ADLER & COLVIN

BLOG POST

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Good News on the Investment Front!! California Passes AB 792, Harmonizing Investment Standards for Nonprofits in California

The stock market may be in shambles, but California charities have reason to celebrate. Historically, charities formed as California nonprofit public benefit corporations have had to satisfy *two* state law investment standards: Corp. Code Section 5240 and UPMIFA (found at Probate Code section 18501 and following). Corp. Code Section 5240(b) provides that in making investments, a board must "avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of the corporation's capital." On the other hand, UPMIFA sets forth a modern prudent investor standard – it sets forth several factors which are to be considered when making investment decisions, states that investment decisions are to be applied to the fund as a whole, and provides that an individual investment must be analyzed in the context of the total portfolio and the overall risk-reward objectives. These two standards have been very difficult for charities and their advisors to reconcile, in great part because the Corp. Code: (a) appears to focus on individual investments (whereas UPMIFA focuses upon the portfolio as a whole); and (b) directs the charity to "avoid speculation," a term which does not appear to have a precise legal definition.

Fortunately, **AB 792** provides that effective January 1, 2016, compliance with UPMIFA will be deemed to be compliance with Corp. Code Section 5240(b). There is a similar provision for religious corporations subject to Corp. Code Section 9250. Thus, beginning in 2016, California charities need to focus only on satisfying the UPMIFA standard (of course, charities which are private foundations also have to be concerned with IRC Section 4944, which prohibits jeopardizing investments). Note that the other provisions of Corp. Code Section 5240 still apply – importantly, the ability of a donor to "authorize" or "require" a charity to retain a contributed asset, which can ease the directors' standard of care as to the investment and re-investment of that asset.

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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