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# ADVISER

## Settlement Shines Spotlight on Donor Intent

When the Robertson Foundation filed a lawsuit against Princeton University in 2002 about how the university was spending its gift money, some not-for-profits took note. Now, seven years later, with a \$101 million settlement fresh in everyone's mind, all not-for-profit organizations should pay attention.

### **The settlement is dear**

The controversy revolved around claims by the Robertson family that Princeton University inappropriately spent more than \$200 million from a charitable fund established to help the University's Woodrow Wilson School of Public and International Affairs prepare graduate students for U.S. government careers in foreign policy and diplomacy.

Then last December, shortly before the case was scheduled to go to trial, Princeton settled with the Robertson family, heirs to the A&P grocery fortune. The family's lead lawyer described the settlement as a "historic victory" for the concept of donor intent partly because of the enormous size of the settlement: Princeton agreed to make total payments from the charitable fund of

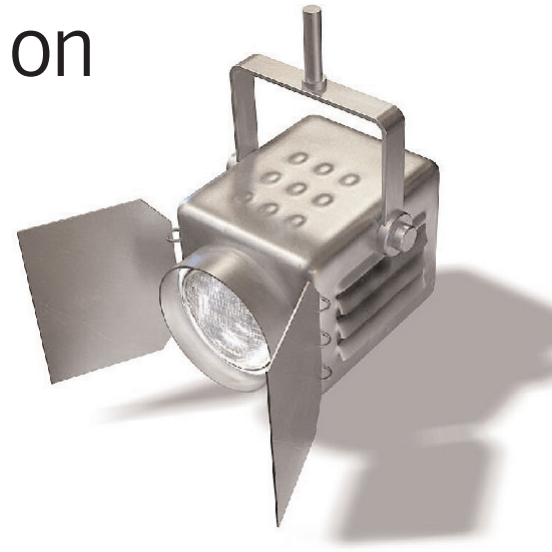
\$50 million to a new foundation plus \$11 million in interest and \$40 million in legal fees. Princeton will be able to use the rest of the original charitable fund (estimated at \$900 million in June 2008) for its Woodrow Wilson school as it chooses.

As reported in the *New York Times* on Dec. 11, 2008, William Robertson, the donor's son and lead plaintiff in the suit, said the settlement was "a message to not-for-profit organizations of all kinds throughout our country that donors expect them to abide by the terms of the designated gifts or suffer the consequences."

### **No isolated incident**

A number of similar disputes have erupted over the last several years that highlight a major dilemma for charities: They must act as loyal stewards of donated funds while maintaining proper authority over them.

Much of the challenge charities encounter is due to vaguely documented contribution arrangements from years earlier. Without strong documentation, it becomes difficult to



interpret intent after a donor is no longer around.

Charities also encounter difficulties when donors specify a use for funds. This creates problems when it comes to meeting ordinary operational expenses — in other words, paying the bills. And, on rare occasions, a charity finds itself in a position where a donation has created more revenue than what is required for its intended use. The charity then faces the question of what to do with the excess money while still adhering to the gift's intent.

### **A donor bill of rights**

So, how can you reduce the likelihood of conflict over donor intent?

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First and foremost, your organization should have a clear understanding of the donor's intent — and documentation that supports it.

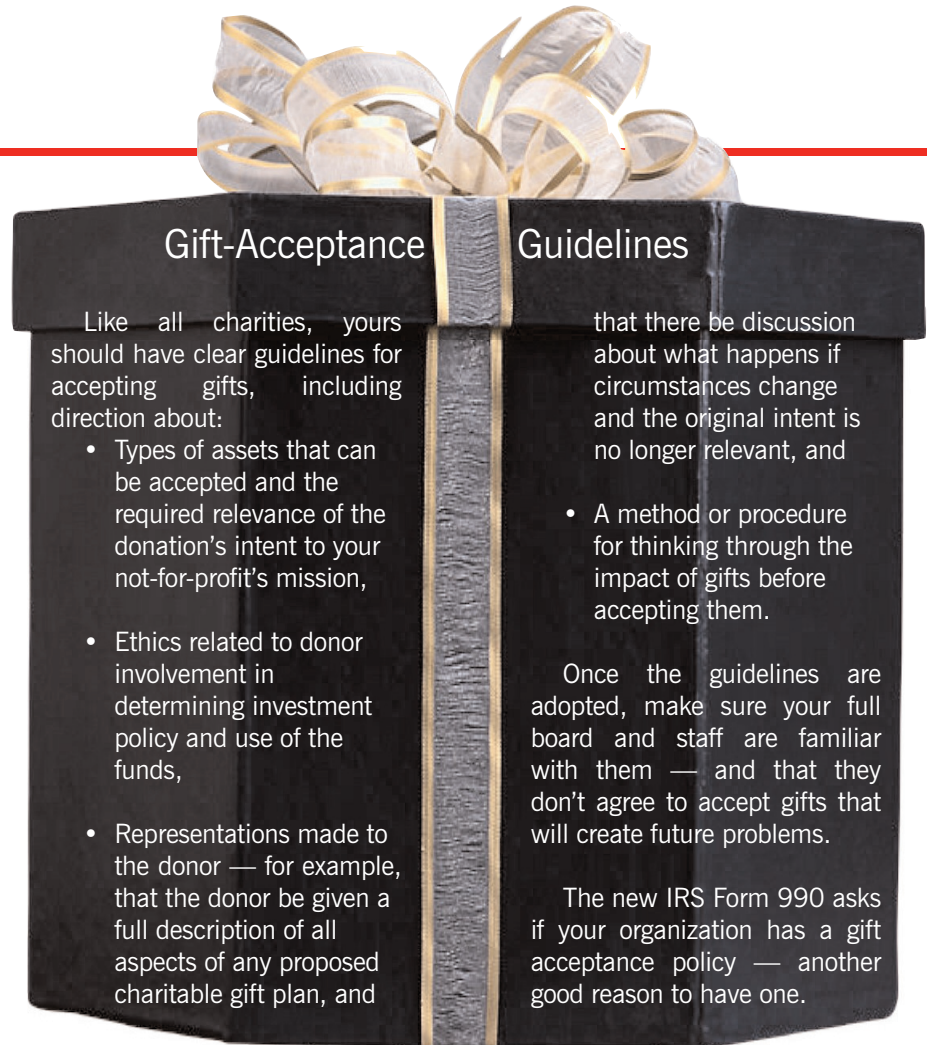
Second, it's imperative to discuss with the donor the necessity of not creating too narrow a focus for the gift, such as on a particular program that may not be relevant in the future.

You also need to retain the ability to make alterations due to social or cultural change. And make sure, of course, that any restrictions put on the gift aren't illegal (such as discriminatory). This way you'll leave your path to the future unclogged with restrictions and, hopefully, without legal tussles. (See "Gift-Acceptance Guidelines" for more information.)

Third, you should consider adopting a donor bill of rights similar to the one created by a consortium of organizations involved in fundraising, including the Association of Fundraising Professionals. To find this document, visit the AFP website ([www.afpnet.org](http://www.afpnet.org)) and click on "Ethics" and "Ethics and donors."

#### **Fulfill your mission**

Princeton's president has said that the settlement achieved the university's



highest priorities in the lawsuit: to ensure that the bulk of the gift will continue to support the Wilson School graduate program and that the university will still have full authority to make academic judgments about how the funds are used.

Nevertheless, most not-for-profits can't afford for a donor intent dispute to go this far. So it's critical to put policies and procedures in place to minimize disputes while ensuring you have access to the funds needed for your organization to fulfill its mission. **h**

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