CHAPTER

8

Recovering Donor Intent When Things Go Wrong

The best defense against a breach of your intentions as a donor is to take proactive steps: create a strong mission statement, populate your board with people you trust, time-limit your foundation, and establish internal and external accountability mechanisms. In the best of circumstances, you, your heirs, and your successor trustees will never experience a donor-intent crisis. But if one does occur, what should you do? This chapter shares the stories of three philanthropies—the Daniels Fund, Atlantic Philanthropies, and the Triad Foundation—and extracts lessons that you as a donor can use to recover your philanthropy's mission, should a violation arise.

Building on the bedrock of a donor's principles: Daniels Fund

Once a foundation veers off course from a donor's original intent, it's rare that a full-fledged return to that intent occurs. But that's what happened on the Colorado front range in the early 2000s. Trustees at the Daniels Fund led a systematic process to restore and protect grantmaking based on the donor's core values.

Born in 1920 in Colorado, Bill Daniels grew up in New Mexico. Scrappy from an early age, he won two state Golden Gloves boxing championships in high school, then served as a U.S. Navy fighter pilot in both World War II and the Korean War. Daniels moved to Casper, Wyoming, in 1952. Intrigued by television and amazed by its growing popularity, Daniels was dismayed that its signals could not reach mountain towns like Casper. As a workaround, Daniels invested in coaxial cable and secured 4,000 subscribing households (about a third of the total homes in the area). His business took off from there. The cable television boom of the 1980s and 1990s made Daniels very wealthy.

Throughout his life, his charitable giving ranged widely. He reached out to those down on their luck, those who abused alcohol and drugs, and those who suffered from mental and physical disabilities. He provided scholarships, with a focus less on academic achievement and more on demonstrated character and leadership potential. He funded efforts to integrate ethics into business schools, and created a bank meant to teach young people the principles of finance and personal responsibility. Through it all, his giving was largely personal: Daniels routinely enclosed a note with each check, explaining to the recipient what he hoped his money would do.

When Daniels passed away in 2000, his estate transferred to the Daniels Fund, making it one of the largest foundations in the nation. Even though he believed he had clearly codified his donor intent—delineating which geographic areas and causes he wished to support and which he didn't, and even listing funding amounts for his favorites—he had failed to clarify the underlying values and principles that should guide the foundation's giving. That omission, combined with professional staff whose worldviews differed from the donor's, produced a culture unfriendly to Daniels' original vision.

"They were good people, but they didn't know Bill," notes Linda Childears, who was one of the first seven board members of the Daniels Fund. "They didn't have his experiences and so they didn't think like him." This was typified in 2002 when a staff member turned down a grant request from the Smithsonian National Air and Space Museum to fund an educational exhibit featuring World War II aircraft—on the grounds that it would be inappropriate to fund a project featuring "instruments of war." When it was pointed out that Daniels himself had piloted the same type of aircraft to defend the cause of freedom, the program officer still insisted that the request be declined.

That incident was "a wake-up call," says John Saeman, a member of the Daniels Fund board at the time who later served as chairman. "Suddenly the Daniels Fund was starting to look like someone else's foundation," summarizes Childears. Daniels' original donor intent was being disregarded, prompting a majority of the board to intervene. The result was a five-year effort to ensure that Bill Daniels' intentions and ideals would underpin the way the foundation conducted its business.

The first major step was to consolidate staffing by closing regional offices across the Mountain West, to prevent the Daniels Fund from becoming a behemoth with many heads. An analysis also showed the organization was spending about 20 percent more on administrative overhead than its peer foundations, in large part because of the satellite offices.

Next came the codification of Daniels' intent in writing. Directors pored over their founder's letters and writings. They carefully studied his giving history—Daniels had made charitable gifts for 25 years prior to his death—and interviewed numerous associates to better understand his intentions. After careful deliberation the directors defined grant areas, guidelines, and grantmaking parameters, all anchored in Daniels' words and deeds. They amended the foundation's bylaws to include these new donor-intent documents—including ones that told Daniels' story from beginning to end, creating a fuller profile of the man that left no doubt about his values and principles. Then the board stipulated that a 90 percent majority of the board would be required to amend the Daniels Fund giving parameters in the future.

