

Charitable Donations Can Stray From Intended Use

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Successful people sometimes want to leave a legacy by benefiting others. Some make gifts to nonprofit organizations, such as colleges, universities, and charities. Others create nonprofit foundations. To ensure a foundation continues after the donor's death, the donor names a bank or law firm as the foundation's trustee. Regardless of the chosen method, a donor wants their gift used as intended.

Donor's Intent Ignored

Unfortunately, those who receive or manage the donor's gift do not always honor the donor's wishes, especially after the donor's death. The failure to follow a donor's specific intent about a gift is unethical and can result in litigation. A good example is the current legal dispute between Tulane University and the descendants of Josephine Newcomb. In 1887, Josephine Newcomb gave Tulane University \$3.6 million to build a women's college in honor of her deceased daughter, Sophie. With Josephine Newcomb's money, Tulane built the H. Sophie Newcomb Memorial College for Women, a separate degree-granting women's college within Tulane University. Josephine Newcomb's original gift is now worth more than \$41 million.

Recently, Tulane University dissolved Newcomb College and combined it with Tulane University. The move outraged Josephine Newcomb's descendants and Newcomb College graduates. Tulane officials justified their action as necessary to the university's reorganization

following hurricane Katrina. Tulane officials contend that Newcomb College's traditional programs continue under what is now the Newcomb Institute.

Tulane's explanation did not satisfy Josephine Newcomb's descendants, the college's graduates, or its current 2000 students. Newcomb's descendants assert that Tulane University acted unethically and illegally in violating Josephine Newcomb's intent in making her gift. They want Newcomb College restored or her donation returned to her heirs.

Orphan Foundations

More ethics issues arise when donors leave their foundations in the hands of banks or lawyers and donors die without heirs to influence future gifts. These are so-called orphan foundations or trusts. Those who previously received gifts from a foundation often find themselves cut off after the donor's death. Banks and lawyers gain prestige from controlling foundations and deciding who will receive gifts. It is not uncommon for them to make gifts to organizations in which they or their families have interests. Also, banks and lawyers receive fees for managing foundations left in their control. The foundation's size decides management fees and not the size or number of gifts made. This encourages some banks and lawyers to give only a minimum amount of money from the foundations. The foundations become profit centers.

Dr. Leonard Felix set up the Helen Fuld Health Trust, named after his mother, and endowed it with \$25 million from his stock market and real estate earnings. Marine Midland Bank managed the trust. As Dr. Fuld's wished, the bank made grants to develop nursing schools in out-of-the-way places and gave needy nursing students money to further their educations.

Sometime after Dr. Fuld's death in 1965, HSBC took over Marine Midland Bank and the trust's control. The trust now has \$136 million in assets, but it is questionable whether its gifts honor Dr. Fuld's original wishes. For example, in 2002 HSBC gave \$6 million from the trust to

Duke University's School of Nursing. Duke University is neither out-of-the-way nor in need of money. When HSBC made the gift to Duke, HSBC's vice president was a member of the board of visitor's of Duke's Terry Sanford Institute of Public Policy. She also had two children who attended Duke. In 2006, HSBC charged the trust almost \$600,000 in management fees.

In 2004, the Internal Revenue Service began looking into five orphaned foundations managed by two Manhattan lawyers. From 1998 through 2005, one of the foundations lost 60 percent of its asset's market value. Two others lost more than 35 percent of their value during that same period. The other foundations showed no growth. In 2003, the attorneys paid themselves \$99,000 each in management fees. One of the foundations made a gift of only \$500, but the attorneys paid themselves \$6,500 each for managing the foundation.

Philanthropy Hurt

A donor must be careful in making gifts or in deciding who will manage their foundation. It is not necessarily illegal to fail to honor a donor's intent. Unless a donor specifically conditions a gift's use, the donor's original wishes may not be honored after the donor's death. While ignoring a donor's original intent may not be illegal, it is unethical. Billionaire philanthropist Warren Buffett said it best: "When people see donor intent get ignored or twisted, it has to discourage philanthropy."