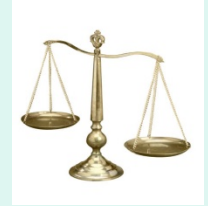




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UPMIFA

(Uniform Prudent Management of Institutional Funds Act)

Implications for Case Western Reserve University



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Presented by

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Agenda

- UPMIFA Overview
- Questions and Answers
- Discussion of Strategies for CWRU
 - Repurposing Unused Funds
 - Audit Standard FAS 117-1
 - Procedures on Selecting Investment Managers
 - Elimination of Underwater Funds Issue
 - Anything Else?

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- Your school has a fund established 30 years ago worth \$100,000 for the express purpose of buying electric typewriters for your students. What can you do to get access to this money for a more useful purpose?
- A gift agreement says only “interest” from this gift may be used. How much can you spend?
- CWRU contracts with an investment manager with impeccable credentials and references. He then takes CWRU funds and disappears. The donors of the funds are angry and sue us. Are we liable?

These and other questions will be answered!

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What is UPMIFA?

- Ohio law based on uniform law
- Governs management of institutional funds
- Effective date: June 1, 2009 (for funds established after that date or actions taken after that date relative to already existing funds)
- Link: <http://www.legislature.state.oh.us/bills.cfm? ID=127 HB 502>

What is an Institutional Fund?



Institutional fund is a fund held by an institution exclusively for charitable purposes.

(Some limited exceptions.)

What Is an Endowment Fund under UPMIFA?

- Endowment fund is an institutional fund that is not wholly expendable based on terms of gift
- Endowment fund does NOT include assets that CWRU designates as endowment for its own use

Focus of UPMIFA

- Investment and Management
- Spending of Endowment Funds
- Modifying/Releasing Restricted Purpose



Management and Investment Standards

- Manage and invest in good faith and with care of ordinary prudent person
- Must consider charitable purpose of institution, purposes of institutional fund, all subject to donor's intent
- May only incur costs that are appropriate and reasonable in relation to the assets, institution's purposes and skills available to the institution

(Section 1715.52)

Factors to Consider in Managing/Investing Institutional Funds

(unless modified by Gift Agreement)

- General economic conditions
- Inflation or deflation
- Tax consequences
- Role of each investment/decision within overall portfolio of the fund
- Expected total return and appreciation
- Other resources of institution
- Institution's need to make distributions and preserve capital
- Asset's special value to charitable purpose of institution

Management and Investment Standards

Unless Modified by Gift Instrument

- Management and investment decisions shall be made in context of institution's portfolio and investment strategy
- Need to make decisions about retention and disposition of property within reasonable period of time
- Assets should be diversified unless institution reasonably determines purposes are better served without diversification

(Section 1715.52)

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Investment Managers

- Institution must act in good faith with care of ordinary prudent person in selecting an agent, establishing scope of delegation, and periodically review agent's activities
- Agent owes duty to institution to use reasonable care
- Institution that acts prudently and in good faith is *not* liable for actions of agent
- Gift agreement can specify terms concerning investment managers

(Section 1715.54)

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Spending Policy

“The appropriation for expenditure in any year of an amount not greater than five percent of the fair market value of an endowment fund, whether or not the total expenditure from it exceeds five percent, calculated on the basis of market values that are determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made creates an *irrebuttable presumption of prudence.*”

(Section 1715.52, emphasis added)

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Spending Policy (cont.)

- Institution may spend as much as institution determines is prudent (unless specific limits on spending are set forth in gift agreement)
- Spending more than 5% does *not* create a presumption of imprudence



Spending Policy (cont.)

Consider following factors *if relevant*:

- Duration and preservation of fund
- Purpose of institution and fund
- General economic conditions
- Inflation or deflation
- Expected return from income and appreciation of investments
- Institution's other resources
- Institution's investment policy

(Section 1715.52)

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Spending Policy (cont.)

