specific Issues / Donor Control

- **Ways donors seek to maintain control**
 - Seek to anticipate every possible outcome in gift agreement
 - Retain enforcement power over gift
 - Require involvement in administration of gift
 - Set up new entity to administer the gift or advisory board within institution to oversee gift

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Part III: Specific Issues / Donor Control

- Avenues for aggrieved donors in New York
- Conflicts of interest when donors are also trustees
- Institutional conflicts

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Part III: Specific Issues / Naming Gifts

- **Naming Gifts**
 - Bricks and mortar versus departments/schools
 - Interaction of institutional policy with gift agreement

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Part III: Specific Issues / Scholarships

- **Scholarships and donor restrictions**
 - Uncertainty in the law
 - Administering long-established scholarships
 - Donor involvement in scholarship administration
 - Language to put in gift agreements

McKinney's Consolidated Laws of New York Annotated

Not-for-Profit Corporation Law (Refs & Annos)

Chapter 35. Of the Consolidated Laws (Refs & Annos)

Article 5-a. Prudent Management of Institutional Funds Act (Refs & Annos)

McKinney's N-PCL § 551

§ 551. Definitions

Effective: September 17, 2010

Currentness

As used in this article:

(a) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community including any purpose that is charitable under the laws of the state of New York.

(a-1) "Donor" means the person who grants or transfers property to an institution pursuant to a gift instrument, or a person designated in the applicable gift instrument to act in the place of the donor, but does not otherwise include the person's executors, heirs, successors, assigns, transferees, or distributees.

(b) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution may designate as an endowment fund for its own use, consistent with the terms of the applicable gift instrument.

(c) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(d) "Institution" means: (1) a person, other than an individual, organized and operated exclusively for charitable purposes; (2) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated; or (3) any corporation described in [subparagraph five of paragraph \(a\) of section 102](#) (Definitions). Whenever any provision of this article imposes any obligation on, or requires any action to be taken by, an institution, such obligation is imposed on, and such action shall be authorized by, the governing board of such institution.

(e) "Institutional fund" means a fund held by an institution. This term shall not include: (1) program-related assets; (2) a fund held for an institution by a trustee that is not an institution; or (3) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(f) “Notice” means information given by an institution as required by this article. An institution will be considered to have given notice if notice is given personally in writing or sent to the recipient’s last known address on record with the institution, or, if no address is on record with the institution, if the institution makes reasonable efforts to attempt to find and notify the recipient. If the notice is mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid. If the notice is delivered by electronic means, such as via facsimile or email, such notice is given when the notice is sent.

(g) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity.

(h) “Program-related asset” means an asset held by an institution not for investment under the terms of the gift instrument, but primarily to accomplish a programmatic purpose of the institution.

(i) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(j) A donor is “available” if such donor (1) is living or, if the donor is not a natural person, is in existence and conducting activities; and (2) can be identified and located with reasonable efforts.

(k) “External agent” means an independent investment advisor, investment counsel or manager, bank, or trust company.

Credits

(Added L.2010, c. 490, § 1, eff. Sept. 17, 2010.)

McKinney’s N PCL § 551, NY NOT PROF CORP § 551
Current through L.2016, chapters 1 to 33, 50 to 60.

McKinney's Consolidated Laws of New York Annotated

Not-for-Profit Corporation Law (Refs & Annos)

Chapter 35. Of the Consolidated Laws (Refs & Annos)

Article 5-a. Prudent Management of Institutional Funds Act (Refs & Annos)

McKinney's N-PCL § 552

§ 552. Standard of conduct in managing and investing an institutional fund

Effective: September 17, 2010

Currentness

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this article, each person responsible for managing and investing an institutional fund shall 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.

(c) In managing and investing an institutional fund, an institution consistent with section 717 (Duty of Directors and Officers):

(1) 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; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered: (A) general economic conditions; (B) the possible effect of inflation or deflation; (C) the expected tax consequences, if any, of investment decisions or strategies; (D) the role that each investment or course of action plays within the overall investment portfolio of the fund; (E) the expected total return from income and the appreciation of investments; (F) other resources of the institution; (G) the needs of the institution and the fund to make distributions and to preserve capital; and (H) an asset's

special relationship or special value, if any, to the purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this article, an institution may invest in any kind of property or type of investment consistent with this article.

