




## Nonprofit Law Resource Library


Major Gifts, Grants & Restricted Funds – Question & Answer: Gifts & Grants

### Q&A

 **1. One of our newer donors is upset about the direction our agency is taking, so much so that she wants back \$30,000 she contributed. Of course, we're going to honor her request, but are we legally obligated to do so especially since we spent the money on a project she earmarked?**

 **2. Late last year, my organization was approved for a grant by a funding source (not a foundation). We received a letter to this effect and, as a result, expended considerable time, money and energies gearing up for a certain program. Five months later the grant still hasn't arrived. We've made a dozen or so attempts to find out why, but our phone calls aren't taken. My question is, can we sue this source for reneging on its pledge?**

 **3. We have a delicate, if not morbid, problem on our hands. An individual last month pledged \$60,000 to our capital campaign (he made the pledge to one of our trustees). Before we could get the pledge in writing, he was involved in a serious accident and is about to undergo a life-threatening operation. If this man dies – and please pardon my insensitivity – is there any way we can enforce the agreement with his heirs? If we can't, I'm almost sure we'll lose the gift.**

 **1. One of our newer donors is upset about the direction our agency is taking, so much so that she wants back \$30,000 she contributed. Of course, we're going to honor her request, but are we legally obligated to do so especially since we spent the money on a project she earmarked?**

The donor offered a charitable contribution with certain restrictions on its use. Your organization accepted the offer. Offer plus acceptance equals binding contract.

Therefore, once you fulfill the terms of the contract, the donor has no legal right to a return of the contribution. The overall direction of your organization is legally irrelevant unless, by virtue of a change in direction, her gift was used differently than she intended.

You may be able to smooth ruffled feathers by explaining to her that it would be difficult to refund the contribution because it has already been spent, in the timely and effective manner that she had instructed.

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The general rule: promises to make grants are enforceable. Therefore, it is likely your organization has a cause of action against the grantor. However, enforceability in this case will largely depend on the terms of the actual letter and other communications between the parties.

Your claim would be based on a theory of breach of contract. The grantor's letter to you constitutes a binding commitment to provide the funding stipulated. Even if the letter is not a formal grant award, so long as you can demonstrate that your organization relied in good faith upon the donor's representations then a contract was formed. This is known as the doctrine of "promissory estoppel", in which the defendant is prevented from denying the existence of a contract.

Whether or not to sue is a policy decision to be made by balancing a number of legal and other considerations. For instance, the suit may have a negative impact on potential donors. The time and costs of the suit might outweigh the benefits of obtaining the funds. On the other hand, the threat of a suit might be sufficient to force the grantor to relinquish the funds or negotiate a settlement.

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Verbal pledges, like verbal contracts, are enforceable. They are simply more difficult to enforce because there is less evidence to support their existence. Therefore, theoretically you could attempt to enforce the pledge through litigation involving the testimony of the trustees.

However, as a practical matter, such a tactic might appear so unseemly to the public as to jeopardize your capital campaign. Therefore, depending on your reading of

the situation, your best bet might be to approach the heirs at an appropriate time and inform them of the pledge, of the donor's intent, and of his firm commitment to your organization.