

IN THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

IN RE: Estate of
 MARION HOUGHTELIN HART,
 Deceased.

CASE NO.:

PETITION TO APPLY CY PRES DOCTRINE

The University of Florida Foundation, Inc. (Foundation), a Florida non-profit corporation, petitions this Court to exercise its statutory authority to modify the purpose and name of a fund so that the fund may be used consistent with the charitable purposes expressed in the gift instrument:

1. This Court has jurisdiction of this matter pursuant to Section 617.2104(6)(e), *Fla. Stat.* (2015).
2. Venue for this action is pursuant to Section 617.2104(6)(e), *Fla. Stat.* (2015).
3. The Foundation is a Florida non-profit corporation and a 501(c)(3) charitable organization established pursuant to Section 1004.28, *Fla. Stat.* (2015) to raise and manage all gift monies for the benefit of the University of Florida (University).
4. The subject matter of this petition is the bequest described in the following paragraph, which is presently under the control of the Foundation, and which is inactive due to a purpose that is impracticable or impossible to achieve.
5. The Eldridge Hart Loan Fund (Fund) was established in 1961 upon the death of Marion Houghtelin Hart (Donor) pursuant to these instructions in her will:



I do hereby give, bequeath and devise a [REDACTED] part of my said residual estate to the Trustees of the University of Florida at Gainesville, Florida, IN TRUST, nevertheless, the annual income therefrom to be made available for loan purposes to students of the College of Law upon such terms as the said Trustees, in their sole discretion, may deem advisable. It is my will and I hereby direct that the foregoing gift be known as the Eldridge Hart Loan Fund.¹

6. In 1993, the Fund, along with more than a dozen other funds, was the subject of an Order on Petition to Apply Cy Pres Doctrine that transferred the Fund from the University to the Foundation (Case No.: 01-92-03888-CA). At that time, no modifications were requested or made to the Fund's purpose and name.

7. In accordance with the Donor's intent, the Foundation administered the Fund so that the annual spendable income was made available for loans to students at the University's Levin College of Law (College). Over time, however, the Fund has not been used for three reasons. First, most students who seek loans also apply for federal student aid, which was not available in its current form at the time of the Donor's bequest. As a practical matter, federal student aid packages become complicated when students receive additional loans from other sources. Consequently, students have not applied for loans from this Fund. Second, the Fund is much larger than needed for the few loans that have been requested. The Fund has been used occasionally for short-term loans for registration fees, study abroad fees, and emergency situations. However, the amount loaned has been much smaller than the amount that is available. Third, the College's efforts to document and monitor the loans have been significant relative to the benefits provided to the few students who have requested loans. For all these reasons, the Fund has become impracticable or impossible to administer, thus frustrating the Donor's wish to benefit the University and to help students at the College.

¹ Information that is not relevant to this petition has been redacted to protect the Donor's privacy. In addition, we note that Section 1004.28, Florida Statutes, makes most of the Foundation's records confidential and exempt from Section 119.07(1), Florida Statutes.

8. The Fund is an endowment fund and, as such, it is invested according to Foundation policies to support the Donor's purpose in perpetuity. Spendable income from the Fund is transferred quarterly to the University, in accordance with Foundation policies. However, because the College has not been able to use the transferred monies for loans, the College has maintained a high balance in its spendable income account or has returned the spendable income to the Foundation to be added back to the principal balance in the Fund.

9. As of May 2016, the market value of the principal balance was \$646,003.73 and the spendable income balance was \$36,097.62. Under Foundation policies, under current conditions, an estimated \$24,500 would be made available to the College annually, if the College were able to use the funds.

10. To best accomplish the Donor's charitable purpose, to fulfill the Foundation's fiduciary obligations to the Donor and to the University, and to have the College benefit from the bequest as intended by the Donor, it is necessary that the purpose and name of the Fund be modified pursuant to Section 617.2104(6)(e), *Fla. Stat.* (2015).

