EFFECTIVE PRACTICES AND IDEAS COLLECTION (EPIC)

Unit 5 – On Being Good Stewards

Chapter 1 – Investment Policy

"Take care of yourself – you never know when the world will need you."

Rabbi Hillel

A lot of the energy and attention in community foundations is devoted to raising assets (often perceived as the most difficult part of our job) and making grants (often perceived as the most important part of our job). But in between raising money and giving it away is a critical step for foundation managers – preserving the gifts with which we have been entrusted, and generatingthe investment returns, without which neither grants nor continued donor services would be possible. We must take care of our resources so that we can be there when our communitiesneed us. At the heart of this process is the investment policy.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

The foundation's Investment Policy:

1. Contains clear goals and performance objectives.
2. Includes standards and evaluation procedures for investment managers.
3. Describes duties of the foundation's investment committee.
4. Clearly defines asset allocation targets and ranges.
5. Contains procedures for change of investment managers.
6. Identifies the schedule for meeting with investment managers to discuss performance.
7. Addresses the screening of investments based on social or other criteria, including whether, when and how the foundation will use such screens.

Stories

A Difficult Discipline

Very often, it is tempting to deviate from policy. However, no matter how difficult, you should always follow the policies. Otherwise, how do you justify your actions?

In a small community foundation in southern Indiana, the executive director was tempted to deviate from the Investment Policy, which states, in part, that all cash gifts are to be immediatelyinvested. The foundation received a $233,000 gift from an estate on February 23, 2009. This was an extremely turbulent time in the stock market as it was still in a tailspin. The Dow Jones Industrial Average was hovering around 7,000 when the gift came in. The executive director wasvery tempted to hold the gift, since the market's decline had no end in sight. However, duty won out and the executive director invested the gift as per policy. Over the next two weeks the market declined even further, finally hitting the low in early March. During these two weeks the executive director fully regretted her decision.

However, this story does have a happy ending! After hitting the March 2009 bottom, the stock market had one of the steepest increases in history, ending the year over 10,400. And the scholarship fund, at the end of 2009, had a fair market value exceeding $303,000. If the executive director had held onto the gift, trying to time the market, she would have missed out onsome of the recovery. That action would have been very difficult to defend and explain.

What I Learned: Follow your policies; that is why you have them.

What I Wish I Knew

- The most important determinant of your investment performance is your asset allocation.
- Socially Responsible Investing (SRI) is tricky for a community foundation, since different donors may have different criteria that would be important to them. If you decide to offeran SRI pool, choose a limited number of screens that make sense considering your missionand are likely to have broad donor appeal. Consider also whether you have the in-house capacity to administer another pool.

Red Flags

- *Manager on autopilot.* Make sure your investment manager is following thepolicy, not just giving you the same cookie-cutter treatment as all their clients.
- *Timing the market.* Your intellects may know better, but under the influence of fear or greed, foundation fiduciaries may be tempted to follow the hot stock tip or join the herd in getting out of a particular asset. Instead, be disciplined. Develop one asset allocationmodel and stick with it.

Practical Tips

- If your foundation welcomes recommendations from donors for new investment managers, your policy should address procedures for donors to make such recommendations.
- Neutral experts can be hard to find, especially ones who understand how investing for aninstitution may differ from an individual’s investment program. If you have a college or university in your area, try recruiting one of their staff experts as a volunteer on your investment committee. This can also help maintain continuity as board members come and go from the committee.

Chapter 2 – Spending Policy

"You cannot keep out of trouble by spending more than you earn."

Abraham Lincoln

A spending policy, typically a part of the investment policy, determines amounts available fromendowment funds for grants, operations, programs and projects of the foundation. No investment policy can be effective in safeguarding your assets and supporting your mission unless it is paired with a prudent policy for how, how much, and when to spend assets.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

The spending policy:

1. Has provisions for fluctuations, such as an extreme drop or extreme rise in investmentvalue.
2. Is available to fund donors.
3. Is clearly explained to staff and board members.
4. Is consistent with the requirements of UPMIFA (in Indiana, IC 30-2-12) (see chapter onUPMIFA below).

