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Legal Issues Related to Unfulfilled Charitable Pledges

In today's challenging economic environment, where large amounts of wealth are "disappearing" overnight, the fulfillment of charitable pledges can no longer be taken for granted. Charities, donors, professional fund raisers, and third parties such as banks, landlords, and suppliers are increasingly asking whether pledged funds will in fact materialize, and what to do if they do not.

What is a Charitable Pledge? As a legal matter, a charitable pledge is a contract between a donor and a charity in which the donor promises to make a contribution in the future. Pledges may be oral or in writing. According to the Financial Accounting Standards Board (FASB), charities are required to record enforceable pledges as assets when they are made, just like any other debt obligation. If a pledge is not fulfilled, the charity must write off the unpaid amount of the pledge.

When is a Pledge Legally Binding and Enforceable? Under traditional contract law principles, a charitable pledge is enforceable if it meets the requirements for a legally binding contract. There must be an agreement between the donor and the charity -- in effect, the donor must promise to make a gift and the charity must promise to accept it. The terms of the agreement must be clear and all conditions specified. There must be "consideration" given in exchange for the pledge, which essentially means that the charity must agree to do something (or not do something) in exchange for the promised donation.

Alternatively, courts will enforce a pledge if the charity has suffered some detriment by taking action in reasonable reliance of the pledge, even though such detriment was not requested as consideration. This legal principle is known as "promissory estoppel" or "detrimental reliance." Actions that constitute detrimental reliance include soliciting other donors based on the pledge, incurring costs, entering into contracts, or borrowing money based on the expectation that the donor's promise will be kept. This principle is currently the law in roughly 30 states.

There are certain defenses that can be raised to avoid enforcement of oral agreements, including if the agreement is not one that is capable of being performed within one year from the time of the agreement. This defense against enforcement is called a "statute of frauds" defense. However, a party may be barred from raising the statute of frauds as a

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V4

Padhraic Smyth



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