

§5106. Release or modification of restrictions on management, investment or purpose

1. Release or modification of restriction with consent. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

2. Modification of restriction by court. The court, upon application of an institution, 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. The institution shall notify the Attorney General of the application and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

3. Modification by court when unlawful, impracticable, impossible or wasteful restriction. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application and the Attorney General must be given an opportunity to be heard.

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

4. Release or modification by institution. This subsection governs the release or modification of a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund that the institution determines is unlawful, impracticable, impossible to achieve or wasteful.

A. 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, 60 days after notification to the Attorney General and if the Attorney General does not object, may release or modify the restriction, in whole or part, if:

(1) The institutional fund subject to the restriction has a total value of less than \$25,000, except that the dollar limit established in this paragraph must be adjusted to reflect changes in the Consumer Price Index for all Urban Consumers, CPI-U, as compiled by the United States Department of Labor, Bureau of Labor Statistics, or its successor index, using 2009 as the base year. On or before January 1, 2011, and each odd-numbered year thereafter, the dollar value must be adjusted for the next 2-year cycle if the cumulative percentage of change in the index, from the base year or from a later year that was the basis of an adjustment of this amount pursuant to this subparagraph, rounded to the nearest whole percentage point, is in excess of 10%. The adjusted exemption must be rounded upward to the nearest \$5,000 increment. The dollar value must not be reduced below \$25,000;

(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. [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

B. If the Attorney General objects under paragraph A, the institution may seek to release or modify the restriction in court pursuant to subsection 3. [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

SECTION HISTORY

PL 2009, c. 450, §2 (NEW). PL 2009, c. 450, §3 (AFF).

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