

# Redirecting Designated Gifts

By Randle S. Davis and William F. Maxwell

*(This article is intended to be a brief, but informative overview of the responsibility of churches in the correct use of monetary gifts designated for a specific purpose.)*

**Question: Can our Church use money in a designated fund for something other than the purpose in the original designation? (e.g. Use money in a building fund to purchase a Church vehicle.)**

It depends on how and by whom the fund was established.

1. If the Church established the “designation” upon the fund, then the Church can change that designation at any time. Legally, the Church would not need the approval of anyone who contributed to that designated fund. For example, Churches often establish building funds and encourage membership to give so that when the church is ready for a new building, funds will be ready as well. Often the need for the new building is further away than hoped and other needs of the church come to the forefront. The Church could vote to use those funds for another Church purpose. However, the same church process that established the fund would need to be followed to change the designation. Normally, this will require the vote of the congregation to change the designation. However, if allowed by Church policy and bylaws the finance committee, trustees or some other group may be able to approve the change. Never, should the Pastor or Church Treasurer take it upon themselves to change the designation. Practically speaking, Churches should be careful about such an action. Future solicitations may be impacted by the memory of the last time that a fund was established and then the designation was changed. Careful communication as to the rationale and reasons behind such an action may help overcome donor suspicions.
2. If the donor established the “designation” upon the gift and the Church accepted same, (e.g. Donor provides funds to install a stained glass window in memory of his mother and church accepts the gift) then there is a second issue which must be addressed. Did the donor place any “conditions” upon the gift should the designation be violated by the Church? (A condition might be that the window be installed in a certain Sunday School class.) If the answer is “no”, then there is no legal implication upon the Church if it re-designates the fund. Again, the Church should communicate with the donor the rationale and reason for using the funds other than as originally intended. If the action is taken without the donor’s knowledge or without the donor’s consent, then the donor could initiate legal proceedings against the Church for return of the gift. If the law is followed, then the donor would lose that legal action. However, the law is not always followed. Some Judges feel they have the wisdom of Solomon and go awry of the law in order to achieve what they feel is justice.
3. If the donor established the “designation” and attached a “condition” upon such in the event the designation was ever violated, then the donor has legal rights against the Church if it violates the designation. Those legal consequences are dictated by the “conditions” attached to the gift. The conditions could be reversion of the gift to the donor, vesting of title to the gift to another charitable organization, etc. This is usually the most infrequent occurrence simply because most donors do not know to attach “conditions” to their designated gifts.

## **Will any of these scenarios impact our tax-exempt status as a Church?**

As long as the Church uses gifted funds for the furtherance of its exempt purpose, then the IRS will not get involved and there will be no adverse implications upon the exempt status of the Church. If the Church uses the funds for purposes not in accordance with its exempt purposes (i.e., private inurement or personal benefit of

pastor or other individuals; influencing legislation or the outcome of a pending election; etc.), then there will be consequences from the IRS, not the least of which will be the loss of exempt status.

**What about returning the designated gift to the donor?**

Unless the Church is going to undertake full and complete due diligence to find each and every donor to a designated fund, it should refrain from offering a refund as an option for any donor. As an alternative, the Church could allow the donor to designate the funds to another ministry of the Church or to the general fund of the Church. To offer a refund means that the Church will not only be required to contact those donors about which it has information, but will also have to take out public notices for any potential donor who might have contributed cash with no reference to the identity of the donor. A charitable organization cannot “cherry-pick” the donors to whom it wants to offer a refund for a designated fund. It either contacts all or none. To avoid the procedural nightmare, do not offer refunds. Use the “notice” to the members of the Church as the notice to all donors. Refunds should be avoided and defaulted to only as a last resort! Refunds would also trigger some tax consequences for the donor which should be addressed by a tax professional.