

When a Donation Steers Off Course

Sometimes philanthropic dreams go unfulfilled.

By FRAN HAWTHORNE

When he donated \$500,000 in 2005, the country singer Garth Brooks never signed an agreement with Integris Canadian Valley Hospital in his hometown, Yukon, Okla. Mr. Brooks expected the money to be used to build a women's health center named for his mother, Colleen, who died of cancer in 1999. The hospital, however, claimed that the grant was unrestricted, to be spent as Integris saw fit.

By 2009, with no indication that construction on the center would ever start, Mr. Brooks sued for his money back. A jury awarded him a full refund, in addition to another \$500,000 in damages.

"Garth is very much a man of his word," said his lawyer, John M. Hickey, a partner at Hall, Estill, Hardwick, Gable, Golden & Nelson of Tulsa. "He believed that he had a deal." (Mr. Brooks and the hospital declined to comment.)

Such a lawsuit is an extreme case. Of the more than \$300 billion a year that is donated to about 1.5 million nonprofits in the United States, most work out as intended. Museum wings get built and scholarships get awarded.

Nevertheless, experts say, dozens of times a year something goes awry. A donor may lose interest or take a bad loss in the stock market. The project may become more complex than a charity expected.

Most important, ambitious goals, and therefore potential failure, are inherent in philanthropy.

"Good grant-making is all about taking risks and doing the things that society says under normal circumstances can't be done, be it feed the homeless or create great art," said Grant Oliphant, president of Heinz Endowments in Pittsburgh, which has \$1.56 billion in assets.

The parties must then scramble to extend their deadline, alter the original concept, seek new funding or in the worst cases, chisel a donor's name off a building.

"It probably happens once a week," said Gene Tempel, founding dean of the Indiana University Lilly Family School of Philanthropy. Organizations typically try to raise 1 to 5 percent more than they think they will need, anticipating unfulfilled pledges.

Pledges are most likely to be completed when they come from large institutions that have stable goals, enough employees

to research and keep track of the recipients, and deep pockets.

Financial shocks, like the 2008-9 recession, are a primary cause of problems.

The dollar value of American gifts and pledges plunged by 5.7 percent in 2008, the largest such decline in half a century, according to the Giving USA Foundation.

Recipients can suffer money troubles, too. The Heinz Endowments in August took the extraordinary step of asking the August Wilson Center for African American Culture in Pittsburgh to return a \$500,000 gift after the center went into conservatorship and the bank holding its mortgage threatened to foreclose. Among other setbacks, the center had lost a source of revenue, unexpected environmental problems emerged during its construction and then the center opened just as the 2008 recession hit.

"The organization did not seem to be in a position to figure out a path forward where it could work," said Mr. Oliphant, whose endowment has contributed more than \$9 million to the center in total, mainly for construction.

This story has a rare happy ending. In late September, the Heinz Endowments, several other philanthropies, the Wilson Center, its bank, the court-appointed conservator and local officials reached an agreement under which the foundations would buy the building for \$8.49 million and set up a new management structure.

Financial problems are not the only ones that can waylay gifts. "People make pledges and then they move, their interests change, they die or they become disenchanted," said Bob Carter, president and chief executive of Bob Carter Companies, a consulting firm specializing in nonprofit fund-raising that is based in Sarasota, Fla. "Life happens."

Mr. Brooks's lawsuit against Integris hospital illustrates another common problem, especially when there is no detailed, written contract. "The donor thinks they have an understanding on the agreement, and the recipient's interpretation turns out to be different," Mr. Tempel of Indiana University said.

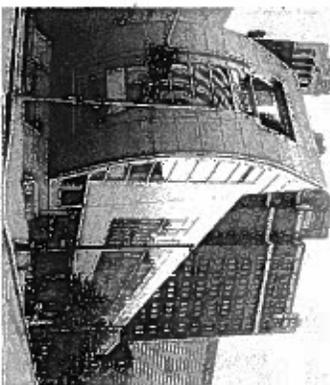
Even when everything is carefully enumerated—in theory—the reality may be more difficult than either side anticipated. "A donor gives to a project that's not in the nonprofit's core competency," said Jacob Harold, president and chief executive of Guidestar, which runs a large online database



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GIVING DERAILED Clockwise

from top: Thomas R. Kline in the future home of Drexel University's law school, which will bear his name, not the original donor's; the August Wilson Center for African American Culture in Pittsburgh, which a foundation cut off for financial troubles; and Garth Brooks, who sued a hospital to get a donation back.

about nonprofits.

In the last five years, at least three clients of Washburn Carmichael, a boutique consulting firm for nonprofits, based in Ossining, N.Y., had trouble finding staff with the specific skills needed to carry out grants, like a Creole speaker trained to work with victims of domestic violence, according to Nancy Carmichael, the vice president and a principal at the firm.

Sometimes, institutions refuse money because of ethical qualms about the donor or the conditions attached to the dollars. This year, WNET, the New York-area public television broadcaster, returned a \$3.5 million grant that the Laura and John Arnold Foundation had given for a series on public pensions, after an article on the website PandoDaily pointed out that Mr. Arnold had actively supported efforts to reduce public pension benefits.

While some of the causes, like a global recession, may be unavoidable, and risk is inherent to philanthropy, experts say that

many problems can be solved with better communication, including a formal gift agreement.

Such an agreement might describe whether payment will be made in a lump sum or over a designated number of years, whether the money can be shifted to another project, and how much of the pledge must be paid before a major donor's name goes up on a building or letterhead, typically 65 to 75 percent.

"Donors have become much more direct about what they can expect in terms of timetables and visibility and the way that the gift is publicly discussed," said Robert Evans, president of Evans Consulting Group in Philadelphia, which specializes in nonprofits.

Then, if problems arise, the parties can renegotiate the terms. If a funder cannot fulfill a pledge on time, payments might be stretched out. On the recipient side, the Washburn Carmichael clients arranged deadline extensions so they could find specialized staff.

When a tsunami battered the Indian Ocean in 2004, nonprofits working in the area asked donors if they could switch funds from their current projects to emergency relief, said Bradford K. Smith, president of the Foundation for New York City, which provides data and training about philanthropy.

Strict standards might avoid embarrassing do-overs as at the new law school at Drexel University in Philadelphia.

In 2008, after Earle I. Mack, a real estate investor and former ambassador to Finland, pledged \$15 million through his personal foundation, the school was named for him. However, recession hit his real estate business hard, and last December, the two sides agreed to rescind both the pledge and the name "to attract other major benefactors," as they said in a joint statement. Two months ago, Thomas R. Kline, a personal injury lawyer, stepped in with \$50 million, and now it is the Thomas R. Kline School of Law.

"I want what is best for the law school and am delighted that this gift will enable it to continue the high standards we envisioned at its founding," Mr. Mack said in an email. Neither Drexel nor Mr. Kline would comment.

"Donors have to accept that this is a gift you're making because you believe in the cause," Mr. Smith warned. "It's not a transaction where you're buying something."