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American Cancer Society®
NATIONAL PROFESSIONAL ADVISOR NETWORK

Gift Planning Briefs

For Professional Advisors

Time Limit Runs Out

Sara Joy Mayhew bequeathed her home to the Congregational Church in Edgartown for use as a parsonage, but if not used for that purpose, the property was to pass to the Society for the Preservation of New England Antiquities, Inc. The church used the home as a parsonage from Mayhew's death in 1956 until 2016, when it sought a declaration that it owned the property in fee simple. The church wanted to sell the land and use the proceeds for other "church purposes." The Superior Court agreed.

The Appeals Court of Massachusetts noted that when Mayhew executed her will, the statutory rule against perpetuities provided that a fee simple determinable or a fee simple subject to a right of entry became a fee simple absolute if the specified contingency did not occur within 30 years, except where both interests were for charitable purposes, making the Society's interest enforceable indefinitely.

Subsequent legislation eliminated the exception from the 30-year limitation period unless the contingent future interest were recorded by 1964. Because the Society did not record its interest, it became unenforceable 30 years after Mayhew's death, ruled the court. *Edgartown Federated Church v. Society for the Preservation of New England Antiquities, Inc.*, No. 18-P-1701.

No Harm, No Foul to Bequest

The trust created in Alan Dawe's will was determined to lack a beneficiary or a charitable purpose and was therefore void. The trust was to pay expenses for a genealogical website Dawe had created for his family. When the trust ended, assets were to pass to the Godfrey Library. His brother sought to have the residue pass by intestacy. The New York Surrogate's Court excised the invalid portion of the trust, allowing funds to pass directly to the library. Dawe's brother appealed.

The Appellate Division of the Supreme Court of New York found the language regarding the library to be unambiguous. Continuing research into the Dawe family name was not a condition of the bequest. While it was an error to consider extrinsic evidence, the error was "harmless," said the court. *In re Dawe*, 2020 NY Slip Op 17.

Endowment Hit by Designation

Seven panels of a Grant Wood mural were first loaned to Coe College by Eugene Eppley, who later transferred ownership of the works to the Eppley Foundation. In 1976, the Eppley Foundation donated the paintings to the college, indicating in the gift letter that "this would be their permanent home, hanging on the walls of Stewart Memorial Library."

For 40 years, the college carried the panels on its books as an unrestricted gift. The panels were exhibited, along with a commemoration of Eppley, in the Library. In 2016, however, the college's auditors determined the artwork should be treated as a restricted gift, adversely impacting the college's endowment.

The College was not seeking to sell the paintings, but asked for a judicial interpretation of the gift's terms, arguing the 1976 gift was unrestricted. The district court ruled there was a restriction on the alienability of the artwork. Coe asked the Supreme Court of Iowa to rule the gift was unrestricted, or to modify or discard the restriction. The court ruled that the gift is restricted and that it would be premature to apply the cy pres doctrine since there's no way to prove the restrictions cannot be carried out.

The term "permanent home" meant not only would Coe own the works permanently, but they would be housed there permanently. Because the gift letter imposed restrictions on the college's ownership, the court said it was deemed to establish a charitable trust. Nothing in the gift letter indicated the gift would fail in the event the display of the paintings becomes impractical or impossible. The Eppley Foundation made no alternative disposition for the panels. The college has not shown that implementing the Eppley Foundation's specific charitable purpose has become impossible or impracticable, based merely on the "fortuitous increase in the value" of the artwork, the court said. *In re Coe College for Interpratation of Purported Gift Restriction*, No. 19-0155.

Permissible Recipient Sufficient for Standing

Richard Paine established Seal Cove Auto Museum and the Richard Paine Automobile Collection Charitable Trust in 1963 and 1986, respectively, to maintain and display his collection of antique cars. The Trust acquired most of the vehicles and an endowment to support maintenance and display of the collection at Paine's death in 2007. The Trust pays Seal Cove at least $200,000 annually to support the museum's operations.