Today the Daniels Fund focuses on grantmaking in areas closely in line with Bill Daniels' wishes and history, including aid for the down-and-out, help for those addicted to drugs and alcohol, and college scholarships for hundreds of students every year as they graduate from high schools in Colorado, New Mexico, Utah, and Wyoming. The foundation could easily have taken a wholly different direction were it not for the intervention of alert trustees and loyal friends.

The moral authority of a living donor: Atlantic Philanthropies

At the core of the donor-intent dispute that unfolded at Atlantic Philanthropies between 2009 and 2012 was one key question: "What deference does an independent board owe to the moral—if not legal—authority of a living donor?" Unlike so many other donor-intent tales, this was a conflict in which the donor himself, Chuck Feeney, was able to express his dissatisfaction directly to the board and staff with whom he disagreed.

By 2009, Atlantic Philanthropies had been operating for over 25 years and had allocated significant sums of money for charitable purposes. Beginning with a focus on American higher education (particularly at Feeney's alma mater, Cornell University), Atlantic had become a global funder of social change in aging, education, health, and human rights. Because the philanthropy had been incorporated in Bermuda, it was not subject to the restrictions placed on 501c3 organizations in the United States. As a result, Atlantic had the ability to support not only traditional nonprofit organizations, but also political causes. Feeney fully supported Atlantic's focus on the disadvantaged, but a growing dissatisfaction with staff and board decisions pulling the group more and more into politics eventually led to his personal intervention to reorient the foundation to the priorities and strategies he deemed best.

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As described in Conor O'Clery's *The Billionaire Who Wasn't: How Chuck Feeney Secretly Made and Gave Away a Fortune* (a biography which Feeney authorized), the crisis at Atlantic Philanthropies began in 2009. Atlantic's endowment at that time was $3 billion. Two years prior, Gara LaMarche had been appointed president of Atlantic, after serving at George Soros's Open Society Institute. Despite some warning signs that LaMarche would favor left-wing giving to a larger degree, Feeney joined the rest of the board in approving the hire.

At the same time, Feeney was growing increasingly distant from Atlantic's other board members. His original trustees of the 1980s, all personal friends or professional colleagues, were long gone, with only one exception. Staff members had also lost close contact with him as Atlantic operated from multiple offices around the world and Feeney himself was spending far less time in New York City. Then the election of Barack Obama to the Presidency in 2008—a victory which Feeney celebrated—gave LaMarche and his supporters even more leeway to pursue a costly "social-justice" agenda. For example, Atlantic invested $26.5 million in an advocacy campaign to pass the Affordable Care Act. Leaders of the Obamacare effort later said that, "Without Gara and Atlantic, the United States would not have enacted this legislation."

Feeney was not opposed to improving access to health care, but didn't believe that political activism was the most effective application of his charitable funds. In seeking "the highest and best use" for Atlantic's assets, Feeney saw far better outcomes from the capital projects that had always appealed to his entrepreneurial inclination to give talented people great places to work.

Feeney was also growing increasingly uneasy about Atlantic's new style and level of operations. LaMarche had developed a high visibility nationally, being invited to the White House for the signing of the Affordable Care Act. This was in stark contrast to Feeney's preferred approach of quiet and unassuming, anonymous philanthropy. The CEO had also initiated a move of the foundation's offices from 24,000 square feet of space to 44,000 square feet, a decision that cost nearly $19 million.

Due to the way Atlantic Philanthropies had developed its governance structure over the years, Feeney was only one of 12 votes on the board. In a 2009 letter to the board he expressed his displeasure with the general direction of the foundation under LaMarche's leadership. He particularly objected to the overtly political "social-justice" spending that was edging out other projects close to his philanthropic heart. His pleas fell on deaf ears.

