Charitable Trusts and Cy Pres Doctrine: Overview

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Charitable trusts are both valuable estate planning tools and excellent philanthropic devices. For instance, charitable trusts come with appealing tax incentives for donors creating charitable *inter vivos* trusts. While in most respects, charitable trusts are governed by the same concepts often discussed here on this blog (like fiduciary duty obligations for trustees), there are a few notable exceptions worth highlighting for anyone looking to take advantage of charitable trusts for estate or tax planning purposes.

As an initial matter, a charitable trust is simply a trust that has a charitable purpose. See, *e.g.*, *Denver Found. v. Wells Fargo Bank*, 163 P.3d 1116, 1125 (Colo. 2007) (“Instead of identifying a person or corporation as beneficiary, the settlor of a charitable trust must describe a purpose which is of substantial public benefit.”). Under Uniform Trust Code § 405, charitable purposes include “the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.” The Restatement (Third) of Trusts § 28 largely matches the UTC, although it is a tad more expansive. For instance, the Restatement includes the advancement of *knowledge*, rather than just *education*, in its definition of charitable purpose. The differences between the UTC and the Restatement, though, are slight.

There are a few important differences between charitable trusts and non-charitable trusts. First, given that charitable trusts must have a charitable purpose, they need not have an ascertainable beneficiary. “In the case of a charitable trust, the beneficiary is the unspecified, indefinite general public to whom the social and economic advantages of the trust accrues.” *Denver Found.*, 163 P.3d at 1125 (“Instead of identifying a person or corporation as beneficiary, the settlor of a charitable trust must describe a purpose which is of substantial public benefit.”).

Second, charitable trusts can last, theoretically, into perpetuity. As a result, the often mentioned Rule Against Perpetuities does not apply to charitable trusts. The Rule Against Perpetuities is intended to avoid estate planning that restricts a property’s use for too long (for instance, it prohibits testator from trying to require descendants keep a piece of land “in the family forever”). But since public policy cuts differently when deciding whether to permit *perpetual charitable purposes*, lawmakers have crafted an exception for charitable trusts.

Third, in keeping with the hope that charitable trusts be enduring, courts apply the *Cy Pres* doctrine, which is aimed at permitting trusts to be modified, rather than fail, as to allow them continued...
existence. As discussed above, charitable trusts come with charitable purpose restrictions. Sometimes it becomes difficult or impossible to conform the trust to that purpose restriction. For instance, if a charitable trust’s stated purpose is to provide funding to a particular education nonprofit organization, if that organization were to no longer exist, absent court intervention, the charitable trust would fail. *Cy Pres* holds that if a charitable trust document does not dictate what to do under changed circumstances, a court is permitted to modify the charitable purpose restriction. So, in our education nonprofit example, instead of terminating the trust under the purpose restriction, the court could simply *modify* the purpose of the trust by dictating that the trust go to benefit a *different* education nonprofit organization.

Most courts recognize the *Cy Pres* doctrine. See, e.g., *Dunbar v. Bd. of Trustees of George W. Clayton College*, 461 P.2d 28, 30 (Colo. 1969) (“Where, as here, it is evident to the trial court that the operation of the trust has failed to fulfill the general charitable intention of the settlor, and the only possibility is that the situation will become worse in the future, the court is justified in applying the doctrine of *Cy pres* on the basis of impracticability.”). In *Dunbar*, for instance, the Colorado Supreme Court held that, in light of changed conditions, the court could employ the *Cy Pres* doctrine to modify an 1899 charitable trust to provide for care of orphans aged 6 to 18, rather than just 6 to 10. *Id.* at 32.

Additionally, both the UTC and the Restatement have adopted the *Cy Pres* doctrine. UTC § 413 states that if a restricted purpose becomes “unlawful, impracticable, impossible to achieve, or wasteful”—rather than letting the trust fail—the court may “modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor’s charitable purposes.” Restatement § 67 is consistent and states that where a charitable purpose “is or becomes unlawful, impossible, or impracticable . . . or becomes wasteful . . . the charitable trust will not fail but the court will direct application of the property or appropriate portion thereof to a charitable purpose that reasonably approximates the designated purpose.”

While there are other differences unique to charitable trusts—including tax treatment, drafting considerations, and standing to enforce the trust—these three differences discussed here are a start. In light of these, it is important to remember that once you establish a charitable trust, public policy can operate to ensure the trust’s continued (if not perpetual) existence.