

Insights

Orlando Museum of Art Seeks to Undo Restrictions on Charitable Bequest

Article

Lowndes

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You may have seen the headlines about the Orlando Museum of Art's challenge to a donor's \$1.8 million gift that was given with "strings attached." The donor intended to fund the acquisition of new works of art, but the Museum, in a petition filed with the Orange County Circuit Court, instead seeks to direct the funds toward maintaining its existing collection through activities such as "curatorial staff, vault maintenance/repair, [and] security." This latest court filing serves as another example of how nonprofit organizations can later rewrite the restrictions placed on charitable gifts after accepting them.

Margaret Young, who passed away in 2005, established a trust that provided, upon the death of her daughter, the remaining assets of the trust were to pass to the Museum's "Permanent Collection Fund and used to add to their permanent collection." The Museum has petitioned the Circuit Court for permission to broaden the uses for which it may apply the funds, stating that the Museum has no "Permanent Collection Fund" and therefore it is "impossible...to achieve the donor's purpose."

The Florida Uniform Prudent Management of Institutional Funds Act provides for instances when a charitable organization may modify the restrictions relating to the "management, investment, or purpose" of a gift. The terms of a gift may be modified in certain circumstances if the organization can demonstrate to the court that "the restriction has become impracticable or wasteful, if it 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."

When leaving restricted gifts to not-for-profit organizations, it is important to remember that these institutions can, and will, seek to modify restrictions placed on gifts when circumstances and institutional missions change over time. This can serve as a source of relief for organizations that accept restricted gifts when the original purpose of a gift has become irrelevant or impracticable, often decades after acceptance. Donors,

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seeking to preserve their original charitable mission for giving, may specify alternative uses for a gift, should the primary purpose no longer hold relevancy in a changing world. The use of charitable trusts, private foundations, and donor-advised funds may also provide flexibility by allowing future trustees or other decision-makers to disburse funds among one or more organizations that align with the donor's established charitable intent.

Careful planning can ensure that a donor's legacy can continue to further their charitable causes well into the future. If you have any questions regarding this matter or need assistance with charitable giving, trusts, or estate planning, please contact **Julie Frey** (julie.frey@lowndes-law.com), **Melody Lynch** (melody.lynch@lowndes-law.com), or **Andrew Powell** (andrew.powell@lowndes-law.com).