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# Knowledge Nugget #3 – The Variance Authority

# *Quiz Questions*

1. Variance Power gives a community foundation the unilateral power to change the charitable purpose of a fund if circumstances have sufficiently changed to make the original restriction inappropriate. True or false?

*True.*

1. An important element that allows a community foundation to file a single Form 990, even though they may have hundreds of funds, is the fact that all of their funds must include the language permitting the Variance Authority. True or false?

*True.*

1. What is the *Cy Pres Doctrine*?
	1. A legal doctrine that gives the court the flexibility to understand the perceived intent of the donor and implement their wishes.
	2. The backup goalie for Manchester United.
	3. I have no idea, I flunked introductory French.
	4. None of the above

The answer is *a. A legal doctrine that gives the court the flexibility to understand the perceived intent of the donor and implement their wishes*. It is this doctrine that forms the basis of the Variance Authority.

1. Which of the following should be considered by the board of a community foundation when considering whether to use the variance authority?
	1. Whether the donor’s conditions are impossible to fulfill.
	2. Whether the proposed new use of the funds closely approximates the original use of the funds.
	3. Whether the conditions have changed enough that the donor was likely to have considered redirecting the use of the money.
	4. All of the above

The answer is *d. All of the above.*

1. A donor can choose whether or not to include variance authority language in a fund agreement they create. True or false?

*False.* You can promise a donor that you will do your best to try to adhere to their charitable wishes, but the final authority must rest with the board of the community foundation. All of your fund agreements should include the Variance Authority language.

1. Under UPMIFA, which of the following elements must be present in order to allow a community foundation to use the Variance Authority without court approval?
	1. The institutional fund is less than $25,000;
	2. The fund is more than 20 years old;
	3. The money will be used with consistent charitable purposes; and
	4. 60 days have passed since the Attorney General received notice of the release or modification.
	5. All of the above

The answer is *e. All of the above*. While a community foundation can invoke the Variance Authority in other circumstances, under UPMIFA when those circumstances are present the action can be taken without seeking further approval.

1. The Variance Authority gives the board of a community foundation the power to change the use of a fund to any legal charitable purpose they wish. True or false?

*False.* As shown in cases involving the New York Community Trust and The San Francisco Foundation, the power of the Variance Authority is not unlimited.

1. Which of the following is true for a fund where the investment manager is recommended by the donor who created the fund?
	1. The community foundation must retain the right to change investment managers in the event of poor investment performance.
	2. If the fund agreement says that the investment manager can be removed only with the approval of the donor, that is considered a material restriction and the gift is not a completed gift, meaning no tax deduction is allowed for the gift.
	3. A community foundation can use an investment manager recommended by the donor, if this is allowed by the community foundation’s policies.
	4. All of the above.

The answer is *d. All of the above*. A community foundation can allow a donor to use their own investment manager – but they don’t have to allow this. Regardless of the policy, the community foundation must retain the right to remove an investment manager for poor performance.