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Keeping the Donors and Their Heirs Happy

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The act of matching donor wishes to institutional needs through philanthropic gift agreements is something of an art. Donors usually have specific goals in mind for their gifts, and because colleges and universities have tremendous financial needs, the enthusiasm to consummate a donation can lead both parties to imagine that everyone has the same expectations. Unless the gift document is clear, however, we often find that the meaning of vague language and expectations in the gift agreement drifts over time.

The rate of drift varies, sometimes divergence between expectations and performance occurs rapidly as the first activities financed under the gift begin to take place. In other instances, the divergence may occur many years later when circumstances or changing priorities cause an institution to change direction in ways that the descendants of the donors do not believe appropriate. These instances are often resolved in more or less amicable fashion within the institution, but occasionally some **appear in court and gain attention on the national stage**.

The challenge of writing precise gift agreements has become increasingly difficult as more and more donors seek unreasonable specificity in the purposes of endowment gifts whose lifetime is presumably forever. Although we may imagine we can predict the future, in most cases what seems central to our academic and institutional concerns today may well be irrelevant tomorrow, and the more narrowly drawn the gift agreement, the less likely it will stand the test of time. An endowment to support the study of romance language and literature will have a much longer useful life than an endowment to support research on the poetry of 16th century Andalucía.

Good gift agreements always include an escape clause that provides a mechanism for the university to ensure that it can meet an endowment's purpose throughout all time. Moreover, even if an institution and a donor have a full understanding of the gift and its purpose, the donor's descendants, many generations hence, may have their own goals and purposes, their own interpretations of an ancestor's intent, which they project onto the gift. They may lay claim to monitor and control the use of a gift made generations ago, and when the original intent is not completely clear, such discussions can become quite contentious and end up in court (the worst place for the resolution of a philanthropic issue).

When constructing an endowment, the donor and the university often glide over an important part of the process. Most endowments pays for only part of full cost of the activities supported. An endowment for the study of Spanish history will support a program in the university that also receives funding from a wide variety of other sources, whether tuition and fees or state appropriations. Those additional resources make the value of the endowment much greater because on the margin of a substantial university investment, an endowment can raise an ordinary program into an exceptional one, an argument often used to motivate gifts.

If the base support from tuition and fees and state appropriations disappears, the endowment income will not be sufficient to sustain the program. This reality can lead clever faculty, department chairs, and deans to work with their donors to leverage additional money from the larger institution to support an endowment gift or to rest a case for continued funding of an obsolete program on the presumed wises of a previous generation's donor. When the university, or one of its units, can no longer support the larger activity for which the endowment was an enhancement, and reorganizes or otherwise changes the institution's structure, the issue then becomes whether the university can find an appropriate and related use for that endowment income.

This is when we curse or praise our predecessors. If the gift agreement is clear, anticipates the possibility of a change in purpose over time, and provides for a method to determine an alternative use, then the institution's need and the donor's intent can be accommodated reasonably, and we praise our predecessors.

If, however, in the enthusiasm for the gift, the university promised to do something very specific forever, it may find itself in conflict with the donor or the donor's heirs, in which circumstances we curse our predecessors. Universities and their fund raising organizations suffer intense pressure to capture private gifts and deliver ever-larger campaign totals, and their long-term success rests on educating their donors about the variability of the academic environment and the essential need for gift agreements that capture both the specific intent of the donor and the inevitability of change. While the best solution for the university is an unrestricted gift, most donors want specific programs to benefit from their legacy.

Sometimes, the university's need to preserve flexibility and the donor's desire for specificity can be met by designing a process for managing change into the gift agreement. The donor's gift might well specify an initial focus that is relatively precise -- the study of Miguel Cervantes' masterwork, *Don Quixote* -- but recognize that the institution will fulfill the terms of the gift by creating successive five year plans for the use of the endowment proceeds, and that over time, as the field of Hispanic literary studies changes, the endowment may be redirected within the larger field of Spanish and Spanish American literary studies.

We might prefer an agreement that offered the opportunity to address all of the Romance languages; but this mechanism will at least not fix the endowment income on studies of *Don Quixote* for all time. As another example, an endowment provided generations ago to study the improvement of sailing ships for commercial transport in the Atlantic is of much less value today than an endowment for research on the economics of trade, beginning with a focus on the improvement of sailing ships.

The hard part of this is the conversation with the donor. Donors have many suitors, and in the competition for their gifts, some institutions will promise more than others. To lose a gift because the university would not meet the donor's specific expectations is a difficult outcome, and few presidents or fund raising professionals want to find themselves in this position. The incentive structure for university gift acquisition is usually short term. The reward goes to the administrators and development professionals who close the gift today, even though the obligations of the university will extend forever. We have campaign totals to meet, the press follows our announcements of fund raising success as if they reflected sports scores, and our associations develop elaborate methodologies to ensure comparable gift accounting standards so we can compete on our annual score.

It takes significant restraint, supported by wise governing boards, to insist on producing good gift agreements with clear, effective, and realistic language that protects both donor and university interests in an endowment that lasts forever. While the conversations that do it right may sometimes be less elegant than anticipated, the institutional benefit will be as long lasting as the endowment itself.