- Removes historic dollar value floor that limits endowment spending
- Eliminates “underwater” endowment problem caused by bad economy
- Retroactive application to existing funds

Interpretation of Limiting Terms

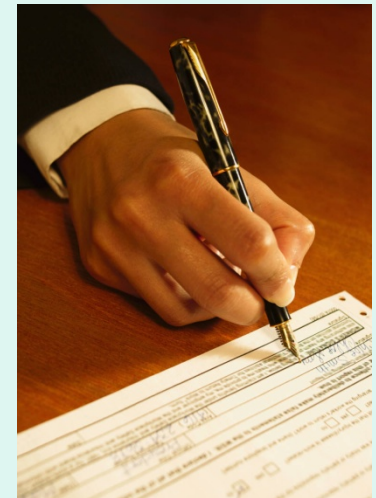


Terms in gift agreement such as requirement to use only “income” “profits” “interest” “preserve the principal intact” and similar terms create endowment fund but do not otherwise limit spending policy

(Section 1715.52)

Releasing / Modifying Restrictions

- A restriction can be released or modified if:
 - A donor consents in writing



Releasing/Modifying Restrictions

- A restriction can be released or modified if Institution brings court action showing restriction:
 - is impractical or wasteful
 - impairs management or investment of fund
 - due to circumstances not anticipated by donor
modification will further purpose of fund
- Modification should be in accordance with donor's probable intention
- At CWRU, Office of General Counsel can file this action (no outside counsel fees)

(Section 1715.55)

Releasing / Modifying Restrictions on Smaller Funds

- More Flexibility Releasing / Modifying Restrictions For Funds That:
 - are less than \$250,000.00
 - were established more than ten (10) years ago
 - purpose is unlawful, impossible to achieve, impracticable or wasteful
 - proposed use is consistent with donor's intent
- Strategic opportunity for CWRU

Releasing/Modifying **Restrictions on Smaller Funds (cont.)**

- Requires notification to Ohio Attorney General sixty (60) days before implementing modification
- Must use Attorney General's specified form
- Attorney General can extend effective date an additional sixty (60) days
- Attorney General can object

(Section 1715.55)

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Your school has a fund established 30 years ago worth \$100,000 for the express purpose of buying electric typewriters for your students. What can you do to get access to this money for a more useful purpose? *Apply to Attorney General to repurpose the fund.*

A gift agreement says only “interest” from this gift may be used. How much can you spend? *As much as is in accordance with the University’s spending policy.*

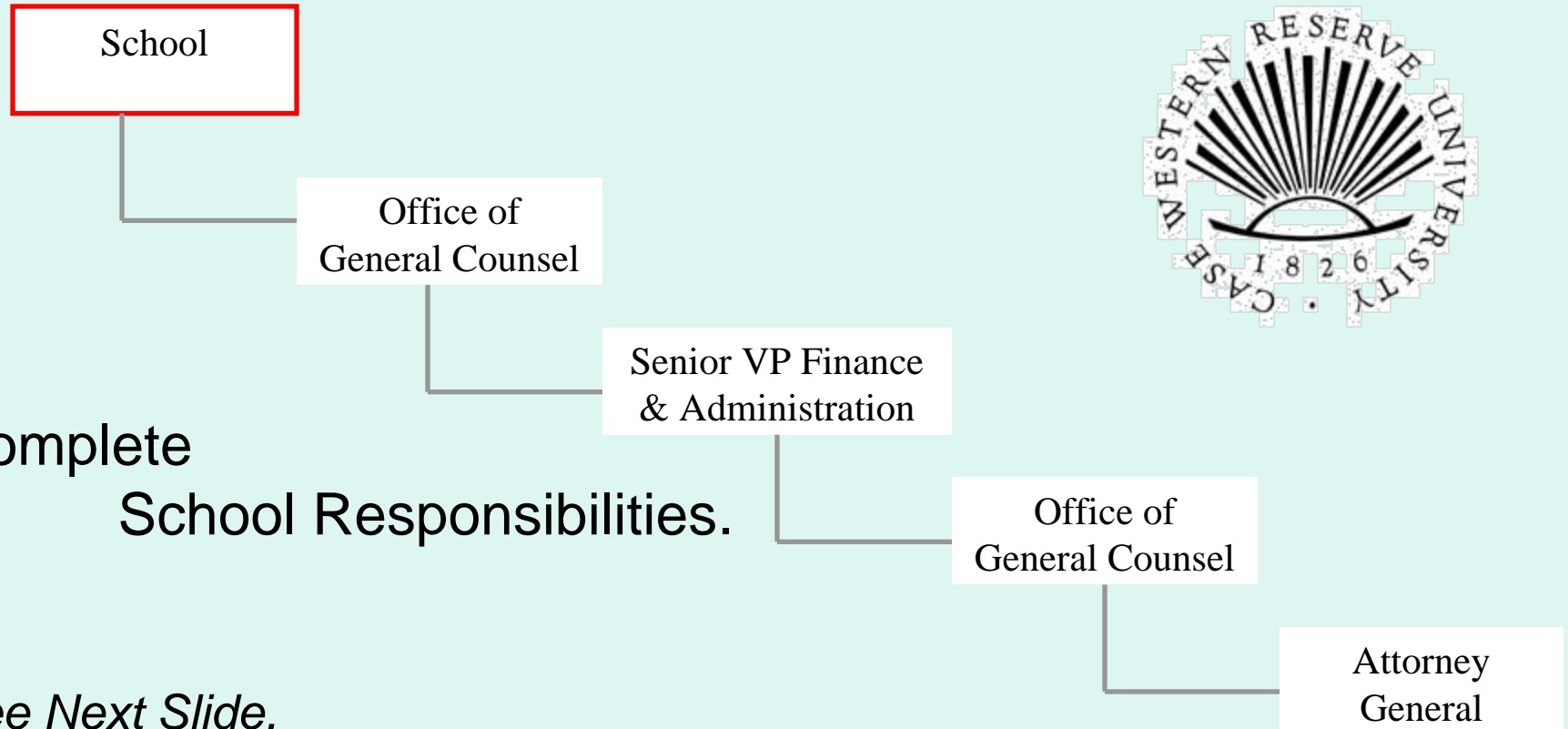
CWRU contracts with an investment manager with impeccable credentials and references. He then takes CWRU funds and disappears. The donors of the funds are angry and sue us. Are we liable? *No, if we can show we acted prudently in selecting the manager.*

