

Hi, I'm Nina. And I'm David.

Welcome to our third instructional video.

This video will highlight the Cy Pres doctrine.

which is a legal doctrine concerning all charitable trusts.

So Nina, I've been interested. What is Cy Pres?

Cy Pres is an old legal doctrine that literally means

"as close as possible", or "as near as may be."

Basically, when funds have been donated for a particular purpose

and that purpose can no longer be performed,

the Cy Pres doctrine allows the court to amend the terms of the trust

as closely as possible to the intention of the original donor.

So, can you give me an example of a cy pres?

Sure. The Cy Pres doctrine first originated when

funds were donated to abolish slavery.

However, after time, slavery was finally abolished,

and the funds could no longer be used for that purpose.

Ultimately, the court decided to use the funds for the needs of

African-Americans in the Boston region because this was

as close as possible to the original intent of the donor.

So, is cy pres actual law?

Yes, David. In the United States, there is a Uniform Trust Code

The UTC provides that there are six reasons why a court would adopt cy pres.

It states, "If a particular charitable purpose becomes:

Unlawful, Impracticable, Impossible,

Obsolete, Ineffective, or prejudicial to the public interest to achieve,

the court may apply cy pres to modify or terminate the trust,

in a manner consistent with the settlor's charitable purposes.

So, Nina, who decides if the new purpose is consistent with the settlor's original intent?

Are there any restrictions?

Oftentimes, the Judge will use the language of the original grant to determine the grantor's charitable purpose.

However, the Uniform Trust Code also states that

the money can not be used for a non-charitable beneficiary.

So, does that mean that when a charity dissolves,

the directors or trustees cannot take the money for themselves?

That's correct, David. When a charity terminates and there is money left over,

the directors or trustees are not entitled to that money.

The funds must be used for a charitable purpose.

But, when a charity terminates, can the board of directors

decide for themselves where the money will go?

No, David. The Director of Charitable Trusts for the Attorney General must be included in all cy pres actions.

When a charity terminates, and there is money left over,

that charity must get authorization from the court to use the funds in a manner different from the grantor's original purpose.

However, the charity can suggest alternatives for the funds

but ultimately it is the court that orders the cy pres.

So, can you give me some examples from real life cases here in New Hampshire?

Absolutely. There are numerous cases of cy pres here in New Hampshire.

Luckily, Judge King has been generous enough to sit down with us and discuss some real life cases in our state.

Hello, I'm Nina. And I'm David.

And we're here with Judge King, the Administrative Judge of the Probate Court to talk about cy pres.

Good Morning. Good Morning.

Our first question is, what is the frequency of cy pres

in your court and have you noticed an

increase or decrease of the frequency as charities hit harder times?

I think I would say the frequency of

cy pres petitions is definitely on the increase in the probate courts.

due to the economic times.

Probably the best example would be the Daniel Webster College case

which is presently underway now in the Hillsborough Probate Court

this is actually the Daniel Webster cy pres petition.

which, as you can see, is about six inches thick.

Daniel Webster college is a nonprofit

corporation that was formed back in the 1960's

as a college to provide education for students. That was the charitable mission.

They have fallen on hard times over the past three to four years, to the point where

they are about \$20 million dollars in debt

and probably about to lose their accreditation.

Fortunately, they found a corporation, called ITT, which is a for profit corporation

willing to buy them out - purchase the assets,

retire the debt, and continue to provide education for students.

As a result, however, there are charitable assets, mostly in the form of scholarship funds,

that have to be spun off from the transaction

Because these charitable assets can't be sold to a for-profit corporation.

So, in the first phase of the hearing,

we approved the sale of

the assets to ITT.

In the second phase of the trial, which hasn't taken place yet,

we need to deal with how those charitable assets will be managed and for what purpose.

The goal, as it presently stands,

is to go from the charitable purpose of providing education,

to a charity which will provide financial assistance to

college students looking to further their education.

Wow. Ok, so,

given what you've seen from the Daniel Webster cy pres,

what are some other interesting cy pres actions you've seen?

