

Memorandum 84-1

Subject: Study L-618 - Uniform Transfers to Minors Act

At the last meeting, the Commission determined to recommend the Uniform Transfers to Minors Act for enactment in 1984. Because of the bill deadline, we have had to have a draft of the recommended legislation prepared before the Commission has had a chance to review the details of the recommended legislation. We can amend the bill after its introduction to conform to the Commission's decisions.

The following materials are attached:

- (1) A staff draft of the preliminary portion of the Recommendation Relating to the Uniform Transfers to Minors Act (yellow pages).
- (2) Draft of Recommended Legislation (white)
- (3) Draft of inserts to be inserted where indicated in the Draft of Recommended Legislation (pink).

The preliminary portion of the recommendation outlines the changes the new Uniform Transfers to Minors Act would make in existing California law. You should read this material to become familiar with the changes. The following changes are noted for your special attention:

(1) Transferor as custodian (see pages 13-15 of preliminary portion of recommendation). The provisions of the new Act are a clear improvement in existing law.

(2) Age requirement for custodian (see pages 16-17 of preliminary portion of recommendation). A custodian must be 21 (rather than 18 as under existing law), unless the custodian is the transferor. There is no minimum age for a transferor-custodian, the only requirement being that the transferor have the capacity to make the transfer.

(3) Care of custodian property (see pages 17-19 of preliminary portion of recommendation). The new Act provides a somewhat stricter standard of care rule for the custodian. It does not include the special provision of existing California law limiting the custodian's liability for losses to the custodial property if the custodian is not compensated for his services. The staff believes that this is an essential part of the new Act and that uniformity among the states is very important. Accordingly, we recommend that the provision of the new Act be adopted.

The existing standard under California law for a guardian or conservator is stated in Probate Code Section 2401 as follows:

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

Section 2101 of the Probate Code provides:

2101. The relationship of guardian and ward and conservator and conservatee is confidential and is subject to the law relating to trusts.

The Comment to Section 2401 reads:

**Legislative Committee Comment—Assembly
1979 Addition**

Section 2401 supplements the provision of Section 2101 that the relationship of guardian and ward and conservator and conservatee is subject to the law relating to trusts. The standard stated in subdivision (a) of Section 2401 is consistent with trust principles but recognizes specifically that what is ordinary care and diligence varies with the circumstances of each case. See Civil Code § 2259 (duty of trustee to use at least ordinary care and diligence in the execution of the trust). In determining what constitutes ordinary care and diligence a professional guardian or conservator (such as a trust company or the trust department of a bank) will be held to a greater standard of care based on its presumed expertise than a lay guardian or conservator. Cf. *Estate of Beach*, 15 Cal.3d 623, 542 P.2d 994, 125 Cal.Rptr. 570 (1975) (executor). Section 2401 applies to all powers and duties of the guardian or conservator, whether or not prior court authorization is required. But see Section 2103 (effect of court authorization or approval).

The duty of management and control stated in subdivision (a) requires that the conservator act diligently in marshaling, taking possession of, and making an inventory of the conservatee's assets. This obligation is imposed on the conservator whether or not the court makes an order under Section 1873 authorizing the conservatee to enter into certain kinds of transactions. As to community property, see Section 3051.

Subdivision (b) of Section 2401 makes clear that ordinary care and diligence may require that the guardian or conservator exercise a power. For example, the guardian or conservator may fail to exercise ordinary care and diligence under the circumstances of the particular estate if the guardian or conservator fails to secure insurance to cover the risk of loss of property of the estate. At the same time, subdivision (b) also makes clear that the

extent to which a power should be exercised is limited to what is required by the exercise of ordinary care and diligence under all the circumstances. Thus, for example, in purchasing insurance covering the estate property, the guardian or conservator should not purchase an amount in excess of the amount that would be purchased using ordinary care and diligence in the management and control of the estate. See also the discussion in the Comment to Section 2451 (collection of debts).

Section 2401 supersedes the portion of the first sentence of former Section 1502 which required every guardian of an estate to manage it frugally and without waste.

(4) Liability to third persons (see pages 22-23 of the preliminary portion of recommendation). The new Act would provide a clear statement concerning the liability of the custodian to third persons. The standard of liability may be lower for contracts than under existing law.

(5) Age at which custodianship terminates (see pages 23-24 of the preliminary portion of recommendation). The new Act would raise the age when the custodianship terminates from 18 to 21 if the property was transferred to the custodian by a lifetime outright gift or by an express provision in a will or trust. The age would remain at 18 if the property was transferred to the custodian from an estate or trust (without express authority in the governing instrument) or from another source (such as an insurance company, guardianship, P.O.D. account). The staff believes that is an important and desirable change in existing law.

(6) Accounting by and determination of liability of custodian (see pages 24-25 of preliminary portion of recommendation). The staff recommends retention of a special California limitation provision that precludes a petition for accounting more than "one year after the filing of a final accounting by the custodian or his legal representative and delivery of the custodial property to the minor or his estate."

(7) Venue (see page 27 of preliminary portion of recommendation). The staff proposes to retain the existing California venue provision in a somewhat liberalized form. The new Act has no venue provision.

(8) Effect on existing custodianships (see page 28 of preliminary portion of recommendation). The new Act would apply to transfers made under the California Uniform Gifts to Minors Act prior to the effective date of the new Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships on

existence on the effective date of the new Act. The new Act also would validate any transfer of custodial property made before its effective date notwithstanding that there was no specific authority in California law for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

We plan to prepare a Comment to each section of the recommended legislation. These comments will draw heavily on the Uniform Law Commissioners' comments. We plan to distribute these comments at the meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STAFF DRAFT

RECOMMENDATION

relating to

UNIFORM TRANSFERS TO MINORS ACT

Introduction

The California Law Revision Commission recommends that California enact the Uniform Transfers to Minors Act.¹ This new Uniform Act replaces the Uniform Gifts to Minors Act.² The Uniform Gifts to Minors Act was enacted in California in 1959,³ and there have been many amendments and additions to the California statute since then.⁴

Use of the Uniform Act provides a simple and inexpensive method of making a gift to a minor and administering the property transferred.⁵ This is the reason that some version of the Uniform Gifts to Minors Act has been enacted in every state.⁶ But many states, like California, have substantially revised the Uniform Act.⁷ The new Uniform Transfers to Minors Act is recommended for enactment by all the states to eliminate

1. This new Uniform Act (hereinafter referred to as "UTMA") was approved and recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws in July 1983.
2. The original version of Uniform Gifts to Minors Act (hereinafter referred to as "UGMA") was adopted by the National Conference of Commissioners on Uniform State Laws in 1956 and was revised by the Conference in 1965 and 1966. See Prefatory Note to UTMA.
3. 1959 Cal. Stats. ch. 709.
4. See 1961 Cal. Stats. ch. 613, 1963 Cal. Stats. ch. 2110, 1965 Cal. Stats. ch. 1616, 1968 Cal. Stats. ch. 478, 1969 Cal. Stats. ch. 1074, 1970 Cal. Stats. ch. 584, 1972 Cal. Stats. chs. 440, 579, 1979 Cal. Stats. ch. 730, 1980 Cal. Stats. ch. 676, 1982 Cal. Stats. chs. 355, 591.
5. See 1 B. Witkin, Summary of California Law Personal Property § 97, at 1694 (8th ed. 1974). The Uniform Act provides a useful alternative to a guardianship or a trust. A guardianship is expensive and court supervised and may not provide sufficient discretion in investment practices. A trust can provide the necessary flexibility but usually can be created only at considerable expense. Id.
6. See Prefatory Note to UTMA.
7. Id.

the existing non-uniformity that now exists among the states. Uniformity in this area is important to avoid conflicts of law when the laws of more than one state may apply to a transaction or series of transactions.⁸

The essential feature of the existing and new Uniform Act is its provision for a "custodian" who manages, invests, and uses the property for the benefit of the minor, "giving the equivalent of a guardian or trustee without the inconvenience and expense of either."⁹ The custodian is governed by a "prudent man" investment rule,¹⁰ and the custodian's power to use the property for the minor's benefit is practically unlimited.¹¹ Persons dealing with the custodian are protected by a provision eliminating any duty of inquiry.¹²

The transfer to the minor is irrevocable and conveys an indefeasibly vested legal title to the minor, subject to the custodianship.¹³ The custodianship terminates under existing California law when the minor reaches 18 years of age.¹⁴ At that time the custodian must deliver the remaining custodial property to the minor.¹⁵ If the minor dies before that time, the custodian must deliver the property to the minor's estate.¹⁶

8. Id. The Uniform Law Commissioners have designated the Uniform Transfers to Minors Act as one of four Uniform Acts chosen for targets for enactment in all states in the 1984, 1985, and 1986 state legislative sessions. Uniform Law Commissioners, Uniform Activities (December 1983). Section 2 of the UTMA is a provision not found in the existing California statute which "attempts to resolve uncertainties and conflicts-of-laws questions that have frequently arisen because of the present non-uniformity of UGMA in the various states and which may continue to arise during the transition from UGMA to this Act." Comment to UTMA § 2.
9. 3 B. Witkin, Summary of California Law Personal Property § 99 at 1695 (8th ed. 1973). See discussion, infra, under "Care of Custodial Property," "Powers of Custodian," and "Use of Custodial Property."
10. See discussion, infra, under "Care of Custodial Property."
11. See discussion, infra, under "Use of Custodial Property."
12. See discussion, infra, under "Protection of Third Person From Liability."
13. Civil Code § 1157; UTMA § 11(b).
14. See discussion, infra, under "Age at Which Custodianship Terminates."
15. Civil Code § 1158(d). The comparable provision of the UTMA is UTMA § 20.
16. Id.

