Akerman Practice Update

TAXATION

June 2011

Florida Adopts FUPMIFA - a Law Governing Investments by Charitable Organizations

Hank Raattama
hank.raattama@akerman.com

On June 17, 2011, Governor Scott signed into law the Florida Uniform Prudent Management of Institutional Funds Act (FUPMIFA). FUPMIFA imposes investment standards on Florida Charities. All Florida Charities should review their investments and investment policies to insure compliance with FUPMIFA. Reference herein to a Florida Charity is to a Florida not-for-profit corporation devoted exclusively to charitable activities.

History

Prior to FUPMIFA there was no Florida statutory law governing Florida not-for-profit corporation's management of investments, with a single exception. Florida universities were subject to Section 1010.10 Florida Statutes which was a substantially modified version of the Uniform Prudent Management of Institutional Funds Act (UPMIFA). That statute is repealed by HB 599. Charitable trusts are and were subject to the Prudent Investor Act (PIA) Section 511.18 Florida Statutes and not FUPMIFA.

FUPMIFA is for the most part (98%+/-) taken from UPMIFA. UPMIFA is a model act written by the Uniform Law Commission. Some version of UPMIFA has been adopted by 48 states prior to Florida. Mississippi is the only state that has not adopted a version of UPMIFA.

Akerman

“FUPMIFA requires each Florida Charity to prudently manage its funds.”

What Does FUPMIFA Require?

In a very general sense, FUPMIFA requires each Florida Charity to prudently manage its funds. FUPMIFA sets out general investment guidelines that must be followed. The investment requirements apply to all funds, not only endowments. FUPMIFA also imposes limits on distributions from endowments. The limits are also in the form of guidelines. The investment and distribution guidelines are very similar conceptually to the PIA and total return concepts of investments (aka modern portfolio theory). Prior to FUPMIFA there was no statutory guidance for investments by a Florida Charity.

To Whom Does FUPMIFA Apply?

Short hand, FUPMIFA applies to Florida not-for-profit corporations that are organized and created exclusively for charitable purposes. In other words, an IRC § 501(c)(3) organized as a Florida not-for-profit corporation.

To Whom Does FUPMIFA Not Apply?

By its terms, FUPMIFA does not apply to trusts that are subject to the PIA. This provision was wise because otherwise a charitable trust may have been subject to both FUPMIFA and PIA. FUPMIFA will also not apply funds where the donor mandates it does not apply.

When Does FUPMIFA Apply?

The effective date of FUPMIFA is July 1, 2012. FUPMIFA applies to institutional funds existing on or established after July 1, 2012. FUPMIFA does not apply to investment decisions made prior to July 1, 2012.

What are the FUPMIFA Investment Guidelines?

FUPMIFA requires the following factors be considered when investing all funds (not just endowments):

- general economic conditions
- inflation / deflation
- tax consequences, if any
- the role of each investment in the overall portfolio
- expected total return
- other resources of the charity
- needs of the charity, both short and long term
- an asset’s special relationship to the charity
- the role of diversification

"UPMIFA is now law For Florida Charities."

These guidelines are common prudent investing factors. In other words, there is nothing really new here. These are total return investment concepts. The statutory requirement to invest prudently is new.

What are the Expenditure Guidelines for Endowments?

An endowment is a fund that the donor (not the charity) specifies is not wholly expendable by the charity. For example, a gift where the donor says, here is $1,000 but you may only spend the income, is a fund that is not wholly expendable by the charity. Typically this is called an endowment. Notwithstanding that the donor said spend income only, FUPMIFA allows the charity to spend a portion of such a fund based on factors that it must take into consideration when appropriating funds for expenditure. The factors are:

- the duration of the endowment
- the purpose of the endowment
- general economic conditions
- inflation / deflation
- expected total return (income and appreciation)
- other resources
- the charity's investment policy

Volunteers With Special Skills?

FUPMIFA specifically requires persons selected to manage funds who possess special investment skills, apply those skills. Board members, advisory boards, and others who are managing funds should read FUPMIFA.

Does FUPMIFA Impact Donor Imposed Restrictions on Uses or Investments of Contributions?

Yes. FUPMIFA permits a charity, without the donor's or a court's approval, to modify gift restrictions that are impractical, illegal, etc. and the fund is less than $250,000. The modification rules contain many details that must be adhered to including possible notice to the Attorney General. FUPMIFA does not deal with using standing to enforce gifts.

What is the Electronic Signatures Section (§ 617.2104(8))?

This section was part of UPMIFA and simply carried over to FUPMIFA. The purpose is a mystery.

"Under the new law Florida Charities must review how they manage investments and how they spend endowments."

What to Do Now?

Each Florida Not-for-Profit §501(c)(3) should read FUPMIFA and then revise its investment policy statement accordingly. This assumes there is an investment policy statement – which should exist. Also, a Florida Charity that has an annual audit should consider FUPMIFA in connection with its FASB ASC 958-205 disclosures.

Endnotes: HB 599; § 617.2104 FLA. Stat.

For more information please contact a member of our Taxation practice.

Akerman is ranked among the top 100 law firms in the U.S. by *The National Law Journal NLJ 250* (2011) in number of lawyers and is the leading Florida firm. With 500 lawyers and government affairs professionals, Akerman serves clients throughout the U.S. and overseas from Florida, New York, Washington, D.C., California, Virginia, Colorado, Nevada, and Texas.

Akerman