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Uniform Prudent Management of Institutional Funds Act (UPMIFA)

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The non-profit sector in the United States has accounted for more than 5% of the GDP annually for over a decade. The law that currently governs the management and investment of charitable funds and endowment spending is now, in most states, the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”). The UPMIFA Statute, in existence since 2006, has almost totally replaced the former Uniform Management of Institutional Funds Act (“UMIFA”).

UPMIFA provides guidance and authority to charitable organizations concerning the management, investment and expenditure of funds held by those organizations and imposes additional duties on those who manage and invest charitable funds as well as on the Boards of non-profit organizations who authorize spending decisions. These duties provide additional protections for charities and also protect the interests of donors who want to see their contributions used wisely.

UPMIFA modernizes the rules governing expenditures from endowment funds, both to provide stricter guidelines on spending from endowment funds and to give institutions the ability to cope more easily with fluctuations

in the value of the endowment by authorizing the substitution of prudent spending rules for the previously inflexible requirements for maintaining historical dollar value.

Finally, UPMIFA updates the provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of those funds. These provisions derive from the approach taken in the Uniform Trust Code (UTC) for modifying charitable trusts. Like the UTC provisions, UPMIFA’s modification rules preserve the historic position of the attorneys general in most states as the overseers of charities. UPMIFA represents significant positive change for charitable organizations, and it is all about more--more for communities, more for education, more for health care and more for the arts.

Barry C. Hawkins, Of Counsel

Barry Hawkins is currently a member of the Executive Committee of the National Uniform Law Commission (ULC) and former Division Chair. He is former Chair of the national drafting committee for the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and Chair of the National Enactment Committee. He lectures nationally on the subject of institutional endowment funds.

He has been quoted by The Wall Street Journal, New York Times, regional newspapers and national journals.

Barry is also a former member of the Board of Governors of the American Bar Association. Since 1983, he has been active in the American College of Real Estate Lawyers, and served three years on its national Board and as chair of its Alternative Dispute Resolution Committee. He is the Past President of the Connecticut Bar Association.



Summary of Changes: Quick Reference

UPMIFA (New)	UMIFA (Old)
<p>Scope</p> <ul style="list-style-type: none"> All charitable institutions holding “institutional funds” including charities organized as trusts and trusts which are managed by charities. 	<p>Scope</p> <ul style="list-style-type: none"> Charitable organizations except for trusts
<p>Investment Conduct</p> <ul style="list-style-type: none"> Express duty of loyalty Express cost management obligation Whole portfolio management standard of performance Express diversification requirement Portfolio balancing required Special skills standard of performance 	<p>Investment Conduct</p> <ul style="list-style-type: none"> General obligation to invest prudently using ordinary business care
<p>Expenditure of Funds</p> <ul style="list-style-type: none"> Seven factors of prudence articulated in the statute substitute for the former historic dollar value (HDV) limitation Optional provision in some states providing that spending over 7% of total return presumed to be imprudent 	<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>Delegation of management/investment</p> <ul style="list-style-type: none"> Prudent delegation in good faith, care standard of prudent person Agent has duty of reasonable care Agent subject to court jurisdiction Delegation to committees, officers or employers as authorized by other law 	<p>Delegation of management/investment</p> <ul style="list-style-type: none"> Delegation allowed without express standards
<p>Release or modification of restrictions</p> <p>Restriction</p> <ul style="list-style-type: none"> Court may release or modify if restriction is: impractical or wasteful, impairs management or investment, meets unanticipated circumstances that allow release or modification furthering purpose of the fund Prior notice to Attorney General required <p>Purpose</p> <ul style="list-style-type: none"> Court may release or modify if purpose is unlawful to retain, impracticable, impossible to achieve, or wasteful Must be consistent with donor’s intent Prior notice to Attorney General required <p>Small Old Fund</p> <ul style="list-style-type: none"> Institution may institute release or modification without court approval Prior notice to Attorney General required 	<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

About the Firm

With more than 170 lawyers practicing from offices in Connecticut, New York and Washington, D.C., Shipman & Goodwin has regional and national experience in a number of industry sectors, including education, emerging and middle market companies, financial services, franchising, government, health care, not-for-profits, petroleum marketing, real estate development, construction, environmental, energy, land use, retail, software and IT, and utilities. We regularly represent clients throughout the northeast and nationally. We are committed to our clients, to understanding their needs and priorities, and to producing practical and effective solutions to their legal problems. The firm is large and diverse enough to handle the most sophisticated legal work, yet small enough that each client is important. Our long-standing relationships are a matter of great pride, and we strive to achieve an ongoing role of counselor and business partner. In addition, Shipman & Goodwin is committed to diversity and inclusiveness within the firm, the legal profession and the community. We value the unique backgrounds and distinct contributions of all individuals; our deep commitment is reflected in our efforts to promote understanding, advancement and empowerment.



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