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I. What is a Charitable Trust? What does “Charitable” mean?

Not every non-profit corporation formed under G.L. c. 180 is a charity. *In re Troy*, 364 Mass. 15, 57 (1973). “Charitable” is a broad term whose meaning is determined by case law. Various statutes regulate charities in specific ways for specific purposes, and define “charity” and “charitable purposes” very broadly.

1. G. L. c. 203E, Massachusetts Uniform Trust Code, enacted in 2012

- a. Section 102: This chapter applies to express trusts, charitable or non-charitable.
- b. Section 103: “Definitions”: defines “Charitable Trust” as a trust, or portion of a trust created for a charitable purpose described in subsection (a) of subsection 405.
- c. Section 106: The common law of trusts and principles of equity shall supplement this chapter.
- d. Section 405 (a): A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, government or municipal purposes or other purposes which are beneficial to the community.
- e. Section 412: The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the



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settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor's probable intent.

2. G. L. c. 12

- a. Sec. 8: The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof.
- b. Sec. 8E. A public charity, before engaging in charitable work or raising funds, must register with the attorney general's division of public charities.
- c. Sec. 8F: Every public charity must file an annual report. If it received more than \$200,000.00 in gross support and revenue it must file an audited financial statement.
- d. The Regulations of the Director of Public Charities, implementing the above requirements are at 940 CMR 2.00 ff.
- e. 940 CMR 2.01 defines "Public Charity" as "any organization that is charitable as determined by Massachusetts law including statutory and case law irrespective of its categorization under federal definitions."
- f. 940 CMR 2.02 (3) (a): For purposes of the audit requirement of M.G.L. c. 12, sec. 8F, "gross support and revenue" will not include the value of donated land to a conservation trust.

3. G. L. c. 59, Assessment of Local Taxes

- a. Section 5, exempts from local taxation personal property of a charitable organization, which term, as used in this clause, shall mean (1) a literary,

benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth, and (2) a trust for literary, benevolent, charitable, scientific or temperance purposes, and real estate owned by or held in trust for charitable purposes

4. G.L. c. 68, Donations and Conveyances for Pious and Charitable Uses

- a. Sec. 18 defines “charitable” as including but not limited to benevolent, educational, philanthropic, humane, patriotic, scientific, literary, religious, eleemosynary, health, safety or welfare-related, or in furtherance of governmental or civic objectives, and benefiting the general public or some indefinite class thereof.
- b. Sec 18 defines “charitable organization” as any person whose purposes or actual operation are charitable in nature or one holding himself out to be a charitable organization in whole or in part, including any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which could be reasonably interpreted to suggest that there is a charitable purpose to any such solicitation.

5. G. L. c. 68A Limitations Upon the Conduct of Certain Trusts and Corporations Having Charitable Interests

- a. Section 4: prohibits certain acts by corporations which are “private foundations” under the Internal Revenue that would give rise to tax liability, such as self-dealing or any investment which would jeopardize the carrying out of its exempt purposes.

II. **Cases Construing “Charity” or “Charitable Organization”**

1. **Attorney General v. Weymouth Agricultural & Industrial Society, 400 Mass. 475 (1987)**

- a. Considered whether organization was a “public charity” and subject to the registration requirement in G.L. c. 8, sec. 6F.
- b. “A public charity for purposes of sec. 6F is an entity which has a legal obligation to apply some or all of its funds for purposes that are charitable.”
Id. 477.
- c. A public charity can arise in two ways, either by being organized with the intent to limit the organization’s use of its funds to charitable purposes, or by engaging in conduct which results in the organization holding funds for charitable purposes. Id.
- d. “A c. 180 (non-profit) corporation could be formed for stated purposes that are charitable and yet it might not be a public charity, perhaps, for example, it was never intended that its activities should benefit a sufficiently large and indefinite class of persons or because its earnings could inure to the benefit of noncharitable objects.” Id. 479.
- e. An organization can be charitable even though it has never solicited or received any charitable contribution. Id. 480.

2. **Boston Symphony Orchestra, Inc. v. Board of Assessors, 294 Mass. 248 (1936).**

- a. An essential of a legal charity is that it should not be a money-making organization. This does not mean that it cannot charge fees, but no profits can be distributed to members or stockholders. Id. 254.

- b. “A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. (citations omitted). It is not confined to mere almsgiving or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man. Under these definitions the appellant in fulfilling a general purpose to educate the public in the knowledge of music might well be considered to be engaged in benevolent or charitable work even though the main end result would be an advancement in broad culture rather than an advancement in learning of a more specific type.” Id. 254-255.
- c. Held: “The substantial use of the property for other than charitable purposes directly connected with the giving of concerts destroys the appellant’s claim to an exemption.” Id. 257.

3. *New England Forestry Foundation, Inc. v. Board of Assessors of Hawley*, 468 Mass. 138 (2014);

- a. Issue whether property was exempt from real estate property taxes as property held by a charitable organization.
- b. “The dominant purpose of a charitable organization must be to perform work for the public good, not merely its own members.” Id. 149.

