

Memorandum 90-17

Subject: Study L-3030 - Custodianships Under Uniform Transfers to Minors Act

At the November 30-December 1, 1989, Meeting, the Commission considered a suggestion from Peter L. Muhs that the Uniform Transfers to Minors Act be revised to permit creation of a custodianship by a transfer made at any time before the "minor" reaches the age at which the custodianship terminates (age 21 or age 25), so that the custodianship will have a duration from the time created until the age at which the custodianship terminates. The staff was requested to draft legislation to deal with this problem.

The Muhs suggestion was based on his assumption that a custodianship may not be created for a "minor" who has attained the age of 18. However, the existing statute permits a custodianship to be created for a "minor" over age 18. Accordingly, the problem that concerns Mr. Muhs does not exist, and there is no need for revision of the existing statute. For an analysis of the problem, see the following discussion.

The letter from Peter L. Muhs included the following comment:

A further comment is that Uniform Transfers to Minors Act transfers might be allowed for someone over age eighteen (although not technically a minor); if the property is to be retained until age twenty-one or age twenty-five (or even some later age), it should not be a requirement that the donee be under age eighteen. This allows the simplified procedures of the Uniform Transfers to Minors Act to be used to handle the disposition of amounts expected to be relatively small and of relatively short duration of management (and possibly for which the chance of a provision coming into play is remote). For example, rather than have complex successive trusts upon the death of a first or second generation beneficiary, a provision for Uniform Transfers to Minors Act may be satisfactory if the next recipient upon failure of the first or second generation is then under age of eighteen, but may not be satisfactory (because it leads to immediate outright distribution) if the beneficiary is between eighteen and twenty-five.

Contrary to Mr. Muhs' assumption, the existing statute permits a custodianship to be created for a person over the age 18 to continue until age 21 or 25, as the case may be.

Probate Code Section 3901(k) defines "minor" as follows:

(k) "Minor" means:

(1) Except as provided in paragraph (2), an individual who has not attained the age of 18 years.

(2) When used with reference to the beneficiary for whose benefit custodial property is held or is to be held, an individual who has not attained the age at which the custodian is required under Sections 3920 and 3920.5 to transfer the custodial property to the beneficiary. [emphasis added]

Section 3920 provides:

3920. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of the following:

(a) The minor's attainment of 18 years of age unless the time of transfer of the custodial property to the minor is delayed under Section 3920.5 to a time after the time the minor attains the age of 18 years.

(b) The time specified in the transfer pursuant to Section 3909 if the time of transfer of the custodial property to the minor is delayed under Section 3920.5 to a time after the time the minor attains the age of 18 years.

(c) The minor's death.

Probate Code Section 3920.5 permits the time of transfer to the minor of custodial property to be delayed to:

(a) Age 21 for a custodianship created by irrevocable gift.

(b) Age 25 for a custodianship created by a will, trust, or irrevocable exercise of a power of appointment.

Section 3920.5 provides in part:

3920.5 (a) Subject to the requirements and limitations of this section, the time for transfer to the minor of custodial property transferred under or pursuant to Section 3903, 3904, or 3905 may be delayed until a specified time after the time the minor attains the age of 18 years which time shall be specified in the transfer pursuant to Section 3909.

(b) To specify a delayed time for transfer to the minor of custodial property, the words "as custodian for _____ until

(Name of Minor)

age _____

(Age for Delivery of Property to Minor)

under the California Uniform Transfers to Minors Act" shall be substituted for the words "as custodian for _____

(Name of Minor)

under the California Uniform Transfers to Minors Act" in making the transfer pursuant to Section 3909.

In light of these provisions, the definition of "minor" in Section 3901(k)(2) includes a person over age of 18 who has not attained the age of 21 (irrevocable gift) or 25 (custodianship created by will, trust, or irrevocable exercise of power of appointment) if the duration of the custodianship is extended to age 21 or 25 under Sections 3920 and 3920.5. Accordingly, the existing statute permits a custodianship to be created after the minor has reached age 18. Mr. Muhs is mistaken in his statement of the rule under existing law. (He apparently is unaware of the definition of "minor" in Section 3901(k)(2).)

The staff believes that the rule under the existing statute is clear and is satisfactory. Accordingly, there is no need for any revision of the existing law.

Respectfully submitted,

John H. DeMouilly
Executive Secretary