

§ 36E-6. Release or modification of restrictions on management, investment, or purpose.

(a) 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 may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The superior 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 wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of the restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the superior 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 must be given an opportunity to be heard.

(d) 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, impossible to achieve, or wasteful, the institution may release or modify the restriction, in whole or part, if:

- (1) The institutional fund subject to the restriction has a total value of less than one hundred thousand dollars (\$100,000);
- (2) More than 10 years have elapsed since the fund was established; and
- (3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

The institution must provide written notice of the proposed release or modification of the restriction to the Attorney General not less than 60 days before releasing or modifying the restriction. The Attorney General may make application to the superior court to contest the institution's determination that the restriction should be released or modified within 60 days of receipt of the institution's written notice. (1985, c. 98, s. 1; 2009-8, s. 2.)