- c. New England Forestry Foundation, Inc.'s ("NEFF") purposes are traditionally charitable. Historically, the benefit provided by land held as open space or in its natural state has been measured by the direct access of people to that land for such purposes as recreation, scenic views, or education. Id. 150.
- d. However, as the science of conservation has advanced, it has become more apparent that properly preserved and managed conservation land can provide a tangible benefit to a community even if few people enter. Id.
- e. NEFF's work is traditionally charitable in that it assists in lessening the burdens of government. Id. 152.
- f. G.L. c. 59, sec. 5 requires that the land be "occupied" for charitable purposes.
- g. The dominant use of the property must be such as to contribute immediately to the promotion of the charity and to participate physically in the forwarding of its beneficent objects. However, if the charitable use of the property is merely incidental to a noncharitable use, the property will not be exempt from taxation. Id. 155.
- h. The decisions of the organization will be entitled to deference so long as the directors act in good faith and not unreasonably in determining how to occupy and use the property in question. Id. 155.
- i. Held: public access not required to qualify for the property tax exemption. Id. 157.

III. Donor-Restricted Gifts; Impressed Charitable Trusts.

1. *Animal Rescue League of Boston v. Assessors of Bourne, 310 Mass. 330 (1941).*

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- a. “One may make a conveyance or a devise in trust to a charitable corporation and, if accepted, the latter would be bound to use the property in accordance with the terms of the trust. But there is a difference between an absolute transfer and one in trust to a charitable institution. In the former, the property becomes an asset of the corporation to be used in such manner as those in control of the corporation deem best for the accomplishment of the corporate purposes, while in the latter, the property is held by the corporation not as its own but in its capacity as a trustee and as an instrumentality of the settlor or testator in carrying out his directions in its use of the property.” Id. 334.

2. *Newhall v. Second Church & Society of Boston*, 349 Mass. 493, 499 (1965)

- a. “We hold that the baptismal basin and the Abigail Foster dish were given and received subject to a commitment to their use, respectively, for the sacrament of baptism and the sacrament of communion, effectively limiting the holder of the legal title to dispose of them.” Id.
- b. “The commitment is not less binding because an express trust was not created.” Id.

3. *Hillman v. Roman Catholic Bishop of Fall River*, 24 Mass. App. Ct. 241 (1987).

- a. Grantor deeded land to Bishop “for the use of St. Mary’s Parish for educational, religious, or recreational purposes.”
- b. The parish stopped using the land as a playground and sold it to a developer.
- c. The issue was whether the gift was made with a general charitable intent or a specific charitable intent.

- d. If specific, the property was limited to that use. If general, the grantee could use it for its general charitable purposes.
- e. “No magical incantation, e.g. ‘in trust,’ is required to create a trust.” Id. 244.
- f. “To create a charitable trust limited to specific charitable purposes, however, requires a more definite expression of intention in the way in the way of granting language or attendant circumstances than here appears.” Id.
- g. An example of sufficiently definitive language appears in *Salem v. Attorney General*, 344 Mass. 626, 627 (1962): ‘to the City of Salem to be used forever as Public Grounds for the benefit and enjoyment of the citizens of said City, under such regulations as may seem best for the proper care of the same.’” Id.

4. Prouty Garden at Boston Children’s Hospital

- a. Prouty Garden was established in 1956 at Children’s Hospital by a gift of Olive Prouty.
- b. There is a plaque in the Garden that says: “Mrs. Prouty insisted on perpetually maintaining this location as a haven for patients, parents, and staff...Because of Mrs. Prouty’s vision, this Garden will exist as long as Children’s Hospital has patients, families, and staff to enjoy it.”
- c. The Garden is about 23,000 square feet and is nationally recognized as an example of a “Healing Garden.”
- d. The Hospital plans to demolish the Garden and construct a new building.
- e. More than 12,000 people have signed an on-line petition to save the Garden.
See www.saveprouty.org.
- f. The Attorney General has jurisdiction to enforce the terms of gifts.

- g. We have requested the attorney general to enforce the impressed charitable trust.

IV. Modification or Alteration of Trusts

- a. G. L. c. 180A “Uniform Prudent Management of Institutional Funds.”
 1. Section 5 (a): If the donor consents in a record, the institution may release or modify a restriction in a gift instrument.
 2. Sections 5 (b) and (c): The court may modify a restriction or the purpose of a gift has become unlawful, impracticable, impossible to achieve or wasteful, the Court may modify a restriction or a purpose in a gift instrument in a manner consistent with the charitable purposes expressed in the gift instrument. The attorney general shall be a party.
 3. Supreme Judicial Court Rule 1:23; If the fund has a value of \$75,000 or less and has been in existence for twenty years, the attorney general may modify the gift in accordance with the donor’s probable intention.

V. Proposed Transfers of Restricted Land for Pipeline

1. Whether a proposed transfer of an easement or other interest in land subject to a conservation restriction is allowed is determined, first, by an examination of the conservation restriction instrument, as a matter of property law. Is the proposed use allowed or prohibited, either explicitly or in the reserved rights and prohibitions?
2. Determine whether the proposed use violates a specific charitable intent with which the gift was made.

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3. Determine whether the proposed use will result in the charitable purpose no longer being the dominant purpose. Determine whether the proposed use will be incidental to the charitable purpose.
4. Where does the consideration go?
5. Consideration must go to the charitable purpose.
6. Does the transaction result in taxable income to a private person?
7. If the organization is charitable private persons cannot benefit.
8. The organization will be required to report income to the Public Charities Division of the Attorney General's Office.