



# **KEEPING THE FAITH OR ESCAPING THE DEAD HAND: TECHNIQUES IN DEALING WITH THE DONOR'S OR FOUNDER'S VISION**

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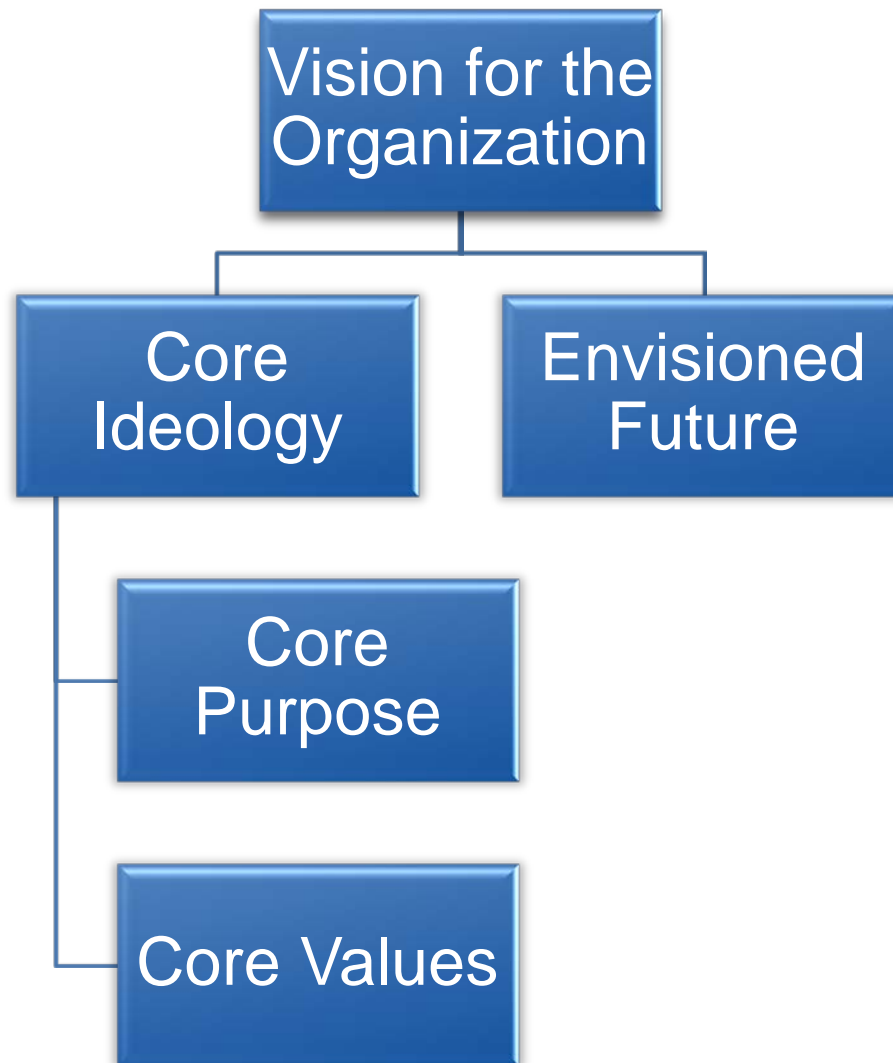
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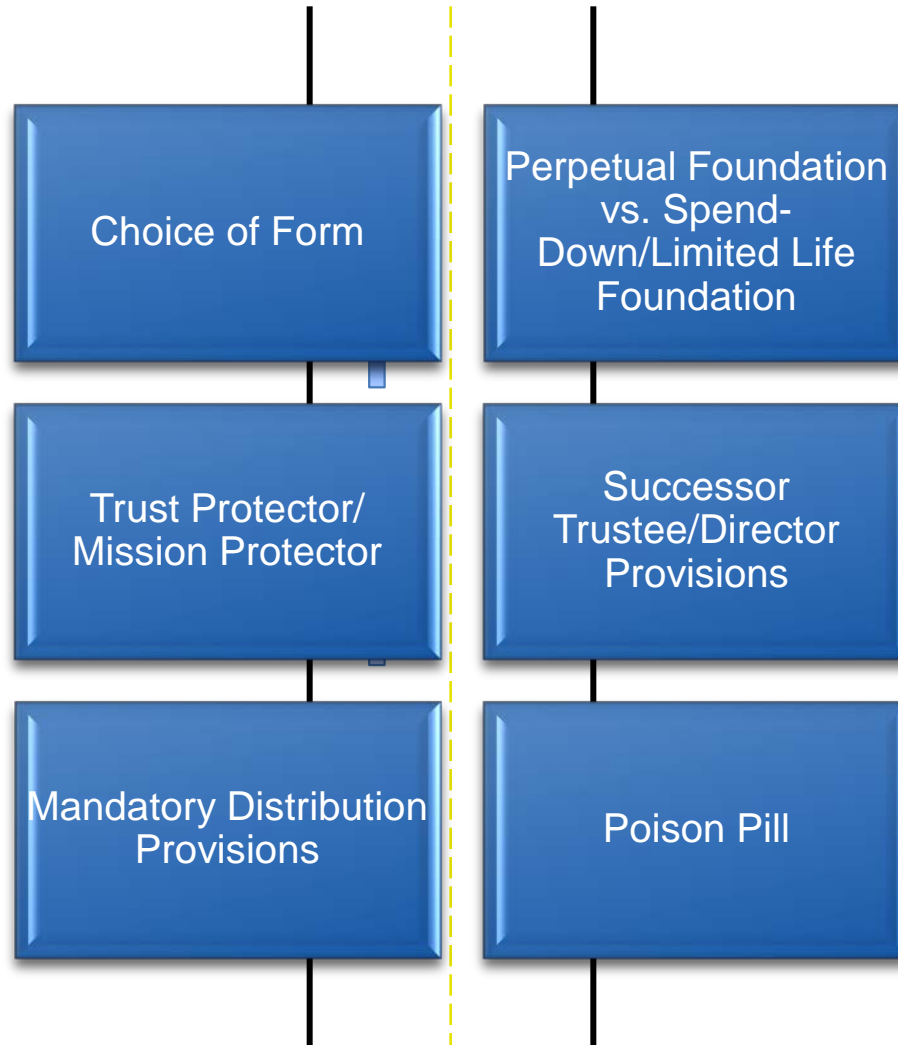
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# CONCEPTUALIZING VISION:




# STABILIZING VISION:





## Choice of Form – State Law

- **Charitable trust**
  - Nonprofit unincorporated association
  - **Nonprofit corporation**
  - LLC acceptable as disregarded entity or a stand-alone if all members exempt
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# TRUST PROTECTOR/MISSION PROTECTOR

## ○ Trust Protector

- Person appointed to hold discretionary powers
  - Approve amendments
  - Approve change to distribution scheme
  - Approve change to beneficiaries
  - Avoid interested transactions
  - Select successor trustees/directors
- In trust context, use allows avoidance of court action while providing independent review and approval
- In corporate context, can be created through membership rights



# PERPETUAL FOUNDATION VS. SPEND-DOWN FOUNDATION

## Limited Life

- Concern about mission drift
- Maximizing current efforts (adding urgent needs urgently)
- Founder's desire for increased involvement/engagement
- Founder's aversion to institutionalized philanthropy
- Uncertainty about philanthropic commitment/desires of future generations

## Perpetual Life

- Sustained, long-term impact
- Funding causes of intransient problems
- Legacy
- Continued support of grantees
- Creating a family philanthropy



## Successor Provisions

- Preference to family vs. community leaders or experts
- All family members vs. family line representatives
- Requiring specific experience/education (including for family members)



# MANDATING ATTENTION TO SPECIFIC CAUSES/GRANTEES

- Mandatory Distribution Provisions
  - Consider increased level over 5% (ex: greater of net income or minimum distribution requirement)
  - Consider requirement of gifts to a specific charity
  - Consider requirement of specified amount to charity historically supported by settlor
- “Poison Pill”
  - Alternative to providing specific distributions
  - Triggers termination when event/condition fails
  - Prevents directors from neglecting specific area/grantee