Stories

Unforeseen Consequences

Spending policies are a key factor effecting foundation funds over many years. There are manyother variables generating a wide variety of scenarios over time: market conditions, investment policy, regulatory environment, organizational culture, and donor and community expectations.

When the tech bubble burst in the early 2000s, many Hoosier community foundations faced the first significant downturn of their existence. Adhering to the then-prevalent UMIFA concept of notinvading Historic Dollar Value, some of these foundations withheld payouts for a time, since funds were underwater (below their original gift value). This required careful communication withdonors and would-be grantees and still resulted in some disappointment and loss of trust – especially when previous foundation representatives had not carefully explained foundation policies to its stakeholders – something which can easily happen in a young, volunteer-driven, asset-hungry foundation.

I arrived as executive director at one foundation just in time to deal with declining fund values – and the impact of decisions made earlier. The board had approved payouts of 6-7% or higher in boom years. As a result, our funds were further in the hole after the bubble burst. We eventuallyadopted a new fund distribution policy, as many other foundations did, permitting a portion of ordinary income only to be paid out even for funds that were under-water by UMIFA calculations. We also established a firm cap on payouts and became more rigorous about informing donors and agencies of our policies.

Another foundation board chose to adopt a hybrid payout policy, but to invite fund founders toopt into the policy, keeping it the default of the policy that funds do not spend below Historic Dollar Value (not even ordinary income) unless donors had opted into the hybrid policy in writing.While giving donors the choice had intuitive appeal, staff essentially had to track and administertwo different payout policies. This complicated everything from payout calculations to communications with fund statement mailings, to explaining policies to prospective new donors.Several years later, when I came on as the new CEO, the board agreed to make the hybrid policythe default for all new funds, and to encourage founders of older funds to switch over to the hybrid policy as well. However, some funds will have to be treated differently long-term becauseof the way the hybrid policy was introduced.

What I Learned: The interplay of various forces on the preservation and use of assets can be complex. Take your time when you establish or revise policies, making sure all decision-makers understand the factors affecting fund management and the long-term implications of their choices. Then communicate, communicate, communicate with bothinternal and external stakeholders about what your policies mean and why they are the way they are.

What I Wish I Knew

- Having donors and volunteers in the community understand the spending policy requirescontinual education. Public relations problems can arise otherwise.
- In developing a spending policy, any foundation must take into consideration “intergenerational equity.” Community foundations face two competing interests: spending resources today to deal with current issues and setting aside funding to allowfuture generations to address community needs. There is no right or wrong answer, andeach community foundation board will need to find its own solution to this question.

Red Flags

- *Lack of familiarity with your fund agreements* – including templates used in the early days of your foundation, as well as special exceptions that may have been made. In anyinstance, the fund agreement or other gift instrument trumps all, including UPMIFA. Know your fund agreements.

- *Ignorance or passive leadership regarding intergenerational equity.* Your board is responsible for ensuring that assets are managed to meet both present and future needs. If you set your spending rate too high, you will exhaust the principal in your endowments, shortchanging future generations. If you set your spending rate too low, you cannot meet your present obligation to the community, nor follow the donors' intentions. Spending policy conversations should include frank deliberation about how tobe fair to both current and future community members.

Practical Tips

UPMIFA helps to define appropriate spending policies from charitable endowment funds. This law, adopted at the state level, outlines seven considerations:

1. Duration and preservation of the endowment fund;
2. Purposes of the institution and of the endowment fund;
3. General economic conditions;
4. Possible effects of inflation or deflation;
5. Expected total return from income and the appreciation of investments;
6. Other resources of the institution; and
7. The investment policy of the institution.

A one-page short explanation of how the spending policy works is helpful for donors.

Chapter 3 – Investment Manager Relationships

"Money doesn't grow on trees."

Mom and Dad

While no tree bears currency as fruit or flower, money does grow kind of like trees grow. Growth and decline are cyclical as the seasons, diversity improves the resilience of the forest, and manytrees are endowed with a recurring harvest useful to humans: walnuts, apples, maple syrup – orearnings. In the orchard of your assets, your investment manager takes care of the planting of diverse investments that promise to flourish in your soil, the pruning of asset classes that have grown to exceed your policy guidelines, and the removal of diseased specimens. You need an arborist who is skilled not only in grafting and trimming, but in making sure your team understands the state of your forest and can act responsibly on recommendations for its care.