In 2016, Seal Cove filed suit seeking to bar the trustees from receiving excessive fees and engaging in self-dealing. It also sought reimbursement for excessive fees already received. The Superior Court dismissed Seal Cove's complaint, finding it was not a qualified beneficiary of the Trust and therefore lacked standing. In 2019, the court approved a consent decree between the Maine Attorney General's Office and the trustees limiting their annual pay and expenses. Seal Cove appealed the consent decree, arguing the court erred in dismissing its earlier complaint for lack of standing.

Seal Cove contended it has standing because it possesses the rights of a "qualified beneficiary." Under the state's uniform trust code, a qualified beneficiary is "a living beneficiary." Seal Cove is not a qualified beneficiary under this definition; charitable trusts don't have "beneficiaries." However, the Maine Supreme Judicial Court noted that under the state's code, a charity "expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary" if it is a distributee or permissible distributee of trust income or principal. The court noted that a charity with the rights of a qualified beneficiary has standing to assert a claim of breach of trust. Because Seal Cove is explicitly named as a possible recipient, it is a permissible distributee. The charity need not show it is *mandated* to receive distributions, only that it is *permitted* to receive distributions. Under state code, if a charity is a permissible distributee, it is a qualified beneficiary. The lower court therefore erred in dismissing Seal Cove's complaint for lack of standing. The matter was remanded. *Attorney General v. Sanford*, 2020 ME 19.

Reimbursement Claim Too Late

Five charities were to share 10% of Yukiko Howell's $151,000 estate following her death in February 2013. Howell's personal representative, Deborah Dunn, distributed $15,000 to each of the five charities in October 2013. In December, Howell's family pointed out to the probate court that the charities were to share a combined total of 10% of the estate, not 10% each. They asked that Dunn be ordered to reimburse the estate if excess funds could not be recovered from the charities.

Bremerton Pilots Association (BPA), one of the charities, was not notified of the mistaken amount until March 2015. BPA said it had already used the funds to provide five youth aviation scholarships for young men and women seeking private pilot licenses. The other four charities returned the excess funds.

The probate court entered judgment against Dunn in the amount of the overpayment, making her an assignee of the estate. In November 2017, Dunn filed suit against BPA, claiming conversion and unjust enrichment. The trial court granted BPA's motion for summary judgment, saying Dunn's claim was barred by the three-year statute of limitations.

The Washington State Court of Appeals agreed with the trial court that the claims accrued in December 2013 when the probate court determined the charitable distributions were incorrect. Although BPA received the distribution in good faith, the estate had the right in December 2013 to demand the return of the excess, making that the moment when the statute of limitations began to run. *Dunn v. Bremerton Pilots Association*, No. 51676-4-II.

Trust Qualifies After Reformation

A Foundation is remainder beneficiary of a testamentary charitable remainder unitrust for the grantor's six living children and the child of a deceased child. The trust was to pay 3.5% to the income beneficiaries. The grandchild's share is to end on a specific date, with the payments then going to the Foundation. Payments for the benefit of Child 1 are to be paid to an existing special needs trust. At Child 1's death, the balance in the special needs trust passes to the Foundation.

Following the grantor's death, the trustee determined the trust was not qualified under Code §664(d)(2) and the estate was not entitled to a charitable deduction under Code §2055(a) because the trust did not pay a minimum 5% unitrust amount annually, payments to the grandchild were not limited to a term of no more than 20 years and payments to the special needs trust were not limited to a term or life expectancy.

The IRS ruled the trust is reformable because a deduction would have been allowed for the remainder interest, but for the requirements of Code §2055(e)(2). The noncharitable payments were expressed as a fixed percentage of the net fair market value of the trust property, making this a reformable interest. Letter Ruling 201947007.

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No Perpetuity

Railroad Holdings LLC conveyed a conservation easement to the Southeast Regional Land Conservancy (SERLC). The deed provided a formula for distributing proceeds in the event the easement must be extinguished and the property sold. SERLC would be entitled to the difference between the fair market value of the area without any encumbrance and the value as burdened by the easement, as of the date of the conservation easement. Reg. §1.170A-14(g)(6)(ii) requires charity be entitled to a proportionate value in the event the easement is extinguished. The Tax Court determined the easement was not in perpetuity because it was measured "at the time of the gift." Charity would receive a diminishing amount as the value of the property increased. *Railroad Holdings, LLC v. Commissioner*, T.C. Memo. 2020-22.

