



Can We Use the Endowment for That?

February 16, 2023

Conrad W. Deitrick
Baker, Donelson, Bearman, Caldwell &
Berkowitz, PC
100 Light Street, 19th Floor
Baltimore, MD 21202

WHAT IS AN ENDOWMENT?

ROADMAP

The scope of this
presentation

- Intersecting concepts
 - Restricted assets
 - Institutional funds
- Uniform Prudent Management of Institutional Funds Act (UPMIFA)
- What we are not talking about
 - Guidelines for managing institutional funds
- What is my objective?
 - **I want to equip you to be able to ask the right questions**

- Includes several different kinds of assets where there are restrictions on your ability to use them
 - Real and tangible property
 - Money you can use right away
 - Money you have to invest and use over time
- Where do the restrictions come from?
 - Gift instruments (discuss later)
- Who can enforce restrictions?
 - State attorney general
 - Sometimes the donor—this is a cutting edge area of law where changes are slowly happening
 - Practical/soft restrictions

Donor-Re stricted Assets

Institutional Funds

- Assets held by an organization for investment purposes
 - Endowment fund (donor restrictions)
 - Board-designated fund (board restrictions)
 - Unrestricted funds (informal)
- Investment management principles governed by UPMIFA

- “An institutional fund not wholly expendable on a current basis”
 - You can’t just spend it all right now, even if you want to, or even if you have a good reason
- A kind of donor-restricted asset
 - Arises by a gift instrument

Endowmen t Fund

Spending from the Endowment

- Language often comes from trust law
 - Not actually a good match for institutional funds
- Under UPMIFA, it's a multi-factor analysis, not a bright line
 - But a rule of thumb: 7% is too much
- May also be restrictions on what the money can be used for

- Must be in writing
 - Gift agreement
 - Bequest in a will
 - Solicitation materials
- **Practice point:** You *can* reserve the right to use donated funds for another purpose if the original purpose is impractical or unsuitable, or if you raise more money than you need. You just need to make sure it's in writing as a part of the gift instrument.

Gift Instrument

Lifting Restrictions

- Donor consent
- Petition the court to deviate from restrictions or remove them completely
 - State Attorney General must be a party
 - Donor does not have to be a party
 - Like *cy pres*
- Simplified procedure for small, old funds
 - Under \$25,000, over 20 years old
 - Permission from state Attorney General, no donor notice required

- Institutional fund set aside by the board
 - Meant to mimic an endowment
- What the board does, the board can undo
- Ask yourself: are these funds restricted by a donor, or did we do this to ourselves?

Board-designated Fund

Unrestricted d Institutional Fund

- A small organization sets aside money for investment purposes
- No actual restrictions
- Still an institutional fund governed by UPMIFA

- Ask yourself: are there any actual restrictions, or do we just act like there are?

- Can take many forms
 - Money
 - Tangible property
- Not governed by UPMIFA
- May be subject to donor restrictions

Program-related Assets

Funds held by another institution

- In other words, when all of the above does not apply
- Examples:
 - Parent organization
 - Charitable trust
 - Community foundation
 - Private foundation
 - Supporting organization
- The practical may be more important than the legal

Q&A DISCUSSION



CONNECT WITH US



WEBSITE

www.bakerdonelson.com



FACEBOOK

[@BakerDonelson](https://www.facebook.com/BakerDonelson)



LINKEDIN

[@Baker-Donelson](https://www.linkedin.com/company/Baker-Donelson)



TWITTER

[@Baker_Donelson](https://www.twitter.com/Baker_Donelson)

Baker Donelson is among the 80 largest law firms in the country, with more than 650 attorneys and public policy advisors representing more than 30 practice areas to serve a wide range of legal needs. Clients receive knowledgeable guidance from experienced, multi-disciplined industry and client service teams, all seamlessly connected across 22 offices in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia and Washington, D.C.