

DONOR DESIGNATED GIFTS

Usually, a charity is the owner of donated funds and, unless provided otherwise, the donor has given up all rights to the funds when the gift was made. However, there is an exception when donors wish to determine what the donated funds can be used for. Unless a charity plans for this type of donation, they can become a challenge to manage.

Donor Designate Giving is also known as Restricted or Directed Gifts. Many donors wish to have a say in how their donations are used and therefore they attach conditions to the gifts they have made. Examples would include donations to a charity to be used for a building fund or scholarship fund or a piano fund or to forward those funds to another charity that does overseas ministry or some other similar ministry endeavour.

If funds are designated for a specific purpose, a charity can accept these gifts that have conditions, but only under the following conditions:

- It does not interfere with the direction and control the charity has over its own activities
- It does not violate any public policy (i.e. It cannot discriminate.)
- It is not illegal. The charity cannot act as a conduit, but it must be an arm's length transaction.

When the charity accepts these gifts with conditions, these funds become trust funds and are therefore held in trust for the purpose or ministry project for which they are intended and can only be used for that purpose. For example, if a charity is raising money to buy a new piano and then determines that it does not need a piano, the charity cannot unilaterally decide to change the condition – nor can it later go back to the donor to ask permission to waive a particular condition.

If a charity wishes to change the purpose of donated funds, it faces the expensive and impractical situation of having to get court approval through a cy-pres application that the charity has no guarantee of being granted. Cy-pres is a legal doctrine used by charities when a donor's wishes become impossible to fulfill. In this case, the charity asks the court to allow it to fulfill the donor's wishes 'as near as possible.'

This situation can be avoided with a Designated Gift Policy that will make donors aware of how designated funds will be used *before* they make a donation. The policy should state that the funds are being accepted on the condition that they will be used for the intended purpose or project, unless the designated purpose or project has been completed, or for some reason cannot be completed, in which case the Board may decide that the funds can be used for another charitable activity. Without the donor agreeing to this condition at the time the donation is being made, the charity may not be able to use the funds for another purpose or project.

The charity must also be aware that common law and the Income Tax Act (ITA) do not allow a charity to act as a conduit for passing on resources, other than the 'Qualified Donee Rule'.

Charities cannot receive resources that are designated to an individual, an organization or a corporation, etc. A charity is required by law to use all of its resources itself in pursuing its own charitable purposes; and therefore, the charity must have direction and control of its resources, which includes all gifts that it receives. A charity cannot issue tax receipts on any gifts it receives unless it has control over them.

The only exception to this is the 'Qualified Donee Rule' that allows charities to transfer resources to qualified donees (generally Canadian registered charities) and looks at the qualified donees' activities as if they are the activities of the sending charity. It is the charity that determines whether it is appropriate to use the qualified donee rule – not the donor.