Well, another phenomenon that we're seeing, I think,

certainly in the State of New Hampshire, and I would guess around the country,

are churches that are closing.

Perhaps in a town where there were originally three

Catholic churches, they have consolidated, which leaves

real estate which may have been left to a charitable purpose

and it needs to be disposed of.

I sat on a case in Grafton County a few years ago

where the Episcopal Church

in Bethlehem closed. The parishioners

went to another church

and the real estate needed to be liquidated.

but the deed that transferred the property to the church initially said

that the property had to be used as a church.

So, a cy pres petition was filed in the Grafton County Probate Court,

and ultimately I ruled that the property could be sold

and the funds that came from the sale of the church

would be put into a educational fund to educate Episcopal

priests in the northern two counties of New Hampshire.

So we converted a charitable asset from real estate to cash,

We try, in these cases, to

fulfill the goals of the original donor to the extent that we can.

In this case the donors were no longer alive,

the Director of Charitable Trusts represents the interests of those folks as well as the public and plays

a very important role in these cases to

give the court guidance on

how we can best fulfill the original mission of the

donors to carry out their intent.

Have you ever encountered a situation where you

had funds that were used for a purpose, that could no longer be used for that purpose,

and the resulting cy pres

for whatever reason, needed to

again be cy presed? And how was that resolved?

I had a case, again in Grafton County, a number of years ago where funds were left

for the support of poor

children, I think is how it was worded.

Specifically left to the Oddfellows, which is a nonprofit

group in the town of Lebanon.

The Oddfellows hall closed, and so there were these charitable funds

with no one to administer them.

So, initially the funds were transferred to another

nonprofit, through a cy pres process,

tried to find a nonprofit organization that as closely as we could mimicked

the goals and intents of the Oddfellows.

Unfortunately, that didn't work out too well, because they didn't

do a good job managing funds, so another

petition was filed and the trust was actually dissolved.

And the cash was transferred to the Trustees

of the Trust funds for the Town of Hanover

and they now manage the funds

in a manner to try and still carry out the intent of the donor, to provide

assistance to needy children.

Now, cy pres is done for the intent of the original donors.

Have you ever seen or heard of a situation where

even though the original donor couldn't be found, someone else

tried to come forth and claim to represent their intents?

Well, there is a case I know of. I didn't sit on the case, but Judge Cloutier,

who is now retired, as the Judge in Hillsborough County,

had the Chandler Library case.

Chandler family left money for this library, which was constructed a number of years ago,

and the proposal was to build a new library

and when the notice was published

several of the descendants of the Chandler family came forward

and objected.

Technically they probably didn't have standing, but Judge Cloutier's practice was to

put the notice in the newspaper and then

whoever shows up, he would allow them to be heard.

I think the Director of Charitable Trusts probably holds their breath

in those situations, because

they don't know whether to object or to

let the folks speak.

The case ultimately went to mediation, and everyone who had an interest

whether they were technically an interested party or not, participated

and it was a good resolution. The resolution was that the funds

from the sale of the library were to be used

to construct an addition on the new library, which would be named the Chandler Addition.

So, it was a situation where

the original intent changed a little, but everyone was happy in the process.

The original intent failed; the library was too small, it couldn't be used any more,

It worked out well in the end.

So if you have left over funds that you have cy pressed, and you have

decide that you are going to ultimately bestow them upon an organization

what are some of the criteria or factors that you would use

in choosing one organization over another?

Well, you certainly want a

financially viable entity to take over

not one that has had its own financial struggles.

And the other thing that's obviously important is to make

the intent of the organization,

the mission, is

such that it can carry out the donor's intent.

In cy pres that's the most important thing the courts look to, that

the folks who left this money or real estate in the first place

maybe 10 years ago, maybe 100 years ago,

that what they had in mind for those funds can be carried out to the extent possible.

So, we need to find an organization or entity that is willing to do that

and is financially capable of doing that.

Well, I think that about wraps it up here at the Charitable Trusts Unit.

I'm David.

I'm Nina. And this is Judge King. Thank you.