

Comparison of UMIFA and UPMIFA

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<u>UMIFA</u>	<u>UPMIFA</u>
<ul style="list-style-type: none"> • Model law promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1972. • First set of uniform rules for the investment and expenditure of endowment funds. • Adopted in Washington in 1973 (RCW 24.44). 	<ul style="list-style-type: none"> • Model law promulgated by NCCUSL in 2006. • Adopted in Washington in 2009. • Applies to all institutional funds existing on or established after July 1, 2009 (although institutions did have option of electing to have apply after May 11, 2009). Repeals RCW 24.44 and adds a new chapter to Title 24 RCW.
<u>Washington's UMIFA</u>	<u>Washington's UPMIFA</u>
<u>RCW 24.44.010 Definitions</u>	<u>Section 2 Definitions</u>
<ul style="list-style-type: none"> • “Institution” means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of these purposes. • “Institutional fund” means a fund held by an institution for its exclusive use, benefit or purposes, but does not include (a) a fund held for an institution by a trustee which is not an institution, or (b) a fund in which a beneficiary which is not an institution has an interest other than possible rights which could arise upon violation or failure of the purposes of the fund. • “Endowment fund” means an institutional fund, or any part thereof, which is not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument. • “Governing board” means the body responsible for the management of an institution or of an institutional fund. • “Historic dollar value” means the fair value in dollars of an endowment fund at the time it first became an endowment fund, plus the fair value in dollars of each 	<ul style="list-style-type: none"> • “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community. • “Endowment fund” means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. “Endowment fund” does not include assets that an institution designates as an endowment fund for its own use. • “Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund. • “Institution” means: <ul style="list-style-type: none"> • A person, other than an individual, organized and operated exclusively for charitable purposes; • A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

subsequent donation to the fund at the time it is made, plus the fair value in dollars of each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

- “Gift instrument” means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

- A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.
- “Institutional fund” means a fund held by an institution exclusively for charitable purposes. “Institutional fund” does not include:
 - Program-related assets;
 - A fund held for an institution by a trustee that is not an institution; or
 - A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.
- “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- “Program-related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.
- “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

RCW 24.44.020 Appropriation of Appreciation (see also RCW 24.44.050 Standard of Conduct)	Section 4 Appropriation for Expenditure or Accumulation of Endowment Fund - Rules of Construction
<ul style="list-style-type: none"> • May appropriate net appreciation, realized and unrealized, over the fund’s historic dollar value for expenditure for endowment purposes. • In determining amount of net appreciation to spend, the governing board must exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision, considering the institution’s long and short-term needs, its present and anticipated financial requirements, expected total return on investments, price level trends and general economic conditions. 	<ul style="list-style-type: none"> • May appropriate for expenditure or accumulate so much of an endowment fund as the institution determines prudent for the uses, benefit, purposes and duration for which the endowment fund is established. • In determining amount to spend or accumulate, the institution must act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors: <ul style="list-style-type: none"> • Duration and preservation of the endowment fund; • Purposes of the institution and the endowment fund; • General economic conditions; • Possible effect of inflation or deflation; • Expected total return from income and the appreciation on investments; • Institution’s other resources; and • Institution’s investment policy. • To limit an institution’s discretionary authority under this section, a gift instrument must specifically state the limitation. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only “income,” “interest,” “dividends,” or “rents, issues, or profits,” or “to preserve the principal intact,” or words of similar import do not limit the institution’s discretionary authority under this section.

<p align="center">RCW 24.44.030 Investment Authority (see also RCW 24.44.050 Standard of Conduct)</p>	<p align="center">Section 3 Standard of Conduct in Managing and Investing Institutional Fund</p>
<ul style="list-style-type: none"> • Broad authority to make, retain and pool investments as the governing board deems advisable. • In determining what investments to make and retain, the governing board must exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision, considering the institution’s long and short-term needs, its present and anticipated financial requirements, expected total return on investments, price level trends and general economic conditions. 	<ul style="list-style-type: none"> • In managing and investing an institutional fund, the institution shall consider the charitable purposes of the institution and the purposes of the institutional fund. • In managing and investing an institutional fund, the institution may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution and shall make a reasonable effort to verify facts relevant to the management and investment of the fund. • An institution may pool two or more institutional funds. • In managing and investing an institutional fund, the following factors, if relevant, must be considered: <ul style="list-style-type: none"> • General economic conditions; • Possible effect of inflation or deflation; • Expected tax consequences, if any, of investment decisions or strategies; • The role that each investment or course of action plays within the overall investment portfolio of the fund; • The expected total return from income and the appreciation of investments; • Institution’s other resources; • The needs of the institution and the institutional fund to make distributions and to preserve capital; and • An asset’s special relationship or special value, if any, to the charitable purposes of the institution. • Management and investment decisions about an

individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the institutional fund and to the institution.

