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#### Legal Issues Related to Unfulfilled Charitable Pledges

In today's challenging economic environment, where large amounts of wealth are "disappearing" overnight, the fulfill ment of charitable piedges can no longer be taken for granted. Charities, donors, professional fund raisen and third parties such as banks, landleeds, and suppliers are increasingly asking whether piedged funds will in fact resterialize, and what to do if they do not.

What is a Charitable Fledge? As a legal matter, a charitable pledge is a contract between a doesn and a charity in which the doesn promises to make a contribution in the future. Pledges may be oral or is writing. According to the Financial Accounting Standards Board (FASB), charities are required to record enforceable pledges as assets when they are made, just like any other debt obligation. If a pledge is not fulfilled, the charity must write off the unpaid amount of the pledge.

When is a Pludge Legally Binding and Enforceable? Under traditional contract law principles, a charitable plodge is enforceable if it meets the requirements for a legally binding contract. There must be an agreement between the donor and the elserity — in effect, the denor must promise to make a gift and the charity must promise to accept it. The terms of the agreement must be clear and all conditions specified. There must be "consideration" given in exchange for the pledge, which essentially means that the charity must agree to do something (as not do something) in exchange for the promised donorless.

Alternatively, courts will enforce a pledge if the charity has suffered some detriment by taking action in reasonable reliance of the pladge, even though such detriment was not requested as consideration. This legal principle is known as "promissory estapped" or "detrimental reliance." Actions that constitute detrimental reliance include saliciting other denors based on the gledge, incurring costs, entering into contracts, or benrawing money based on the expectation that the denor's promise will be kept. This principle is currently the law is roughly 30 states.

There are certain defenses that can be raised to avoid enforcement of oral agreements, including if the agreement is not one that is capable of being performed within one year from the time of the agreement. This defense against enforcement is called a "statute of frauds" defense. However, a party may be barred from raising the statute of frauds as a

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**JR Anderson** 

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