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Uniform Prudent Management of Institutional Funds Act (UPMIFA)

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The non-profit sector in the United States generated about $1.4 trillion in revenue in 2004, accounting for 5.2% of the GDP of the United States that year. 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 these 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.

Shipman & Goodwin Partner Barry C. Hawkins served as the Chairman of the Uniform Law Commission ("ULC") (formerly NCCUSL) Committee which drafted UPMIFA over a four year period from 2002 to 2006. Since then he has chaired the ULC Enactment Committee for UPMIFA, leading the national effort which has resulted in UPMIFA having been enacted in 44 states as of October 2009. In the efforts to obtain virtually full enactment by the end of 2010, Hawkins has conducted educational programs in more than 20 states and testified in the legislatures of many others. He has been quoted in The Wall Street Journal, New York Times, and several dozen regional newspapers and national journals on UPMIFA and has conducted five national web based programs for attorneys and accountants, either directly on UPMIFA or in conjunction with the new GAAP accounting guidelines promulgated by the Financial Accounting Standards Board (FASB) in its August 2008 Guidance For Non-Profit's Financial Statement Preparation (FSB 117-1).

Hawkins conducts a national practice in UPMIFA compliance and interpretation and continues to write and lecture nationally on this subject which has gained even greater importance as a result of the challenges faced by non-profit institutions over the last two years facing diminished investment performance, and the need to make spending decisions from so-called "under water" funds. He is also the chair of the Fairfield County Community Foundation.

Summary of Changes: Quick Reference

UPMIFA (New)	UMIFA (Old)
Scope • **All charitable institutions holding "institutional funds" including charities organized as trusts and trusts which are managed by charities.**	***Scope*** • Charitable organizations except for trusts
Investment Conduct • **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**	***Investment Conduct*** • General obligation to invest prudently using ordinary business care
Expenditure of Funds • **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**	***Expenditure of Funds*** • Net appreciation may be spent for purposes of endowment • Historic dollar value limitation
Delegation of management/investment • **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**	***Delegation of management/ investment*** • Delegation allowed without express standards
Release or modification of restrictions *Restriction* • **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** *Purpose* • **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** *Small Old Fund* • **Institution may institute release or modification without court approval** • **Prior notice to Attorney General required**	***Release or modification of restrictions*** • 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

Shipman & Goodwin represents many of the leading businesses, institutions, individuals and government entities. With more than 130 lawyers practicing from offices in Hartford, Stamford, Greenwich and Lakeville, Connecticut, our firm has experience in a number of industry sectors, including UPMIFA, education, government, financial services, health care, non-profit organizations, emerging and middle market companies, petroleum marketing, real estate development, utilities, franchising, retail, and software and IT. In addition, the firm employs over 200 individuals in a variety of professional and administrative areas including accounting, computer information services, human resources, library science, marketing, office services and record management, as well as paralegals and legal secretaries. Since our founding in 1919, we have offered a cross-disciplinary approach to problems that provides our clients with an efficient and cost-effective legal solution.

SHIPMAN & GOODWIN LLP®

COUNSELORS AT LAW

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com