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Q & A

CWRU Process for Repurposing Smaller Funds



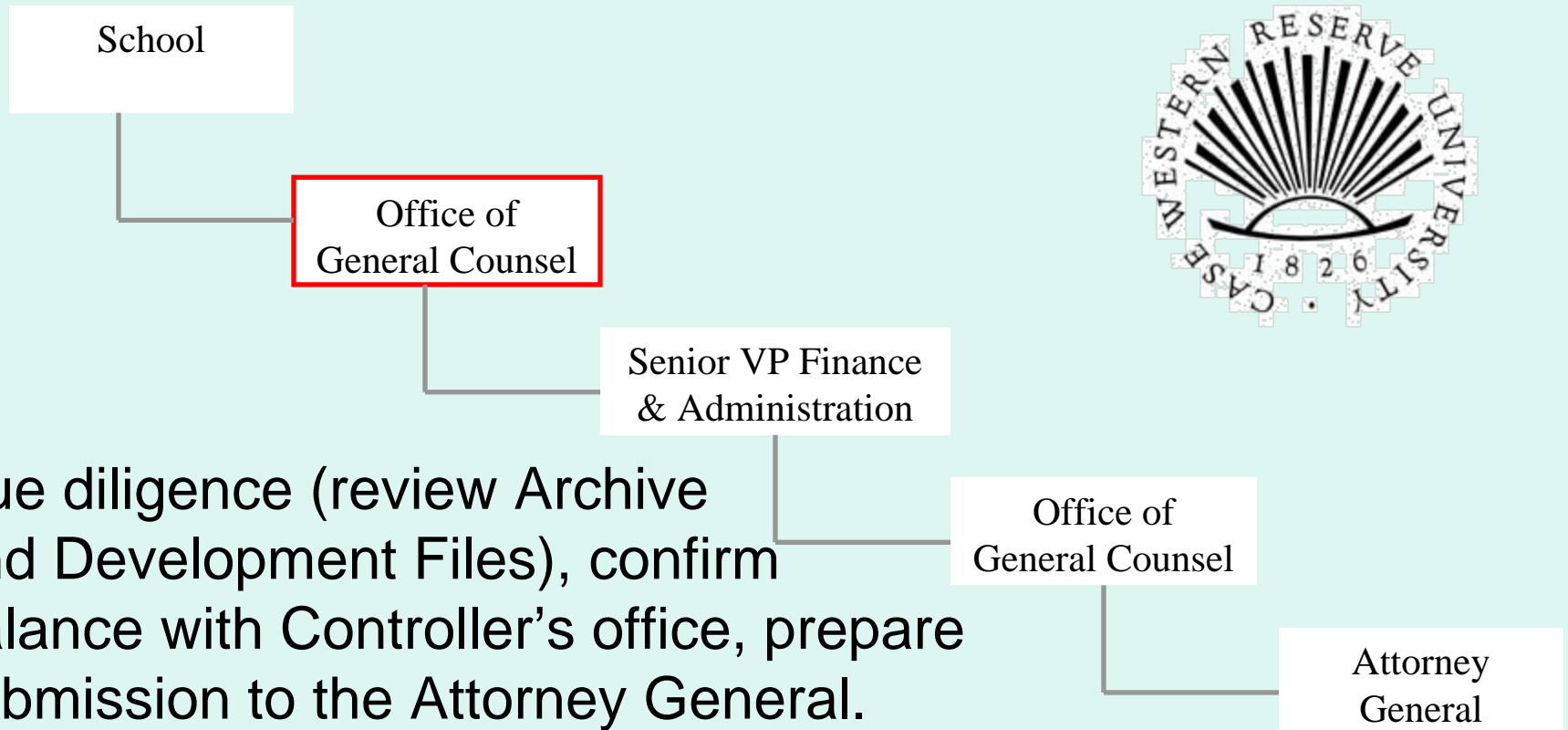
See Next Slide.

