

OVERSIGHT OF CHARITABLE ASSETS ACT

Prefatory Note

Goals of the Act. The Uniform Oversight of Charitable Assets Act has three main goals. First, the Act will articulate and confirm the role of the state attorney general in protecting charitable assets. The attorney general's oversight function exists in most states in the common law or by statute, but in a few states courts have found no common law authority and in a few other states the scope of the authority is unclear. The attorney general's authority is broad and this Act will not limit or narrow that authority.

Second, the Act will make sure the attorney general has the information needed to perform the oversight function, without overburdening the charities or the attorney general with excessive reporting requirements. The Act specifies which transactions and legal proceedings require notice to the attorney general and provides for registration and annual reports for some charities.

Third, the Act will coordinate in one place in a state's statutes all information concerning the attorney general's authority with respect to the supervision of charitable assets.

The Act will replace the Uniform Supervision of Trustees for Charitable Purposes Act (1954). That Act has been adopted in a small number of states and is out-of-date.

The term "attorney general" is used to mean the charity regulator in a state. In many states, the Office of the Attorney General has a division called the Charity Section or something similar. A lawyer in that section typically has the title Assistant Attorney General, but the person in that role may have a different title.

It is useful to remember that the attorney general has an educational role and a facilitative role as well as a regulative role. The attorney general wants to educate charities and work with charities to help them become more efficient and more effective. The attorney general will be better able to perform these roles with adequate information about the charities operating in the state.

Which Charities Does the Statute Cover? The Act has a relatively broad definition of "covered charity" and then will apply certain sections of the Act (registration and reporting) more narrowly. The Drafting Committee continues to discuss which charities should be covered by the statute, which should be required to register, and which should file additional reports. "Covered charity" is an entity that holds property for charitable purposes, but the term excludes governmental entities and businesses.

General Authority of the Attorney General. The Act states the broad duty of the attorney general to represent the public interest in the protection of charitable assets. The Act states that the attorney general may enforce the use of charitable assets by a charity

for the purposes for which the assets were given to the charity, may take action to prevent or correct a breach of a fiduciary duty in connection with the administration of a charity or charitable assets, and may intervene in an action brought to correct a misapplication of charitable funds, a departure from the purpose of the charity, or a breach of a fiduciary duty owed the charity.

Registration. A charity covered by the registration section must register with the attorney general within a specified period of time after the charity is established or receives property. The charity must provide basic information about the charity (name, address, statutory agent, purpose) and a copy of the charity's organizing document (articles of incorporation or trust instrument).

Annual Reports. Charities that file a report with the Internal Revenue Service such as a Form 990 or a Form 990-EZ will file a copy with the attorney general. Other charities will file an annual report with some basic information, listed in the Act, about the charity. The Act may limit the requirement to file an annual report to charities with assets above a minimum amount.

Notice of "Life Events." One of the concerns the Drafting Committee sought to address was the problem that occurs when an attorney general learns about the loss of charitable assets after a charity has disposed of the assets. The Act requires a charity to file a notice of the following, a specified number of days [20, 30 or 60 days] before the event occurs:

- Any amendment to the charity's organizational document, if the amendment changes the purposes or results in a material change in the structure, governance, or activities of the charity.
- The intent to dissolve or terminate, with a copy of the charity's plan of dissolution. The charity cannot transfer assets until the earlier of receiving written consent from the attorney general, written notice that the attorney general will take no action, or the passage of time [20 days]. After dissolution, the charity must file with the attorney general a description of the assets transferred and a list of the names and addresses of those who received the assets, other than creditors.
- The intent to sell, lease, exchange, or otherwise dispose of all or substantially all of its property, unless the transaction is in the regular course of the charity's activities or the attorney general waives this requirement.
- The intent to merge with any other entity. The notice must include a copy of the proposed plan of merger.
- A decision to file for bankruptcy (no later than the date of the filing).
- Receipt of a notice of revocation or modification of a federal, state, or local tax exemption (within a specified period of time after receipt).

In addition, the personal representative of an estate or the trustee of a trust that involves the distribution of property to a charity must send the attorney general a copy of the will or trust.

Any person who asserts a claim in a proceeding involving a charity or charitable assets must give written notice to the attorney general if the value of the charitable assets involved is at least \$25,000. The notice must include a copy of the pleading. The proceedings that require notice are the following:

- An action against or on behalf of a charity seeking to enforce the use of charitable assets or the breach of a duty owed to the charity;
- A proceeding seeking instructions relating to the administration, use, or distribution of the charitable assets;
- A proceeding to construe a document under which charitable assets are held or to modify the terms under which charitable assets are held;
- A proceeding involving a trust or probate estate in which matters affecting charitable assets may be decided; or
- A proceeding to remove or replace a trustee of a charitable trust.

Cooperation with Other Officials. The Act permits the attorney general to cooperate with any official of the state, of another state, or of the United States. The attorney general can provide information or documents concerning an investigation or proceeding to the other official in connection with the other official's role in the oversight of charities and charitable assets. The attorney general can also acquire information or documents from the other official.