That way you will be picking off beautiful payouts for decades to come.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

1. There is a written plan including criteria for selection of an investment manager(s) and/orconsultant.
2. The board has set minimum standards for performance relative to benchmarks.
3. Conflict of Interest (e.g., family or personal relationship, board members receiving compensation from investments, self-dealing) is addressed with all investment managersduring both the hiring process and the working relationship.
4. In addition to regular reports, the Foundation meets with its investment manager(s) and/or consultant on a regular basis (at least annually for managers, at least quarterlyfor consultants).

Stories

A Foundation Too Big to Fail?

At one time, the Picower Foundation, with assets in excess of $1 billion, ranked 71st nationally insize. In 2002, it made a $50 million grant to advance neuroscience research at the Massachusetts Institute for Technology, which at the time was the largest gift ever received by MIT from a private foundation. Between 2004 and 2007, the Picower Foundation gave away about $70 million.

The Picower Foundation, however, had all its investments with Bernie Madoff. When the scandal involving Madoff was uncovered it was discovered that, rather than a value of $1 billion,the Picower Foundation was, in fact, worthless. As a result, charitable giving that could have approached $50 million a year disappeared.

What I Learned: If an investment manager promises (or appears to deliver) results that are toogood to be true – it is. Do your due diligence!

What I Wish I Knew

- The more investment managers you add, the more complicated your month-end reconciliation becomes.
- Your relationship with your investment manager is a business relationship. A relationshipbased on anything other than objective criteria could lead to under-performance and damage your foundation's credibility.

Red Flags

- *Phenomenal performance.* Be cautious of any investment manager who claims to reportinvestment performance far exceeding market performance.
- *Creeping fees.* Pay careful attention to underlying investment management fees with your assets to make sure that they're reasonable.

Practical Tips

- Your internal controls will be stronger if a firm other than your investment manager provides custody of the securities.
- Investment results should be reported according to accepted standards.

Chapter 4 – Shopping for an Investment Manager or Consultant

"There seems to be some perverse human characteristic that likes to make easy things difficult."

Warren Buffet

The investment manager or consultant is a critical member of your team – just as important to your foundation's success as staff with program or development responsibilities. But most foundations don't have investment expertise directly on their staffs until they are quite large. Meanwhile, the role of Chief Investment Officer will be outsourced. This makes it more importantthan ever that you hire someone trustworthy and effective – and that you clearly define your objectives and guidelines and hold this person accountable. It all starts with the RFP process.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

1. Periodically the foundation reviews its relationship with its investment manager(s)/consultant(s) and investigates alternate relationships.
2. The Request for Proposal (RFP) is reviewed by legal counsel prior to distribution.
3. The proposals are evaluated using a predetermined, weighted Rubric-style grading system based on foundation priorities, comparing such things as fees, structure, philosophy, operating style and client satisfaction.
4. The foundation communicates in a timely manner with all firms that submitted a proposal but were not chosen.
5. The appropriate volunteers have a "face-to-face" meeting with the investment manager(s) and/or consultant(s) prior to final selection.
6. Volunteers and staff disclose any conflict of interest before a final decision is made.
7. There is a written contract with the foundation's investment manager(s)/consultant(s).
8. The investment manager(s)/consultant(s) sign(s) the foundation's investment policy indicating that they will abide by the terms of that policy.

Stories

"Let Me Take Care of That for You"

A small nonprofit in our community received a very nice bequest of nearly $100,000. Becausethis charity's budget was relatively small – less than $50,000 a year – the bequest had the potential to be a very nice revenue source.

One member of the board, whose child participated in the nonprofit, was also a financial advisorwho sold investment management services. He was able to convince the board to allow him to invest the bequest – for which he received a commission. No one on the board, apparently, questioned this as a potential conflict of interest.

The board member/investment manager used the money to buy a mutual fund with a front-endsales charge. This fund was heavily invested in internet and technology stocks. When the "internet bubble" burst in the late 1990s, this fund lost a great deal of its value.

After reviewing what had happened, the board decided to pull the money from that financial advisor and create a fund at the community foundation. By that time, however, the $100,000bequest was less than $60,000.

