



What Is Our Role

- ▶ Protect the public interest in charity, by statute, common law & the Texas Constitution.
- ▶ Receive notice of any “proceeding involving a charitable trust” pursuant to Ch. 123 of the Texas Property Code.
- ▶ Receive notice of a will probate if the beneficiary is a charity that for any reason cannot be notified pursuant to Ch. 308 of the Texas Estates Code.
- ▶ May intervene in any “proceeding involving a charitable trust.”
- ▶ May seek to set aside any settlement or judgment for lack of compliance with notice provisions under Texas law.
- ▶ The powers of the Attorney General to protect the public interest in charity are broadly defined. Significant discretion is given to the Attorney General to investigate and intervene in matters involving charitable entities.



Texas By The Numbers

- ▶ As of December 2019, there were 102,594 501(c)(3) charities and 7,596 private foundations in Texas
- ▶ Gross assets held by Texas 501(c)(3)'s: \$265,824,381,340.
- ▶ Gross assets held by Texas private foundations: \$48,947,086,761.
- ▶ The IRS revoked 4,775 Texas charities in 2018 for failure to file for 3 consecutive years and revoked 3,216 in 2019.



Complaints and Notices

- ▶ Charity complaints received by year:
 - FY 2018 – 157
 - FY 2019 – 172
 - FY 2020 – 159

(Note: This does not include complaints to CPD.)
- ▶ Property Code Ch. 123 (charity cases) notices received by year:
 - FY 2018 – 124
 - FY 2019 – 151
 - FY 2020 – 127
- ▶ Estates Code Ch. 308 (will probate) notices received by year:
 - FY 2018 – 16
 - FY 2019 – 23
 - FY 2020 – 11



Investigations & Interventions

- ▶ Under the TX Business Organizations Code, the AG may:
 - Investigate the organization, conduct & management of a filing entity (§ 12.153)
 - Examine books & records of a filing entity (§ 12.151)
 - Issue a request to examine all records (§ 12.152)
 - Seek termination of a filing entity (§ 11.303)

- ▶ Charitable Trusts coordinates with the Consumer Protection Division to enforce violations of the Texas Deceptive Trade Practices-Consumer Protection Act (Tx Bus. & Comm. Code §17.41, et. seq.)

- ▶ Charitable Trusts also coordinates with criminal divisions within the Office of the Attorney General, as well as local law enforcement and other states attorneys' generals in multistate investigations.



What Activities May Spark An Investigation or Intervention

- ▶ Failure to Follow the Charitable Mission
 - Provide little or no charitable benefit or service
 - Prioritize the leader's agenda over the organization's charitable purpose (Failure to follow donor intent)
 - Misrepresent the charity, its services or its programs
- ▶ Mismanagement or Misappropriation of Funds
 - Embezzle funds
 - Overcompensate directors or staff (or trustees)
 - Fail to follow basic financial recordkeeping activities
- ▶ Poor Governance in Operation of the Charity
 - Fail to adopt and implement key policies & procedures
 - Allow a culture that ignores board responsibilities to the organization
 - Fail to follow basic requirements (board minutes, bylaws)



Potential Causes of Action

- ▶ Breach of Fiduciary Duty
- ▶ Fraud
- ▶ Violations of the DTPA (Texas Deceptive Trade-Consumer Protection Act)
- ▶ Violations of TUPMIFA (Texas Uniform Prudent Management of Institutional Funds Act)
- ▶ Violations of the Telemarketing Sales Rule
- ▶ Violations of LETSA, Veterans & Public Safety Organization related statutes



Possible Relief & Remedies

- ▶ *Cy Pres* and Compliance with Donor Intent
- ▶ Training Requirements for Directors & Management
- ▶ Reconstitution of Governing Board
- ▶ Amendment to Organizational Documents
- ▶ Reporting and Auditing Requirements
- ▶ Solicitation Restrictions
- ▶ Prohibition by Leadership With Other Charitable Organizations
- ▶ Injunctive Relief and Asset Freeze
- ▶ Dissolution of Organization or Termination of Trust
- ▶ Civil Penalties under the DTPA (enhanced for targeting consumers 65 years or older)
- ▶ Damages, Restitution and/or Disgorgement
- ▶ Attorneys' fees and costs
- ▶ Receivership



