



Online CLE

Donor Restrictions and UPMIFA: Perpetuity May Not Be Forever?

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Chapter 4

Donor Restrictions and UPMIFA: Preventative Maintenance for Endowment Funds

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Contents

I.	Background and Scope of UPMIFA	4-1
II.	Donor Restrictions	4-2
III.	Prudent Investing	4-3
IV.	Endowment Spending.	4-4
V.	Release or Modification of Restrictions	4-6
	Oregon Uniform Prudent Management of Institutional Funds Act	4-9
	Comparison of UMIFA and UPMIFA	4-13

I. BACKGROUND AND SCOPE OF UPMIFA

The Uniform Management of Institutional Funds Act ("UMIFA") was adopted by the National Conference of Commissioners on Uniform State Laws (the "Uniform Law Commission") in 1972 and enacted in Oregon in 1975. The stated purposes of UMIFA were to guide charities on the management and investment of funds, provide rules on spending from endowment funds, and permit the release of restrictions on the use and management of charitable funds. Recognizing that UMIFA was incomplete and somewhat out of date, the Uniform Law Commission adopted the Uniform Prudent Management of Institutional Funds Act ("UPMIFA") in 2006. (The addition of the word "prudent" might insinuate that the original law was the Uniform Imprudent Management of Institutional Funds Act.) UPMIFA was enacted in Oregon in 2007 (ORS 128.301 to 128.336) and has to date been enacted in 49 states (the only holdout being Pennsylvania).

UPMIFA modernizes many of the general rules of UMIFA, but the overall purpose remains largely unchanged. In a nutshell, UPMIFA (1) provides a modern prudence standard applicable to the management and investment of charitable funds, (2) modernizes and expands the authority of a nonprofit board of directors to make expenditures from endowment funds, and (3) provides added flexibility in the release or modification of applicable donor restrictions.

UPMIFA applies to "institutional funds," defined as funds held by an institution exclusively for charitable purposes. ORS 128.316(5). It applies to charitable organizations organized as either nonprofit corporations or trusts (but only charitable trusts having a charity as trustee).

UPMIFA does not apply to "program-related assets" ("assets held by an institution primarily to accomplish a charitable purpose of the institution, and not primarily for investment"), such as a building used by a charitable organization as office space. As explained by the UPMIFA Drafting Committee:

The Drafting Committee decided that applying the prudent investor rules of UPMIFA to the buildings a charity uses to carry out its charitable purposes might be confusing, and for that reason decided to exclude a category of assets called "program-related assets." For example, a university may own classrooms, laboratories, and dormitories. Decisions about buying new buildings, renovating existing buildings, and managing those buildings will be governed by standards of prudence, but saying that the university should approach decision making with respect to those buildings as a "prudent investor" might seem puzzling to an administrator. The land might be more valuable if used for another purpose, but the university would need to keep the buildings for use by its faculty and students.

II. DONOR RESTRICTIONS

Donors frequently impose restrictions on charitable gifts relating to the investment of the funds, the purpose or purposes for which the funds may or may not be used, the duration of the fund, or the amount that may be distributed. Donor restrictions are enforceable against a charitable organization under a variety of theories, including charitable trust law and contract law. Even in the case of an unrestricted charitable gift, the donor likely is relying on the assumption that the charity will use the gift for its current charitable purposes. An unrestricted gift to the University of Portland, for example, likely would be implicitly restricted to purposes relating to Catholic higher education.

The question of who has standing to enforce charitable restrictions is unsettled in Oregon. Some cases from other states have treated restricted charitable gifts as contracts enforceable by the donor, other cases have upheld the traditional rule that charitable restrictions may be enforced only by the Attorney General, and in many states there is no case law at all. For an excellent article on these and other theories for the enforcement of charitable restrictions, see William P. Sullivan, *The Restricted Charitable Gift as Third-Party-Beneficiary Contract*, 52 Real Property, Trust & Estate Law Journal 79 (2017).

In my experience, the Oregon Attorney General (through the Charitable Activities Section) generally requires strict compliance with any and all applicable charitable restrictions, based in part on its right to notice in connection with "charitable trusts" under the Oregon Uniform Trust Code (ORS 130.170), certain mergers under the Oregon

Nonprofit Corporation Act (ORS 65.484), and the dissolution of Oregon nonprofit corporations (ORS 65.627).

UPMIFA expressly recognizes the paramount importance of donor restrictions, which generally "trump" the default provisions. An institution's investment responsibilities and ability to make expenditures from endowment funds are specifically subject to "the intent of a donor expressed in the gift instrument" (ORS 128.318(1) and ORS 128.322(1)), a board's authority to delegate management and investment functions is subject to "any specific limitation set forth in a gift instrument" (ORS 128.326), and any release or modification of restrictions requires the consent of the donor or notice to the Attorney General (ORS 128.328).