Analysis of Uniform Transfers of Minors Act

The new Uniform Transfers to Minors Act restates and rearranges the earlier Uniform Gifts to Minors Act to improve its clarity while also expanding its coverage. The new Act makes some important substantive changes in the existing California law. These changes are discussed below.¹⁷

Types of Property That May be Transferred to Custodian

The new Act allows any kind of property, real or personal, tangible or intangible, to be the subject of a transfer to a custodian for the benefit of a minor.¹⁸ This is consistent with existing California law.¹⁹

Nomination of Custodian to Receive Property Upon Occurrence of Future Event

The new Act²⁰ permits a custodian for a minor to be nominated²¹ to receive a distribution in the future under a will or trust, or as a

17. Less significant and technical changes to existing law are noted in the Comments following each section of the Commission recommended legislation.
18. UTMA § 1(6). See the Prefatory Note to UTMA. See also, the Comment to UTMA § 1 ("The definition of 'custodian property' has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible and intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interests in land trusts, as well as all other intangible interests in property. Contingent or expectancy interests such as the designation of a beneficiary under insurance policies or benefit plans become 'custodial property' only if the designation is irrevocable, or when it becomes so, but the Act specifically authorizes the 'nomination' of a future custodian as beneficiary of such interests (see SECTION 3). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as is the case under UGMA.")
19. The California statute lists various kinds of property that may be custodial property, the list concluding with the phrase "or any other type of property." Civil Code § 1155(e). See also Civil Code § 1156(a)(6). "Property" is broadly defined in Civil Code Section 14.
20. UTMA § 3.
21. The person making the nomination may name contingent or successive future custodians to serve, in the order named, in the event that the person first nominated dies, or is unable, declines, or is ineligible to serve. UTMA § 3.

beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. account, benefit plan, or similar future payment right. The revocable beneficiary designation takes effect only when the donor dies, or when a lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust. An unrevoked nomination is binding on the executor or administrator of the donor's estate or the trustee²² or on the insurance company or other obligor who contracts to pay in the future.²³

The existing California statute permits a testator to devise any kind of property to a custodian subject to the Uniform Gifts to Minors Act.²⁴ The provision of the new Act would expand the existing California authorization to include not only a testamentary disposition but also any transfer of property upon the occurrence of a future event. This expanded authorization would provide a simple and inexpensive method for handling money or other property belonging to a minor upon the occurrence of a future event. For example, a grandparent instead of naming a minor as the beneficiary of an insurance policy on the grandparent's life could name the parent of the minor as the custodian for the benefit of the minor to receive the amount payable on the policy upon the death of the grandparent. Or a depositor instead of naming a minor child as a P.O.D. payee on a deposit account could designate a custodian for the benefit of the child to receive the money on deposit upon the death of the depositor. In these types of cases, the nomination of the custodian

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22. See UTMA § 5(b). If all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the executor or administrator or trustee must designate the custodian from those eligible to serve as custodian for property of that kind. UTMA § 5(c).
23. See UTMA § 7(b). If all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the transfer may be made to an adult member of the minor's family or to a trust company unless the property exceeds a stated value (\$10,000), in which case a guardianship must be established. UTMA § 7(c). See Comment to UTMA § 7. See also UTMA § 1(10) ("member of the minor's family" defined).
24. Prob. Code §§ 6340-6349 (operative January 1, 1985), superseding Prob. Code §§ 186-186.9.

to receive the property upon the occurrence of the future event avoids the need to establish a guardianship or to seek a court authorization for some other method for administration of the property subject to court control.²⁵

Kinds of Transfers that Create Custodianship

The new Act permits a transfer to a custodian for the benefit of a minor by

--A lifetime outright gift.²⁶

--A transfer from a trust, estate, or guardianship, whether or not specifically authorized in the governing instrument.²⁷

--A transfer from a person indebted to a minor who does not have a guardian, such as a person against whom the minor has a tort claim or judgment, a financial institution holding a deposit, or an insurance company issuing a policy payable on death to a minor.²⁸

The detail of the provisions and the extent to which they would expand existing California law is discussed below.

Traditional lifetime gift. The only kind of transfer authorized by the Uniform Gifts to Minors Act is the traditional lifetime gift.²⁹ The California statute also authorizes the traditional lifetime gift.³⁰ The

25. See Prob. Code §§ 3410-3413 (court proceeding to obtain order concerning manner of handling money payable to minor). See also Prob. Code §§ 3600-3612 (court order prescribing manner of handling money or property paid or delivered pursuant to compromise or judgment for minor). See discussion in the text, infra, at notes 46-51.

26. UTMA § 4.

27. UTMA §§ 5, 6.

28. UTMA § 7.

29. See Comment to UTMA § 4.

30. Civil Code § 1156. Like the UGMA, the California statute authorizes a transfer only by an "adult." Civil Code § 1156(a). See also Civil Code § 1155(a) (an "adult" is a person who has attained the age of 18 years). The new Act does not require that a transferor be an "adult." "If permitted under other law relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor." Comment to UTMA § 1. Section 63 of the Civil Code permits an emancipated minor to make a will, gift, or other transfer. Elimination of the requirement that the transferor be an adult would make clear that an emancipated minor can make a transfer to a custodian for the benefit of the

new Act recognizes an outright lifetime gift and adds a provision that makes clear that a transfer to a custodian for the benefit of a minor may be made by an irrevocable exercise of a power of appointment.³¹ This addition would be a useful clarification of California law.

Transfer authorized in a will or trust. The new Act permits a transfer to a custodian for the benefit of a minor as authorized in a will or trust.³² This is consistent with the existing California provisions that permit a testator to devise any type of property to be held by a custodian subject to the California Uniform Gifts to Minors Act.³³ California has no provisions concerning transfers to a custodian as authorized in a trust instrument, so this provision of the new Act would clarify and possibly expand existing California law.³⁴

Other transfer by fiduciary. The new Act permits an executor or administrator of an estate or a trustee to transfer property to a custodian for the benefit of a minor in the absence of a will or under a will

minor or another minor and would be consistent with Section 63 of the Civil Code.

31. UTMA § 4. The exercise of the power of appointment would be subject to any limitations imposed by the creating instrument. Civil Code §§ 1387.1-1387.3. See also Civil Code § 63(b)(8) (exercise of power of appointment by emancipated minor).
32. UTMA § 5. This provision "is based on nonuniform provisions adopted by Connecticut, Illinois, Wisconsin and other states to validate distributions from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly authorized by the governing instrument." Comment to UTMA § 5.
33. Prob. Code §§ 6340-6349 (operative January 1, 1985), superseding Prob. Code §§ 186-186.9. "A testator may devise securities, money, life or endowment policies, annuity contracts, real estate, tangible personal property, or any other type of property" to be held subject to the California Uniform Gifts to Minors Act. Prob. Code § 6340, superseding Prob. Code § 186.
34. Although there is no express statutory authority in California for a transfer by a trustee to a custodian subject to the Uniform Gifts to Minors Act where authorized by the trust instrument, the court has statutory authority to terminate a trust and to order that the trust assets "be distributed to the beneficiaries in a manner which conforms as nearly as possible to the intention of the testator" or "trustor" where "the fair market value of the principal of the trust becomes so low, in relation to the costs of administration thereof, that the continuance of the trust pursuant to its existing terms will defeat or substantially impair the accomplishment of the purposes of the trust." Civ. Code § 2279.1; Prob. Code § 1120.6. See also the discussion supra under "Nomination of Custodian to Receive Property Upon Occurrence of Future Event."

or trust that does not contain an authorization to do so.³⁵ The new Act also permits the guardian of the estate of a minor to transfer estate property to a custodian for the benefit of the minor.³⁶ These transfers of trust or estate property are permitted only where the fiduciary making the transfer determines in good faith and in his or her fiduciary capacity that the custodianship will be in the best interests of the minor.³⁷ A transfer may not be made if prohibited by, or inconsistent with, the terms of any governing instrument.³⁸

Where the amount of the property to be transferred from the trust or estate (as measured by its value) does not exceed a stated amount (\$10,000), the new Act permits the transfer to be made without prior court approval.³⁹ California has a more restrictive authorization. Money or other property can be paid or delivered without prior court approval only to a parent and only where the total estate of the minor does not exceed \$5,000 in value.⁴⁰ The more liberal authorization of

35. UTMA § 5(a). See the text supra, at notes 32-34, for a discussion of the provision applicable where the will or trust authorizes a transfer to a custodian for the benefit of the minor.