# INSTITUTIONALIZING VISION:

Board Initiation

Board Training on Fiduciary Duties

Governance and Policies

Advisory Boards

Succession Planning



# Board Initiation/Training



Process for “on-boarding” to train in policies & duties



Process for training in mission and culture



Educate on history and goals of Foundation



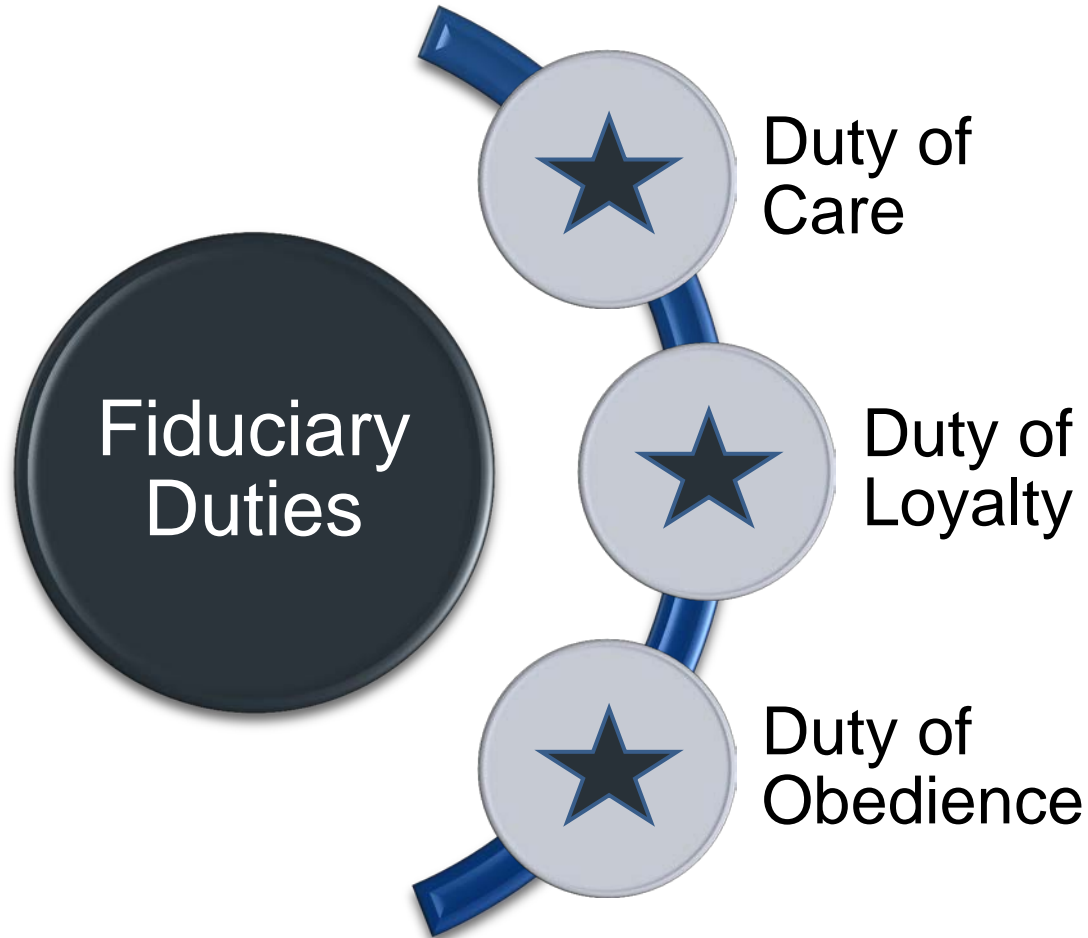
Ongoing training, education  
• Board retreats, board member updates



Board Evaluations



# SHOW UP, SUIT UP, SPEAK UP, PLAY FOR THE TEAM, FOLLOW THE RULES



# GOVERNANCE POLICIES

- Mission Statement
- Code of Ethics
- Conflict of Interest Policy
  - Advanced Resignation Protocol
- Roles & Responsibilities
- Whistleblower Policy

