FLORIDA UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

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I. Florida Uniform Prudent Management of Institutional Funds Act

a. Florida UPMIFA, New Florida Statutes Section 617.2104. In 2011, Section 617.2104, the Florida Uniform Prudent Management of Institutional Funds Act ("Florida UPMIFA") was enacted and Section 1010.10 (the Florida Uniform Management of Institutional Funds Act (Florida UMIFA) was repealed, effective July 1, 2012.

b. Expanded Application; Definitions, s. 617.2104(2).

   i. Institutions. Florida UPMIFA applies to all "institutions," defined as a person organized and operated exclusively for charitable purposes (other than an individual or a trust subject to Section 518.11, F.S.), a government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose, or a trust that had both charitable and noncharitable interests after all noncharitable interests have been terminated. The repealed Florida Uniform Management of Institutional Funds Act (Florida UMIFA) applied only to educational institutions.

   ii. Institutional Fund: "a fund held by an institution exclusively for charitable purposes. The term does not include: 1. program-related assets; 2. a fund held for an institution by a trustee that is not an institution; 3. a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund; or 4. A fund managed or administered by the State Board of Administration pursuant to its constitutional or statutory authority."

   iii. Endowment Fund: "an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use."

iv. Gift Instrument: "a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund."

c. Standard of Conduct in Managing and Investing Institutional Funds, s. 617.2104(3).

i. Donor Intent; Charitable Purposes. Subject to the intent of the donor as expressed in the gift instrument, an institution must also consider the charitable purposes of the institution and of the institutional fund.

ii. Duties of Mangers. Each person managing and investing has a duty of loyalty and "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."

iii. Reasonable Costs; Verify Facts. The institution may only incur reasonable and appropriate costs and must make reasonable efforts to verify relevant facts.

iv. Factors. The following factors (if relevant) must be considered in managing and investing a fund:

1. Economic conditions;
2. Possible effect of inflation or deflation;
3. Any expected tax consequences;
4. The role that each investment or course of action plays considering the overall investment portfolio of the fund;
5. The expected total return from income and the appreciation;
6. The institution's other resources;
7. The needs of the institution and the fund to make distributions and to preserve capital; and
8. An asset's special relationship or special value, if any, to the institution's charitable purposes.

v. Portfolio Theory. Florida UPMIFA uses a portfolio theory and requires that all management and investment decisions be made considering an overall strategy "having risk and return objectives reasonably suited to the fund and to the institution."

vi. Investments; Diversification. Investments may be made in any kind of property and must be diversified unless the fund is better served without diversification.

vii. Receipt of Property. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property in order to maintain compliance of the portfolio of the institutional fund.

viii. Special Skills. Any person with special skills or expertise has a duty to use them with regard to the management and investment of the fund.

d. Appropriation for Expenditure or Accumulation of Endowment Fund, s. 617.2104(4).

i. Appropriate or Accumulate Funds. An institution may appropriate or accumulate funds as it deems prudent so long as it is, first, within the donor's intent as expressed in the gift instrument and, second, within the uses, benefits, purposes, and duration of the endowment fund. The institution must act in good faith and "with the care that an ordinarily prudent person in a like position would exercise under similar circumstances" considering, where relevant:

1. The endowment fund's duration and preservation;
2. The purposes of the institution and of the endowment fund;
3. Economic conditions;
4. Possible effect of inflation or deflation;
5. Expected total return from income and appreciation;
6. The institution's other resources; and
7. The institution's investment policy.

ii. Donor Limitation on Appropriation/Accumulation. In order to limit the institution's ability to appropriate or accumulate, a gift instrument must specifically state such a restriction.

iii. Donor Specificity Required. Terms in a gift instrument designating a gift as an endowment, or that directs/authorizes the use of only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or other similar language, create an endowment fund of permanent duration (unless otherwise limited in the gift instrument) but do not limit the authority to appropriate or accumulate.

e. Delegation of Management and Investment Functions, s. 617.2104(5). Delegation is permissible, provided that the gift instrument does not limit delegation.

    i. Delegation to Agent. An institution must act in good faith "with the care that an ordinarily prudent person in a like position would exercise under similar circumstances" in selecting an agent, establishing the scope of the delegation, and periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the delegated functions.

    ii. Agent's Duty of Care. The agent owes a duty of reasonable care to the institution and the institution is not liable for the agent's decisions or actions when the institution acts in good faith as an ordinarily prudent person would as described in the Florida UPMIFA.

f. Release or Modification of Restrictions on Management, Investment or Purpose, s. 617.2104(6).

    i. Donor Consent. With a donor's consent, an institution may release or modify a restriction in a gift instrument on the management, investment, or purpose of an institutional fund (within the charitable purpose of the institution).

    ii. Governing Board. If the institution cannot obtain donor consent because of the donor's death, disability, unavailability, or impossibility of identification, a governing board may modify a restriction contained in a gift instrument regarding the management, investment, or use of an institutional fund if:

        1. The fund has a total value of $100,000 or less; and

        2. Either

            a. the restriction has become impracticable or wasteful, impairs the management, investment, or use of the fund or

            b. if, because of circumstances unanticipated by the donor, the modification will further the fund's purposes.

    iii. Institution, Notice to Attorney General. "If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, after providing written notice to the Attorney General, may release or modify the restriction, in whole or part, if:

1. The institutional fund subject to the restriction has a total value of at least $100,000 and not more than $250,000;
2. More than 20 years have elapsed since the fund was established; and
3. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument."

iv. Court; Management or Investment. Upon application of the institution, with notice to the Attorney General, the circuit court may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if 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. Any modification must be in accordance with the donor's probable intention to the extent practicable. For example, if an institution received funds with a restriction to invest only in subprime mortgage bonds, at a time when such investment may have seemed reasonable, the organization could use this provision to request a modification of the restriction.

v. Court; Restriction on Use. Upon application of the institution, with notice to the Attorney General, the circuit court may modify the purpose of the fund or restriction on the use contained in the gift instrument if the restriction has become unlawful, impracticable, impossible to achieve, or wasteful, in a manner consistent with the charitable purposes expressed in the gift instrument. For example, consider a large endowment restricted to purchasing books, held by an organization that is changing to electronic formats, or an endowment to purchase typewriters for underprivileged students; the institutions may use this provision to request a modification of the restrictions on the use of the endowment.

g. Reviewing Compliance, s 617.2104(7). Compliance with Florida UPMIFA is determined in light of the facts and circumstances at the time a decision is made or action taken, not by hindsight.

h. Effective Date and Application, s. 617.2104(8). Florida UPMIFA applies to institutional funds existing on or established after July 1, 2012. With regard to institutional funds existing on July 1, 2012, Florida UPMIFA governs only decisions made or actions taken on or after July 1, 2012.