11. Written consent of the Donor could not be obtained by reason of the Donor's death. The Donor's spouse is also deceased. After a diligent search, no children or grandchildren have been found. (See Exhibit 1, Affidavit.)

12. The Foundation requests that the purpose and name of the Fund be modified from loans to scholarships as follows:

The Eldridge Hart Loan Fund, established in 1961 through the bequest of Marion Houghtelin Hart to provide loans to College students, will be known as the Eldridge Hart Scholarship Fund, and the spendable income will be made available to the College for scholarship purposes.

13. The Foundation has provided notice of this petition to the Attorney General of the State of Florida as required by Section 617.2104(6)(e), *Fla. Stat.* (2015). (See Exhibit 2, Notice.)

14. The Foundation will continue to hold, manage, and invest the Fund to be used for the benefit of the University, in accordance with Foundation policies and the Donor's wishes as modified by the Court.

WHEREFORE, the Foundation requests this Court to enter an Order modifying the purpose and name of the Fund to serve the intent of the Donor to benefit the University of Florida and students at the Levin College of Law.

Respectfully submitted,
UNIVERSITY OF FLORIDA
FOUNDATION, INC.


By: 
Tara Boonstra
Attorney for Foundation
Florida Bar No. 506974
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Gainesville, FL 32603
(352) 392-8418
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EXHIBIT 1

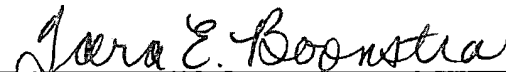
AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF ALACHUA)

Before me, the undersigned authority, personally appeared TARA E. BOONSTRA, who, first being duly sworn, deposes and says:

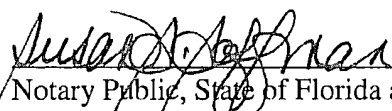
1. My name is Tara E. Boonstra. I am over 18 years of age and am competent to testify about the matters set forth herein.
2. I am an attorney for the University of Florida Foundation, Inc. (Foundation).
3. In my capacity as attorney for the Foundation, I have been involved in the Foundation's efforts to identify the spouse and any children or grandchildren of Marion Houghtelin Hart. Mr. Hart's spouse is deceased. After a diligent search, no children or grandchildren have been found.

I affirm under the penalties of perjury that the foregoing statements are based on my personal knowledge, information, and belief.



Tara E. Boonstra
Attorney for University of Florida Foundation, Inc.

Sworn to and subscribed before me
this 16th day of June, 2016



Notary Public, State of Florida at Large

(Affix Notarial Seal)



Susan Gail Goffman
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF985319
Expires 4/25/2020

VIA CERTIFIED MAIL 7001 1140 0002 7259 8795

June 14, 2016

The Honorable Pam Bondi
Attorney General of the State of Florida
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050

RE: Notice of Petition to Apply Cy Pres Doctrine

Dear Attorney General Bondi:

Section 617.2104(6)(e), Florida Statutes, requires that the Attorney General be notified of a request to a circuit court to modify the charitable purpose contained in a gift instrument. Toward that end, we enclose a copy of a Petition to Apply Cy Pres Doctrine that we intend to file.

The gift instrument is the will of a donor who died in 1961. The donor's spouse is also deceased, and a search failed to locate any children or grandchildren. The will states that the gift be used for student loans. However, for reasons stated in the petition, over time, loans of this type have become impracticable or impossible to administer. Therefore, we will request that the purpose and name be modified from "loans" to "scholarships." We believe that this modification is consistent with the Donor's intent.

With respect to the enclosed petition, we note that Section 1004.28, Florida Statutes, protects donor identities and makes most of our records confidential and exempt from Section 119.07(1), Florida Statutes.

If you or your staff have questions or concerns, please feel free to contact me at (352) 392-8418. Thank you for your consideration of this matter.

Sincerely,



Tara Boonstra
Assistant Legal Counsel

Enclosure