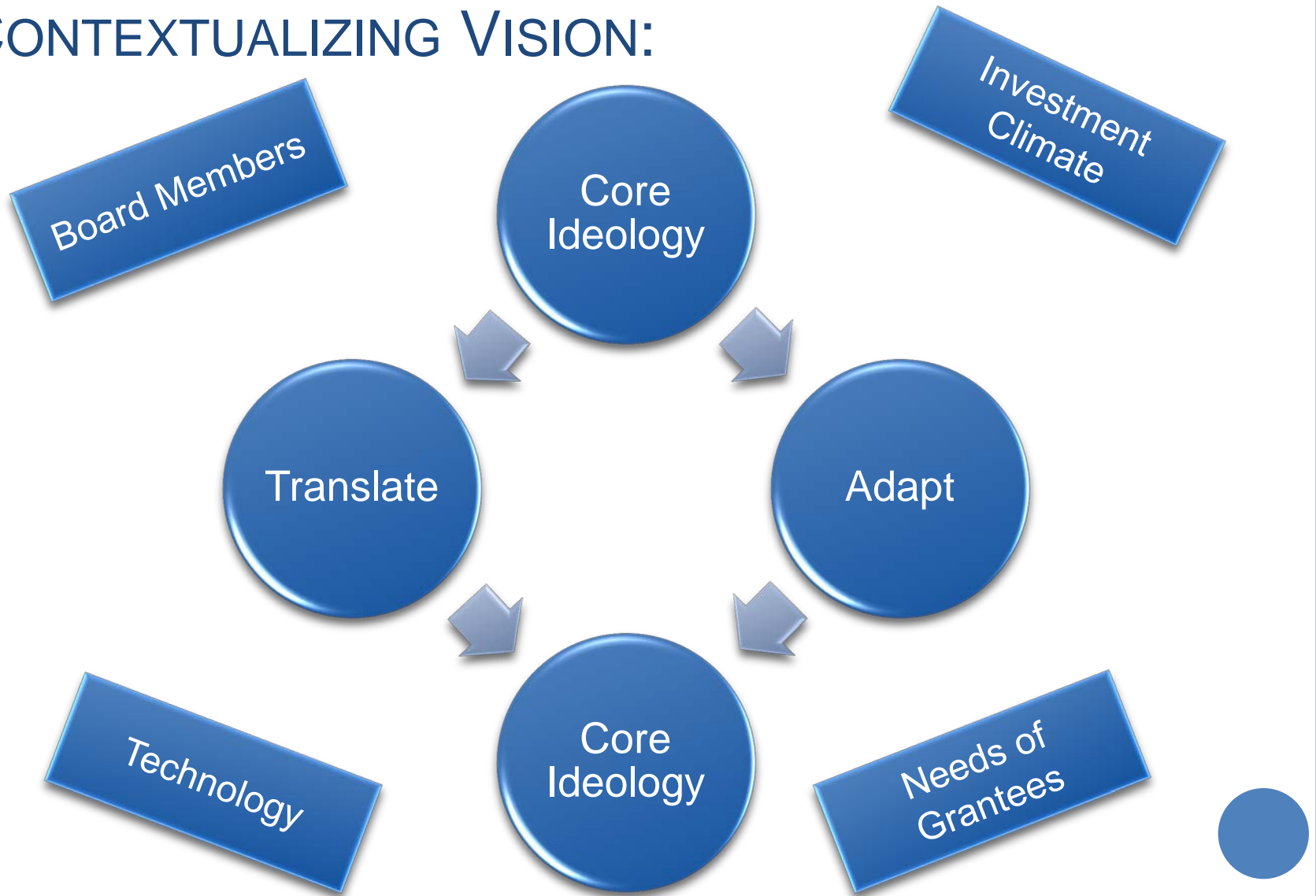


# ADVISORY BOARDS

- Committee of people who do not have the authority of the board
- No voting rights/no fiduciary responsibility
- May include leading experts to study issues & guide board
- May be junior advisory board to train future generations in philanthropy (research, due diligence, presentation)
  - Part of succession planning



# CONTEXTUALIZING VISION:



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### *Example: Program-Related Investments*



The primary purpose of the investment is to accomplish one or more of the purposes described in Section 170(c)(2)(B);