What I Learned: When it comes to matters of investment, always, always scrutinize the motivesof would-be helpers. Make sure your mission comes first.

What I Wish I Knew

- This is a highly competitive field and investment management fees may be subject to negotiation.
- The investment manager community will aggressively try to provide their services to yourfoundation. Manage your time according to your own priorities.

Red Flags

- *Castles in the air.* If it sounds too good to be true, it is.
- *Rosy retrospectives.* Don't be lulled into proposals that tell you how well they could havedone with your funds.
- *Local fallout.* Beware of using one local advisor; this may raise the hackles of other localcompetitors much more than choosing a manager or consultant from out of town who is in another league.

Practical Tips

- There should be a clear understanding of the benchmarks that will be used to evaluatethe performance of the investment manager.
- Make sure you are considering all fees including management and investment.
- Don't select someone local just because they're local. First and foremost, they've got tohave the chops to meet your objectives.

Chapter 5 – Audit Process

"People always ask me, 'Were you funny as a child?' Well, no, I was an accountant."

Ellen DeGeneres

Minding the store is no laughing matter, and that's what a foundation board counts on its auditorto help it do. The auditor role, played well, can inspire confidence in your board and donors, provide guidance on unfolding issues, and help foundation leaders be thoughtful about managing risks and reporting assets. Find a skilled professional to fill this role and then make the most of his or her capabilities. If you have a few laughs together along the way, it's icing on the cake.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

1. The foundation has a standing committee with responsibility for the audit and internalcontrols.
2. The committee is made up of objective volunteers who are knowledgeable in financial matters.
3. An external audit firm is selected using a fair and unbiased process.
4. Internal controls to safeguard assets are documented.
5. Internal controls are tested at least once annually (in addition to testing by auditors), andthe results of the internal control testing are reported to the audit committee.
6. The auditing firm tests internal controls as part of their audit fieldwork.
7. Results of the audit are shared with the audit committee and board, including time fordiscussion without staff present.
8. All management letter items are responded to and followed up in a timely manner.
9. The foundation changes auditing firms or audit partners every 3 - 5 years.

Stories

More Than We Bargained For

Our community foundation undertook an RFP process for an auditor several years ago and received meaningful proposals from three firms. We evaluated each proposal based on pre-established criteria, including weighting of different items. Two of the firms came out way aheadof the third; in fact, they came out with the exact same average score.

Various points-of-view were expressed as committee members discussed which way to go. The CEO argued for the out-of-town firm. They had worked with many community foundations and knew the issues of our field, and they had a reputation among peers for excellent service. Plus, the CEO had some reservations about the personality of the lead CPA in the other firm, based onconfidential observations shared by another local non-profit director that worked with him.

Several of the committee members, however, strongly felt that with all else being equal in our systematic scoring, we should favor the local candidate. They favored keeping our business localin general, and another CPA in the firm was an emeritus board member and donor of the community foundation. (Naturally these board members had business relationships with the emeritus member as well). The final vote came out for the local firm and we hired them.

The CPA we worked with from the local firm did turn out to need a lot of education about our field. He also had a way of leaving our accountant out of the loop and failed to share importantinformation with us the first year that could have had a serious impact on our payouts the following year. Further, he took more of the CEO's time than any other auditor she had ever worked with, reviewing each issue in exacting detail. Even the committee was so bored by his audit presentations that they didn't want him to report directly to the board but opted for a committee member to recap key items instead.

We had reason to believe at the outset that this individual was "an odd bird" (as one committee member described him) and not the easiest to work with. What we hadn't expected was that therelationship would turn sour. The CPA voluntarily put in work that was beyond the terms of our contract and then insisted that we owed him for the work we had not asked him to do. Even peers in his firm were sympathetic to us, acknowledging that he could "get a bee in his bonnet" and become unreasonable.

We'd intended to work with our new auditor for three years but ended the relationship two years into that period. We spent significant staff and volunteer time handling the situation, which included statements from him implying that he would sue us for the amount he felt he was owed.He finally seemed to accept that his position was indefensible and gave up. However, he will probably always believe he was wronged and may well be steering donors away from the Foundation behind closed doors.