III. PRUDENT INVESTING

UPMIFA Section 3 (ORS 128.318) governs the standard of conduct in a board of directors' management and investment of institutional funds. It adopts a modern "prudence" standard, generally following the language of the revised Model Nonprofit Corporation Act and the Uniform Principal and Income Act, and requires generally that managers make investment decisions "in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." ORS 128.318(2). It also adopts modern portfolio theory, under which prudence is based upon the investment performance of the portfolio as a whole, rather than any single investment. It also implicitly recognizes that prudent investing is process driven, rather than product driven, that some risk is necessary (just not uncompensated risk), and that the principal investment responsibility is to protect the real value of the portfolio, adjusted for inflation. UPMIFA specifically directs fund managers to take into account general economic conditions, the possible effect of inflation or deflation, the expected tax consequences, if any, of investment decisions or strategies, the role of each investment within the overall investment portfolio, the expected total return, the other resources of the institution, and the needs of the institution to make distributions and to preserve capital. ORS 128.318(5). It also specifically recognizes that, in some unusual

circumstances, the purposes of an institution might be better served without the usual diversification of assets. ORS 128.318(5)(d).

UPMIFA Section 5 (ORS 128.326) specifically permits (and in my view generally requires) a nonprofit board of directors to delegate the management and investment of funds to qualified "external agents." ORS 128.326(1). In delegating investment and management responsibilities, the institutional board is required to select agents with prudence and in good faith, and to periodically review the agent's performance. ORS 128.326(1). Somewhat interestingly, by accepting a delegation of management or investment authority, an agent "submits to the jurisdiction" of the Oregon courts. (ORS 128.326(4). A nonprofit board is also specifically authorized to delegate management and investment functions to "its committees, officers, or employees." ORS 128.326(5).

IV. ENDOWMENT SPENDING

Perhaps the biggest change under UPMIFA relates to the rules for spending from endowment funds. Under the traditional (pre-UMIFA) rules, typically an endowment fund created by a donor would permit the institution to spend or withdraw the "net income" of the fund for the designated purposes, with no access to corpus. Although this approach might be reasonable in times of high interest rates and dividend yields, in more modern times current income yield on a prudently diversified investment portfolio became relatively small in comparison to the overall investment yield. UMIFA permitted an institution to expend the "net appreciation" in the value of an endowment fund over its "historic dollar value," subject to the usual principles of prudence. That permitted the institution to invest the endowment fund to maximize the overall investment yield, without regard to current income and realized appreciation. It was also the basis for permitting modern "percentage payout" policies, under which the institution withdraws from the fund each year a fixed percentage of the value of the fund (usually calculated over a period of time, such as three years), determined by the board of directors as a reasonable rate of return, taking into account the cash needs of the institution, the expected total return on assets of the fund, and the desirability of maintaining the real value of the fund assets adjusted for inflation. In times of recession, a significant

problem with the UMIFA "historic dollar value" floor was that it was unclear whether and to what extent distributions could be made from an "underwater" fund, i.e., an endowment fund with assets having a total fair market value that is less than the historic dollar value. Some commentators took the position that no distributions whatsoever could be made from an upside down fund, while others took the position that "net income" should be distributable in any case. It was also recognized that, after an endowment fund has been in existence for a number of years, the historic dollar value would become increasingly meaningless.

UPMIFA Section 4 authorizes an institution to "appropriate for expenditure" (or accumulate) as much of the assets of the fund as the institution determines to be prudent, taking into account the duration of the fund, the purposes of the institution and the endowment fund, general economic conditions, the possible effect of inflation or deflation, the expected total return from income and appreciation, the other resources available to the institution, and the investment policies of the institution.

ORS 128.322(1). For purposes of these rules, an "endowment fund" is a fund that, under the terms of the gift instrument, is not wholly expendable by the institution on a current basis. ORS 128.316(2). It does not include unrestricted assets designated by the institution as an endowment fund (a so-called "quasi endowment").

The appropriation for expenditure rules apply even in the case of a gift instrument designating a fund as "endowment," or including a direction to use only "income," "interest," or "dividends." ORS 128.322(3). UPMIFA thus implicitly includes a retroactive rule of construction, applicable to prior gifts from donors using words like "income" or "endowment" without specific direction. The stated rationale of the Uniform Law Commission was as follows:

Non-retroactivity would produce serious practical problems: If the Act were not retroactive, a charity would need to keep two sets of books for each endowment fund created before the enactment of UPMIFA, if new funds were added after the enactment. The burden that such a rule would impose is out of proportion to the benefit sought. UPMIFA § 4 (2006), Comment (c).

