

## Amending or Ending Gift Restrictions

When restricted contributions are made, donors, grantors and charitable organizations generally expect that gifts will be fully used for the intended purposes within the anticipated time period. It is important to keep good records regarding receipt of all restricted gifts, including the documents used in fundraising appeals. Moreover, in accepting restricted gifts, charitable organizations may be legally obligated to administer gifts in accordance with restrictions.

From time to time, however, restricted gift purposes cannot be fulfilled as expected. Consider two circumstances: 1. A congregation receives restricted gifts totaling \$10,000 to purchase a new piano. The congregation purchases the piano at a cost of \$8,500 and cannot use the excess \$1,500 in accordance with gift restrictions; 2. A congregation accepts restricted gifts and grants to renovate the worship space. However, contributions were not sufficient to fully fund the renovations. Instead of partially renovating the worship space, the congregation council would like to repurpose the gifts.

The best practice is to obtain written permission from the actual donors and grantors. In situations where the actual donors are known and can be contacted, charitable organizations should take all steps necessary to get such permission to repurpose restricted gifts. All reasonable attempts to utilize gifts according to their original restrictions should be pursued prior to deciding that a restricted gift will not be used as intended.

Whenever possible, it is advisable to work directly with donors and grantors to obtain permission to use restricted funds for alternate purposes. For example, the suggestion would be that the extra money raised for the piano would be applied to future tuning of the piano, piano music, accompanist pieces, etc. If donors and grantors are not available (or perhaps close relatives are not available), or an agreement cannot be reached, the congregation may be legally obligated to the original restrictions.<sup>1</sup> Each specific fact situation needs to be reviewed closely to determine the proper steps to take. Congregations and other charitable organizations should consult with their legal counsel to address individual gift circumstances.

Donors and grantors may retain the right to request return of gifts or grants when restricted funds will not be used as intended. Donors should be made aware of tax implications if charitable deductions were taken in prior years and those funds are then returned to the donors. Often this means that the return of a gift must be reported by the congregation as income to the donor.

In order to remove or amend gift restrictions in circumstances such as those

referenced above, a congregation would ordinarily pursue one of the following options: obtain written permission of the donors or grantors, apply to the applicable state's attorney general for permission, or obtain a court order. In most states, the attorney general has authority to oversee charitable organizations and charitable gifts within the state. However, obtaining an enabling action from the attorney general or a court order can be time consuming and/or costly.

Anticipating that circumstances may arise wherein restricted gifts cannot be fully utilized as intended is important. Actual requests for gifts should clearly set forth an alternate use of any excess funds and congregations should adopt written policies to govern acceptance and management of restricted gifts. In the policies, the congregation council can address what rights may be retained by the council to address:

- a) restricted fund balances that remain after the completion of applicable initiatives;
- b) naming a similar or complementary purpose for ministries or projects that cease to exist or are impractical; and
- c) protocol for consulting with donors, or representatives of donors, to amend gift restrictions for current ministries or projects.

Policies cannot be applied retroactively, but they can assist in managing future matters. Explanatory disclosure language regarding alternate uses of funds should be clearly addressed in all gift requests and acceptance process (e.g., printed in gift solicitation materials and printed on gift receipts). As with the piano example above, the disclosed alternate gift use would be possibly piano or music-related expenses. In order to govern use of future gifts, policies must exist at the time of gift acceptance and should be clearly communicated to donors.

Whenever there are extra funds available for ministry we are grateful. However, it is important to be careful and proactive when such funds relate to restricted gifts.

*<sup>1</sup> As stated, the best way to address each situation will vary. If most gifts were small and difficult or impossible to identify, it may be appropriate to explain the facts that certain donated funds can no longer be used for the purposes intended. In the piano fundraising scenario, the pastor, choir director, organist, congregation council and worship committee should also seek to discuss with members alternate use suggestions for the excess funds. Those proposed similar uses would be decided on and notice of this action given in the congregation newsletter and on the website. If individuals come forward and object, it may be possible to deal with on a case-by-case basis. It is always important to check with your attorney in taking this step.*