- Except as otherwise provided by law, an institution may invest in any kind of property or type of investment consistent with this section.
- An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.
- Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.
- A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.
- In addition to complying with the duty of loyalty, each person investing an institutional fund shall manage and invest the fund in good faith and with the care of any ordinarily prudent person in a like position would exercise under similar circumstances.

RCW 24.44.040 Delegation of Investment Authority (see also RCW 24.44.050 Standard of Conduct)	Section 5 Delegation of Management and Investment Functions
<ul style="list-style-type: none"> • Broad authority to delegate investment authority to committees, officers, employees, agents and independent investment advisors, managers, banks or trust companies. • In delegating investment authority, the governing board must exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision, considering the institution’s long and short-term needs, its present and anticipated financial requirements, expected total return on investments, price level trends and general economic conditions. 	<ul style="list-style-type: none"> • Delegation of management and investment functions to an external agent is permitted to the extent that the institution could prudently delegate under the circumstances. • An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances in (a) selecting an agent; (b) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and (c) periodically reviewing the agent’s decisions in order to monitor the agent’s performance and compliance with the scope and terms of the delegation. If an institution follows these rules, then it is not liable for decisions or actions of the agent to whom functions have been delegated. • In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation. • An institution may also delegate functions to its committees, officers or employees. <i>See also Section 3</i> (A person that has special skills or expertise, or is selected in reliance upon the person’s representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.)

<p align="center">RCW 24.44.050 Standard of Conduct</p>	<p align="center">Section 3 Standard of Conduct in Managing and Investing Institutional Fund</p>
<ul style="list-style-type: none"> • Ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision, considering the institution’s long and short-term needs, its present and anticipated financial requirements, expected total return on investments, price level trends and general economic conditions. • “Ordinary business care and prudence” is not further defined. 	<ul style="list-style-type: none"> • In addition to complying with the duty of loyalty, each person investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. <i>See also, all other factors and rules cited for Section 3 above.</i>
<p align="center">RCW 24.44.060 Release of Restrictions on Use or Investments</p>	<p align="center">Section 6 Release or Modification of Restrictions on Management, Investment, or Purpose</p>
<ul style="list-style-type: none"> • Restrictions may be released with written consent of donor. • Restrictions may be released by court order if (a) donor consent cannot be obtained by reason of death, disability, or unavailability or impossibility of notification of donor; (b) the attorney general is given notice and an opportunity to be heard; and (c) the court finds that the restriction is obsolete, inappropriate or impractical. Release by court order cannot change an endowment fund to a fund that is not an endowment fund. 	<ul style="list-style-type: none"> • Restrictions may be released or modified with the consent of donor (in the form of a record). • The court may modify restrictions regarding <u>management or investment</u> of an institutional fund if (a) the restriction has become impracticable or wasteful; (b) if it impairs the management or investment of the fund; or (c) if, because of circumstances not anticipated by the donor, a modification of the a restriction will further the purposes of the fund. To the extent practicable, any modification must be made in accordance with the donor’s probable intention. • The court may modify restrictions regarding <u>use</u> of an institutional fund or the particular charitable purpose of an institutional fund if the restriction or purpose becomes unlawful, impracticable, impossible to achieve, or wasteful. Modifications must be consistent with the charitable purposes expressed in the gift instrument.

	<ul style="list-style-type: none">• Court proceedings are initiated by petition of the institution with notice to the attorney general and an opportunity to be heard.• An institution, in its own right, may release or modify restrictions on management, investment or purpose if (a) the institution determines that the restriction is unlawful, impracticable, impossible to achieve or wasteful; (b) the institutional fund has a total value of less than \$75,000 (as adjusted for inflation by \$2,500 per year beginning in 2011); (c) more than 20 years have elapsed since the fund was established; (d) the institution uses the fund in a manner consistent with the charitable purposes expressed in the gift instrument; and (e) the institution gives the attorney general 60 days prior notice.
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