



# Adventures in Accepting Restricted Gifts



Date: June 25, 2015  
Time: 1:00 – 2:30 Eastern Time  
Presenter: Elaine Eberhart  
Chair, Department of Development  
Mayo Clinic in Florida



## Caveat

At Mayo Clinic, we  
call donors  
benefactors.



# Agenda: Problems with Restricted Gifts

- Administrative
- Financial
- Legal
- Stewardship



# Agenda: Laying the Foundation for Yes





# Agenda: Detour or Road Closed



Changing a restriction with the benefactor or in court

Disclaiming a restricted testamentary gift





# Agenda: When Restrictions go to Heck in a Handbasket: A Few Examples

Where are we going, and why are we in this handbasket?





# What is the Difference Between a Restricted and Unrestricted Gift?

We often think of unrestricted gifts as undesignated, but they can be *broadly designated* and truly unrestricted

Most common restricted gift: **Restricted Purpose**

Gifts can also be restricted by:

- Terms
- Gift vehicle
- Funding Asset



# Best Case Scenario for Restricted Gifts

Every gift fits neatly under a strategic fundraising initiative, is easily administered, is legal, and advances the institution financially.

Center for  
Biomedical  
Discovery

Center for  
Individualized  
Medicine

Center for  
Regenerative  
Medicine

Mayo Model of  
Care

Proton Beam  
Therapy  
Program

Robert A. and  
Patricia E. Kern  
Center for the  
Science of  
Healthcare Delivery

Mayo Medical  
School





# But that is...





# Problems with Restricted Gifts

- Administrative
- Financial
- Legal
- Stewardship



# Administrative Difficulties

- Narrow eligibility criteria that may prohibit use of the gift long-term
- Programs that are difficult and expensive to execute or that simply lie outside the missional priorities of the organization
- Funds that are dependent on the continued employment of a particular employee



# Legal Difficulties

- Benefactor wishes to retain control over the gifted asset
- Benefactor wishes to impose restrictions that are illegal or unethical
- Gift acceptance issues regarding assets (Pre-arranged sales of real estate gifts or debt-encumbered property)



# Financial Difficulties

- Cannot meet the investment expectations of the benefactor
- Doesn't meet institutional minimums for type of fund or for endowment
- Benefactor has a complicated financial relationship with the institution: vendor, investor in for-profit activities, board member who sits on investment committee



# Stewardship Difficulties

- Benefactor seeks more recognition than stewardship policy allows
  - Wants same recognition for deferred gifts and current gifts
  - Wants more recognition than institutional standards
- Benefactor seeks the stewardship “deal” a friend received eons ago



# Laying the Foundation for **Yes**

- Gift acceptance policies and teams
- Gift agreements
- Exceptions to policy
- Risk tolerance



# A Layer of Facilitation and Review at Mayo Clinic

- Development Administrators (DAs) are fundraising initiative experts and liaisons to clinical, research, and educational areas
- DAs vet restrictions with area leaders and sometimes suggest alternatives to development officers and benefactors





# A Layer of Facilitation and Review at Mayo Clinic

- DAs prepare Memoranda of Understanding (MOU) to assure that restrictions can be honored, particularly above a certain dollar threshold, and assure that proposal language properly captures the restriction



# Gift Acceptance Policies

- Help minimize inconsistency
- Manage benefactor expectations
- Help rein in “entrepreneurial” development officers and volunteers
- Maintain institutional integrity

*“A foolish consistency is the hobgoblin of little minds, adored by little states and philosophers and divines.” - Emerson*



# Components of Most Gift Acceptance Policies

- Mission
- Conflict of interest
- Gift Acceptance Committee
- Gifts that the organization will not accept
- Gift vehicles
- Assets accepted as gifts
- Trustee appointment



## You might want to include:

- Booking, valuation, and counting standards
- Stewardship policy
- Real estate acceptance and management policies
- Policy on gold coins
- Use of outside counsel
- Escalation policy



# Gift Acceptance Team at Mayo Clinic

- Gift Planning Associate Chair ~ Chair
- OGP Gift Planning Administrator ~ Administrator
- Legal Officer
- Director of Finance
- Director of Stewardship
- Principal Gift Officer
- Major Gift Officer
- Administrative Assistant