36. UTMA § 6(b).

37. UTMA § 6(c). See Comment to UTMA § 6.

38. UTMA § 6(c). "Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section." Comment to UTMA § 6.

39. UTMA § 6(c).

40. Prob. Code §§ 3400-3402. This authorization applies only where the total estate of the minor, including the money or other property to be paid or delivered to the parent, does not exceed \$5,000 in value. Prob. Code § 3401(c)(1). Excluded in determining the value of the total estate of the minor for this purpose are (1) custodial property under the California Uniform Gifts to Minors Act, (2) money deposited in an account in a financial institution subject to withdrawal only upon court authorization, and (3) money or other property held on conditions determined by a court. Prob. Code § 3400(b). The parent to whom the money or property is paid or delivered must be one who is entitled to custody of the minor. Prob. Code § 3401. The property is held in trust for the minor until the minor reaches majority. Prob. Code § 3401. Where the property is being transferred by a guardian of the minor's estate,

the new Act would be a desirable addition to California law. Relaxing the restriction on the person who can receive the property and increasing the amount from \$5,000 to \$10,000 would avoid the expense of a court proceeding and court supervision where the fiduciary determines that the transfer is in the best interests of the minor and the amount involved is so little that the expense is not justified.

Where the amount of the property to be transferred from the trust or estate has a value of more than \$10,000, the new Act permits the transfer to be made only with court approval. Again, existing California law is more restrictive. There is no provision under existing law for avoiding the establishment of a guardianship where the property payable to the minor from the trust or estate is other than money. Where the property is money, the court has several options under existing California law.⁴¹ The court may order that money be paid to the guardian of the estate of the minor and may order that a guardianship be established if necessary. The court may order that the money be deposited in an account with a financial institution or in a single-payment deferred annuity, subject to withdrawal only upon court authorization. If the amount does not exceed \$20,000, the court may order that the money be held on such other conditions as the court determines are in the best interests of the minor.⁴² The enactment of the new Act in California

all of the money and other property of the guardianship estate must be transferred to the parent. Prob. Code § 3401(b). As to a transfer by a trustee, see note 34, supra.

41. Prob. Code §§ 2410-2413. A petition requesting a court order for disposition of the money may be filed by a parent of the minor entitled to custody of the minor, the guardian of the estate of the minor, or the person holding the money belonging to the minor. Prob. Code § 3411. The court may order one or more of the options described in the text. Prob. Code §§ 3412, 3413. If the minor has a guardian of the estate and the sole asset of the estate is money, the court may order that the guardianship be terminated and may make an order as described in the text. Prob. Code § 3412. As to a transfer by a trustee, see note 34, supra.
42. Prob. Code §§ 3412, 3413. In applying the dollar limit stated in the text, the following are excluded: (1) money or property which is or will be held as custodial property under the California Uniform Gifts to Minors Act, (2) money deposited in an account with a financial institution subject to withdrawal only upon court authorization, and (3) money or other property held on other conditions determined by the court. Prob. Code § 3410.

would give the court the additional option to order that money or other property be paid or delivered from the trust or estate to a custodian for the benefit of the minor if the fiduciary making the transfer considers the transfer to be in the best interest of the minor, the transfer is not prohibited by or inconsistent with the terms of any governing instrument, and the court approves the transfer. The exercise of this new authority offers several advantages over existing law. First, it avoids the expense of establishing and administering a guardianship of the estate where the minor's property is other than money. Second, it allows more discretion in the investment of the minor's property where the amount exceeds \$20,000 than is presently provided by the court's limited authority to order investment in a court controlled account with a financial institution.

Transfer by obligor. The new Act makes two exceptions to its general requirement that a guardianship must be established to receive property belonging to a minor that is to be transferred from a source other than an estate or trust:

(1) The property must be transferred to a custodian if one has been nominated to receive distribution in the future of a contractual right (such as a life insurance policy, annuity contract, P.O.D. account, or similar payment right). This exception is discussed above.⁴³

(2) Where no custodian has been nominated and the property does not exceed a stated value (\$10,000), a person who holds property of or owes a liquidated debt to a minor not having a guardian has the choice either (i) to require the appointment of a guardian to receive the property or (ii) to transfer the property to an adult member of the minor's family or a trust company as custodian for the benefit of the minor.⁴⁴

The second exception listed above is designed to permit a custodianship to be established as a substitute for a guardianship to receive relatively small payments by an obligor owing a liquidated amount, such as a tort judgment debtor of a minor, a financial institution holding a joint or P.O.D. account of which a minor is a surviving payee, or an

43. See discussion under "Nomination of Custodian to Receive Property Upon Occurrence of Future Event," supra.

44. UTMA § 7(c). See also Comment to UTMA § 7.

insurance company holding life insurance benefits payable to a minor beneficiary.⁴⁵

Existing California law avoids the need for a court proceeding only where the total estate of the minor does not exceed \$5,000 in value and only where the transfer is to a parent having custody of the minor.⁴⁶ The enactment of the new Act would broaden this authority to increase the amount to \$10,000 and to permit transfer not only to the parent having custody of the minor but also to a trust company or an adult member of the minor's family (parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt).⁴⁷ The broader authorization of the new Act will provide a useful means of avoiding the expense of a court proceeding in cases where the person holding the property or owing the money is willing to transfer it to a custodian for the benefit of the minor and the amount involved is too small to justify the expense of court supervision.

Where the value of the property of the minor exceeds \$5,000 in value, existing California law requires the establishment of a guardianship unless the court otherwise orders pursuant to two special statutory procedures. One of these procedures applies if the property belonging to the minor is money.⁴⁸ The other applies where the court approves a compromise or enters a judgment providing for the payment or delivery of money or other property for the benefit of a minor.⁴⁹ Under these two special procedures, the court is given authority to select one or more of the methods of disposition specified in the statute and to order that the money or other property be disposed of in the manner selected.⁵⁰

45. See Comment to UTMA § 7. To encourage the obligor to establish a custodianship, the new Act contains a provision that discharges the transferor from further responsibility for custodial property delivered to and receipted for by the custodian. UTMA § 6. See also UTMA § 16.

46. See note 40, supra.

47. UTMA § 7(c). See also UTMA § 1(10) ("member of the minor's family" defined).

48. Prob. Code §§ 3410-3413.

49. Prob. Code §§ 3600-3612.

50. In addition to transfer to a guardian of the estate already appointed, the alternatives specified are: (1) to order that a guardian of the estate be appointed and that the property be transferred to the guardian (Prob. Code §§ 3413, 3602(b), 3611(a)), (2) to order that

Neither of the special procedures specifically authorizes the court to order that the money or other property be paid or delivered to a custodian for the benefit of the minor. The provisions governing the special procedures should be revised to give the court this additional authority. Giving the court this additional authority would be consistent with the authority given the court by the new Act where the transfer is from an estate or trust.⁵¹

Manner of Creating Custodial Property and Effecting Transfer

The new Act⁵² provides more detailed rules than existing California law⁵³ concerning the manner of creating custodial property and effecting the transfer. Significant changes the new rules would make in existing California law are summarized below.

Security in registered form. A security in registered form may be transferred to a custodianship under California existing law by registering it in the name of custodian as custodian.⁵⁴ The new Act permits a custodianship to be created in this manner but also permits a transfer of securities in registered form to be made to a custodian without the need to register the transfer in the name of the custodian.⁵⁵ The new alternative transfer method is provided so that transfers may be accomplished more expeditiously and so that securities may be held by custodians in street name.⁵⁶

money be deposited in a court controlled account with a financial institution or invested in a single-premium deferred annuity, subject to withdrawal only upon court authorization (Prob. Code §§ 3413(a), 3611(b)), (3) if the value of the property does not exceed \$20,000, to order that the property be held on such other conditions as the court determines to be in the best interest of the minor (Prob. Code §§ 3413(b), 3611(c)), (4) if the value of the property does not exceed \$5,000, to order that it be paid or delivered to a parent having custody of the minor to be held in trust until the minor reaches the age of majority (Prob. Code §§ 3413(c), 3611(d)).

