

WEST VIRGINIA CODE: §44-6A-6

§44-6A-6. Release or modification of restrictions on management, investment, or purpose.

Without limiting the options otherwise available to an institution under applicable law, a restriction on the management, investment, purpose or other provision of a gift to an institutional fund may be released or modified in any one or more of the following ways:

- (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 may 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 wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a 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.
- (3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, 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 must be given 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, impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney General, may release or modify the restriction, in whole or in part, if:
 - (A) The institutional fund subject to the restriction has a total value of less than \$25,000;
 - (B) More than twenty years have elapsed since the fund was established; and
 - (C) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.
- (5) If the terms of a gift instrument, either specifically or by being subject to the charter of the institution, confer a power on the institution to release or modify a restriction on the

management or investment of an institutional fund or the particular charitable purpose or restriction on the use of the institutional fund, the institution shall have the power to so modify or terminate that restriction and the other provisions of this section shall not apply to that release or modification. A release or modification under this subsection may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

WV Legislature