

The following example illustrates the interplay of the legally non-binding mission statement and the legally binding statement of purposes contained in a foundation's governing instrument:

Tom Fox (all names are fictional), a 50-year-old investor, forms a foundation to support the preservation of Civil War battlefields and education about the Civil War. Tom accepts the lawyer's recommendation that the foundation have broad charitable purposes in its governing instrument, but a mission statement — freely changeable at any time — that focuses on the Civil War.

In his late 70s, Tom experiences deteriorating health and concludes that the foundation should shift its support to medical research. He tells his lawyer that he wants to leave the bulk of his remaining assets to the foundation and wants those assets forever dedicated to research into cures and treatments for diabetes and arthritis, with a limitation favoring research by public universities. At the same time, Tom is worried that his adult children are not interested in diabetes, arthritis, or any other health-related issues, and he is concerned that they will not take a serious interest in the foundation. He also has told his adult children that he expects them to contribute their own money to the foundation.

**Tom and his lawyer agree as follows:** The statement of purposes in the foundation's governing instrument will remain broad and unchanged. A new mission statement will be adopted to express the intention that the foundation support research at public universities into diabetes and arthritis and "in the event they are eradicated, other medical conditions affecting the elderly." Tom will sign a new Will, leaving the bulk of his assets to the foundation but on the condition that the assets passing at the time of his death be used exclusively in furtherance of the mission statement in effect at the time of his death.

**Tom likes this structure:** During his lifetime, the assets of the foundation are spent in furtherance of the mission that is important to him, but he retains the flexibility to change his mind. At his death, his bequest is limited to the specific purposes set forth in a mission statement he approved during his lifetime, but with built-in flexibility in the event diabetes and arthritis are eradicated. Meanwhile, Tom's adult children and other descendants have some flexibility, too. Although the bequest in Tom's Will is limited to the purposes specified in a mission statement he approved during his lifetime, the mission statement can be changed vis à vis all other assets of the foundation. Therefore, assets Tom gave before his death and any assets his descendants contribute to the foundation in the future can be used in support of whatever charitable purposes future generations deem appropriate.