51. See discussion in text, supra, under "Other Transfer by Fiduciary."

52. UTMA § 9.

53. Civil Code § 1156.

54. Civil Code § 1156(a)(1).

55. UTMA § 9(a)(1)(ii) ("Custodial property is created and a transfer is made whenever . . . a certified security in registered form is . . . delivered . . . together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument [transferring the interest].").

56. See the Comment to UTMA § 9.

Real property. The new Act provides that custodial property is created and a transfer is made when an interest in real property is recorded in the name of the custodian as custodian.⁵⁷ Existing California law permits a transfer to be made "by executing and delivering in the appropriate manner a deed, assignment, or similar instrument to the custodian."⁵⁸ The recording requirement of the new Act is a desirable requirement to promote accurate land records and should be adopted in California.

Property subject to registration of ownership with state or federal agency. The new Act includes a provision governing the transfer of tangible personal property--such as automobiles and aircraft--subject to registration of ownership with a state or federal agency.⁵⁹ Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.⁶⁰ California has no comparable provision and it is unclear exactly how such a transfer must be accomplished.⁶¹

Present assignment of future payment rights; property transferred by exercise of power of appointment. The new Act includes a provision that covers the irrevocable exercise of a power of appointment and the irrevocable present assignment of a future payment rights, such as royalties, interest and principal payments under a promissory note, or beneficial interests under life or endowment or annuity insurance contracts or benefit plans.⁶² The transfer is effective upon delivery of written notification to the payor, issuer, or other obligor that the right is transferred to the custodian.⁶³ The new Act also includes a provision

57. UTMA § 9(a)(5).

58. Civil Code § 1156(a)(5).

59. UTMA § 9(a)(6).

60. See Comment to UTMA § 9.

61. Civil Code § 1156(a)(6) (transfer of interest in property where manner of transfer of that kind of property is not otherwise specifically provided).

62. UTMA § 9(a)(4). See also the Comment to UTMA § 9.

63. UTMA § 9(a)(4). "The payor, issuer, or obligor may require additional formalities such as completion of a specific assignment form and an endorsement, but the transfer is effective upon delivery of the notification." Comment to UTMA § 9.

for making a revocable nomination of a future custodian as the beneficiary of a power of appointment of such payment rights.⁶⁴ The existing California statute has no comparable provisions.

Transferor as custodian. The existing California statute does not reflect any consistent rule as to when a transferor may create a custodianship by naming himself or herself as custodian.⁶⁵ The rule under the new Act is that a transferor may create a custodianship by naming himself or herself as custodian except where a transfer of possession and control to a third party is necessary to establish donative intent

64. See the discussion supra under "Nomination of Custodian to Receive Property Upon Occurrence of Future Event."

65. Prior to the 1982 revision of Civil Code Section 1156 to expand the kinds of property that can be transferred to a custodianship, the section was consistent with the concept that an irrevocable gift requires "an actual or symbolic delivery, such as to relinquish all control by the donor." 3 B. Witkin, Summary of California Law Personal Property § 84 at 1685 (8th ed. 1973). See generally, Witkin, supra, Personal Property §§ 84-92 at 1685-89. Thus, the section permitted the donor to be the custodian of a security in registered form if the security is registered in the name of the donor as custodian but not if the security is not in registered form. Cf. Jean v. Jean, 207 Cal. 115, 277 Pac. 313 (1929) (valid gift made where donors (parents) had shares of stock transferred on corporation books to the names of the donees (children) and delivered the certificates to one of the sons, to hold them during the lives of the parents, and then to deliver them to the other children). The section also permitted the donor to be the custodian if money was deposited in an account held in the name of the donor as custodian for the minor. And if the subject of the gift was a life or endowment insurance policy or an annuity contract, the donor was permitted to be the custodian if the policy or contract was "assigned" to the donor as custodian for the minor. It is unclear whether such a policy or contract can be "assigned" without delivery to a third person or notification of the obligor on the policy or contract. But under general gift principles, it would appear that one or the other is necessary to make an effective gift and this is the position taken by the new Act. See UTMA § 9(a)(3) (policy or contract must either be registered with issuer in name of transferor or third person as custodian or assigned in a writing delivered to a third person as custodian). The 1982 revision of Civil Code Section 1156 departs from the well establish concept of the requirements for an effective gift of personal property and permits the donor to serve as custodian for real estate without the need to make the transfer a matter of record and to serve as custodian of other kinds of property not previously covered by the section by merely executing and retaining an instrument of transfer.

and consummation of the transfer.⁶⁶ The new Act requires that the custodian be a person other than the transferor unless the transfer is reflected in the public records⁶⁷ or notice of transfer is given an appropriate third person.⁶⁸ Unlike the literal language of the existing California law,⁶⁹ the new Act does not permit a transferor to keep the property and purport to make an irrevocable transfer by executing and retaining an instrument transferring the property to himself or herself as custodian.⁷⁰ The substitution of the rule of the new Act for the inconsistent California provisions would eliminate uncertainty⁷¹ and

66. UTMA § 9. See Comment to UTMA § 9 ("despite the fact that this . . . Act permits it in the case of registered securities, money, life insurance, and personal property subject to titling laws, it is generally still inadvisable for a donor to appoint himself custodian or for a parent of the minor to serve as custodian.")

67. The transferor of an interest in real property may serve as custodian since the transfer must be recorded to be effective. UTMA § 9(a)(5). The transferor may serve as custodian if a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is issued in the name of the transferor as custodian for the minor. UTMA § 9(6)(i).

68. A transferor may serve as custodian of any of the following:

(1) A security registered in the name of the transferor as custodian. UTMA § 9(a)(1)(i).

(2) Money paid or delivered to a broker or financial institution for credit to an account in the name of the transferor as custodian. UTMA § 9(a)(2).

(3) Ownership of a life or endowment insurance policy or annuity contract registered with the issuer in the name of the transferor as custodian. UTMA § 9(a)(e)(i).

(4) A right transferred by an irrevocable exercise of a power of appointment or a transfer of an irrevocable present right to future payment if written notification is delivered to the payor, issuer, or other obligor that the right is transferred to the transferor as custodian.

69. "If the subject of the gift is an interest in real estate, [the donor may make a gift] by executing and delivering in the appropriate manner a deed, assignment, or similar instrument to the donor" as custodian for the minor. Civil Code § 1156(a)(5). "If the subject of the gift is an interest in any [other property of a kind not previously covered by the section, the donor may make a gift] by causing the ownership of the property to be transferred by any written document to the donor" as custodian for the minor. Civil Code § 1156(a)(6).

70. See UTMA § 9.

71. It would clarify the uncertainty whether the assignment of a life or endowment insurance policy or an annuity contract to the donor as custodian must be a matter of record with the obligor on the

would be consistent with the California law concerning gifts of personal property generally.⁷²

Guardian of the minor as custodian. The existing California statute permits a transfer to "a guardian of the minor" as custodian for the minor.⁷³ This provision was added in 1982,⁷⁴ perhaps to make clear that a person serving as the guardian of a minor could also serve as a custodian for the benefit of the minor under the California Uniform Gifts to Minors Act.⁷⁵ The uncertainty created by the addition of language permitting a transfer to a guardian of the minor as custodian is that it is unclear whether the property transferred to the guardian becomes a part of the guardianship estate and becomes subject to the statutory provisions applicable to the guardianship estate.⁷⁶ This matter should be clarified by substituting a provision that a (1) person serving as guardian of the minor may also serve as a custodian under the new Act but in this case the custodial property does not become a part of the guardianship estate and (2) property may be transferred from a guardianship estate to the person who serves as guardian to be held by that person as custodian under the California Uniform Transfers to Minors Act.⁷⁷

policy or contract and the uncertainty whether gifts of other types of property to the donor as custodian are effective even though the gift would not be effective under the traditional rules governing gifts. See note 65, supra.

72. See note 65, supra.

73. Civil Code § 1156(1), (2), (3), (5), and (6).

74. 1982 Cal. Stats. ch. 581 § 2.

75. It may have been thought that a guardian could not serve as a custodian because of the provision that "no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this article." Civil Code § 1157(a). But see 3 B. Witkin Summary of California Law Personal Property § 101 at 1696 ("while the property is held by the custodian, the minor's guardian has no rights, duties or authority with respect thereto (unless the guardian is the custodian)").

76. E.g., Prob. Code §§ 2400-2644.

77. Under some circumstances, the recommended legislation permits property to be transferred from a guardianship estate to a custodianship. E.g., Prob. Code § 3412 (as proposed to be amended in recommended legislation), permitting a court to terminate a guardianship estate consisting solely of money and giving the court a choice of several methods of disposing of the guardianship estate, including transfer to a custodian for the minor under the California Uniform Transfers to Minors Act.

