

**540A.106 Release or modification of restrictions on management, investment, or purpose.**

1. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification shall not allow a fund to be used for a purpose other than a charitable purpose of the institution.

2. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or if, because of circumstances not anticipated by the donor, the restriction will defeat or substantially impair the accomplishment of the purposes of the institutional fund. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard. Any modification must be made in accordance with the donor's probable intention.

3. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, or impossible to fulfill, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application and the attorney general shall be given the opportunity to be heard. If the donor or the donor's designee having the right to enforce the restrictions under subsection 5 provides the institution with an address, then the institution shall also notify the donor or such designee of the application by United States mail addressed to the last address so provided and the donor or such designee shall have an opportunity to be heard.

4. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, or impossible to fulfill, the institution may release or modify the restriction, in whole or part, sixty days after notifying the attorney general, if all of the following conditions are met:

a. The institutional fund subject to the restriction has a total value of less than fifty thousand dollars.

b. More than twenty years have elapsed since the fund was established.

c. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

5. a. A donor whose aggregate gifts to an endowment fund exceeds one hundred thousand dollars may maintain an action in the district court of the county in which the institution's principal office is located to enforce restrictions respecting the purposes of the fund established by the donor in a gift instrument. A gift made in property shall be valued at fair market value on the date of the gift.

b. A donor may designate in a gift instrument or other record signed by the donor and delivered to the institution one or more persons, by name or by description, whether or not born at the time of such designation, to enforce the restrictions respecting the purposes of the fund during the donor's lifetime if the donor is judicially declared incompetent.

c. A donor may designate in a gift instrument or other record signed by the donor and delivered to the institution one or more persons, by name or by description, whether or not born at the time of such designation, to enforce the restrictions respecting the purposes of the fund for fifty years beginning on the date of the donor's death. If the donor prevails in any action in district court to enforce restrictions respecting the purposes of the fund in a gift instrument, the district court may order the institution to reimburse the donor's costs, including reasonable counsel fees, incurred in connection with the action, if the court finds that the institution acted in bad faith or with gross negligence.

d. The provisions in this subsection 5 may be altered by contrary provisions in a gift instrument.

6. Nothing in subsection 5 affects the authority of the attorney general to enforce any restriction in a gift instrument.

7. This section does not limit the application of the judicial power of cy pres or the right

of an institution to modify a restriction on the management, investment, purpose, or use of a fund as may be permitted under the gift instrument or by law.

2008 Acts, ch 1066, §6, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11