Of course, a donor may direct to the contrary, but the restriction would need to be very specific (for example, by permitting an institution to expend only "the net income earned on the assets of the fund, but in no event any portion of principal").

In part because of concerns expressed by some commentators about the removal of the "historic dollar value" floor of UMIFA, UPMIFA includes an "optional" provision creating a "rebuttable presumption of imprudence" if an institution expends more than 7 percent of the value of an endowment fund in any single year. This rebuttable presumption of imprudence was vigorously promoted by the Oregon Attorney General when UPMIFA was enacted in Oregon in 2007, and appears at ORS 128.322(4).

(Note that the presumption of imprudence for withdrawals of more than 7 percent does not create an automatic safe harbor for withdrawals of less than that amount. Depending on the circumstances, expenditures of less than 7 percent could be deemed to be imprudent.)

V. RELEASE OR MODIFICATION OF RESTRICTIONS

According to the comments of the Uniform Law Commission, one goal of UPMIFA was to "clarify" that the common law doctrines of *cy pres* and deviation apply to funds held by nonprofit corporations as well as to funds held by charitable trusts. The view of the Uniform Law Commission was that UPMIFA should require an institution to pursue modifications that are "in accordance with the donor's probable intention" for deviation and "in a manner consistent with the charitable purposes expressed in the gift instrument" for *cy pres*. In addition, UMIFA permitted only the "release" of restrictions, whereas UPMIFA permits the "release or modification" of restrictions.

The new rules are contained in UPMIFA Section 6, which provides in its entirety as follows:

SECTION 6. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.

(a) 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.

(b) 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.

(c) 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.

(d) 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], 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];
- (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.

Subsection 6(a) (codified in Oregon as ORS 138.328(1)) permits the release or modification or restriction with the written consent of the donor.

Subsection 6(b) (ORS 128.328(2)) applies the common law rule of equitable deviation to permit an institution to petition the court to modify a restriction 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." Notice must be given to the Attorney General.

Subsection 6(c) (ORS 128.328(3)) applies the common law rule of *cy pres* to permit the court to modify the purpose of the fund or an applicable restriction that becomes "unlawful, impracticable, impossible to achieve, or wasteful." Notice must be given to the Attorney General.

UPMIFA also includes a helpful "small, old fund" provision. Under Section 6(d) (ORS 128.328(4)(c)), in the case of a fund that is both small (no more than \$25,000) and old (at least 20 years), the institution may release or modify the restriction and use the property "in a manner consistent with the charitable purposes expressed in the instrument." At least 60-days' notice must be given to the Attorney General.

OREGON UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

128.305 Short title. ORS 128.305 to 128.336 may be cited as the Uniform Prudent Management of Institutional Funds Act. [2007 c.554 §10]

128.316 Definitions for ORS 128.305 to 128.336. As used in ORS 128.305 to 128.336:

(1) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose or any other purpose the achievement of which is beneficial to the community.

(2) “Endowment fund” means an institutional fund or part of an institutional fund that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. “Endowment fund” does not include assets that an institution designates as an endowment fund for the institution’s own use.

(3) “Gift instrument” means 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.

(4) “Institution” means:

(a) A person, other than an individual, organized and operated exclusively for charitable purposes;

(b) A government or governmental subdivision, agency or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(c) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) “Institutional fund” means a fund held by an institution exclusively for charitable purposes.

“Institutional fund” does not include:

(a) Program-related assets;

(b) A fund held for an institution by a trustee that is not an institution;

(c) 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

(d) A fund managed by the State Treasurer, moneys held by the State Treasurer for investment or moneys managed or held for investment by or on behalf of the State Treasurer under ORS chapter 293 or 348.

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(7) “Program-related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [2007 c.554 §1]

128.318 Standard of conduct in managing and investing institutional fund. (1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than ORS 128.305 to 128.336, each person responsible for managing and investing an institutional fund 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.

(3) In managing and investing an institutional fund, an institution:

(a) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution and the skills available to the institution; and

(b) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the fund to make distributions and to preserve capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation, but instead in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(c) Except as otherwise provided by law other than ORS 128.305 to 128.336, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of ORS 128.305 to 128.336.