Acceptance by custodian. The new Act includes a form of transfer document⁷⁸ that contains an acceptance that, with some exceptions,⁷⁹ must be executed by the custodian to make the disposition effective. The existing California law requires an acceptance executed by the person designated as custodian in the case of a gift of a security not in registered form⁸⁰ but no comparable requirement was included in the provision added in 1982 to cover the transfer of property not otherwise covered by a specific provision.⁸¹ An acceptance--making clear that the custodian has accepted the property as custodial property--is useful since the custodian becomes responsible for the management and control of the property.⁸² This has become more significant now that the kinds of property that can be included as custodial property is unlimited.

Age requirement for custodian. The new Act increases the age requirement for an individual custodian from 18 years to 21 years.⁸³ This increase does not apply where the transferor is to be the custodian;

78. UTMA § 9(b). See also the Comment to UTMA § 9.

79. The acceptance is not required in the following cases:

(1) Where a security is registered in the name of the custodian.
UTMA § 9(a)(1)(i).

(2) Where money is paid or delivered for credit to an account in the name of the custodian.

(3) Where the property transferred is ownership of a life or endowment insurance or annuity contract or property covered by an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract.

(4) Where the property is an interest in real property.

(5) Where a certificate of title is issued in the name of the custodian by a state or federal agency which evidences title to tangible personal property.

80. Civil Code § 1156(a)(2).

81. Civil Code § 1156(a)(6).

82. UTMA § 12. See also 3 B. Witkin, Summary of California Law Personal Property § 91 at 1689 (8th ed. 1973) ("acceptance is a requisite of a valid gift. . . . In most cases the rule works no injustice, for it is qualified by the proviso that acceptance of a beneficial gift is presumed"). See also discussion, infra, under "Disclaimer, Resignation, Death, or Removal of Custodian; Designation of Successor Custodian."

83. UTMA § 1(1) ("adult" means "an individual who has attained the age of 21 years"); UTMA § 9 (transfer to "an adult other than the transferor" authorized). Compare Civil Code §§ 1155(a) ("adult" means "a person who has attained the age of 18 years"), 1156 (transfer to "adult person").

under the new Act a transferor may be a custodian without regard to age so long as the transferor has the capacity to make the transfer.⁸⁴ The increase in age from 18 to 21 apparently is intended to assure that the custodian will be more likely to have the maturity and judgment to perform the duties of the custodian in view of the expansion of the scope of the new Act to include all types of property.

Care of Custodial Property

The new Act restates and provides a somewhat stricter standard of care rule for the custodian. The new rule is cast in terms of a prudent person "dealing with property of another"⁸⁵ rather than one "who is seeking a reasonable income and the preservation of his capital" as under the Uniform Gifts to Minors Act and existing California law.⁸⁶ The new rule also adds a slightly higher standard for professional fiduciaries.⁸⁷ The new rule parallels a provision of the Uniform Probate Code, and this will permit use of the existing and growing body of law interpreting the Uniform Probate Code standard.⁸⁸ The new Act does not include the provision of existing California law⁸⁹ that a "custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrong-doing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this [Act]."

84. See Comment to UTMA § 1 ("Nothing in this Act requires that a transferor be an 'adult.' If permitted under other law of the enacting state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his own benefit or for the benefit of another minor." See also note 30 supra).

85. UTMA § 12(b).

86. Civil Code § 1158(e). See Comment to UTMA § 12.

87. UTMA § 12(b) ("If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise."). Under existing California law, in determining what constitutes ordinary care and diligence, a professional fiduciary (such as a trust company) will be held to a greater standard of care based on its presumed expertise than a lay fiduciary. Cf. Estate of Beach, 15 Cal.3d 623, 542 P.2d 994, 125 Cal. Rptr. 570 (1975) (executor). See also Legislative Committee Comment to Probate Code Section 2401 (guardian or conservator).

88. Uniform Probate Code § 7-302.

89. Civil Code § 1159(e).

The recently enacted guardianship statute contains no comparable provision giving a special immunity to a noncompensated guardian,⁹⁰ and none should be included in the California Uniform Transfers to Minors Act which will be a substitute for a guardianship.

Existing California law permits a custodian to retain any security received without the obligation to diversity investment.⁹¹ The new Act extends that rule to any property received.⁹² This is a desirable expansion.

The new Act expands the duties of the custodian to include the duty to take control and appropriately register or record custodial property in the name of the custodian as custodian.⁹³

In order to eliminate any uncertainty, the new Act⁹⁴ grants specific authority to invest custodial property in life insurance (1) on the minor's life if the minor's estate is the sole beneficiary of the policy or (2) on the life of another person in whom the minor has an insurable interest if the minor, the minor's estate, or the custodian in the custodial capacity is made beneficiary of the policy.

The new Act adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns.⁹⁵

The new Act adds a provision requiring that custodial property consisting of an undivided interest be held as tenant in common.⁹⁶ This provision is designed to permit the custodian to invest custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit.⁹⁷ The new Act does not permit investment in property held in joint tenancy with a right of

90. See Prob. Code § 2401. See also Prob. Code § 2101.

91. Civil Code § 1158(d).

92. UTMA § 12(b).

93. UTMA § 12(a).

94. UTMA § 12(c). Compare Civil Code § 1158(j) (life or endowment insurance policy or annuity contract that is subject of gift to custodian), which would be superseded by the new UTMA provision.

95. UTMA § 12(e).

96. Id.

97. See Comment to UTMA § 12.

survivorship, but it does not preclude a transfer of such an interest to a custodian, and the custodian is authorized to retain a joint tenancy interest so received.⁹⁸

Powers of Custodian

The new Act would replace the specific list of custodian's powers in the existing California law⁹⁹ with a provision that grants the custodian the very broad and general powers of an unmarried adult owner of the property.¹⁰⁰ This general provision is subject to the prudent person rule and to the duty to segregate custodial property and the record keeping requirements specified in the new Act.¹⁰¹ The Uniform Commissioners determined not to try to expand the list of the custodian's powers to try to deal with all forms of property covered by the new Act and to specify all powers that might be appropriate for each kind of property.¹⁰² The approach of the new Act "permits the Act to be self-contained and more readily understandable by volunteer, non-professional fiduciaries, who most often serve as custodians. It is intended that the authority granted includes the powers most often suggested for custodians, such as the power to borrow, whether at interest or interest free, the power to invest in common trust funds, and the power to enter contracts that extend beyond the termination of the custodianship."¹⁰³ The approach of the new Act is superior to the California approach which by listing specific powers may impliedly exclude others.

Use of Custodial Property

The new Act makes two significant changes in the provision of existing California law concerning the use of custodial property:

98. Id.

99. Civil Code § 1158(f).

100. UTMA § 13(a) (custodian "has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property").

101. UTMA § 13(b).

102. Comment to UTMA § 13.

103. Id.

(1) The standard for expenditure of custodial property is revised to permit custodial property to be used "for the use and benefit of the minor."¹⁰⁴ This replaces the existing California standard that permits the property to be used "for the support, maintenance, education, and benefit of the minor."¹⁰⁵ The change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.¹⁰⁶

(2) The new Act adds a provision that a delivery, payment, or expenditure for the use and benefit of the minor is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.¹⁰⁷ This provision is designed to avoid the attribution of custodial property income to the person obligated to support the minor.¹⁰⁸

The new Act does not contain any provision comparable to Section 1158.5 of the Civil Code. This section permits a donor who is also a custodian to elect to eliminate the authority of the custodian to distribute property for the support, maintenance, education, and benefit of the minor except pursuant to a court order. The section was added to the California statute in an effort to solve tax problems that may arise when a donor makes a gift to a minor under the Act and designates himself or herself as custodian.¹⁰⁹ Although it is uncertain whether the section accomplished its purpose,¹¹⁰ continuance of the section in the new California Uniform Transfers to Minors Act would be desirable.

104. UTMA § 14.

105. Civil Code § 1158(b), (c).

106. Comment to UTMA § 14. The "use and benefit" standard "is intended to include payment of the minor's legally enforceable obligations such as tax or child support obligations or tort claims. Custodial property could be reached by levy of a judgment creditor in any event, so there is no reason not to permit custodian or court-ordered expenditures for enforceable claims." Comment to UTMA § 14.

107. UTMA § 14(c).

108. See Comment to UTMA § 14.

109. For a discussion of the section, see Review of Selected 1965 Code Legislation at 52-53 (Cal. Cont. Ed. Bar 1965). See also Comments to UTMA §§ 9, 13, 14.

