



Wisconsin's Uniform Prudent Management of Institutional Act "WUPMIFA"

Partnership For Philanthropic Planning
Donors Forum of Wisconsin

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Overview

- Major overhaul of rules regarding spending from endowments.
 - Concept of "historical dollar value" largely eliminated.
- Applies prudent investor rule to endowment investments.
- Makes it easier to modify or eliminate restrictions.



Terms

- UMIFA – Uniform Management of Institutional Funds Act – WI prior law
- UPMIFA - Uniform Prudent Management of Institutional Funds Act – Uniform law
- WUPMIFA - Uniform Prudent Management of Institutional Funds Act as revised for WI



When is WUPMIFA effective?

- August 4, 2009.
- Applies to actions taken by existing endowments after that date.
- Does not apply to actions taken by existing endowments before that date.
- Applies to actions taken by endowments created after that date.



Scope of WUPMIFA

- Applies to “endowment funds”
 - Broader scope than prior law
 - Need not be called endowment funds
- Terms of an endowment fund can vary WUPMIFA rules
 - Spending
 - Investing
 - Modification



What is an endowment fund?

“An institutional fund that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis.”



What is an endowment fund?

- Institutional fund - a fund held by an institution exclusively for charitable purposes.
- This includes an institutional fund held by a third party.
- Wisconsin deleted the provision that provided that these funds are not subject to UPMIFA.



Endowment funds held by others

- An agency endowment fund for a charity held by a community foundation.
- A supporting organization of the Super School holds the Super School Endowment Fund.
- City Trust Company is trustee of a trust for the sole benefit of Local University.



Terms of an endowment fund

- Found in the “gift instrument.”
- “A record or records, including an institutional solicitation, under which property is transferred to an institutional fund.”
- May consist of more than one document.
- Not a change from prior law.



Modification of WUPMIFA by Donor

- Most parts of WUPMIFA can be modified by the donor in the gift instrument.
 - “Subject to the intent of a donor expressed in a gift instrument . . .”
- What degree of specificity is needed?
 - Limits on the power to spend or power to delegate must be specifically stated.



Modification of WUPMIFA by Donor

- Provisions that cannot be modified
 - A person shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
 - May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution.
 - Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.
 - An institution may pool 2 or more institutional funds for purposes of management and investment.



Modification of WUPMIFA by Donor

- Provisions that cannot be modified
 - In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.
 - An institution that [properly delegates] is not liable for the decisions or actions of an agent to which the function was delegated.
 - By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.



Not subject to WUPMIFA

- Private Foundations
- Corporate Foundations
- Board Designated Endowments
- A charitable remainder trust (until the non-charitable interest terminates) or a charitable lead trust
- Program-related assets held by a charity



Not subject to WUPMIFA

- Program-related assets
 - “An asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.”
 - A university may own classrooms, laboratories, and dormitories.
 - Some assets may be mixed – part program-related and part held for investment.



Endowment Spending Under UMIFA

- A charity could spend realized or unrealized appreciation.
- A charity could not spend appreciation if the endowment was below “historic dollar value.”



Endowment Spending

“An institution may [spend] so much of an endowment fund as the institution determines is **prudent for the uses, benefits, purposes, and duration for which the endowment fund is established.**”



Endowment Spending

- In deciding how much of an endowment to spend the institution shall
 - act in good faith,
 - with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and
 - consider a list of factors.



Endowment Spending Factors

1. The duration and preservation of the endowment.
2. The purposes of the institution and the endowment fund.
 - Note that these may be different.
3. General economic conditions.
4. The possible effect of inflation or deflation.



Endowment Spending Factors

5. The expected total return from income and the appreciation of investments.
6. Other resources of the institution.
7. The investment policy of the institution.



Endowment Spending Free For All?

- No! See Comments to UPMIFA.
- “When the institution considers the purposes and duration of the fund, **the institution will give priority to the donor’s general intent that the fund be maintained permanently.** “



Endowment Spending Free For All?