School Responsibilities

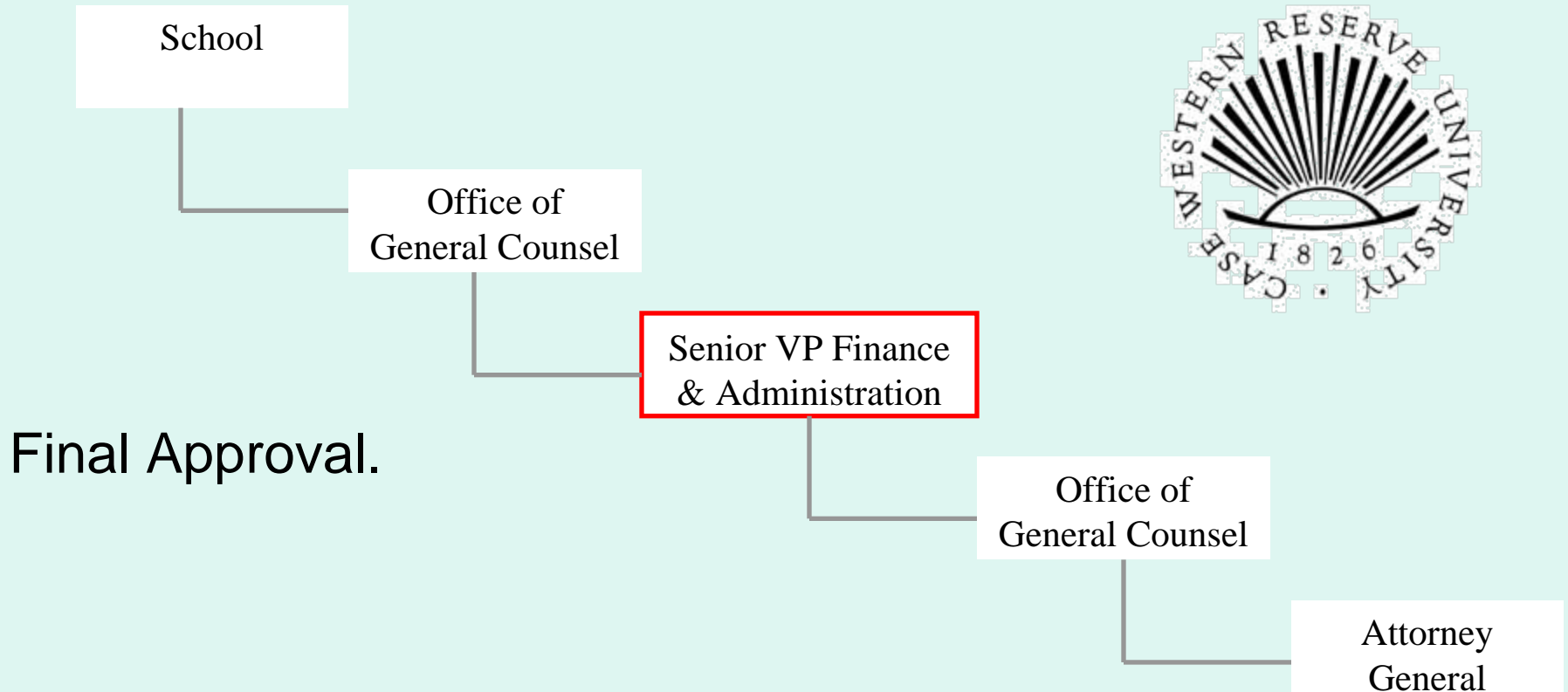
Send email to Office of General Counsel and include:

- 1) Name of fund less than \$250,000 and more than 10 years old that has not been used
- 2) Explain why existing purpose is unlawful, impracticable, or wasteful
- 3) State new purpose and explain why that is consistent with donor's intent
- 4) Email should come from Dean, or accompanied by evidence of Dean's approval
- 5) Attach as pdf critical documents in your possession (e.g. gift agreement, Board of Trustees' resolution)

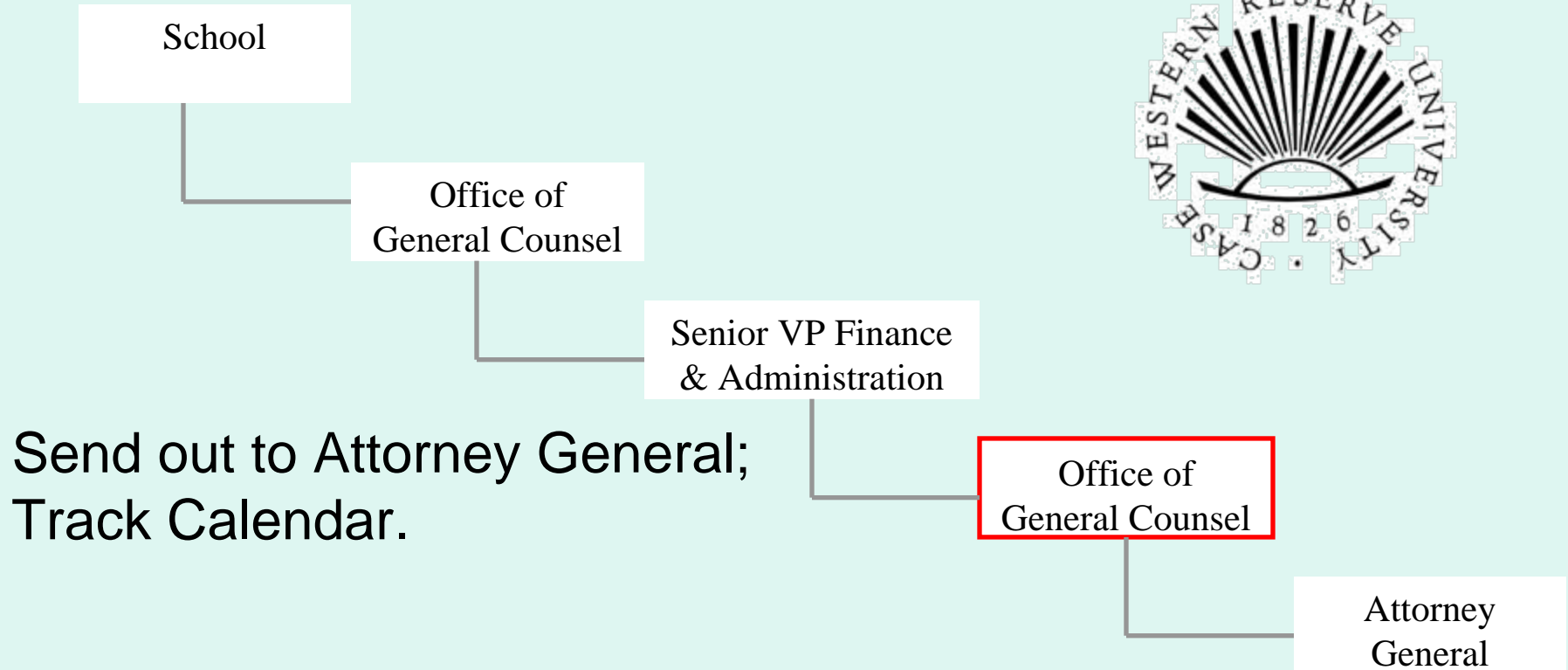
CWRU Process for Repurposing Smaller Funds