We ended up hiring the audit firm that had been his rival in our RFP several years before. Everyone in our foundation has been thrilled with their professionalism, efficiency, knowledge,and customer relationship skills.

What I Learned: While there are many important qualifications for an auditor, all else being equal, you want someone who is not only effective in their technical skills and knowledge, but easy and pleasant for your staff and volunteers to work with. Life is tooshort for anything else.

What I Wish I Knew

- Sometimes you know more about non-profit auditing than auditors do. You often knowmore about community foundation issues than your auditor will.
- If you have an unusual situation throughout the year, get your auditor involved so you know what they will be looking for when it is time for the audit.

Red Flags

- *Inside connections.* Be mindful about conflict-of-interest issues when hiring an audit firm.
- *Low introductory price.* Be careful about selecting an auditor based on low introductoryprice. Reputable firms charge what they are worth and make it worth your while.
- *Multi-year contracts.* You may have the intention to work with the same auditor for several years, but sign agreements one year at a time. If problems arise, you don't wantto be locked in to continuing with that firm.
- *FASB fanaticism.* FASB rulings are subject to interpretation. Listen to your auditor's interpretation, but don't let him or her insist that there's only one right way to understandthe issues.

Practical Tips

- When shopping for an auditor, make sure you select an auditor experienced in non-profits, using a formal process and asking the right questions.
- You may spend a lot of time educating new audit staff on the operations of a communityfoundation.
- The auditing profession is very competitive, and you should not hesitate to negotiate feeswith an auditor.

Chapter 6 – Fiscal Responsibility

"You cannot escape the responsibility of tomorrow by evading it today."

Abraham Lincoln

Fiscal responsibility is a self-imposed discipline. There is rarely immediate pressure to recordinformation clearly, track it carefully, and report it accurately. But errors and inattention can have far-reaching consequences. That's why it's best to establish regular routines, so that it becomes second nature for staff and board members to manage resources carefully.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

1. Information about assets and liabilities, gifts received, fund balances and the operationalbudget is clear and concise.
2. Financial reports with prior year comparisons are presented to the board on a regular basis.
3. Budget variances are clearly identified and explained.
4. All information is presented to the board in advance of the meeting.
5. Board members are encouraged to ask questions, offer suggestions and voice concerns.
6. The foundation's operating budget is sustainable and avoids reliance upon the use of cash reserves.

Stories

Mixing the Minutes

I recently came across a story about a community foundation executive director who rewarded himself at the expense of his foundation. The community foundation in question was smaller insize, with about $2 million in assets. Keep in mind that an executive director of such a small foundation would probably only make $20,000-$30,000 per year.

This executive director had a strong personality and basically ran the show, so to speak. One task that he took on was to draft the minutes for the board meetings. Not only didhe draft the minutes, but he also made changes to them without the knowledge of the other staff and board members. Many of his changes were fictional, like marking that a grant had been discussed and approved at the last board meeting when it had not been. This was the narrative equivalent of cooking the books.

As I mentioned, an executive director at a small foundation like this one would only make

$20,000-$30,000 per year. Apparently, the executive director did not think his salary was sufficient, because for a particular board meeting, he added a section in the minutes that increased his salary. The section he added marked that the board members discussed and approved to give him a significant pay increase. How much of a pay increase, you ask? After that board meeting, the executive director began making $65,000 per year. It was not until a shift in board leadership occurred that they discovered the fictional nature of many of the boardmeeting minutes.

What I Learned: Community foundation staff and board members need to pay attention, not justto board minutes, but to all information regarding the foundation and its efforts. Board members should also bolster their courage and speak up if they notice inconsistenciesin information.

What I Wish I Knew

- One of the attributes that you sell as a community foundation is your ability to be fiscallyresponsible, especially since you're selling a product that will last forever.

Red Flags

- *Hints of poor financial management.* If a foundation is not (or is perceived not to be) fiscally responsible, the damage to the reputation of the foundation can last a very longtime.
- *Sloppiness.* Do the right thing even when it seems inconsequential – someone's alwayswatching.

