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Client Alert: Trust Disputes: When a Charitable Donation Seems Impossible, Cy Pres may be able to Help

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Florida residents spend time and energy to ensure their wishes are carried out after death by preparing a will or trust through the assistance of an estate lawyer. Sometimes, their wishes include donating money, land, or personal items to a charity. Even with the correct estate plan in place, a charitable donation may be impossible when the time arises for the donation such as when the identified charity is no longer in existence or is unable to accept the donation. Our trust and estate litigation lawyers can assist in honoring the charitable intent of the deceased through legal doctrines such as Cy pres.

Our lawyers monitor the evolving case law surrounding trust disputes, including a recent Third District Court of Appeals decision. In the recent decision, the Third District Court of Appeal reviewed the trial court's decision as to whether the trustee honored the charitable intent of the settlor. Specifically, Janet Reno, through her trust, intended to donate her home and property to the University of Miami. As part of the donation, Ms. Reno directed that her home and property be preserved in perpetuity. Based on this direction, the University of Miami declined the donation. Accordingly, the trustee contacted Miami Dade College in an effort to donate the property to an educational institution and honor the donative intent of Ms. Reno. Pursuant to Florida Statute § 736.0413, entitled Cy pres, the Court determined the substitution was valid.

Cy pres is a French term for “as near as may be.” Accordingly, the doctrine of Cy pres is used when the original intent of the settlor becomes impossible or is impracticable and a substitution is made to honor the original intent. Cy pres is typically utilized when a beneficiary is a corporation or charity that no longer exists at the time of death. Although the University of Miami was still in existence at the time of Ms. Reno’s death, the University of Miami was unable to honor the direction that the property be preserved in perpetuity. Thus, the trustee contacted another educational institution, and ultimately, the court found the substitution proper. Ms. Reno’s charitable intent was preserved.