

Two Perspectives on UPMIFA:

The View of the Accountant and Attorney on Managing Institutional Funds

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Summary

- *UMIFA*
 - *Brief Overview*
- *UPMIFA*
 - *Most Significant Changes*
- *Comparison*

UMIFA – The Basics

- Adopted in 1972 by the National Conference of Commissioners
 - In effect in 46 states and the District of Columbia
 - Minn. Stat. §309.62 to 309.71
- Prior to UMIFA
 - Ability to spend appreciation unclear
 - Resulted in investment strategy favoring current income vs. long-term capital gains

UMIFA – The Basics

- Who It Governed:
 - UMIFA applied to “institutions” defined as charitable organizations (incorporated or unincorporated)
 - Did not apply to funds managed by trustees that are not themselves charities (individual trustees or trust companies)
- What it Governed:
 - The management and investment of “institutional funds” and “endowment funds” as defined by the Act

UMIFA – The Basics

- “Institutional Funds”
 - Fund held by an institution for its exclusive use, benefit or purpose
 - Not a charitable trust with non-charitable beneficiaries (such as a unitrust)
- “Endowment Funds”
 - An institutional fund which is not wholly expendable by the institution on a current basis
 - Not referring to purpose restrictions
 - Refers to restrictions on the level of distributions
 - Not a “board-restricted” fund

UPMIFA – The Basics

- Uniform Prudent Management of Institutional Funds Act
 - Approved by the Uniform Commissioners in 2006 to replace UMIFA
 - Minn. Stat. §309.62 to 309.71
 - Effective August 1, 2008 in Minnesota
- MSBA Task Force
 - Business Law Section Nonprofit Committee and Probate and Trust Law Section
 - Proposed four changes from model act
 - all included as amendments in final legislation

UPMIFA – The Basics

- Who it Governs:
 - “Institution” includes any organization or entity which holds funds exclusively for charitable purposes
 - Excludes:
 - Corporate and individual trustees are still excluded
 - Program-related assets are excluded
 - Funds in which a beneficiary which is not an institution has an interest are excluded (such as charitable remainder unitrust)

- Investment Standards
 - Directs the officers and directors to act as a prudent investor would, using a portfolio approach in making investments and considering the risk and return objectives of the fund
 - Derived from Uniform Prudent Investor Act

Investment Conduct

- Three Mandatory Standards
 - Duty of Loyalty and Care
 - Ordinarily prudent person in a like position would exercise under similar circumstances
 - Duty Regarding Cost
 - May only incur costs that are “appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution”
 - Duty to Investigate
 - Must make reasonable effort to verify facts relevant to management and investment

Investment Conduct

- **Default Rules** - must be considered in managing and investing institutional funds, *unless the gift instrument provides otherwise*:
 - General economic conditions
 - Possible effects of inflation or deflation
 - Expected tax consequences, if any
 - Role that each investment plays within the overall investment portfolio
 - Expected total return from income and the appreciation of the investments
 - Other resources of the institution
 - Needs of the institution and fund to make distributions and to preserve capital
 - The asset's special relationship or value, if any, to the charitable purposes of the institution

Investment Conduct

- Default Rules –
 - Management and investment decisions not to be made in isolation
 - Decisions to be made in context of the institutional fund's portfolio as a whole
 - As part of an overall investment strategy having risk and return objectives reasonably suited to the fund and the institution
 - May invest in any kind of property or type of investment

Investment Conduct

- **Default Rules –**
 - *Duty to diversity* unless the institution determines that, because of special circumstances, the purpose of the fund are better serviced without diversification
 - Cannot be based on needs of donor
 - Hope of obtaining additional gifts may be appropriate
 - Not in UMIFA
 - Within a reasonable time, institution must make and carry out decisions regarding the retention or disposition of the gift property or to rebalance the portfolio

Spending

- Eliminates concept of “historic dollar value”
 - UMIFA permitted net appreciation over “historic dollar value” to be spent for purposes of endowment
- Historic dollar value appreciation calculation no longer creates a spending ceiling
 - But tracking of historic dollar value still relevant in reviewing prudence of spending

Spending

- **Default Rules** - must be considered in making *yearly expenditure decisions*:
 - Duration and preservation of the endowment fund
 - Purposes of the institution and the endowment fund
 - General economic conditions
 - Effect of inflation or deflation
 - Expected total return from income and the appreciation of investments
 - Other resources of the institution
 - Investment policy of the institution

Spending

- Model act includes a “rebuttable presumption of imprudence”
- Where an institution spends more than 7% of the fair market value of the fund, calculated over a three-year average, presumption of imprudence
- This provision was not included in the Minnesota bill
 - Determination that floors, or ceilings, do not reflect changing circumstances and either encourage overspending or unnecessarily limit spending

Delegation

- UMIFA permitted delegation but without expressed standards
- UPMIFA permits prudent delegation in good faith,
 - Prudent person care standard to select an agent, establish scope and terms of delegation (requires periodic review and supervision of agent)
 - Agent has duty of reasonable care
- Agent subject to court jurisdiction
- Delegation to committees, officers or employees as authorized by other law

Release of Restrictions

- UMIFA
 - Living Donor:
 - With donor written consent, “release” restriction on the use or investment of the fund
 - Unavailable Donor:
 - If donor consent cannot be obtained prior to donor’s death, disability or unavailability, Board may apply to district court for release of the restriction on the use or investment
 - May not change an endowment fund into a non-endowment fund

Restrictions

- UPMIFA
 - Living Donor:
 - Authorizes a ***modification or release*** of a restriction with donor’s written consent
 - Unavailable Donor:
 - Court modifications referred to process set forth in Minn. Stat. §501B.31
 - Old, Small Fund Option
 - Where an institution holds a fund for over 20 years and the value of the fund is less than \$50k, it may, after providing 60 days notice to the Attorney General, release or modify a restriction
 - Requires the restriction to be “unlawful, impracticable, impossible to achieve or wasteful”

UMIFA – UPMIFA

Key Comparisons

- *Investment freedom* – portfolio managers are not limited in the kinds of assets for investment (broader than UMIFA)
- *Costs* – must be managed prudently in relationship to the assets, purpose of the institution and skills available to the institution (New)

UMIFA – UPMIFA

Key Comparisons

- *Expenditure of Funds* – total return expenditures is expressly authorized under comprehensive prudent standards (New)
- *Delegation* – contains standards for delegation by institution, holds manager to duty of reasonable care and subjects to court jurisdiction, relieves institution of liability if duties complies with (Expansion of UMIFA)

UMIFA – UPMIFA

Key Comparisons

- *Appreciation* – Abolishes historic dollar value limitation on expenditure in UMIFA (New)
- *Rebuttable Presumption of Imprudence* – Not included in Minnesota version
- *Release of Restrictions on Old, Small Funds* (New)

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