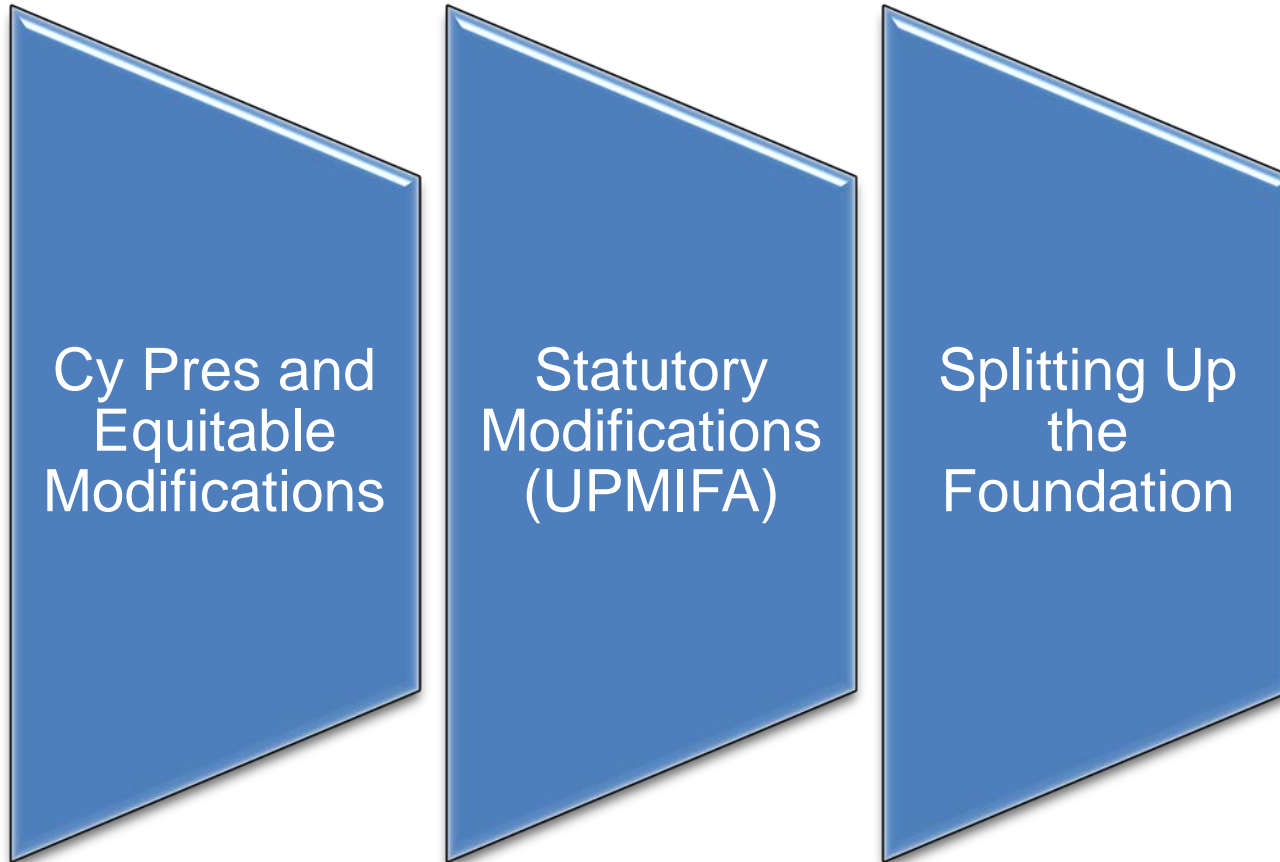
No significant purpose of the investment is the production of income or the appreciation of property; and



No purpose of the investment is to accomplish one or more of the purposes described in Section 170(c)(B)(2)(D) [*political purposes*].



# COMPROMISING VISION:





## CONCLUSION:

- Organizational founders and other philanthropic donors want their vision to be followed.
- Boards should seek to:
  - **understand** the vision,
  - **institutionalize** the vision for successive generations of board members, and,
  - where change is needed in the strategic implementation of the vision, **adapt** the vision to the new context.
- In following these guidelines, a foundation is able to *keep the faith while escaping the dead hand.*



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