Notable Results

- ▶ BeHive Youth Development – Investigation of nonprofit corporation for failure to protect the charitable assets entrusted to it. – Recovered \$466k to *cy pres* to another charity to perform the mission.
- ▶ Sears Methodist Retirement System – Intervention into bankruptcy to preserve restricted charitable funds that were taken by estate. – Recovered \$1.7M to *cy pres* for the charitable mission.
- ▶ Estate of Robert Yeats Wheeler – Intervention into will contest to protect charitable foundation decedent wished to establish. – Foundation established with \$31M from estate.
- ▶ Estate of Brenda Kay Dobbs – Intervention into will contest to protect the charitable interests of two small charities. – Recovered \$275k to be distributed to each charity.
- ▶ Clara Smith Charitable Foundation – Investigation of trustee (Bank of America) related to trust expenses. – Resolved with agreement waiving trustee fee (\$500k value), capping investment management fee, and installation of community advisory counsel to make grant recommendations.



Statutory Notice to the Attorney General

Brief Description	Statutory Reference	Notice to AG Requirement
Judicial proceeding involving a charitable trust	Texas Property Code Chapter 123. Notice requirement at §123.003. See also Texas Property Code § 115.011.	Notice required via certified or registered mail, within 30 days of filing of the pleading but no less than 25 days prior to a hearing. AG must diligently review on behalf of public interest in charity and determine whether intervention is warranted.
"Decanting" – Trustee exercise of powers of distribution from one trust to another in furtherance of trust	Texas Property Code, Chapter 112, Subchapter D, §112.074 (see also §112.078)	Notice required if a charity is a beneficiary, including a presumptive remainder beneficiary or when the trustee has authority to distribute to a charity or for charitable purposes.
Selecting a replacement charitable beneficiary when the named charitable beneficiary of a trust has ceased to exist	Texas Property Code §113.026	Notice required if trustee and settlor desire to replace charitable beneficiary when named charitable beneficiary of trust fails. AG must "refer" to litigation under certain circumstances.
"Orphan Trust" - Relocating the administration of a charitable trust	Texas Property Code §113.030	Notice required of intent to relocate the grant-making function of a charitable entity.
Release or modification of restrictions on the management, investment or purpose of an institutional fund under UPMIFA	Texas Property Code §115.015	Plaintiff in an action on a contract involving a charitable trust must prove that before the 31 st day after the date the action began, or any court approved date that is more than 30 days before judgment, notice was provided to the attorney general.
Release or modification of restrictions the management, investment or purpose of a small institutional fund under UPMIFA	Texas Property Code §163.007(b) and (c) – Uniform Prudent Management of Institutional Funds Act	Chapter 123 (see above) applies to judicial proceedings brought to modify an institutional fund under UPMIFA.
Decedent's Will includes charitable beneficiary that cannot be notified	Texas Property Code §163.007(d) – Uniform Prudent Management of Institutional Funds Act	Institution seeking to release or modify a restriction on a small fund may do so without court action. Notice to AG citing facts sufficient to meet the statutory requirements is mandated at least 60 days prior to such release or modification.
Amending a charitable trust to be consistent with IRS provisions for tax exemption	Texas Estates Code § 308.002(b)(4) and §308.003	Notice that complies with Texas Estates Code §308.003 is required not later than the 60 th day after the date of an order admitting the will to probate, if a charity is a beneficiary under the Will and cannot be notified. Notice must be by registered or certified mail.
	Texas Property Code §112.056	Certain charitable trusts may be amended upon consent of the settlor to comply with IRS requirements. Notice is effective when a duplicate original is filed with the attorney general.



Statutory Notice to the Attorney General (continued)

Brief Description	Statutory Reference	Notice to AG Requirement
Disclaimer of interest	Texas Property Code, §240.0081 – Texas Uniform Disclaimer of Property Interests Act	Notice required if charitable is entitled to notice; a charity entitled to notice is no longer in existence; the trustee is authorized to distribute assets to one or more charities that are not named in the trust instrument or the trustee is authorized to distribute for a charitable purpose, but no charity is named as beneficiary.
Judicial modification or reformation of will	Texas Estates Code, §255.451-255.455	Notice required if a proceeding under §255.451 involves a charitable trust.
Validity of defective corporate acts	Texas Business Organizations Code §22.516	Notice required if proceeding is brought under §22.512 if the organization is a charitable entity.