110. The Commission is not aware of any court or administrative ruling concerning the section.

Compensation of Custodian

The new Act gives a nondonor custodian a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.¹¹¹ Existing California law¹¹² does not include this requirement that the custodian's election to charge compensation must be exercised at least annually or it lapses and may not be exercised later.¹¹³ The provision "is intended to avoid imputed income to the custodian who waives compensation, and also to avoid the accumulation of a large unanticipated claim for compensation exercisable at termination of the custodianship."¹¹⁴

The new Act omits as surplusage the standards contained in the existing California statute (which are the same as an optional provision of the Uniform Gifts to Minors Act)¹¹⁵ for determining "reasonable compensation" which includes, "in the order stated," a direction by the donor, statutes governing compensation of custodians or guardians, or a court order.¹¹⁶

Protection of Third Person from Liability

The new Act¹¹⁷ would continue the substance of the existing California provisions¹¹⁸ that protect a third person from liability where the

111. UTMA § 15(b). A donor-custodian may not receive compensation under existing California law. Civil Code § 1159(c).

112. Civil Code § 1159(c).

113. See Comment to UTMA § 15.

114. Comment to UTMA § 15.

115. See Civil Code § 1159(c) and Comment to UTMA § 15.

116. "While compensation of custodians becomes a more likely occurrence and a more important issue under this Act because property requiring increased management may now be subject to custodianship, compensation can still be determine by agreement, by reference to a statute or by court order, without the need to so state in this Act."
Comment to UTMA § 15.

117. UTMA § 17. The new provision is shortened and simplified version of the Uniform Gifts to Minors Act provision and reflects the expansion of the new Act to include all types of property. See Comment to UTMA § 17.

118. Civil Code §§ 1158(f) (portion), 1160. The portion of Civil Code Section 1158(f), which protects a third person in connection with an interest in real property, would become unnecessary in view of the broad language of Section 17 of the UTMA.

third person in good faith acts on the instructions of or otherwise deals with a person purporting to make a transfer or purporting to act in the capacity of a custodian.

Liability to Third Persons

The new Act contains a comprehensive section providing limitations on the personal liability of the custodian and the minor to third persons.¹¹⁹ No counterpart is included in the Uniform Gifts to Minors Act¹²⁰ or in existing California law.¹²¹

The new provision is based on a provision of the Uniform Probate Code,¹²² and generally limits the claims of third persons to recourse against the custodial property. The custodian incurs personal liability for actual fault or for failure to disclose the custodial capacity in the contract when contracting with third parties.¹²³ The minor incurs personal liability only for actual fault.¹²⁴

This new provision is a needed addition to California law because some forms of custodial property now permitted can give rise to liabilities as well as benefits.¹²⁵ The new provision appears to be consistent

119. UTMA § 17.

120. See Comment to UTMA § 17.

121. The only provision in the California Gifts to Minors Act relating to the liability of the custodian is an ambiguous provision found in subdivision (f) of Civil Code Section 1158 ("The fact that a person is known to be acting in his or her capacity as custodian does not impose any obligation on other parties to inquire into the existence of the custodian's power or the propriety of its exercise. If the exercise of the power is improper, the custodian is liable to interested parties for their damage or loss from the breach of fiduciary duty as the trustee of an express trust.").

122. Uniform Probate Code § 5-429 (individual liability of conservator). See Comment to UTMA § 17.

123. UTMA § 17(b).

124. UTMA § 17(c).

125. "Become some forms of custodial property now permitted under this Act can give rise to liabilities as well as benefits (e.g., general partnership interests, interests in real estate or business proprietorships, automobiles, etc.) . . . it is necessary to protect the minor and other assets he might have from such liabilities, since the minor is unable to disclaim a transfer to a custodian for his benefit. Similar protection for the custodian is necessary so as not to discourage nonprofessional or uncompensated persons from accepting the office. Therefore this section generally limits the

with existing California law concerning tort liability of a guardian¹²⁶ but may restrict existing liability of the custodian who makes a contract in the custodial capacity.¹²⁷

Age at Which Custodianship Terminates

A custodianship terminates under existing California law when the minor attains the age of 18 years.¹²⁸ The age was lowered from 21 to 18 in 1972 to conform to the lowering of the age of majority to 18.¹²⁹

The new Act¹³⁰ would retain the age of majority (18) as the age for termination of the custodianship (1) where the custodianship is created by a transfer from a guardianship estate, decedent's estate, or trust¹³¹ unless the transfer is made pursuant to authority in a will or trust¹³² or (2) where the custodianship is created by a transfer from other than an estate or trust by a person who holds property of or owes a liquidated debt to a minor.¹³³ These custodianships terminate at the age of 18 because they are substitutes for a guardianship that otherwise would terminate at that time.¹³⁴

claims of third parties to recourse against the custodial property, as third persons dealing with a trust are generally limited to recourse against the trust corpus." Comment to UTMA § 17.

126. See *Campbell v. Bradbury*, 179 Cal. 364, 176 P. 685 (1918).

127. Existing California law appears to be that a trustee is personally liable on a contract unless the contract stipulates that the trustee is not liable. See *Hall v. Jameson*, 131 Cal. 606, 91 P. 518 (1907); *Duncan v. Dormer*, 94 Cal. App. 218, 270 P. 1003 (1928). Disclosure of the trustee's status and of the identity of the trust does not appear to be sufficient to avoid liability. See *Hall v. Jameson*, *supra*. See also 7 B. Witkin, *Summary of California Law Trusts* § 100 at 5460 (8th ed. 1974).

128. Civil Code § 1158(d).

129. See 1972 Cal. Stats. ch. 579. The age of majority was lowered from 21 to 18 by legislation enacted in 1971. See 1971 Cal. Stats. ch. 1748 § 23.

130. UTMA § 20(2).

131. See the discussion in the text, *supra*, at notes 35-38.

132. See the discussion in the text, *supra*, at notes 32-34.

133. See the discussion in the text, *supra*, at notes 43-45.

134. See Prob. Code § 1600 (when guardianship terminates). See also Prefatory Note to UTMA and Comment to UTMA § 20.

The new Act¹³⁵ would raise the age of termination from 18 to 21 where the custodianship is created by a lifetime gift¹³⁶ or by a transfer authorized by a will or trust.¹³⁷ Even though the statutory age of majority is 18, the new Act reverts to 21 for these transfers since most transferors who specifically authorize a custodianship wish to preserve the custodianship as long as possible.¹³⁸ This is most likely to be the case, for example, where the custodial property is intended to be preserved and used to finance a college education.¹³⁹ Continuing the custodianship until age 21 permits the donor to avoid the expense of preparing a trust instrument to create a trust that otherwise would be required in order to retain the property under custodial management until the young person reaches age 21.¹⁴⁰

Accounting by and Determination of Liability of Custodian

The class of persons who under existing California law¹⁴¹ may require an accounting by the custodian would be expanded by the new Act to include any person who made a transfer to the custodian or the legal

135. UTMA § 20(1).

136. See discussion in the text, supra, at notes 29-31. For this purpose, a lifetime gift includes an irrevocable exercise of a power of appointment in favor of a custodian for the benefit of a minor. UTMA § 4.

137. See discussion in the text, supra, at notes 32-34.

138. See Prefatory Note to UTMA ("Since tax law permits duration of [IRC] Section 2503(c) trusts to 21, even though the statutory age of majority is 18 in most states, this age [21] should be retained since most donors and other transferors wish to preserve a custodianship as long as possible."). See also Comment to UTMA § 1(11).

139. E.g., Estate Planning for the General Practitioner § 4.8 at 182-83 (Cal. Cont. Ed. Bar 1979) ("A client may feel that a particular child at 18 does not have, or will not have, sufficient maturity to manage a substantial gift, particularly where the client wishes to make the gift for a particular purpose, e.g., education. . . . custodian under the California Uniform Gifts to Minors Act must deliver the property to the minor when he reaches 18 (CC § 1158(d)). Therefore, a testamentary or inter vivos trust may be necessary to achieve the client's goals.").

140. See note 139, supra. Continuing the custodianship to age 21 would be consistent with the recently enacted California Statutory Will statute which provides for a trust that continues until the testator has no living child under 21 years of age. See Prob. Code § 6244 (operative January 1, 1985), superseding Prob. Code § 56.11.

141. Civil Code § 1162(a).

representative of the transferor, the minor's guardian of the person, and the successor custodian.¹⁴² This is a desirable expansion.

The new Act contains no counterpart to the existing California special statute of limitations precluding a petition for accounting more than "one year after the filing of a final accounting by the custodian or his legal representative and delivery of the custodial property to the minor or his estate."¹⁴³ The Uniform Commissioners determined not to include a special limitation provision:

Because custodianships can be created without the knowledge of the minor, a person might learn of a custodian's failure to turn over custodial property long after reaching majority, and should not be precluded from asserting his rights in the case of such fraud. In addition, the 1966 [Uniform Gifts to Minors] Act has no such preclusion and seems to have worked well. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect future custodians from harassment.¹⁴⁴

This reasoning does not apply to the California limitation which commences to run only after the filing of the final accounting and delivery of the custodial property. The California provision appears to serve a useful purpose--to cut off claims of mismanagement--and should be retained.

