

UNDERSTANDING CHARITABLE PLEDGES



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At a Glance

- Promises to pay are not always enforceable by the charity.
- The IRS recently permitted payment of pledges from a donor advised fund under certain circumstances.
- The Chicago Community Trust makes no reference to your pledge when it issues a grant from your donor advised fund.

What is a pledge?

A pledge is a promise to make a gift to a charity.

Can a charity successfully sue me and force me to pay a pledge?

It depends upon whether the court deems your pledge to be enforceable or unenforceable. Courts look to the state's law of contracts. The law varies from state to state. For example, some states, like Illinois, take the position that all pledges are unenforceable unless the charity either:

- provides consideration, such as a naming opportunity; or
- spends money or incurs other liabilities—such as breaking ground or hiring contractors—in reliance upon the donor's promise.

However, the current trend among states is to find that a pledge is enforceable regardless of whether the charity has provided consideration or relied upon the donor's promise.

When making its decision, a court looks to the facts and circumstances surrounding your pledge and then applies state law. The facts and circumstances are different in each situation. Also, if you and the charity reside in different states, the court will have to determine which state's law to apply. Consequently,

determining whether a pledge is enforceable can be a difficult legal question.

Writing off a pledge requires serious consideration by the charity. The charity's board has a duty to protect the charity's assets. Also, enforceable pledges are booked as an asset on the charity's financial statements. So if the charity decides to write off the pledge, they must report that write-off to the IRS.

Can I recommend that my donor advised fund (DAF) pay a pledge I already made?

This is an evolving area of the law for organizations that sponsor DAFs, like The Chicago Community Trust.

Historically, the IRS stated that if money from a DAF was used or could be used to pay the enforceable pledge of a donor, penalties could be assessed. The penalties could be assessed on the donor, a fund advisor or certain parties related to these individuals. Penalties could also be assessed on the DAF sponsor.

Due to the difficulty in determining whether a pledge was legally enforceable, many DAF sponsors responded in two ways. First, they asked the fund advisor to certify that a grant made from the DAF was not being used to pay a donor's pledge before issuing the grant. Second, they included language in the letter to the charity stating that the charity would *not* use the grant from the DAF to pay an enforceable pledge.

On December 4, 2017, the IRS issued Notice 2017-73 which states that a grant from a DAF to a charity that is used to pay the donor's enforceable, pre-existing pledge will not result in more than an incidental benefit to the donor so long as:

- The letter from the DAF sponsor to the charity makes no reference to the existence of a pledge;
- No donor, advisor or related party receives “more than an incidental benefit”; and
- The donor or advisor does not attempt to claim an additional charitable deduction for the grant.

The Notice stated that taxpayers could rely upon this new rule until it issued additional guidance. As a result, several DAF sponsors no longer require a fund advisor to certify that a grant is not being used to pay a pledge and have deleted, in their letters to grant recipients, the statement that the grant is not being used to pay a pledge.

The IRS also asked for public comment to the Notice. Several DAF sponsors and professional advisor organizations filed written comments. Many of the comments were critical of the three conditions and asked for further clarification. For example, one commentator stated the IRS should define what it means by “no reference” to a pledge. Otherwise, a DAF sponsor could inadvertently break the rule by including a detailed description of the grant’s charitable purpose in the letter to the grantee when the sole reason was to ensure the grantee met the donor’s intent.

Will The Chicago Community Trust permit me to pay my pledge from my DAF?

Yes. However, we ask that you make no reference to the pledge when making your grant recommendation. Also, our letter to the grant recipient will not reference any pledge you may have made. Consequently, that organization decides how to apply the funds it receives, such as counting it toward your pledge or treating it as a new gift.

If you have additional questions about using a DAF to satisfy an existing personal pledge, please contact Don Gottesman, Director of Gift Planning, at dgottesman@cct.org or 312.565.6141.



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Since 1915, donors have partnered with The Chicago Community Trust to leverage the power of their philanthropy in ways that transform lives. By connecting the generosity of donors with the needs of the community, together we are building a thriving, equitable and connected Chicago region.