

Memorandum 82-29

Subject: Study L-614 - Probate Law (Bequests to Minors)

A special statute dealing with bequests of certain personal property to minors was enacted in 1972. See Prob. Code §§ 186-186.9. Under this procedure, testamentary gifts of securities, money, life or endowment policies, and annuity contracts can be made under the Uniform Gifts to Minors Act, Civil Code Sections 1154-1165, which applies to intervivos gifts and employs a custodian. Before the enactment of Probate Code §§ 186-186.9, it was necessary to have a guardian appointed unless the amount involved was sufficiently small. Under existing law, money or other property may be paid or delivered to a custodial parent if the value of the minor's estate is less than \$5,000. Prob. Code § 3401.

The staff is not aware of any major defects in the bequest to minors statute. Attached to this memorandum as Exhibit 1 is a staff draft of this statute. This draft makes only editorial changes in existing Probate Code Sections 186-186.9. The staff draft preserves the existing usage of "bequest," whereas the Uniform Probate Code generally uses "devise" which is defined in UPC Section 1-201(7) as a testamentary disposition of real or personal property. When the decision is made concerning which terminology to use, these sections will be revised accordingly.

The Uniform Probate Code does not appear to have any detailed provisions in this area. Section 3-915 of the UPC provides:

A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this Code or otherwise to give a valid receipt and discharge for the distribution.

The Comment to this section says that it is "especially important as a possible source of authority for a valid discharge for payment or distribution made on behalf of a minor." The UPC thus incorporates other law governing bequests to minors and the equivalent of Probate Code Sections 186-186.9 would appear to be needed even if the probate administration portions of the UPC were adopted.

A limitation on the usefulness of the existing procedure should be noted. One authority states that the primary disadvantage of using a custodianship under this statute is that there is no way to extend its duration once the minor has reached the age of 18. See, California Will Drafting §§ 10.50, 24.11 (Cal. Cont. Ed. Bar, Supp. 1981). This is because the California Uniform Gifts to Minors Act provides that the property shall be delivered or paid over to the minor upon his or her attaining the age of 18 years. Civil Code § 1158(d). This limitation on the usefulness of the procedure is no reason not to continue the procedure. A testator who is sophisticated enough to invoke the bequest to minors statute should be sophisticated enough to avoid it where it does not achieve the desired result.

Respectfully submitted,

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EXHIBIT 1

STAFF DRAFTProbate Code §§ 186-186.9 (repealed). Bequests to minors

Comment. Former Sections 186-186.9 are continued without substantive change in [Chapter __] (commencing with Section ____). For a table showing the disposition of former Sections 186-186.9, see the Comment to [Chapter __] (commencing with Section ____).

Probate Code §§ [1-10] (added). Bequests to minors

SEC. . [Chapter __] (commencing with Section ____) is added to Division 1 of the Probate Code, to read:

[CHAPTER __.] BEQUESTS TO MINORS

Comment. [Chapter __] (commencing with Section __) continues former Chapter 11 (commencing with Section 186) without substantive change. The source of each section in the new [chapter] is shown in the following table.

<u>Former Sections 186-186.9</u>	<u>New Sections [____]</u>
186	1
186.1	2
186.2	3
186.3	4
186.4	5
186.5	6
186.6	7
186.7	8
186.8	9
186.9	10

[CHAPTER __.] BEQUESTS TO MINORS

§ [1.] Bequests to minors under this chapter

[1.] A testator may bequeath securities, money, life or endowment policies, and annuity contracts, as these terms are defined or used in the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code, to a person who is a minor, as provided in this [chapter].

§ [2.] Applicability of Uniform Gifts to Minors Act

[2.] If a testator provides in his or her will that a bequest shall be paid or delivered to a custodian subject to the California

Uniform Gifts to Minors Act, all of the provisions of that act, including, but not limited to, the definitions and the provisions concerning powers, rights, and immunities contained in that act, are applicable to the bequest during the period prior to distribution of the property.

§ [3.] Designation of custodian

[3.] The bequest under this [chapter] shall be made to a designated adult person or a trust company qualified to do business in this state with the words, in substance, "as custodian for (name of minor) under the California Uniform Gifts to Minors Act." Failure to name a qualified custodian does not invalidate the bequest as a bequest permitted by this [chapter]. A variation in the wording of the bequest from the wording set forth in this section shall be disregarded if the testator's intent to make a bequest pursuant to this [chapter] appears from the will as a whole or from the wording of the bequest.

§ [4.] Noncomplying bequest

[4.] Unless the will clearly requires otherwise, a bequest which does not comply with the provisions of Sections [1, 2, and 3], or a bequest to a person who becomes an adult prior to the order for distribution, shall be deemed to be a direct bequest to the person named as the minor for whom the property was to be held.

§ [5.] Distribution of property

[5.] If a testator provides for a bequest to be paid or delivered as provided in this [chapter], the executor or administrator of the testator's estate, upon entry of an order for distribution, shall make distribution pursuant to the order for distribution by transferring the bequeathed property in the form and manner provided by the California Uniform Gifts to Minors Act.

§ [6.] Successor or alternate custodians; compensation

[6.] The testator in his or her will may provide for successor or alternate custodians and may specify the standard of compensation of the custodian.

§ [7.] Successor custodian

[7.] If a vacancy in the custodianship exists prior to full distribution of the bequest by the executor or administrator, a successor custodian shall be appointed for any undistributed property in the manner provided by the California Uniform Gifts to Minors Act.

§ [8.] Notice to and participation of custodian

[8.] (a) Except as otherwise provided in the will or ordered by a court, each custodian designated in the will and the person for whom the property is to be held shall be deemed a legatee for the purpose of receiving notices which may be required or permitted to be sent to a legatee in the estate of the testator.

(b) Unless required by the will or ordered by the court, a custodian does not have a duty to participate in the proceedings in the estate on behalf of the minor, and in no event does the custodian have a duty to so participate until he or she has filed a written notice of acceptance of the office of custodian with the clerk of the court in which administration of the estate of the testator is pending.

§ [9.] Jurisdiction of court

[9.] Until distribution of the property pursuant to an order for distribution is completed, the court in which administration of the estate of the testator is pending has exclusive jurisdiction over all proceedings and matters concerning undistributed property, including, but not limited to, the appointment, declination, resignation, removal, bonding, and compensation of, and the delivery or transfer of the undistributed property to, a custodian. After distribution of any property is completed, the court has no further jurisdiction over the distributed property and the property shall be held subject to the California Uniform Gifts to Minors Act in the same manner as if it had been a lifetime gift.

§ [10.] Not exclusive procedure

[10.] This [chapter] shall not be construed as providing an exclusive method for making bequests to or for the benefit of minors.