The new Act would add a useful provision permitting a person entitled to an accounting to petition the court for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has already been adjudicated in an action to which the minor or the minor's legal representative was a party.¹⁴⁵ No comparable provision is found in existing California law.

Disclaimer, Resignation, Death, or Removal of Custodian; Designation of Successor Custodian

The new Act¹⁴⁶ consolidates and simplifies the existing California provisions relating to resignation, death, or removal of the custodian

142. UTMA § 19(a), (b).

143. Civil Code § 1162(a).

144. Comment to UTMA § 19.

145. UTMA § 19(a).

146. UTMA § 18.

and the appointment of a successor custodian.¹⁴⁷ The new Act would add provisions to cover matters not adequately covered in existing California law and would make one substantive change. These are summarized below.

Disclaimer by custodian. The new Act includes a provision to cover disclaimer of office by designated or successor custodians or by nominated future custodians who declined to serve.¹⁴⁸ No comparable provision is included in existing California law.

Resignation of custodian. The new Act provides that a custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.¹⁴⁹ Existing California law does not specify the manner in which a custodian may resign.

Designation of successor custodian. The new Act broadens the category of persons who may be designated as a successor custodian. If the successor custodian is designated by a custodian, the custodian may designate a trust company or an adult other than the transferor as successor custodian.¹⁵⁰ This broadens existing law which provides that only an adult member of the minor's family, a guardian of the minor, or a trust company may be designated as a successor custodian.¹⁵¹ However, the designation of a successor custodian by a minor who has attained the age of 14 years remains subject to this limitation,¹⁵² but the persons who are included as an adult member of the minor's family eligible to be appointed as a successor custodian are expanded to include a spouse and a stepparent of the minor.¹⁵³

Order to show cause. Existing California law¹⁵⁴ contains a provision, not found in the new Act, relating to petitions to remove a custo-

147. Civil Code § 1161.

148. UTMA § 18(a).

149. UTMA § 18(c).

150. UTMA § 18(b).

151. Civil Code § 1161(b) (last sentence).

152. UTMA § 18(d).

153. Compare Civil Code § 1155(1) with UTMA § 1(10).

154. Civil Code § 1161(h).

dian or to require that the custodian give a bond and petitions for the appointment of a successor custodian:

(h) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

This specification of the procedure to be followed in connection with these petitions is useful and should be included in the new Act when enacted in California.¹⁵⁵

Venue

The California Uniform Gifts to Minors Act provides that in certain instances specified persons may petition the court for an accounting, for the designation of a successor custodian, for the removal of a custodian and designation of a successor custodian or, in the alternative, that the custodian be required to give a bond.¹⁵⁶ Section 1162.5 of the Civil Code specifies the venue for court proceedings under the California Act. No venue provision is included in the new Act.

A venue provision provides certainty and helps to assure that the court proceedings have some logical connection to the custodianship. The substance of the existing venue provision should be continued in the California Uniform Transfers to Minors Act but liberalized to add the county where the custodian resides as a proper county, whether or not the minor resides in this state. The county where the custodian resides is not a proper county under the existing provision, except that any county is a proper county if neither the minor, nor the donor, nor any parent reside in this state, and no estate of a deceased or legally incapacitated custodian is being administered in this state.¹⁵⁷

155. The new Act also expands the list of persons who may petition the court to designate a successor custodian to include "any other interested person."

156. Civil Code §§ 1161, 1162.

157. Civil Code § 1162.5(c).

Effect on Existing Custodianship

The new Act would apply to all transfers made before its effective date in the manner and form prescribed in the California Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of the new Act.¹⁵⁸ This provision avoids having two bodies of law in force--one applicable to existing custodianships and the other to custodianship created under the new Act--for 18 more years until all custodianships created under existing law have terminated.¹⁵⁹

The new Act would validate any transfer of custodial property made before its effective date notwithstanding that there was no specific authority in California law for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.¹⁶⁰

Recommended Legislation

The Commission's recommendation would be effectuated by enactment of the following measure:

158. UTMA § 22(b).

159. See the Comment to UTMA § 22.

160. The 1982 legislation (1982 Cal. Stats. ch. 591) that expanded the scope of the California statute to include all kinds of property did not contain any provision that would validate transfers made before its effective date.

3412, 3413,

An act to repeal Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code, to amend Sections 3400, 3410, 3602, 3611, ~~6245, 6246~~, 6341, 6348, and 6349 of, to add Section 3303 to, to add Part 9 (commencing with Section 3900) to Division 4 of, and to repeal Sections 6340, 6342, 6343, 6344, and 6346 of, the Probate Code, relating to the Uniform Transfers to Minors Act.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code is repealed.

SEC. 2. Section 3303 is added to the Probate Code, to read:

3303. Nothing in this part ~~affects or~~ limits the provisions of the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

SEC. 3. Section 3400 of the Probate Code is amended to read:

3400. (a) As used in this article, "total estate of the minor" includes both the money and other property belonging to the minor and the money and other property belonging to the guardianship estate, if any, of the minor.

(b) In computing the "total estate of the minor" for the purposes of this article, all of the following shall be deducted:

(1) "Custodial property" held pursuant to 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 Transfers to Minors

Act, Part 9 (commencing with Section 3900).

(2) Any money or property subject to court order pursuant to subdivision (c) of Section 3602 or Article 2 (commencing with Section 3610) of Chapter 4.

SEC. 4. Section 3410 of the Probate Code is amended to read:

3410. (a) This article applies to both of the following cases:

(1) Where the minor has a guardian of the estate and the sole asset of the guardianship estate is money.

(2) Where the minor has no guardian of the estate and there is money belonging to the minor.

(b) This article does not apply to, and there shall be excluded in computing "money belonging to the minor" for the purpose of this article, all of the following:

(1) Money or property which is or will be held as "custodial property" pursuant to the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 4154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code Transfers to Minors Act, Part 9 (commencing with Section 3900).

(2) Any money or property subject to court order

pursuant to subdivision (c) of Section 3602 or Article 2
(commencing with Section 3610) of Chapter 4.

INSERT 1
(insert new
sections 5
and 6)

SEC. 7. Section 3602 of the Probate Code is
amended to read:

3602. (a) If there is no guardianship of the
estate of the minor or conservatorship of the estate of
the incompetent person, the remaining balance of the money
and other property (after payment of all expenses, costs,
and fees as approved and allowed by the court under
Section 3601) shall be paid, delivered, deposited, or
invested as provided in Article 2 (commencing with Section
3610).

(b) Except as provided in subdivision (c), if
there is a guardianship of the estate of the minor or
conservatorship of the estate of the incompetent person,
the remaining balance of the money and other property
(after payment of all expenses, costs, and fees as
approved and allowed by the court under Section 3601)
shall be paid or delivered to the guardian or conservator
of the estate. Upon application of the guardian or
conservator, the court, making the order or giving the
judgment referred to in Section 3600 or the court in which
the guardianship or conservatorship proceeding is pending

may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order ~~that~~ either or both of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money or property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform

Transfers to Minors Act, Part 9 (commencing with Section 3900).

(d) If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under ~~this~~ subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

8

SEC. 8. Section 3611 of the Probate Code is amended to read:

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to

withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on such conditions as the court determines to be in the best interest of the minor or incompetent person.

(c) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars (\$20,000) in value, that all or any part of the money and other property be held on such other conditions as the court in its discretion determines to be in the best interest of the minor or incompetent person.

(d) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars (\$5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(e) If the remaining balance of the money or other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or part of the money or other property be transferred to a

custodian for the benefit of the minor under the
California Uniform Transfers to Minors Act, Part 9
(commencing with Section 3900).

9

SEC. 7. Part 9 (commencing with Section 3900)

is added to Division 4 of the Probate Code, to read:

PART 9. CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT

3900. This part may be cited as the "California Uniform Transfers to Minors Act."

3901. In this part:

(a) "Adult" means an individual who has attained the age of 21 years.

(b) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(c) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(d) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same

functions.

(e) "Court" means the superior court.

(f) "Custodial property" means (1) any interest in property transferred to a custodian under this part and (2) the income from and proceeds of that interest in property.

(g) "Custodian" means a person so designated under Section 3909 or a successor or substitute custodian designated under Section 3918.

(h) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law or an industrial loan company licensed and supervised under the laws of this state.

(i) "Legal representative" means an individual's personal representative or conservator.

(j) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(k) "Minor" means an individual who has not attained the age of 21 years.

(l) "Person" means an individual, corporation, organization, or other legal entity.

(m) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(n) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(o) "Transfer" means a transaction that creates custodial property under Section 3909.

(p) "Transferor" means a person who makes a transfer under this part.

