New York Prudent Management of Institutional Funds Act

NYPMIFA

CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

Background

- Implemented September 17, 2010
- Governs the management and investment of funds held by nonprofits
- Provides information on endowment spending for NFP's
  - Can spend corpus if Board deems prudent
  - No Court approval or AG review
  - Need to consider alternatives

CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

Managing Investments

- Factors to be considered if relevant:
  - General economic conditions
  - The possible effect of inflation or deflation
  - The expected tax consequences, if any, of investment decisions or strategies
  - The role that each investment plays within the overall investment portfolio
  - The expected total return (inclusive of unrealized gains/losses)
  - Other resources of the organization
  - The needs of the organization and the funds available to make distributions and preserve capital
  - An asset's special relationship or value, if any, to the purposes of the organization
  - Funds must be diversified, unless the institution prudently determines that, because of special circumstances, the purpose of the fund are better served without diversification

Impact on Endowments

- Endowments can be handled two ways:
  - This is contingent on donor language in gift instrument (if explicitly prohibits spending of corpus, corpus cannot be spent)
  - Held in perpetuity – corpus is not touched only income earned by the endowment and this is based upon how much of the income is appropriated by the board for expenditure
  - Spent based upon a spending policy established by the Board
    - Example - $1,000,000 endowment. Board establishes a 5% spending policy, whereby 5% of the fund balance is expended for scholarships. If the portfolio generates a greater than 5% return, the portfolio increases and if the portfolio generates a return under 5%, the portfolio declines

CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

Impact on Endowments

- Endowment funds are donor restricted assets (as opposed to a quasi endowment which is board designated)
- Endowments remain restricted until they are “appropriated for expenditure” (released by board)
- Funds appropriated for expenditure do not need to be spent right away. They retain their nature as with or without restriction if not spent

Impact on Endowments

- In deciding whether to appropriate from an endowment fund, the organization must operate in good faith and must consider the following:
  - The duration and preservation of the endowment fund
  - The purpose of the organization and the endowmwnt fund
  - General economic conditions
  - The impact of inflation/deflation
  - The expected total return on investments
  - Other resources of the institution
  - Where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the endowment fund giving due consideration to the effect that such alternatives may have on the institution
  - The investment policy of the organization

CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

Impact on Endowments

- Organization must make a contemporaneous record of its consideration of the factors in its decision to either accumulate or appropriate
  - Should be detailed and address each of the eight factors
- A separate assessment should be made for each fund/endowment
- NYPMIFA creates a rebuttable presumption of imprudence if an organization appropriates more than 7% of the funds FMV (averaged over a period of not less than the preceding 5 years)

CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

Impact on Endowments

- Soliciting Endowment funds:
  - The Act requires a disclosure when institutions solicit for endowment funds.
  - The solicitation must include a statement that, unless otherwise restricted by the gift instrument pursuant to N-PCL § 553(b), the institution may expend so much of the endowment fund as it deems prudent after considering the factors set forth in N-PCL § 553(a).