IRA Identity Crisis

A charity named the death beneficiary of an IRA asked the IRS to rule the Transfer IRA opened by the IRA custodian is not an IRA as defined in Code §408. The IRS said the Transfer IRA is merely a "continuation in substance" of the Inherited IRA from which the transfer is accepted. The IRS ruled the original IRA does not lose its status as an IRA under Reg. §1.408-2(a) at the decedent's death merely because it is maintained for the benefit of a charity. Nothing suggests that accounts held by non-individual beneficiaries cannot meet the definition of inherited IRAs. Therefore, concluded the IRS, the Transfer IRA does not fail to be an IRA under Code §408, and is exempt from tax under Code §408(e)(1). The IRS also held that the trustee-to-trustee transfer of assets from the original IRA, of which the charity was the beneficiary, to a Transfer IRA, an IRA maintained for the benefit of the same charity, is not includible in gross income (Ltr. Rul. 201943020).

Quick Tip

All required minimum distributions are suspended for 2020 under the CARES Act. The SECURE Act had already allowed for clients turning 70½ in 2020 to postpone taking distributions from IRAs until the year they reach age 72. Is there any benefit to QCDs if required minimum distributions do not apply? Clearly the QCD cannot take the place of some or all of the required withdrawal, but using funds in an IRA to make gifts to charities means clients are making gifts with money that has never – and will never – be subject to income tax. Many clients in their 70s may no longer be able to itemize deductions on their income taxes. QCDs, whether or not they take the place of required minimum distributions, allow donors to make gifts of pre-tax dollars. IRA owners may make gifts up to $100,000 annually, but if they continue working past age 70½ and making deductible contributions to IRAs (also allowed under the SECURE Act), the maximum QCD is reduced by the amount of any deductible IRA contributions.

Trustee Had Standing and Obligation

Dr. James Bellamy, a professor of classical Arabic literature, entered into a gift agreement with the University of Michigan. Bellamy's gift of $3.5 million was to fund a medieval classical Arabic literature professorship, thereby continuing his work following his death. If, when the professorship was to be created, no one at the University qualified, an outside search was to be conducted. The balance of the gift amount was transferred to the University in early 2016 by Trevor Le Gassick, trustee of Bellamy's Trust and personal representative of his estate.

In late 2017, the University announced the appointment of Professor Samer Mahdy Ali to the Bellamy professorship. Ali, who joined the University's Department of Near Eastern Studies in 2014, specialized in late medieval Arabic literature and was an associate, not a full professor. Le Gassick claimed Ali was "not qualified to teach classical Arabic literature" and said an outside search was required. The University's posting merely sought an associate professor in "Pre-Modern Arabic Culture." The department chair noted, when announcing Ali's appointment, that the motive was to alleviate budget issues by having the Bellamy Trust, rather than the department, pay Ali's salary.

Le Gassick filed suit against the University, alleging breach of contract and fiduciary duty for failing to use the funds in a manner consistent with the terms of the gift agreement. The probate court agreed with the University that Le Gassick lacked standing, saying the right to enforce the agreement is personal to the settlor and cannot be exercised by the settlor's fiduciary.

The State of Michigan Appeals Court found that as trustee and personal representative of Bellamy's estate, Le Gassick "had the right and obligation" to act upon learning Bellamy's instructions were not being followed. In light of the amount transferred and the lack of effort to ensure compliance with Bellamy's wishes, "an action must be maintained," said the court, adding that donors would have "little incentive" to create charitable trusts if no mechanism were available to enforce their specific intentions. *Le Gassick v. University of Michigan Regents*, No. 344971.

For more information on our charitable planning services, visit cancer.org/npan or call **1-866-332-3216** to contact your local American Cancer Society estate and gift planning professional.