



New law applies to every nonprofit

By Barry VanderKelen

Since the beginning of the year, California nonprofits have been subject to the Uniform Prudent Management of Institutional Funds Act.

Recently I heard two nonprofit leaders say that the act is helping them survive these tough economic times because, as one person said, "it makes it easier to spend out endowments."

This is a dangerous attitude. And one that could entangle a nonprofit's board of directors in donor relations, public relations and legal problems.

In fact, UPMIFA requires the board to be more engaged in managing the organization's money because it applies to long-term savings, reserves and funds being accumulated for a future project, like constructing a new building or renovating existing facilities. Whereas before, under UMIFA — the Uniform Management of Institutional Funds Act — many nonprofits took the position that income from investing an endowment gift could be spent but never the historic/original gift value.

Now, however, boards of directors must take the purpose of the organization, the purpose of the funds, the economic and investing conditions, and the intent of the donor into account when calculating

how to invest and how much to spend. A board may determine, after taking all of these factors into account, that it is prudent to spend some of the original gift. UMIFA was not clear about how to invest funds. Many people turned to trust law for guidance, which led to endowments and long-term funds being invested in bonds and high-dividend stocks, but not in growth stocks that offer low current yields. Such investments were protecting historic gift value but not allowing the money to grow to offset the effects of inflation.

Also motivating the adoption of UPMIFA were questions about how to treat funds that were worth less than historic gift value. Many organizations received large donations during the dot.com craze and then saw the values of those funds plummet when that bubble burst.

Rather than give clear rules on how to spend from endowments, a board of directors must now take into consideration the charitable purpose of the nonprofit and the purposes of the endowment funds. The board must always act in good faith. UPMIFA suggests that spending more than 7 percent of the endowment's value as averaged over the prior three years is imprudent. Unfortunately, the law does not state that spending less than 7 percent is prudent.

One standard of care for investing the

money is to hire a professional. The person must be carefully selected, however, which means that a board member's relative may not be the best person to manage the money. In addition, the board must make sure the manager follows the guidance for investing in UPMIFA.

Boards of directors must do three things to comply with UPMIFA. First, become familiar with the act. The actual bill is available on the state Senate's Web site, www.senate.ca.gov, and was SB 1329 in the 2007-08 session. There are many good summaries on the Internet that have been produced by law firms and professional associations. Second, boards must have a record of how they are applying the guidance in UPMIFA. Third, donor intent must be clearly documented.

Without clear rules anymore, boards must be more active in deciding how to invest and how much to spend from endowments.

Barry VanderKelen is executive director of the San Luis Obispo County Community Foundation. He can be reached at barry@slocf.org.

Resource Use

- Support nonprofit leadership
- Board development/training
- Strategic planning

Nonprofit Business Column of The Tribune

The San Luis Obispo Tribune publishes a column every other week in the Business section dedicated to the business practices of nonprofit orgs. Barry VanderKelen, Executive Director of the San Luis Obispo County Community Foundation writes the bi-

weekly column to help strengthen nonprofit organizations in the community. Each column is reprinted here as a one-page handout for use by local organizations. Barry can be reached at 543-2323 or by e-mail at barry@slocf.org.