



Donor Scandals, Tainted Gifts and You

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[Learning Objectives]

At the end of this session, you will be able to identify:

- Claw-back Claims – The gift that takes back!
- Pledges that do not pay
- Donor scandal impacting use of gift
- Preventative measures

[Claw-back Claims]

- Claims based upon the legal theory of fraudulent transfer
- Transfer made intending fraud or “without receiving a reasonably equivalent value in exchange for the transfer”
- Donations fit well into this definition
- Trustee/receiver duty is to maximize return for victims

[Clawback Claims]

- Federal bankruptcy law
- Minnesota law
- Good faith / innocence is generally not a defense
- Impact can be devastating

[Clawback Claims]

- Steps to Prevent Claw-back Claims
 - Have a Gift Acceptance Policy
 - Basic Donor Due Diligence
 - For large donations, seek input of Board, Counsel, Accounting Firm
 - Insurance is usually unhelpful

[Pledge Problems]

- Pledges: On the Front End
 - Careful budgeting and financial analysis for big capital projects is crucial
 - Relying largely on big, single-donor pledges can be dangerous financially and reputationally
 - Especially when the pledges serve as “seed money”
 - Due Diligence work should be standard operating procedure

[Pledge Problems]

- Pledges: On the Back End
 - Decision of whether to take steps to enforce pledge is subject to general business judgment standard
 - Reputation with donor and other donors is a key issue
 - Fiduciary duties of the organization to protect assets

[Donor Scandal Impact]

- Naming Rights
- Written agreements are important
- Should include a “bad boy” clause
- In other ways, the agreement should contemplate the future
- Standing is problematic for donors and their angry nephews



Thank you!

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