Practical Tips

- Make sure you have trusted staff members in positions of fiscal responsibility.
- It's important to have checks and balances in place among staff that are both reasonable and relative to the benefit and size of the organization.
- Use a routing slip to follow a check's processing through the staff

Chapter 7 - UPMIFA

Prudent: Sagacious in adapting means to ends; circumspect in action, or in determiningany line of conduct; practically wise; judicious; careful; discreet; sensible; -- opposed to rash; as, a prudent man; dictated or directed by prudence or wise forethought; evincing prudence; as, prudent behavior.

Definition from BrainyQuote.com

Building on earlier legal formulations, the Uniform Prudent Management of Institutional Funds Act (UPMIFA) was set forth to help guide organizational fiduciaries in discharging their duties in a prudent manner. Responding to the limitations of its predecessor, known as UMIFA (which omitted "prudent" from its title, though not its intent), the new UPMIFA law dropped the concept of Historic Dollar Value – the original value of gifts to an endowment, which must be preserved. Instead, UPMIFA spells out a range of factors to be considered in the management of institutional funds. UPMIFA addresses a range of institutional funds – not just endowments – and it pertains to all charitable organizations. It provides rules regarding both the investment andexpenditure of assets.

UPMIFA gives fiduciaries a wider latitude to exercise their judgment toward prudent managementof funds. Thus, it also requires a more nuanced and complex evaluation. An unintended consequence of the legislation is that it not only allows, but demands, greater understanding andskill on the part of fiduciaries.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

1. The foundation refers to the Uniform Prudent Management of Institutional Funds Act (UPMIFA) in its investment policy, by-laws or other document ratified by the board.
2. The board determines that the foundation incurs only reasonable costs in investing andmanaging charitable funds.
3. The board assures that a reasonable effort is made to verify facts about specific/proposed investments.
4. The board assures that the foundation appropriates or accumulates as much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration of the endowment fund.
5. The board determines that the foundation refers to UPMIFA or the gift instrument to determine spending or distribution from the endowment fund.
6. The board considers key elements of the UPMIFA legislation in making its investment management decisions:
    a. General economic conditions.

b. Possible effects of inflation or deflation.
c. Possible tax consequences of investment decisions or strategies.
d. Role of each investment or course of action in relation to the overall portfolio.
e. Expected total return from income and appreciation of investments.
f. Other resources of the institution.
g. Needs of the institution and institutional fund to make distributions and to preservecapital, and.
h. Relationship or value of the asset to the charitable purposes of the institution.
i. Duration and preservation of the endowment fund.
j. purposes of the institution and of the endowment fund.
k. the investment policy of the institution.

7. The board pursues diversification of investments unless, due to special circumstances,the purposes of the fund are better served without diversification.
8. The board utilizes any special skills or expertise possessed by the institution or managers.

Stories

If Only They Had Known…

A very small local charity was pleased to learn that it had received a small bequest – $12,000 – that the donors will be asked be invested for the benefit of the charity. The charity had a small annual budget, about $150,000 a year, so the gift was meaningful to their larger budget picture.

When the gift was received in early 2008, interest rates on bank certificates of deposit were lowand heading lower. One board member had an idea. He had heard about something called a “mortgage-backed security” which paid more than a certificate of deposit. Because the charity had no investment policy – and did not know of or understand UPMIFA, which could have provided useful guidance – everyone agreed with the board member’s suggestion. The entire $12,000 was used to purchase one bond.

The 2010 audit tells the rest of the story. The $12,000 investment in the mortgage-backed security had to be written down to less than $2,000, and the charity reported a “loss on investments” of more than $10,000 – quite a loss for a charity of that size.

What I Learned: It’s a good thing that UPMIFA applies to all charities, and to a range of institutional funds – and that it provides principled guidance on how to be prudent in the management of such funds. In practice, however, many boards may not familiarize themselves with UPMIFA. We should keep our own boards informed and give other local boards a heads-up when we know they might need it.

What I Wish I Knew

- Accountants and lawyers don’t always agree on the parameters or definitions of UPMIFA.
- It’s ideal if your finance committee or board has some financial expertise to help you understand these issues and apply them to the foundation.
- Confusingly, while Indiana did adopt a version of what is nationally known as UPMIFA, theHoosier state retained the old name UMIFA for its new regulations. Throughout this document, laws based on the national UPMIFA model are referred to as UPMIFA.