Eventually, Feeney called for the resignation of three board members whom he saw as siding with LaMarche to too great a degree. They refused. Feeney says one told him, "You will have to carry me out on a stretcher."

Adding to Feeney's consternation, there was increasing debate and concern about whether the board would sunset the foundation by 2016, as the board had agreed in 2002. There was argument over whether the funds should still be considered "Feeney's money." "Underlying everything was the question of whether the directors had the right and the duty to determine how it should be put to use, regardless of the donor's priorities," writes O'Clery in his book.

In September 2010 Feeney sent a 2,000-word "manifesto" to each board member outlining his concerns and objections. He said he disagreed with the "social-justice" approach, that Atlantic Philanthropy's recent grantmaking was not what he had in mind when he set up the endowment, and that it was not something he could support. He again requested that the three board members resign, along with LaMarche. He proposed that all grantmaking be halted for a reset.

Feeney urged "a moral and fiduciary obligation that the interests, values, and passions of the living sole donor be given central consideration in spending the fruits of his labor." In response, the board retained legal counsel on the question of Feeney's rights, further outraging the donor by spending hundreds of thousands of dollars on legal fees. As the situation spiraled further out of control, an anonymous writer claiming to represent a group of Feeney's friends sent the board a letter threatening to take the conflict public.

"What will potential philanthropists think if they find out that a foundation board doesn't listen to the wishes of the founder when he is alive and sitting in the room, never mind when he is dead?" The board also received another missive, this one from nine staff members, questioning recent decisions on operations and grantmaking at Atlantic. The staff letter reinforced the determination of the minority of board members sympathetic to Feeney.

In mid-2011, LaMarche finally resigned, as did the board's chairman less than a month later. Feeney himself resigned from the board and his longtime friend and trusted associate Chris Oechsli took over as president. Oechsli proceeded to initiate a review of grantmaking with the goal of refocusing on four core grant areas and the founder's programs. By the end of 2012, all the board members to whom Feeney had objected were gone, either resigned or disqualified by new term limits established for trustees.

The dispute at Atlantic Philanthropies provides the most dramatic example of a donor-intent crisis to date, because it happened while the living donor was still actively engaged. The absence of a clear and detailed statement of donor intent from Feeney, and the failure to create a governance structure that protected the prerogatives of the living donor, fueled this collision. See Chapter 5 for more on the special circumstances of living donors.

Recovering a legacy for the future: Triad Foundation

Imagine a pot of money that supports both the liberal Media Matters and the conservative Media Research Center. Both the Center for Public Integrity and the Heritage Foundation. Both *Mother Jones* and *National Review.* That describes the fortune earned by media executive and businessman Roy Hampton Park, known as the founder of the Duncan Hines line of packaged foods and a pioneer in the world of newspapers, broadcasting, and mass communications. Today Park's money supports two separate family foundations based in Ithaca, New York. The story of the split of his legacy into the Park Foundation and Triad Foundation offers a final example, for this chapter on recovering donor intent, of how things can go wrong.

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Roy Park was a determined, individualistic entrepreneur—a self-made man in the truest sense. He created the Park Foundation in 1966 and gave generously to educational, religious, and other charitable organizations in his home community of Ithaca and in other locales where he owned media outlets. Park passed away in 1993, by which time Park Communications had acquired or created 22 radio stations, 11 television stations, and 144 publications, including 42 newspapers. With an infusion of most of the $711 million from his company's sale in the mid-1990s, the Park Foundation transformed very suddenly from a modest, corporate-oriented foundation run primarily by the donor and his spouse into a significantly larger family foundation with a board composed of both family and non-family members.

