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316.267.2000**hinklaw.com****Protecting Charitable Gifts from a Charity's Creditors**

An unfortunate, but increasing reality is that some charities are electing to file for bankruptcy to deal with creditors. Sometimes these creditors arise from unexpected litigation and others from declines in revenue and weakness in the economy. Unlike businesses, charities cannot be forced into bankruptcy by their creditors, they must elect to file bankruptcy to deal with their debts, and increasingly, more charities are doing just that.

While a for-profit business wants to guarantee investment returns, charities desire to fund philanthropic needs. As a donor, it is important that any gift made to a charity be used for the charitable purpose, not for paying creditors. Charities, to encourage continued public support, also desire to use the assets to achieve their charitable purpose and keep donated assets from their creditors.

To protect assets from a charity's potential creditors, donors and charities can work together to create gifts that are held in a restricted account to be used for a specific purpose, or held in an account governed by a common estate planning clause called a "spendthrift" clause. A gift given to a charity that can be used for any purpose as determined by the charity is not a restricted gift. An unrestricted gift can be used to satisfy a charity's creditors, voluntarily or forcibly in bankruptcy. Gifts restricted for a specific purpose or transferred to an endowment are ways of giving the charity the legal title to the property (the right to manage or invest the gift) but not the right to use the property to satisfy creditors.

A spendthrift clause provides that no assets held in a specified fund may be made available to satisfy creditors. A spendthrift clause is typically used as part of an endowment gift or charitable trust. Additional techniques may be available depending on the specific facts of the case. Contact us to determine what is right for your situation.

For help in making charitable gifts, coordinating charitable giving with a client's estate plan, or developing a plan to protect charitable gifts from creditors, contact the Estate Planning Group of Hinkle Law Firm LLC. Combined with our experience in facilitating charitable giving, Hinkle Law Firm LLC has recently added experienced bankruptcy attorneys to help clients protect assets from creditors and navigate the complexities of bankruptcy proceedings.