



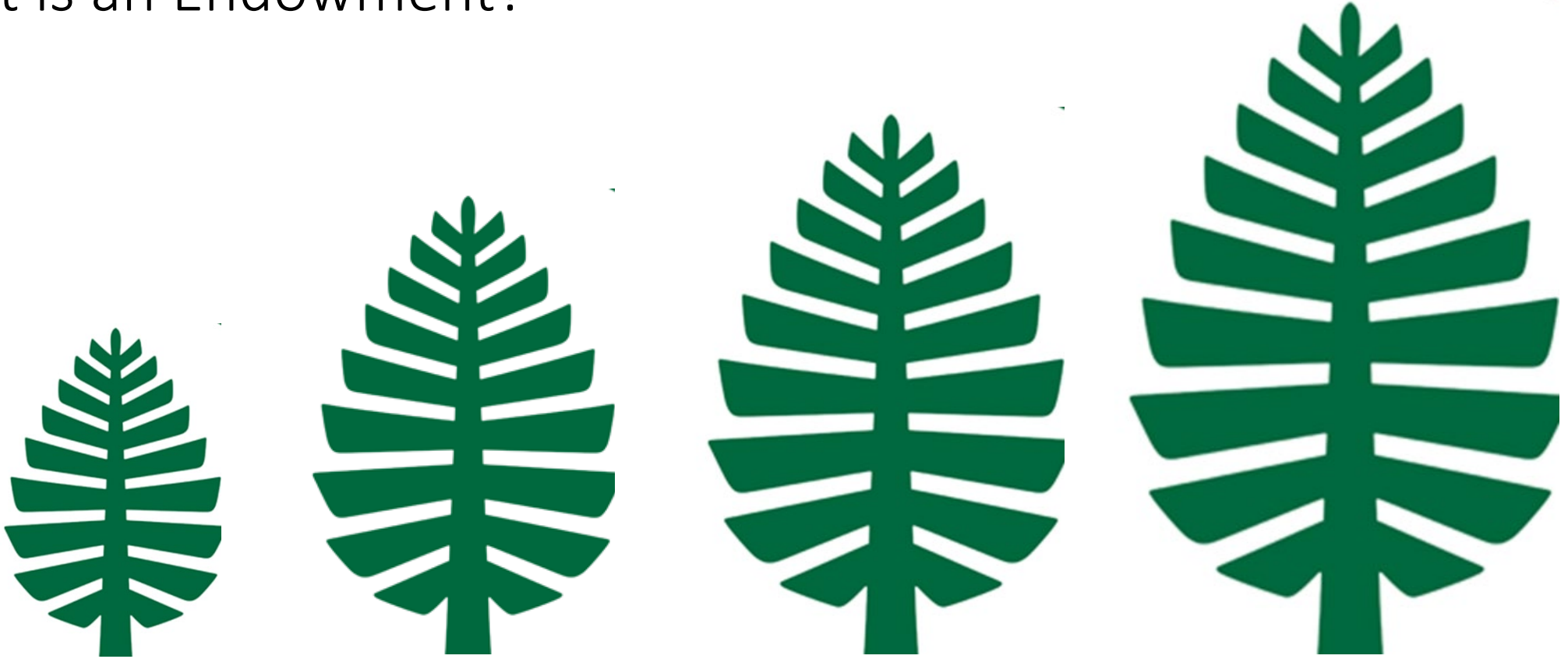
Office of Endowment Administration

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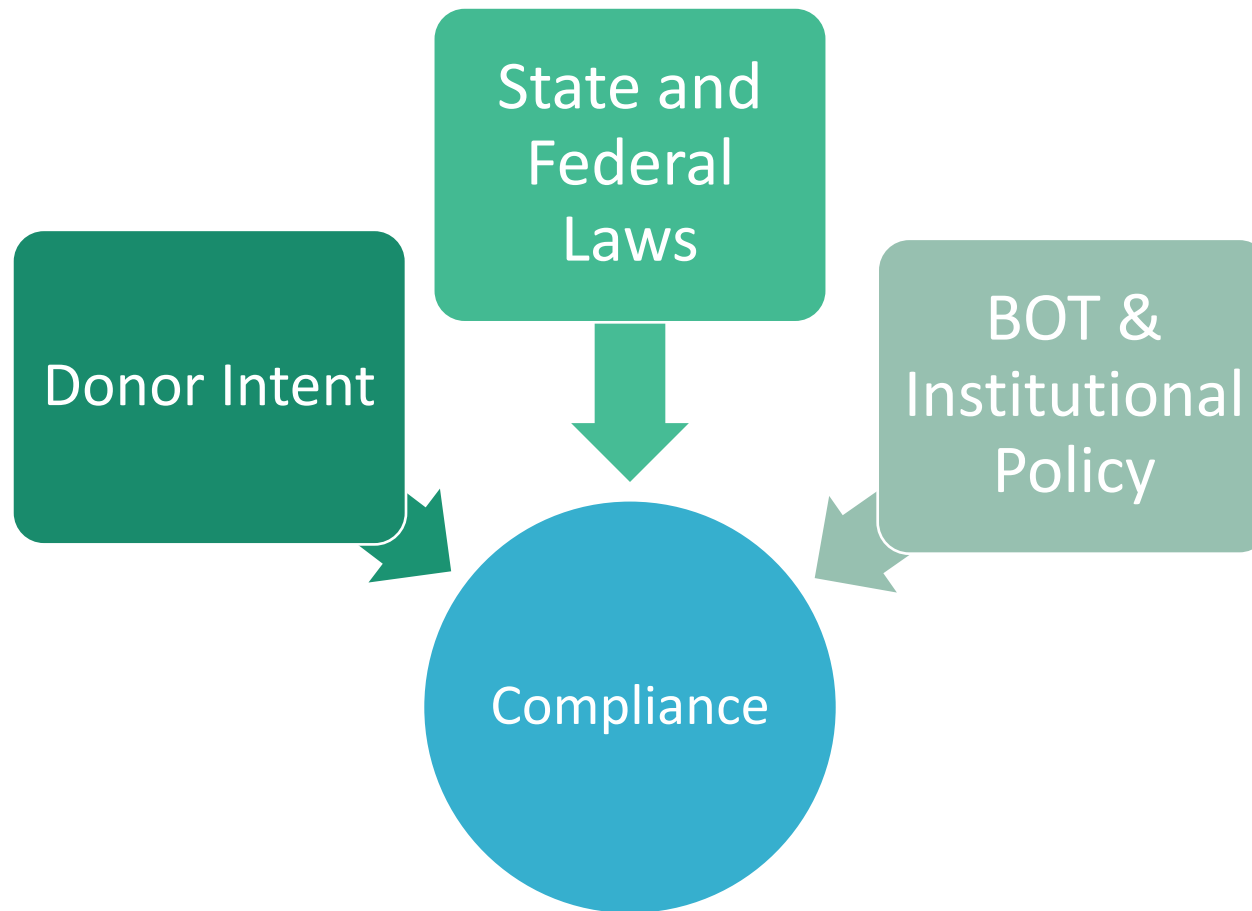
Tutorial for management of difficult-to-spend endowment funds

Contact us: Endowment.Administration@Dartmouth.edu

What is an Endowment?



- Typically established with donor gifts
- Permanently invested to grow and support purposes designated by the donors
- Not wholly expendable



Three major authorities determine the College's rights and responsibilities in administering its endowment. The Office of Endowment Administration (OEA) reviews expected and existing funds for compliance compatibility from each of these perspectives.

Change Happens

Dartmouth and the world have evolved in the more than 250 years since the College was founded.

Dartmouth's first endowed fund was established in 1789 by John Phillips 1777H. His gift of thirty-seven pounds ten shillings and various tracts of land supported a professorship in theology.

Some priorities and gift restrictions that were once well founded may now conflict with laws or institutional policies or may be related to organizational functions that have expired or substantially changed. Continue viewing this presentation to understand the options and steps to take when this occurs.

Endowed funds that are difficult to spend begin their journey with a fund review by OEA.

