

## **Donating versus Establishing a Charitable Nonprofit: The Example of the Make It Right Foundation**

When tragedy strikes, it is human nature for people to reach out and help others. Though many are content to donate time, money, or tangible resources to existing charitable organizations, others see a vacancy, a place where charity is needed but not active or not effective. In response to this void, some people create their own nonprofit organization to address needs or problems that our government and society have been unable to remedy.

This was most certainly the case in 2007, when Brad Pitt formed his own charity, the Make It Right Foundation, to assist with the reconstruction efforts in New Orleans' Lower Ninth Ward. The Lower Ninth Ward had been hard hit in 2005 by Hurricane Katrina, and in the years following had struggled to recover from the extensive loss of life and physical damage that resulted. In response to the lack of resources and aid being given to the Lower Ninth Ward, Mr. Pitt founded the Make It Right Foundation with the initial goal of building 150 homes in the area. The charity however, fell short of its goal and people living in these homes have begun litigation because of the deterioration and lack of disclosure of problems with their homes. Although litigation is ongoing, the case of Mr. Pitt and the Make It Right Foundation highlights many of the pitfalls that can arise when well intending people with great causes, turn to using a nonprofit organization as their method to help others.

One of the most important issues that the Make It Right Foundation presents is whether parties with good intentions should form new nonprofit organizations or partner with existing charities with similar interests. While no one can doubt that Mr. Pitt had good intentions, his interests would have been better served if he had partnered with an existing charity and provided a gift or trust with conditions that specifically stated that the money he donated was to be used to build homes in the Lower Ninth Ward. Partnering with existing charities, particularly those that conduct the activities that the donor is interested in, is a wise decision especially when the donor has a very specific intent for how their funds should be used. Here, it was clear from the start the Make It Right Foundation's purpose was to help rebuild homes in the Lower Ninth Ward. This nonprofit did expand to other geographic areas (i.e. Montana, New Jersey and Missouri), but it is unclear if the charity was initially founded for the purpose of building homes beyond the Lower Ninth Ward (likely not). If the purpose was later broadened to building eco-friendly homes, does that purpose cover the geographic expansion of the charity outside the state of Louisiana. Given that the geographic expansion has contributed to many of the internal problems within the charity, Mr. Pitt would likely have been better served partnering with an existing nonprofit such as Habitat for Humanity, and having conditions on his donation, rather than creating a nonprofit that has struggled to build homes and likely failed to comply with relevant disclosure laws.

Another major legal issue that the Make It Right Foundation is facing is whether the foundation had obligations to the people who received the homes, particularly to disclose the defects that the foundation was aware of regarding the condition of the structures. Although the Make It Right Foundation is a nonprofit, it is likely that the court will treat the nonprofit as a seller of homes, which in turn attaches the traditional duties to disclose defects to potential buyers. As a result, the Make It Right Foundation, if it in fact did not disclose these defects, will

be held liable for the damages incurred by its failure to disclose. The problems faced by the foundation serve as a reminder to nonprofits that they too are governed by the same duties of disclosure as for-profit home builders and sellers.

Although the Make It Right Foundation was formed for a good purpose and with good intent, it ultimately provides an example of the fact that not all charitable purposes need to become nonprofits, and if one forms a nonprofit, there needs be supervision of the charitable activities and adherence to applicable law.

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