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## Traps for the Unwary – Tips to Ensure Enforceability of Charitable Pledges

When a donor attempts to cancel or withdraw from a charitable pledge, many organizations choose not to enforce the pledge in the spirit of donor and public relations. However, it is important to understand that charitable pledges can be legally enforceable obligations. Following is a summary of Texas law regarding enforceability of pledges.

To be enforced under general contract law, the charity should offer consideration in exchange for the pledge, whether this takes the form of donor recognition, naming rights, or other benefits to the donor. Benefits provided immediately (for example, putting the donor's name on a park bench upon finalizing a pledge) may give the organization a better argument for enforceability in the future. In addition, any consideration given in exchange for a pledge should be clearly stated in the pledge agreement. Generally, the value of the consideration provided by the charity is not required to be equivalent to the contribution. In fact, consideration will generally be deemed adequate unless it is "grossly disproportionate" to the pledged donation. In determining the consideration to provide, it is important to ensure that donor benefits do not rise to the level of creating a "quid pro quo contribution," requiring that the donor's charitable deduction be reduced by the value of benefits received.

In addition to (or in lieu of) consideration, an organization can help ensure enforceability of a pledge by taking actions in reliance on the pledge. For example, beginning construction on a new building wing or purchasing equipment in reliance on a donor's pledge could support enforcement. Reliance can take many forms, including inducing other donors to donate by publicizing the pledge, entering into contracts, or making long-term budgetary decisions. Any reliance anticipated at the time of pledge should be clearly stated in the pledge agreement, preferably with an acknowledgment by the donor that he or she understands that the organization will take action based on the pledge. An organization should also maintain detailed records of any consideration for or reliance on a pledge.

In addition, courts often seek to enforce charitable pledges, including viewing unilateral cancellation of a pledge by a donor as against public policy.

If you have any questions regarding enforcing charitable pledges, please feel free to contact one of the attorneys listed below.

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