

NEW LAW AFFECTS NORTH CAROLINA CHARITABLE ENDOWMENTS

Near the end of March, the North Carolina General Assembly enacted the Uniform Prudent Management of Institutional Funds Act, or UPMIFA. As a result, North Carolina educational and charitable organizations, including colleges, universities and certain government entities, now have additional flexibility in how they spend from and manage restricted endowment funds. The significance of this additional flexibility cannot be overstated given the current financial climate in which institutions now find themselves.

UPMIFA replaces the Uniform Management of Institutional Funds Act (“UMIFA”). Although UPMIFA carries forward several UMIFA provisions, UPMIFA introduces significant and beneficial changes. Of most significance are (i) the expanded flexibility to spend institutional funds beyond their “historic dollar value,” and (ii) the ability of an institution, in certain circumstances, to release or modify a restriction of an endowment fund without court approval.

Under UMIFA, funds could not be spent below their “historic dollar value” without express consent of the donor. The recent decline in the global financial markets has caused the value of many institutional funds to dip below “historic dollar value,” which was generally defined as the initial principal value of the fund plus all subsequent contributions. As a result, UMIFA limited the support these funds were able to provide to institutions and their constituents. UPMIFA, on the other hand, does not include this “historic dollar value” restriction. Rather, UPMIFA allows an institution to spend from an institutional fund in any manner the institution deems prudent, provided the gift instrument does not otherwise restrict the institution’s ability to spend.

UPMIFA also allows institutions to release or modify restrictions imposed by the donor of an institutional fund without going to court in some cases. This option is available if (i) the institution determines that the restriction is unlawful, impracticable, impossible to achieve or wasteful, (ii) the institutional fund subject to the restriction has a total value of less than \$100,000, (iii) more than 10 years have elapsed since the institutional fund was established, (iv) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument, and (v) the institution provides written notice of the proposed release or modification of the restriction to the Attorney General not less than 60 days before releasing or modifying the restriction.

Womble Carlyle is prepared to assist institutions in reviewing how and to what extent UPMIFA applies to their institutional funds and to advise institutions regarding how UPMIFA may enhance their ability to meet their fiscal needs. If you have any questions about UPMIFA, please get in touch with your regular Womble Carlyle attorney contact or one of the attorneys below:

Jean Adams—(336) 721-3776 or JAdams@wcsr.com
Ran Bell—(336) 721-3675 or RBell@wcsr.com
Liz Coss—(704) 331-4954 or ECoss@wcsr.com
Betty Quick—(336) 721-3638 or EQuick@wcsr.com
Kim Stogner—(336) 721-3622 or KStogner@wcsr.com

Liz Arias—(336) 728-7015 or EArias@wcsr.com
Neil Coghill—(704) 331-4934 or NCoghill@wcsr.com
Edward Griggs—(336) 721-3762 or EGriggs@wcsr.com
George Ragland—(336) 721-3646 or GRagland@wcsr.com

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