Fund reviews are triggered by four occurrences.

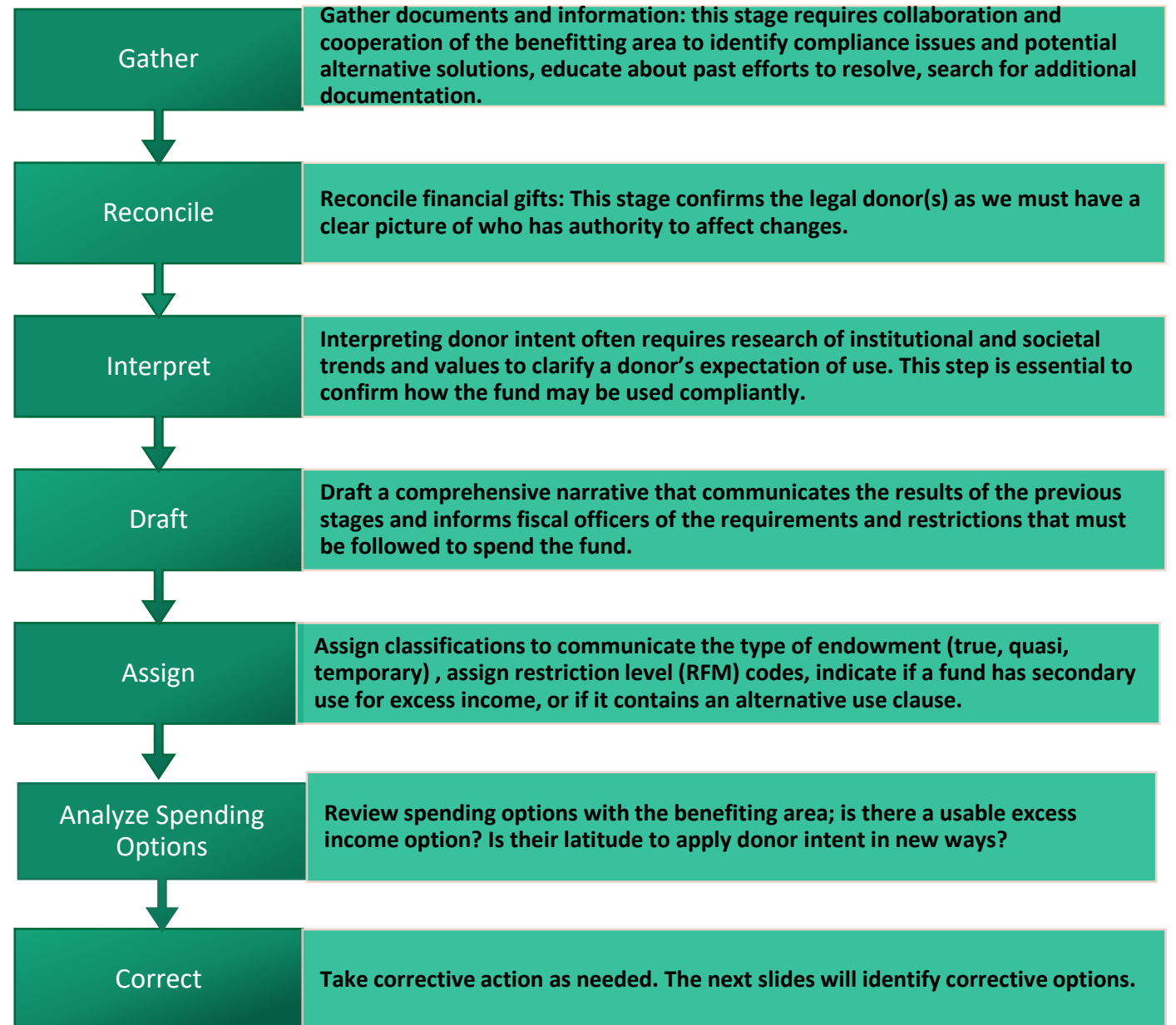
Dartmouth
Policy
Changes

Departmental
Requests

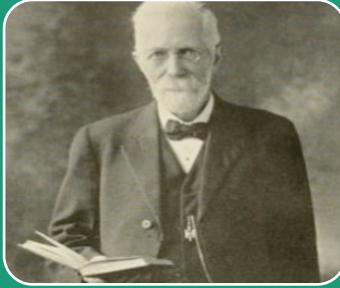
Projects
Targeting Risk
or
Opportunity

External
Legal/Policy
Changes

Stages of the Fund Review Process



Correct: Depending on review findings, one of three methods may be pursued to amend a fund's purpose and alleviate challenging restrictions. In all situations, a new purpose should align as closely as possible to a donor's original intent.



Living Donor or Active Foundation

- Work with Advancement and the benefitting area to amend the existing gift instrument.



Employ Alternative Use Clause

- Review with benefitting area & Office of General Counsel
- Obtain leadership approval



Cy Pres

- Non-Judicial modification
- Judicial modification

Living donors and active foundations



- Consulting the legal donor(s) of a fund is always the most ideal solution to amending existing restrictions that may make an endowment gift challenging to spend fully.
- Through collaboration with Advancement and the benefiting department, OEA can assist with drafting an amended agreement that meets the interests of both the donor and Dartmouth.

Alternative Use Clause

A wide variety of alternative use language may be found in existing College endowments. Below is the currently adopted language required in all gift agreements, and consistent with state and federal regulations for endowment funds.

If, at some time in the future, it is Dartmouth's opinion that all or part of the income from this Fund can no longer be usefully applied to the objectives as stated above, or if changing circumstances render it impossible, unlawful, or in conflict with the proper administration of Dartmouth to carry out the terms of the Fund, then Dartmouth may use the income for another purpose which, in its opinion, most nearly approximates the charitable intent of the Donor(s).

Employing alternative use may be an excellent solution when there are no active donors to consult.

- Requests to employ an alternative use clause should be submitted to OEA and should include an explanation of why the restrictions cannot be met.
- Execution of alternative use must be done through OEA and in compliance with Dartmouth's Alternative Use Clause Policy (available through our office).



Cy pres = as near as possible