(4) An institution shall diversify the investments of an institutional fund unless the institution prudently determines that, because of special circumstances, the purposes of the fund are better served without diversification. An institution shall review a decision not to diversify as frequently as circumstances require, but at least annually.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this article.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

(f) Each institution shall adopt a written investment policy setting forth guidelines on investments and delegation of management and investment functions in accord with the standards of this article.

Credits

(Added L.2010, c. 490, § 1, eff. Sept. 17, 2010.)

McKinney's N PCL § 552, NY NOT PROF CORP § 552
Current through L.2016, chapters 1 to 33, 50 to 60.

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Chapter 35. Of the Consolidated Laws (Refs & Annos)

Article 5-a. Prudent Management of Institutional Funds Act (Refs & Annos)

McKinney's N-PCL § 553

§ 553. Appropriation for expenditure or accumulation of endowment fund; rules of construction

Effective: September 17, 2010

Currentness

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

(6) other resources of the institution;

(7) where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the endowment fund, giving due consideration to the effect that such alternatives may have on the institution; and

(8) the investment policy of the institution.

For each determination to appropriate for expenditure, the institution shall keep a contemporaneous record describing the consideration that was given by the governing board to each of the factors enumerated in this paragraph.

(b) To limit the authority to appropriate for expenditure or accumulate under paragraph (a) of this section, a gift instrument must specifically state the limitation. Terms in a gift instrument setting forth a specific spending level, rate, or amount, or explicitly modifying or overriding the provisions of paragraph (a) of this section, will limit the authority of the institution to appropriate for expenditure or accumulate under paragraph (a) of this section.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under paragraph (a) of this section.

(d) A rebuttable presumption of imprudence shall apply to gift instruments executed upon or after the effective date of this article as follows: The appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than five years immediately preceding the year in which the appropriation for expenditure is made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than five years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(1) apply to an appropriation for expenditure permitted under law other than the chapter of the laws of 2010 that enacted this article or by the gift instrument; or

(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund.

(e)(1) With respect to a gift instrument executed by the donor before the effective date of this article an institution must provide ninety days notice to the donor, if the donor is then available, before applying paragraph (a) of this section for the first time, during which time the donor may clarify or amend the gift instrument to prohibit the application of paragraph (a) of this section. Such notice shall include a form for use by the donor, which shall contain language substantially as follows:

Attention, Donor:

Please check Box #1 or #2 below and return to the address shown above.

#1 The institution may spend as much of my gift as may be prudent.

#2 The institution may not spend below the original dollar value of my gift.

If you check Box #1 above, the institution may spend as much of your endowment gift (including all or part of the original value of your gift) as may be prudent under the criteria set forth in Article 5-A of the Not-for-Profit Corporation Law (The Prudent Management of Institutional Funds Act).

If you check Box #2 above, the institution may not spend below the original dollar value of your endowment gift but may spend the income and the appreciation over the original dollar value if it is prudent to do so. The criteria for the expenditure of endowment funds set forth in Article 5-A of the Not-for-Profit Corporation Law (The Prudent Management of Institutional Funds Act) will not apply to your gift.

If the donor does not respond within ninety days from the date notice was given, paragraphs (a), (b), and (c) of this section shall be applied.

(2) This paragraph shall not apply if: (A) the gift instrument permits appropriation for expenditure from the endowment fund without regard for the fund's historic dollar value; (B) the gift instrument limits the institution's authority to appropriate for expenditure in accordance with paragraph (b) of this section; or (C) the gift consists of funds received as a result of an institutional solicitation without a separate statement by the donor expressing a restriction on the use of funds.

(f) When an institution acts pursuant to paragraph (a) or (e) of this section, it shall keep a record of such action.

Credits

(Added L.2010, c. 490, § 1, eff. Sept. 17, 2010.)

McKinney's N PCL § 553, NY NOT PROF CORP § 553
Current through L.2016, chapters 1 to 33, 50 to 60.

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| McKinney's Consolidated Laws of New York Annotated |
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| Chapter 35. Of the Consolidated Laws (Refs & Annos) |
| Article 5-a. Prudent Management of Institutional Funds Act (Refs & Annos) |

McKinney's N-PCL § 554

§ 554. Delegation of management and investment functions

Effective: September 17, 2010

[Currentness](#)

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this article, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances as required by [section seven hundred seventeen](#) of this chapter, in:

(1) selecting, continuing or terminating an agent, including assessing the agent's independence including any conflicts of interest such agent has or may have;

(2) establishing the scope and terms of the delegation, including the payment of compensation, consistent with the purposes of the institution and the institutional fund; and

(3) monitoring the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care, skill and caution to comply with the scope and terms of the delegation.