Red Flags

- *Choosing not to operate under UPMIFA.* While UMIFA was voluntary, UPMIFA is statutoryand required in Indiana. (Don’t be confused by the fact that Indiana kept the name as UMIFA when adopting the changes.)
- *Relying on general or national information about UPMIFA.* Not every state has adoptedUPMIFA, and details vary from state to state – check your state.
- *Black-and-white pronouncements.* Be aware that there are various interpretations of UPMIFA. Professional opinions are just that.

Practical Tips

- Ensure that board members and new donors understand how the foundation applies UPMIFA to determine if it is important to them.
- UPMIFA outlines what the foundation needs to consider as it is making its spending determination.
- Make considerations outlined in #4 above available to your board/committee when theyare determining spending allocations.
- UPMIFA allows your board to modify or release certain restrictions on funds without courtor donor approval.

Chapter 8 – Fund Agreements

“A verbal contract isn't worth the paper it's written on.”

Samuel Goldwyn

A gift agreement is a common tool used by charitable organizations when accepting a major gift.Putting the agreement in writing helps clarify choices, spell out details, and ensure that all parties are comfortable with the arrangement. Such a step is more important when the gift is for a permanent fund. The donor will someday be unavailable to consult, and the staff whotoday so clearly understand the intent for the fund will have many successors. Further, with a permanent fund it is more likely that at some future time, circumstances unanticipated atthe fund’s founding will arise. Putting the contract in writing is the best way to capture donor intent, express organizational commitments, and cover all contingencies.

Assessment

Take this quiz to determine your community foundation’s level of effectiveness in this area:

a. Fund agreements are routinely reviewed to ensure continued compliance with its terms.
b. Fund agreements reflect the approved format and language of competent legal counsel.
c. To protect the donor and the foundation, clearly defined procedures are in place for preparing and approving new fund agreements.
d. Original fund agreements are stored in a secure location or format.
e. A process is in place to document key steps in the creation of a new fund agreement.

Stories

Honoring Original Donor Intent

Sometimes, a community foundation will face a difficult issue when donors ask to change a fundagreement. Many years ago, a married couple created an endowed fund in both of their names.The wife subsequently died, and the husband remarried. The husband asked that his previous wife’s name be removed from the fund and replaced with his new wife’s name.

Our board chose not to honor the request, as we felt that the endowed fund should remain a permanent memorial to both spouses. The husband also helped solve the problem when he came to us with a new gift for the endowed fund. We created a new fund with his second wife'sname, so now the donor has two funds, one with the name of the first wife and one with the name of the second.

What I Learned: When explained tactfully, donors will understand that you are bound to honorthe intent expressed at the time of the original fund agreement.

What I Wish I Knew

- Fund agreements need to clearly reflect what the donor wants, so that when the donor isgone, the document can stand on its own. It will be the donor's voice in 50 years, after everyone at the table today is deceased.
- When a memorial gift happens suddenly, dealing with the grieving family may require great sensitivity. While such a gift can be a very meaningful way for the family to memorialize a loved one, emotions may run high and fluctuate.

Red Flags

- *Casually amending fund agreements.* Be careful if the foundation and/or donor wants toamend the fund agreement – be aware of the limitations and requirements. Don't execute an amendment that provides the donor more control, only less. You can removerestrictions, but you can't add them.
- *Advisor quandaries.* If you have a fund agreement where both spouses are the donor advisor, the foundation needs to know if the parties have determined who will advise thefund in the case of divorce.
- *Hasty deposits.* Don't file or deposit the gift until the fund agreement is signed – for theprotection of the foundation and the donor.
- *Restricted agency funds.* Don't set up an agency fund with restrictive purposes until checking with the agency first.

Practical Tips

- Your board should set policy on who is authorized to accept new funds and under whatcircumstances. You can expedite most funds by requiring board approval only for fundsthat vary from board-approved templates for the various fund types.
- Communicate to the donor that their fund agreement serves as their voice in perpetuity.
- If the donor wants to create a fund for an agency or purpose that is unlikely to be permanent, have them suggest an alternate purpose.

Have a frank conversation with the donor before their gift indicating that once their gift is made, it cannot be amended.

Questions?

Have questions about this information? Please contact us.

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