“Although the Act does not require that a specific amount be set aside as “principal,” the Act **assumes that the charity will act to preserve “principal” (i.e., to maintain the purchasing power of the amounts contributed to the fund) while spending “income” (i.e. making a distribution each year that represents a reasonable spending rate, given investment performance and general economic conditions)**”.



Endowment Spending Free For All?

- “[A]n institution should monitor principal in an accounting sense, identifying the original value of the fund (the historic dollar value) and the increases in value necessary to maintain the purchasing power of the fund.”



Endowment Spending

- A donor can limit the amount that can be spent from an endowment.
- The limitation must be specifically stated in a gift instrument.
- Language only authorizing the use of income, interest or dividends does not limit the authority to spend the endowment.



Endowment Spending

Wisconsin did not include the optional UPMIFA provision that provides that spending more than 7% of an endowment creates a rebuttable presumption of imprudence.



Endowment Spending

Wisconsin did not include the optional UPMIFA provision requiring Attorney general approval for endowments under \$2,000,000 that spend below historic dollar value.



Investment Rules Under UMIFA

- Permissible investments
 - Any real or personal property deemed advisable by the board, whether or not it produces a current return.
- Delegation
 - Permitted, but no release from liability.
- Diversification
 - Can retain contributed property for as long as the board deems advisable.



Investment Rules Under UMIFA

- Must follow any donor-imposed restrictions.
- Each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.



WUPMIFA Investment Rules

- Adopts the prudent investor standard for investment decision making.
- Lists the factors that commonly bear on decisions in fiduciary investing.
- Incorporates the duty to diversify investments.



Prudent Investor Standard

- Must manage and invest the fund in good faith and with the care an ordinarily prudent investor in a like position would exercise under similar circumstances.
- May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution.
- Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.



Prudent Investor Standard

- Investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.
- No per se permitted or prohibited investments.



WUPMIFA Investment Factors

1. General economic conditions
2. Possible effect of inflation or deflation
3. Expected tax consequences, if any, of investment decisions or strategies
4. Role that each investment or course of action plays within the overall investment portfolio of the fund



WUPMIFA Investment Factors

5. Expected total return from income and the appreciation of investments
6. Other resources of the institution
7. Needs of the institution and the fund to make distributions and to preserve capital
8. An asset's special relationship or special value, if any, to the charitable purposes of the institution



WUPMIFA Diversification

- Shall diversify the investments unless reasonably determine that, because of special circumstances, the purposes of the fund are better served without diversification.
- Within a reasonable time after receiving property, shall make decisions concerning the retention or disposition of the property.



Delegation

- Can delegate management and investment responsibility if prudent.
- Must act prudently in
 - Selecting an agent
 - Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
 - Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.



Delegation

- An institution that properly delegates is not liable for the decisions or actions of the agent.
- Cannot delegate decision-making authority over how much to spend from an endowment.
- Must consider limitation on not incurring unnecessary costs.



Release Or Modification of Restrictions

- Restrictions can relate to:
 - MANAGEMENT
 - Who makes decisions regarding scholarships?
 - How much can be spent?
 - INVESTMENT
 - Provision requiring at least 75% of fund to be invested in Treasury Bonds.
 - PURPOSE
 - Fund for treatment of patients using a specific treatment method.



Release Or Modification of Restrictions

- Restrictions can be released or modified by:
 - Donor
 - Charity
 - Court
- Different rules for each



Release Or Modification Of Restrictions By Donor

- **Donor and charity can agree on the release or modification of a restriction.**
- Bert Bigbucks donated \$1,000,000 to build a new building for his alma mater. The university could not raise the additional money needed for the project. Bert and the university can agree that the money should instead be used for scholarships.
- Prior law only applied to restrictions on use or investment.



Release Or Modification Of Restrictions By Donor

- Must Bert's wife Bobbi agree to the modification?
 - Whose name was on the contributed property?



Release Or Modification Of Restrictions By Donor

- If Bert has died, can Bobbi or his children agree to the release or modification on his behalf?