(c) An institution that complies with paragraph (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) Each contract, if any, pursuant to which authority is so delegated shall provide that it may be terminated by the institution

at any time, without penalty, upon not more than sixty days notice.

(f) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by the laws of this state other than this article, as set forth in, inter alia, [section 514](#) (Delegation of investment management).

(g) Nothing in this article shall impair the operation of [section 717](#) (Duty of directors and officers).

Credits

(Added [L.2010, c. 490, § 1, eff. Sept. 17, 2010.](#))

McKinney's N PCL § 554, NY NOT PROF CORP § 554
Current through [L.2016, chapters 1 to 33, 50 to 60.](#)

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Chapter 35. Of the Consolidated Laws (Refs & Annos)

Article 5-a. Prudent Management of Institutional Funds Act (Refs & Annos)

McKinney's N-PCL § 555

§ 555. Release or modification of restrictions on management, investment, or purpose

Effective: July 1, 2014

Currentness

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) A court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management 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. The institution shall notify the donor, if available, and the attorney general of the application, and the attorney general and such donor must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the purposes expressed in the gift instrument. The institution shall notify the donor, if available, and the attorney general of the application, and the attorney general and such donor must be given an opportunity to be heard.

(d)(1) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, ninety days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(A) the institutional fund subject to the restriction has a total value of less than one hundred thousand dollars;

(B) more than twenty years have elapsed since the fund was established; and

(C) the institution uses the property in a manner consistent with the purposes expressed in the gift instrument.

(2) Notice to the attorney general shall contain: (A) an explanation of (i) the institution's determination that the restriction meets the requirements set forth in subparagraph one of this paragraph and (ii) the proposed release or modification; (B) a copy of a record of the institution approving the release or modification; and (C) a statement of the proposed use of the institutional fund after such release or modification.

(3) If the attorney general does not notify the institution within ninety days, the institution may proceed with the release or modification.

(4) Notice shall also be given to the donor, as defined in paragraph (a-1) of [section 551](#) (Definitions), if available, provided, however, that such notice shall not be required for funds described in [clause \(B\)](#) of [subparagraph two of paragraph \(e\)](#) of [section 553](#) (Appropriation for expenditure or accumulation of endowment fund; rules of construction).

(e) For purposes of this section, an institution may apply to the following courts to release or modify a restriction contained in a gift instrument:

(1) to the supreme court of the judicial district wherein the institution has its office or principal place of carrying out the purposes for which it was formed; or

(2) where the applicable gift instrument is a will, to the surrogate's court in which such will is probated.

(f) This chapter shall not limit the application of the doctrines of cy pres and deviation.

Credits

(Added L.2010, c. 490, § 1, eff. Sept. 17, 2010. Amended L.2013, c. 549, § 60, eff. July 1, 2014.)

McKinney's N PCL § 555, NY NOT PROF CORP § 555

Current through L.2016, chapters 1 to 33, 50 to 60.

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McKinney's N-PCL § 556

§ 556. Reviewing compliance

Effective: September 17, 2010

[Currentness](#)

Compliance with this article shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not retrospectively.

Credits

(Added L.2010, c. 490, § 1, eff. Sept. 17, 2010.)

McKinney's N PCL § 556, NY NOT PROF CORP § 556
Current through L.2016, chapters 1 to 33, 50 to 60.

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[McKinney's Consolidated Laws of New York Annotated](#)

[Not-for-Profit Corporation Law \(Refs & Annos\)](#)

[Chapter 35. Of the Consolidated Laws \(Refs & Annos\)](#)

[Article 5-a. Prudent Management of Institutional Funds Act \(Refs & Annos\)](#)

McKinney's N-PCL § 557

§ 557. Application to existing institutional funds

Effective: September 17, 2010

[Currentness](#)

This article shall apply to institutional funds existing on or established after the effective date of this article. As applied to institutional funds existing on the effective date of this article,¹ this article shall govern only decisions made or actions taken on or after that date.

Credits

(Added L.2010, c. 490, § 1, eff. Sept. 17, 2010.)

Footnotes

¹

Sept. 17, 2010.

McKinney's N PCL § 557, NY NOT PROF CORP § 557

Current through L.2016, chapters 1 to 33, 50 to 60.

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