



FINANCIAL GOVERNANCE & SUSTAINABILITY

Bequest and Endowment Governance: Honouring Intent You Cannot Ask About

A rigid condition can cost more to administer than the gift provides. Plan for this before it arrives

A bequest is one of the few forms of income a board cannot renegotiate after the fact. By the time it arrives, the person who set its conditions is no longer available to clarify what they actually meant, adjust an impractical restriction, or agree to a sensible variation. Getting the governance around bequests right happens well before the gift ever arrives, in how an association talks to donors and structures its own bequest program in advance.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Same Duty, Applied To A Gift That Outlives The Giver](#)
2. [The Practical Trap Most Boards Do Not See Coming](#)
3. [A Practical Preventive Step](#)
4. [When Donor Intent Cannot Be Fulfilled As Written](#)

The Same Duty, Applied To A Gift That Outlives The Giver

For registered charities, overseeing bequests and restricted gifts sits squarely inside the ACNC Governance Standard 5 duty this series has returned to throughout its financial governance discussion: board members must understand and oversee how the charity's finances, including restricted funds received by bequest, are managed. For associations that are not charities, the same expectation flows from directors' duty of care and diligence and the terms on which the gift was made. A board that simply accepts a large legacy without engaging with its conditions is not meeting that standard, regardless of how welcome the funds are.

The Practical Trap Most Boards Do Not See Coming

A well-intentioned but overly restrictive bequest condition can create a real administrative burden disproportionate to the gift itself. A bequest with sufficiently rigid, binding conditions, restricted to a narrow purpose, held permanently, or subject to specific management terms, can mean the organisation holds the gift on a separate trust, with its own accounting and reporting, and in some cases its own ACNC registration and review or audit requirements, depending on its terms and size. For a smaller bequest, the ongoing cost of administering that arrangement can exceed the practical benefit of the restriction the donor intended. The right time to manage this risk is before the bequest is finalised, not after it lands. An association that proactively guides donors toward flexible, non-binding statements of wishes, rather than rigid binding conditions written into a will, protects both the donor's real intent and the organisation's ability to actually honour it efficiently.

A Practical Preventive Step

Encouraging a prospective donor toward a non-binding statement of wishes, rather than a legally binding condition embedded in the will itself, is a specific, actionable piece of guidance worth offering in donor conversations. This approach preserves the substance of what the donor wants to achieve while giving the organisation the flexibility to adapt if circumstances change meaningfully over the years or decades a bequest may ultimately be held. Publishing your organisation's correct legal name, ABN, and suggested bequest wording clearly on your own website is a small, useful step that reduces the risk of an invalid or ambiguous gift reaching your organisation in the first place.

When Donor Intent Cannot Be Fulfilled As Written

Circumstances do change over the life of a long-held bequest or endowment, a specific program the gift was restricted to may cease to exist, or a stated purpose may become impractical decades after the original condition was written. Australian courts have long recognised an equitable doctrine, generally known as *cy-près*, allowing a charitable purpose that has become impossible or impractical to fulfil as originally stated to be varied toward the closest practical equivalent, rather than the gift simply failing altogether. Varying a charitable gift usually needs a court order or, in some states, a scheme approved by the Attorney-General under charitable trusts legislation. It is not something a board can quietly decide for itself, and the process varies by state and territory, which is why professional advice at the point a conflict with donor intent arises is essential rather than optional.

- Treat bequest oversight as a board-level financial governance matter, connecting directly to the Governance Standard 5 duty for charities and directors' duty of care for every association, not simply a fundraising or donor relations function.
- Guide prospective donors toward non-binding statements of wishes rather than rigid binding conditions, protecting both donor intent and the organisation's practical ability to honour it over time.
- Publish your organisation's correct legal name, ABN, and suggested bequest wording clearly and accessibly, reducing the risk of gifts arriving with invalid or ambiguous instructions.
- Assess any incoming bequest's actual conditions against the cost of administering it as a separate restricted fund or trust before accepting it as designed, since a well-intentioned restriction can sometimes cost more to administer than the gift itself provides.
- Use a short acceptance checklist for every bequest: the conditions, the cost to administer, how the restricted fund will be tracked, who signs the acceptance, and whether legal advice is needed.
- Seek legal advice the moment a bequest's stated conditions can no longer practically be fulfilled as written, rather than allowing the board to informally reinterpret donor intent on its own authority.

A bequest represents trust placed in an organisation to carry out someone's wishes long after they are able to clarify them. The governance discipline this deserves is not paperwork for its own sake. It is the only mechanism available for honouring that trust accurately, once the person who gave it is no longer there to ask.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

Bequest and Endowment Governance: Honouring Intent You Cannot Ask About

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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