Release Or Modification Of Restrictions By Donor

- What if there is more than 1 donor to a fund?
 - Must all consent – all or nothing?
 - If less than all donors consent, can you release the restriction as to their portion of the fund? What is their portion of the fund?
 - What about matching gifts?



Release Or Modification Of Restrictions By Donor

- After release or modification the fund must still be used for a charitable purpose of the institution.
- This limitation only applies to donor releases or modifications.



Release Or Modification Of Restrictions By Charity

- If a charity determines that a restriction is “unlawful, impracticable, impossible to achieve, or wasteful,” it can release or modify the restriction, in whole or in part, if:
 - The fund is less than \$75,000;
 - More than 20 years have elapsed since the fund was established (not since the last gift);
 - It uses the property in a manner consistent with the charitable purposes expressed in the gift instrument; and
 - The Attorney General is given 60 days notice.



Release Or Modification Of Restrictions By Charity

- Donor consent is NOT required, but may be advisable.
- Comment to UPMIFA states “an institution’s concern for donor relations [will] serve as a sufficient incentive for notifying donors when donors can be located.”



Release Or Modification Of Restrictions By Charity

- Scholarship funds for nursing students – impossible to achieve because School of Nursing closed so modified to be used for biology students.
 - Charity must determine which alternative use for the fund reasonably approximates the original intent of the donor.
 - Uniform Act - “The charity cannot divert the fund to an entirely different use. For example, the fund for nursing scholarships could not be used to build a football stadium.”



Release Or Modification Of Restrictions By Charity

- Scholarships for students fitting certain narrow criteria that are rarely used (students of 100% Norwegian descent from the Town of Cedarburg) – impracticable so modified to be used for anyone who is 100% Norwegian or anyone from the Town of Cedarburg.



Release Or Modification Of Restrictions By Charity

- A donor commonly has a predominating purpose for a gift and, secondarily, an intent that the purpose be carried out in a particular manner.



Release Or Modification Of Restrictions By Charity

- Prior law – no provision for a charity to release or modify restrictions.



Release Or Modification Of Restrictions By A Court

- At the request of a charity, court may modify a restriction if:
 - The restriction has become impracticable or wasteful,
 - The restriction impairs the management or investment of the fund, or
 - If, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.
- The Attorney General must be notified of the hearing and be given an opportunity to be heard.

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Release Or Modification Of Restrictions By A Court

- To the extent practicable, any modification must be made in accordance with the donor's probable intention.
 - This can include transferring the fund to another charity.
- A donor commonly has a predominating purpose for a gift and, secondarily, an intent that the purpose be carried out in a particular manner.

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Release Or Modification Of Restrictions By A Court

- Prior law only applied to restrictions on the use or investment of a fund, not on its management.
- This option did not apply if the donor refused to consent.
- The court had to find that the restriction was “obsolete, inappropriate or impracticable.”
- The court could not order the funds to be used for another institution.



ACTION STEPS

- Determine if your endowment, fund, trust, etc. is subject to WUPMIFA.
- Determine if your “gift instrument” modifies the WUPMIFA rules or gives you the authority to modify them.



ACTION STEPS

- Spending
 - Review your spending policy to insure it is “prudent for the uses, benefits, purposes, and duration for which the endowment fund is established.”
 - Review the endowment spending factors and determine if and how they apply.



ACTION STEPS

- Investments
 - Make sure you are following the prudent investor standard.
 - Review the costs of managing the endowment.
 - Review the investment factors and determine if and how they apply.
 - Enact or review a diversification policy.



ACTION STEPS

- Review delegations to make sure that
 - They were done prudently,
 - The scope and terms of the delegation are appropriate, and
 - The agent's performance is periodically monitored.



ACTION STEPS

- Restrictions
 - Review restrictions on all endowments to determine whether it is appropriate to release or modify them.



ACTION STEPS

- Donor relations
 - What (if anything) do you tell your donors?



Conclusion and Questions

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