Uniform Prudent Management of Institutional Funds Act

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I. Introduction and Background

Uniform Management of Institutional Funds Act (UMIFA 1972)

- Provides guidance on investment authority
- Authorizes expenditure of appreciation of endowment funds
- Provides rules for the release of restrictions on the use or investment of funds
- 47 jurisdictions

Uniform *Prudent* Management of Institutional Funds Act (UPMIFA 2006)

- Updates guidance on investment authority (UPIA)
- Changes rules on spending from endowment funds
- Adds rules for the modification of restrictions on the use or investment of funds
- 25 enactments as of August 2008

II. Definitions – What Does the Act Cover?

Endowment Fund

- Not wholly expendable on a current basis
- Donor-restricted funds (not board-designated funds)

Institution and Institutional Fund

- Organized and operated exclusively for charitable purposes

- Not a fund held by a trustee that is not an institution (a corporate trustee or an individual trustee)

- Not assets held primarily to accomplish a charitable purpose and not primarily for investment ("program-related assets")

III. Standard for Managing and Investing Institutional Funds

RMNCA

> "in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances"

Prudent Investor Act - Factors

- Gift instrument – donor intent
- Incur only reasonable costs
- Reasonable effort to verify facts
- General economic conditions
- Possible effect of inflation or deflation
- Expected tax consequences
- Role of each investment in overall portfolio
- Expected total return
- Other resources
- Needs of institution to make distributions and preserve capital
- Asset's special relationship to institution's purposes
- Overall investment strategy – portfolio approach
- Duty to diversify
- Dispose of unsuitable assets
- Develop an investment strategy suitable for the fund and the charity
- Special skills and expertise must be used
- Funds may be pooled for investment
- Delegation of authority to independent financial advisors permitted

Mission Investing

- "shall consider the charitable purposes"
- consider, if relevant, an asset's "special relationship or special value" to the charitable purposes

IV. Expenditures from Endowment Funds

Historic Dollar Value

- Defined as amount contributed
- Old funds – no connection to purchasing power
- New funds – underwater

New Approach – no HDV

- Subject to the gift instrument - donor intent
- "prudent for the uses, benefits, purposes, and duration for which the endowment fund is established"

Factors

- Duration and preservation of the fund
- Purposes of the institution and the fund
- General economic conditions
- Possible effect of inflation or deflation
- Expected total return
- Other resources
- Investment policy of the institution

Rule of Construction

"pay only the income" means UPMIFA rule applies: current expenditures and permanent duration

Optional Section - Rebuttable Presumption of Imprudence

- If spending in one year exceeds 7% of the asset value of the fund
- Computed over a rolling three-year period
- Not a safe harbor – no presumption of prudence
- Adopted in 7 of the 25 enacting jurisdictions

Donor Issues

- UPMIFA is default law, subject to gift instrument
- Charity and donor can agree to different rules
- Gift instrument – a writing that sets the terms of the gift
- Solicitation can be a gift instrument

Accounting Issues

UMIFA – FAS 117, 124

- historic dollar value labeled "permanently restricted"
- purpose restriction – "temporarily restricted"
- endowment restriction – "unrestricted"
- restricted for legal purposes – unrestricted for accounting purposes

UPMIFA - FSP FAS 117-1

- "the amount classified as permanently restricted shall be the amount of the fund (a) that must be retained permanently in accordance with explicit donor stipulations, or (b) that in the absence of such stipulations, the organization's governing board determines must be retained (preserved) permanently consistent with the relevant law."

- Possible approaches: hdv, "purchasing power"

- Other amounts – temporarily restricted until board authorizes spending

- Additional disclosures

V. Release or Modification of Restrictions

Donor Consent

- Written consent, all donors
- Not available if donor deceased or cannot be found

Management and Investment Restrictions - Deviation

- If a restriction on management or investment becomes impracticable or wasteful or impairs the management or investment of the fund or
- If due to unanticipated circumstances modification will further purposes of fund
- Modify in accord with donor's probable intent
- Must notify Attorney General and obtain court approval

Purpose or Use Restrictions – Cy Pres

- If a purpose or restriction becomes unlawful, impracticable, impossible, wasteful
- Modify consistent with purposes in gift instrument
- Must notify Attorney General and obtain court approval

Small, Old Fund

- Less than $25,000 (some enacted statutes use 50,000 or 100,000)
- More than 20 years
- Modify consistent with purposes in gift instrument
- Notify Attorney General and wait 60 days
- No court approval required
- Virginia – less than $250,000 with consent of Attorney General

Default Statute

- Provide for modification in gift instrument
- Try to clarify expectations

Donor Notification

- Not required by statute
- Notify donors when possible – good donor relations

VI. Final Comments

Retroactive Application

- Applies to all funds, decisions made after effective date
- Rule of construction resolves an ambiguity – increases likelihood of giving effect to intent of donors

Default Statute

Charities and donors can draft different rules

Finding UPMIFA

www.upmifa.org – act with comments, history, summary and short articles, state comparisons, enactment status

Legislation as of August 2008

Twenty-five enactments: Alabama, Arizona, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Indiana, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Hampshire, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia

Bills still in the legislature: California, Illinois, Michigan, Ohio

Questions or Comments:

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