Legally, cy pres refers to an equitable doctrine that permits courts to reform a written gift instrument as near as possible to the donor's intention so that the gift does not fail.

The [Charitable Trust Unit](#) of New Hampshire's Attorney General's office oversees charitable trusts and organizations. The New Hampshire statute specific to institutional funds is [RSA ch. 292-B](#), and [Section 292 B:6](#) relates to release of restrictions.



Chapter 292-B codifies New Hampshire's adoption of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) that allows for the pursuit of modification if a fund "...becomes unlawful, impracticable, impossible to achieve, or wasteful,..."



Dartmouth may pursue judicial or non-judicial release to modify a fund's restrictions when a fund review deems that the restriction meets the above qualifications, and in cases where previously discussed methods of modification are unavailable.

Non-Judicial Release

This process allows release of restrictions on written notice to the Attorney General's office without the need for court approval.

- Typically, can be managed by OEA and Dartmouth's Office of General Counsel.

Candidate funds must be:

- > 25 years old, and
- Market Value of < \$25,000.
- Fewer than 6% of Dartmouth's endowment funds meet the criteria, and many of those have broad purposes that do not require amendment.

Judicial Release

This process may be used for funds that don't meet the criteria for non-judicial release.

- Requires a judicial review and order.
- Requires assent of the Attorney General's office.
- Requires collaboration of OEA with internal and external counsel.



Project Priorities

With almost 7,000 individual funds making up Dartmouth's endowment, there are more funds that require review than can be accomplished in a short time.

OEA maintains a master list of funds that have been identified as difficult to spend in compliance with existing restrictions.

Modified purposes are prioritized based on multiple factors such as:

- Cooperation and involvement of benefiting area during the review process.
- Available resources including staffing, financial risk analysis, competing institutional priorities.
- Likelihood of success.





Thank you for viewing this tutorial.

We hope you found the information you were looking for. Please do not hesitate to contact the Office of Endowment Administration with questions.

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