# The Gift Acceptance Team

- Is committed to facilitating gift closures
- Interprets and enforces policy
- Does not make policy
- Members have tolerance for ambiguity



## Every Rule has an Exception, and Most Exceptions are Governed by Rules

- Mayo Clinic Gift Acceptance Team maintains a record of prior exception decisions
- Documenting gift acceptance exceptions creates guidelines for future exception decisions

### **BUT**

- Not all exceptions set precedents
- Some exceptions eventually will be codified in the gift acceptance policy



# Documentation is Everything

- Call reports should document all encounters in which benefactor discusses restricted intention
- Capturing the restricted intention from its earliest iteration
- Documenting institutional promises made regarding restrictions
- Confirming the benefactor's intention during every conversation
- Including family members in conversations as appropriate and documenting conversations with them





# Nothing is as Important as a Well-Drafted Gift Agreement

- Be prepared: have several templates for various types of gifts
- Always include changed circumstance language
- Review regularly to assure compliance with current law



# Nothing is as Important as a Well-Drafted Gift Agreement

- Assure layers of review prior to signatures
- Ask benefactor to seek advice of his/her advisor prior to signing



# Managing Risk

- Know the risk tolerance of the decision makers
- Outline the risk in internal documents; don't underestimate the risk
- Project risk long-term; err on side of worst-case scenario in describing risk for decision makers
- Though you are benefactor-centric, cue decision makers that you are committed to protecting the interests of the institution



# Managing Expectations

- Move slowly; don't get ahead of the decision makers.
- Don't get stakeholders excited about gifts that may not happen.
- Attend to relationships with legal, finance, and programmatic colleagues before negotiating difficult gift scenarios.
- Take one for the team.
- Know when and how to escalate.



# Changing Restrictions or Disclaiming Testamentary Restricted Gifts

## Detours and Roadblocks



# Changing Restrictions for Endowed Funds: UPMIFA

- Restrictions can be released with the written consent of the benefactor.
- If the benefactor's written consent cannot be obtained, a court of appropriate jurisdiction can release the restriction if the restriction "is obsolete, inappropriate, or impracticable."



# Changing Restrictions for Endowed Funds: UPMIFA

- If the fund is over 20 years old and the amount is less than \$25K, the charity may not need to go to court
- A release cannot change the use of the funds to non-charitable purposes



# Disclaiming a Restricted Testamentary Gift: Questions

- Can the gift be disclaimed under applicable federal and state law?
- What is the time period in which docs can be filed?
- Have you filed the appropriate state documents?
- Have you already accepted any part of the disclaimed asset, a trust distribution, for instance?





# Going to Heck in a Handbasket

A few cases about which you probably  
have heard . . .



# Cases That Suggest What Can Go Wrong and How Badly

- Sweet Briar College
- Garth Brooks
- The Barnes Foundation
- The United Daughters of the Confederacy v. Vanderbilt University



# Finally, the importance of honoring restrictions...



# The Enforcers

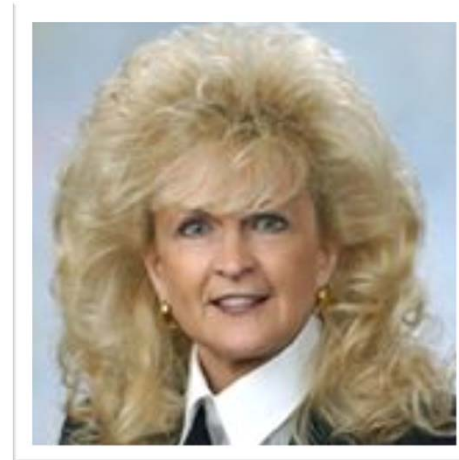
**Lori Swanson**

**Attorney General  
State of Minnesota  
9,496 Charities**



**Carmen Keller**

**Development Allocations  
Administrator  
Mayo Clinic  
8,120 Restricted Accounts**





# Questions and Answers





## Still Have a Question?

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