



FAQ for Charitable Institutions with Donor-Restricted Funds

HONORING DONOR INTENT WHILE CONFRONTING FINANCIAL CHALLENGES

This publication contains general guidance for any Ohio institution holding donor-restricted funds. Primarily, though, the guidance is intended for leaders of Ohio colleges and universities who may be thinking about using donor-restricted funds for operational needs (e.g., using funds intended for scholarships to instead pay salaries or other operating expenses). An institution in this position should communicate with the **Ohio Attorney General's Charitable Law Section (AGO)** as early as possible.

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Q What is a donor-restricted fund?

A donor-restricted fund is formed when there is an agreement between a donor and an institution regarding how donations must be used. Restricted funds are also created when the institution solicits contributions for a specific purpose. Donor-restricted funds are different than board-restricted funds (which can generally be changed without the involvement of the Ohio Attorney General or courts).

Q What is the AGO's role regarding institutions' use of donor-restricted funds?

The AGO is responsible for protecting charitable assets, ensuring they are used as donors intended. The AGO cannot give legal advice, but this guidance is meant to inform institutions of their legal obligations and help them avoid unnecessary risk and liability.

Q What laws govern the use of donor-restricted funds?

General legal principles exist in Ohio common law and the Ohio Revised Code (ORC), including Ohio's Charitable Trust Act (ORC 109.23 et seq.), Nonprofit Corporations Act (ORC Chapter 1702), Charitable Solicitations Act (ORC Chapter 1716), and Trust Code (ORC Title 58, particularly, Chapter 5804). If an "institution" holds an "institutional fund" (defined by divisions (B) and (C) of ORC 1715.51), the institution must manage, invest, and use donor-restricted funds as appropriate under Ohio's Uniform Prudential Management of Institutional Funds Act (UPMIFA) (ORC 1715.51-.59). Sometimes, investigation by the AGO may also reveal that a misuse of donor-restricted funds constitutes theft or fraud.

Q If the gift instrument does not clearly allow the institution to modify or release a donor-imposed restriction, is there any other way to modify or release the restriction?

An institution can modify a donor-restricted fund in one of three ways: (1) donor consent; (2) notice to the attorney general (which is limited to funds less than \$250,000 and older than 10 years); or (3) court approval (with the AGO as a necessary party).

Does the AGO need to be involved when a donor consents to modify or release restrictions?

No, but only donors (not their families) can consent.

What standards apply when an institution seeks court approval to modify donor restrictions on a fund's use?

Division (C) of ORC Section 1715.55 allows a court to modify a fund's charitable purpose or restrictions on the fund's use only if its charitable purpose or restrictions have become unlawful, impracticable, impossible to achieve, or wasteful. Then the court must ensure that the modification is consistent with the charitable purposes in the gift instrument.

When can an institution modify or release restrictions solely by notice to the AGO?

Division (D) of ORC Section 1715.55 allows modification or release solely by notice to the attorney general only if the fund subject to the restriction is (1) valued at less than \$250,000 and (2) more than 10 years old. Institutions must complete and submit a form available on the AGO's website. The AGO may object to the proposed modification or release. Institutions are encouraged to reach out to the AGO with any questions about this process.

What standards apply when an institution proposes to modify donor restrictions solely by notice to the attorney general?

In each situation, the law requires the AGO to evaluate whether the institution is seeking to modify or release a restriction that has become unlawful, impracticable, impossible to achieve, or wasteful. If so, the AGO must then evaluate whether the proposed use of the fund is consistent with the charitable purposes expressed in the gift instrument.

What standards apply when a financially-stressed institution proposes to modify or release donor restrictions to cover operational needs?

The same legal standards apply regardless of an institution's reasons for seeking to modify or release donor restrictions. But if those reasons include the institution's desire to use the money for operational needs, additional factors may sometimes be relevant. Though not an exhaustive list, additional factors include whether:

- The institution has documented attempts to obtain consent from any donors.
- The modification or release might be appropriate even without considering the institution's financial situation (e.g., is the restriction impracticable because the pool of students for a scholarship has become too small?).
- The institution is facing legitimate financial exigencies.
- The institution has a viable plan to address its financial challenges in the long term (or if, instead, the proposed modification or release might result in charitable funds being wasted).
- The institution has sought guidance from appropriate professionals.
- The institution is open to taking advantage of resources available through government agencies.

Each institution's situation is different, so the AGO will review each situation and fund separately to determine if the institution has met all applicable legal requirements.

How should institutions contact the AGO for additional guidance on this process?

Call 1-800-282-0515 or email CharitableLaw@OhioAGO.gov



Check out the AG's Charitable University, an online learning platform covering legal obligations of charitable board members and other resources about running effective organizations. This resource is appropriate for board members of institutions of higher education, as well as for Ohio's college students who can be better prepared to provide leadership to Ohio's communities upon graduation.
<https://charitable.ohioago.gov/Charitable-University>



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