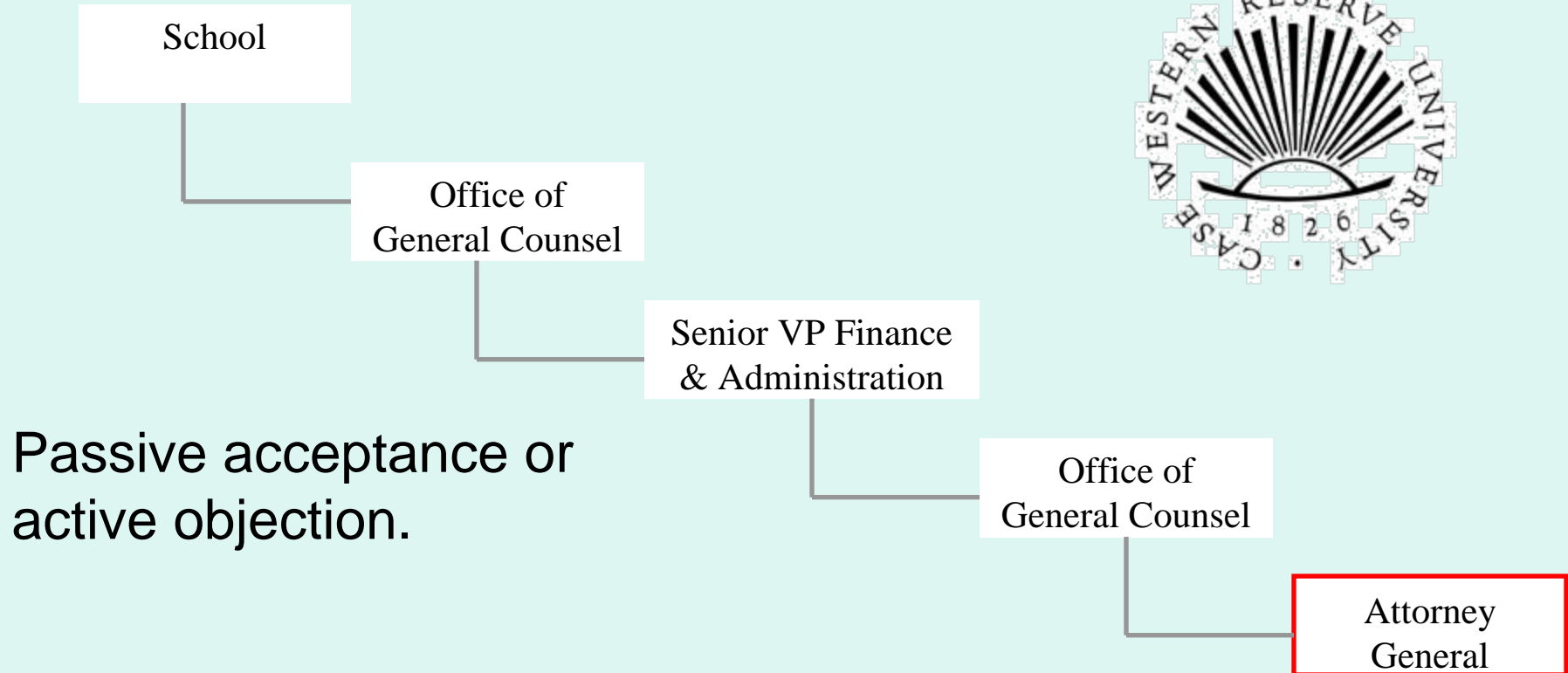
CWRU Process for Repurposing Smaller Funds



CWRU Process for Repurposing Smaller Funds



CWRU Process for Repurposing Smaller Funds



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To avoid limitations associated with purpose that is too restrictive or outdated, include Perpetual Benefit Language in gift agreements and solicitations



From CWRU Standard Gift Agreement:

The University acknowledges the Donor's desire that this [Name of Fund] should benefit the University in perpetuity. If, in the future, in the opinion of the President of University or the Executive Committee of The Board of Trustees of University, all or part of the [Name of Fund] cannot, in the future, be applied usefully to the above purpose, it may be used for any related purpose which, in the opinion of the President or the Executive Committee of The Board of Trustees, will most nearly accomplish the wishes of the Donor as expressed herein.

Audit Standard FAS 117-1

For donor restricted funds: The amount classified as permanently restricted shall be the amount of the fund (a) that must be retained permanently in accordance with explicit donor stipulations, or (b) that in the absence of such stipulations, the organization's governing board determines must be retained (preserved) permanently consistent with the relevant law.

Audit Standard FAS 117-1

- *For donor restricted funds:* A not-for-profit organization shall classify the portion of the fund that is not classified as permanently restricted net assets as temporarily restricted net assets (time restricted) until appropriated for expenditure by the organization.
- *For all funds:* Disclose information to enable users of financial statements to understand the net asset classification, net asset composition, changes in net asset composition, spending policy(ies), and related investment policy(ies) of its endowment funds.



Follow Up Issues

- Review Overall Investment Policy
- Review Overall Spending Policy
- Policy on selection of Investment Managers



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Other Items For Discussion?

Thank you for Attending!