The Park Foundation trustees agreed on certain aspects of Roy Park's legacy, which allowed them to establish, in 1996, scholarship and fellowship programs at Cornell University, Ithaca College, North Carolina State University (his alma mater), and the University of North Carolina at Chapel Hill. However, Park's two children—Roy Park Jr. and Adelaide Park Gomer—sparred over the ideological direction of the foundation in the ensuing years. Park Jr. objected to funds used for environmental activism and other left-wing causes. "It was heartbreaking to see what my father worked so hard to make being directed to grants I felt were so unrelated to what he believed," Park Jr. says. The conflict came to a head in the fall of 2001, when Park's widow, Dorothy Park, proposed to split the foundation into two with separate boards. Dorothy and her daughter Adelaide continued to operate the now left-leaning Park Foundation, while her son Roy took the helm of the right-leaning Triad Foundation, with his son and daughter as his fellow directors.

Donor Roy Park's biggest misstep was leaving nothing in writing regarding his mission and intentions for his foundation. Like John Andrus, he may have assumed that his conservative and free-market beliefs could be easily deciphered from his work ethic and entrepreneurial nature, his political and religious preferences, his own track record of philanthropy, and the personal letters and public statements he left behind. But without explicit instructions, family members drew widely divergent conclusions. Today both his daughter and son maintain that they are following Park's donor intent, even though their philanthropic priorities are poles apart.

To reduce confusion heading into the future, and to strengthen donor intent at the Triad Foundation, Roy Park Jr. has written a legacy statement codifying his father's philanthropic values for future generations. It contains a statement of principles and a detailed philanthropic biography of his father—a concrete look into who the man was and what he believed, including ample direct quotes. It makes clear that Roy Park supported democracy and free enterprise, limited government, religious liberty, freedom of thought, and broad access to education and employment. It also contains a geographic restriction, focusing community-based grants on the areas where Triad Foundation family members live.

"Triad seeks to avoid the trend of most foundations established by free-enterprise entrepreneurs which almost inevitably, once the founders pass on, move firmly into the grip of orthodox liberalism," Park Jr. explains. In his book, *Sons in the Shadows*, Park Jr. is even more adamant: "My father's legacy is not one to be forgotten, and what he worked for all his life should not be ignored or refuted. I was sensitive to erosion of his hardworking lifetime ideals, and despite the absence of his intentions for the foundation's mission in his will, the philanthropic objectives that best reflected the interests of my side of the family were evident in the previous 30-year history of his grant making.... As far as my family was concerned, no one was going to trample on his grave."

Precautions for recovering your intent

Unfortunately, stories of successful recaptures of donor intent are rare. Far more prevalent are stories of permanent departure from a funder's original wishes. If you find yourself in a donor-intent crisis, or you aim to prevent one in the future, keep these guideposts in mind:

People make the difference

For the Daniels Fund, the key ingredients for recovery of donor intent were trustees and staff members unafraid to ruffle feathers in order to preserve the donor's original wishes. Childears recalls that when she assumed leadership, "I was stunned by how many professionals in philanthropy asked me, 'What new direction will you take at the Daniels Fund?' It simply never occurred to me that I would take the Daniels Fund in any direction other than the one defined by our donor. It seems commonplace for many of my peers in the foundation world to believe that fidelity to donor intent denies them the ability to respond creatively to the 'problems of today.' They have the right to their opinions, but they do not have the right to violate donor intent."

Be judicious about board governance

While you're living, it's advisable to view your board members as consultants, there to offer their expertise but ultimately to follow your wishes. Giving them too much power can be dangerous, as was the case at Atlantic Philanthropies, where Feeney was only one voting member. "While the donor is still alive, the board should serve in more of an advisery role than as a true governing board," suggests Al Mueller. "If you set it up where the board can outvote the donor, you've made a big mistake. When you pass away, they can then turn into an independent board of directors." You should, of course, balance this precaution with the need to grant enough authority and responsibility to board members to equip them with the knowledge and experience to carry on your philanthropy if you plan to sunset years after your death, or operate in perpetuity.

In situations where a donor failed to create a statement of intent, craft a legacy statement

Follow the example of Roy Park Jr. Tell the donor's life story and how it relates to his or her philanthropic intentions. Name the donor's core values and priorities and specify what should, and should not, be funded. Identify gifts made in the donor's lifetime and why they are meaningful. Use the donor's own words, drawn from correspondence or speeches, as much as possible.