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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 fulfillment of charitable pledges can no longer be taken for granted. Charities, donors, professional fund raisers, and third parties such as banks, landlords, and suppliers are increasingly asking whether pledged funds will in fact materialize, and what to do if they do not.

What is a Charitable Pledge? As a legal matter, a charitable pledge is a contract between a donor and a charity in which the donor promises to make a contribution in the future. Pledges may be oral or in 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 Pledge Legally Binding and Enforceable? Under traditional contract law principles, a charitable pledge is enforceable if it meets the requirements for a legally binding contract. There must be an agreement between the donor and the charity -- in effect, the donor 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 (or not do something) in exchange for the promised donation.

Alternatively, courts will enforce a pledge if the charity has suffered some detriment by taking action in reasonable reliance of the pledge, even though such detriment was not requested as consideration. This legal principle is known as "promissory estoppel" or "detrimental reliance." Actions that constitute detrimental reliance include soliciting other donors based on the pledge, incurring costs, entering into contracts, or borrowing money based on the expectation that the donor's promise will be kept. This principle is currently the law in 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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Table of Contents Legal Issues Related To Unfulfilled Charitable Pledges V4

1. Understanding the eBook Legal Issues Related To Unfulfilled Charitable Pledges V4
 - The Rise of Digital Reading Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Advantages of eBooks Over Traditional Books
2. Identifying Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Legal Issues Related To Unfulfilled Charitable Pledges V4
 - User-Friendly Interface
4. Exploring eBook Recommendations from Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Personalized Recommendations
 - Legal Issues Related To Unfulfilled Charitable Pledges V4 User Reviews and Ratings
 - Legal Issues Related To Unfulfilled Charitable Pledges V4 and Bestseller Lists
5. Accessing Legal Issues Related To Unfulfilled Charitable Pledges V4 Free and Paid eBooks
 - Legal Issues Related To Unfulfilled Charitable Pledges V4 Public Domain eBooks
 - Legal Issues Related To Unfulfilled Charitable Pledges V4 eBook Subscription Services
 - Legal Issues Related To Unfulfilled Charitable Pledges V4 Budget-Friendly Options
6. Navigating Legal Issues Related To Unfulfilled Charitable Pledges V4 eBook Formats

- ePub, PDF, MOBI, and More
 - Legal Issues Related To Unfulfilled Charitable Pledges V4 Compatibility with Devices
 - Legal Issues Related To Unfulfilled Charitable Pledges V4 Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Highlighting and Note-Taking Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Interactive Elements Legal Issues Related To Unfulfilled Charitable Pledges V4
 8. Staying Engaged with Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Legal Issues Related To Unfulfilled Charitable Pledges V4
 9. Balancing eBooks and Physical Books Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Legal Issues Related To Unfulfilled Charitable Pledges V4
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Setting Reading Goals Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Fact-Checking eBook Content of Legal Issues Related To Unfulfilled Charitable Pledges V4
 - Distinguishing Credible Sources
 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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