(f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds. [2007 c.554 §2]

128.322 Appropriation for expenditure or accumulation of endowment fund; rules of construction. (1) Subject to subsection (4) of this section and the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(a) The duration and preservation of the endowment fund;

(b) The purposes of the institution and the endowment fund;

(c) General economic conditions;

(d) The possible effect of inflation or deflation;

(e) The expected total return from income and the appreciation of investments;

(f) Other resources of the institution; and

(g) The investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only “income,” “interest,” “dividends” or “rents, issues or profits,” or “to preserve the principal intact,” or words of similar import:

(a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section.

(4) The appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(a) Apply to an appropriation for expenditure permitted under law other than ORS 128.305 to 128.336 or by the gift instrument; or

(b) Create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund. [2007 c.554 §3]

128.326 Delegation of management and investment functions. (1) Subject to any specific limitation set forth in a gift instrument or in law other than ORS 128.305 to 128.336, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this state other than ORS 128.305 to 128.336. [2007 c.554 §4]

128.328 Release or modification of restrictions on management, investment or purpose. (1) 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.

(2) 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, the restriction impairs the management or investment of the fund or, 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.

(3) 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.

(4) 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, within 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(a) The institutional fund subject to the restriction has a total value of less than \$25,000;

(b) More than 20 years have elapsed since the fund was established; and

(c) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(5) The provisions of this section apply to property and other interests given by private donors as a gift to a public body, as defined by ORS 174.109, or to any instrumentality of a public body. This subsection does not limit any other authority that a public body or an instrumentality of a public body may have to release or modify a restriction contained in a gift instrument on the management, investment or purpose of funds. [2007 c.554 §5]

128.332 Reviewing compliance. Compliance with ORS 128.305 to 128.336 is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight. [2007 c.554 §6]

128.334 Relation to Electronic Signatures in Global and National Commerce Act. ORS 128.305 to 128.336 modify, limit and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit or supersede 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b). [2007 c.554 §8]

128.336 Uniformity of application and construction. In applying and construing ORS 128.305 to 128.336, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Prudent Management of Institutional Funds Act. [2007 c.554 §9]

Comparison of UMIFA and UPMIFA
(From Uniform Law Commission Website)

UMIFA	UPMIFA
<p>Scope:</p> <ul style="list-style-type: none"> • Charitable organizations except for trusts, unless a charity is the trustee 	<p>Scope:</p> <ul style="list-style-type: none"> • Charitable organizations except for trusts, unless a charity is the trustee
<p>Investment Conduct:</p> <ul style="list-style-type: none"> • General obligation to invest prudently using ordinary business care 	<p>Investment Conduct:</p> <ul style="list-style-type: none"> • Express cost management obligation • Whole portfolio management standard of performance • Express diversification requirement • Portfolio balancing required • Special skills standard of performance
<p>Expenditure of Funds:</p> <ul style="list-style-type: none"> • Net appreciation may be spent for purposes of endowment • Historic dollar value limitation 	<p>Expenditure of Funds:</p> <ul style="list-style-type: none"> • Express prudent total return standard, 7 factors: <ul style="list-style-type: none"> ○ Fund duration ○ Fund/institution purposes ○ General economic conditions ○ Effects, inflation/deflation ○ Expected total return ○ Other resources ○ Institutional investment policy • Optional, over 7 percent of total return presumed imprudent
<p>Delegation of Management/Investment:</p> <ul style="list-style-type: none"> • Delegation allowed without express standards 	<p>Delegation of Management/Investment:</p> <ul style="list-style-type: none"> • Prudent delegation in good faith, care standard of prudent person: <ul style="list-style-type: none"> ○ To select agent ○ Establish scope and terms of delegation ○ Requires periodic review and supervision of agent • Agent has duty of reasonable care • Agent subject to court jurisdiction • Delegation to committees, officers, or employees as authorized by other law

UMIFA	UPMIFA
<p>Release or Modification of Restrictions:</p> <ul style="list-style-type: none"> • Court release if restriction obsolete, inappropriate, or impracticable • Notice to Attorney General required • Cy pres (modification of purpose) not limited or addressed 	<p>Release or Modification of Restrictions:</p> <p><u>Restriction</u></p> <ul style="list-style-type: none"> • Court may release or modify if restriction is: <ul style="list-style-type: none"> ○ Impracticable or wasteful ○ Impairs management or investment ○ Meets unanticipated circumstances that allow release or modification furthering purposes of the fund • Notice to Attorney General required <p><u>Purpose</u></p> <ul style="list-style-type: none"> • Court may release or modify if purpose is: <ul style="list-style-type: none"> ○ Unlawful to retain ○ Impracticable ○ Impossible to achieve ○ Wasteful • Must be consistent with donor's intent • Notice to Attorney General required <p><u>Small Old Fund</u></p> <ul style="list-style-type: none"> • Institution may institute release or modification without court approval • Notice to Attorney General required