(q) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

3902. (a) This part applies to a transfer that refers to this part in the designation under subdivision (a) of Section 3909 by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this part despite a subsequent change in residence of a transferor, the minor, or the

custodian, or the removal of custodial property from this state.

(b) A person designated as custodian under this part is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

3903. (a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for _____ under the California

(name of minor)
Uniform Transfers to Minors Act."

The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under subdivision (a) of Section 3909.

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section 3909. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event, the custodianship becomes effective, and the custodian shall enforce a transfer of the custodial property pursuant to Section 3909.

3904. A person may make a transfer by

irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 3909.

3905. (a) A personal representative or trustee may make an irrevocable transfer pursuant to Section 3909 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 3903 to receive the custodial property, the transfer shall be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 3903, or all persons so nominated as custodian die before the transfer ^{for} are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under subdivision (a) of Section 3909. ← for worse

3906. (a) Subject to subdivision (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 3909, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subdivision (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 3909.

(c) A transfer under subdivision (a) or (b) may be made only if all of the following requirements are satisfied:

(1) The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor.

(2) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument.

(3) The transfer is authorized by the court if it exceeds ten thousand dollars (\$10,000) in value.

3907. (a) Subject to subdivisions (b) and (c), a person not subject to Section 3905 or 3906 who holds property of, or owes a liquidated debt to, a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 3909.

(b) If a person having the right to do so under Section 3903 has nominated a custodian under that section to receive the custodial property, the transfer shall be

made to that person.

(c) If no custodian has been nominated under Section 3903, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars (\$10,000) in value.

3908. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this part.

3909. (a) Custodial property is created and a transfer is made whenever any of the following occurs:

(1) An uncertificated security or a certificated security in registered form is either:

(A) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ under the California Uniform

(name of minor)
Transfers to Minors Act."

(B) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subdivision (b).

(2) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ under the

(name of minor)
California Uniform Transfers to Minors Act."

(3) The ownership of a life or endowment insurance policy or annuity contract is either:

(A) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ under the

(name of minor)
California Uniform Transfers to Minors Act."

(B) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for _____ under the

(name of minor)
California Uniform Transfers to Minors Act."

(4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for _____ under the

(name of minor)
California Uniform Transfers to Minors Act."

(5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ under the

(name of minor)

California Uniform Transfers to Minors Act."

(6) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(A) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ under the California Uniform

(name of minor)
Transfers to Minors Act."

(B) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for _____ under the California Uniform

(name of minor)
Transfers to Minors Act."

(7) An interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form in subdivision (b).

(b) An instrument in the following form satisfies the requirements of subparagraph (A) of paragraph (1) and paragraph (7) of subdivision (a):

"TRANSFER UNDER THE CALIFORNIA
UNIFORM TRANSFERS TO MINORS ACT

I, _____
(name of transferor or name and representative capacity if a fiduciary)
hereby transfer to _____, as custodian for
(name of custodian)
_____ under the California
(name of minor)

Uniform Transfers to Minors Act, the following:
(insert a description of the custodial property sufficient to identify it).

Dated: _____

(Signature) _____

_____ acknowledges receipt of above
(name of custodian)
under the California Uniform Transfers to Minors Act.

Dated: _____

set
forth

flush
left

the property described above as
custodian for the minor named

01371

84004 14:54

RECORD # 330 BF:

RN 83 020674 PAGE NO. 19

(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

3910. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this part by the same custodian for the benefit of the same minor constitutes a single custodianship.

3911. (a) The validity of a transfer made in a manner prescribed in this part is not affected by any of the following:

(1) Failure of the transferor to comply with subdivision (c) of Section 3909.

(2) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under subdivision (a) of Section 3909.

(3) Death or incapacity of a person nominated under Section 3903 or designated under Section 3909 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to Section 3909 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights,

powers, duties, and authority provided in this part, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this part.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this part and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this part.

3912. (a) A custodian shall do all of the

following:

(1) Take control of custodial property.

(2) Register or record title to custodial property if appropriate.

(3) Collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or

INSERT 2
(add
subdivisions
(d), (e)
and
(f))

expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (1) the life of the minor only if the minor or the minor's estate is the sole beneficiary or (2) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for _____ under the California

(name of minor)
Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

3913. (a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 3912.

3914. (a) A custodian may deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (1) the duty or ability of the custodian personally or of any other person to support the minor or (2) any other income or property of the minor which may be applicable or available for that purpose.

X → If (b) on petition of an interested person or the minor X

if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

3915. (a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 3904, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in subdivision (f) of Section 3918, a custodian need not give a bond.

3916. A third person in good faith and without court order may act on the instructions of, or otherwise deal with, any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for

INSERT 3
add new
subdivision
(d)

determining any of the following:

(a) The validity of the purported custodian's designation.

(b) The propriety of, or the authority under this part for, any act of the purported custodian.

(c) The validity or propriety under this part of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian.

(d) The propriety of the application of any property of the minor delivered to the purported custodian.

3917. (a) A claim based on (1) a contract entered into by a custodian acting in a custodial capacity, (2) an obligation arising from the ownership or control of custodial property, or (3) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable for either of the following:

(1) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal

that capacity and to identify the custodianship in the contract.

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

3918. (a) A person nominated under Section 3903 or designated under Section 3909 as custodian may decline to serve by delivering a valid disclaimer under Division 2.5 (commencing with Section 260) to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section 3903, the person who made the nomination may nominate a substitute custodian under Section 3903; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subdivision (a) of Section 3909. The custodian so

X

designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under Section 3904 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subdivision (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of

the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor, or of the custodian, or an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subdivision (a) or resigns under subdivision (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor, if the minor has attained the age of 14 years, may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section 3904 or to require the custodian to give appropriate bond.

3919. (a) A minor who has attained the age of

INSERT 4
add
subdivision
(g)

14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court for any of the following:

(1) An accounting by the custodian or the custodian's legal representative.

(2) A determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 3917 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this part or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under subdivision (f) of Section 3918, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

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 21 years of age with respect to custodial property transferred under Section 3904 or 3905.

(b) The minor's attainment of 18 years of age with respect to custodial property transferred under Section 3906 or 3907.

(c) The minor's death.

3921. This part applies to a transfer within

the scope of Section 3902 made on or after January 1, 1985, if either of the following requirements is satisfied:

(a) The transfer purports to have been made under the California Uniform Gifts to Minors Act.

(b) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this part is necessary to validate the transfer.

3 3922. (a) As used in this section, "California Uniform Gifts to Minors Act" means former Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of

INSERT 5
(add new
Section
3921)

2

Part 4 of Division 2 of the Civil Code.

(b) Any transfer of custodial property as now defined in this part made before January 1, 1985, is validated notwithstanding that there was no specific authority in the California Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(c) This part applies to all transfers made before January 1, 1985, in a manner and form prescribed in the California Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on December 31, 1984. [INSERT 6]

(d) To the extent that this part, by virtue of subdivision (c), does not apply to transfers made in a manner prescribed in the California Uniform Gifts to Minors Act or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the California Uniform Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities.

④ 392. This part shall be applied and construed to effectuate its general purpose to make uniform the law.

with respect to the subject of this part among states enacting it.

INSERT 7
(add
new
Section
3925)

~~SEC. 8. Section 6245 of the Probate Code is amended to read:~~

~~6245. The mandatory clauses of all California statutory wills are as follows:~~

~~(a) INTESTATE DISPOSITION. If the testator has not made an effective disposition of the residuary estate, the executor shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of the testator's death relating to intestate succession.~~

~~(b) POWERS OF EXECUTOR. (1) In addition to any powers now or hereafter conferred upon executors by law, including all powers granted under the Independent Administration of Estates Act, the executor shall have the power to: (A) sell estate assets at public or private sale, for cash or on credit terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.~~

~~(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the~~

guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody, or control of the minor, or (C) a custodian, serving on behalf of the minor under the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act of any state.

The executor is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(3) On any distribution of assets from the estate, the executor shall have the discretion to partition, allot, and distribute the assets (A) in kind, including undivided interests in an asset or in any part of it, or (B) partly in cash and partly in kind, or (C) entirely in cash. If a distribution is being made to more than one beneficiary, the executor shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(c) POWERS OF GUARDIAN. A guardian of the person nominated in the California statutory will shall have the same authority with respect to the person of the ward as a parent having legal custody of a child would

have. A guardian of the estate nominated in a California statutory will shall have all of the powers conferred by law. All powers granted to guardians in this paragraph may be exercised without court authorization.

SEC. 9. Section 6246 of the Probate Code is amended to read:

6246. In addition to the mandatory clauses contained in Section 6245, the California statutory will with trust form shall also incorporate the following mandatory clauses:

(a) INEFFECTIVE DISPOSITION. If, at the termination of any trust created in the California statutory will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the State of California then in effect relating to intestate succession.

(b) POWERS OF TRUSTEE. (1) In addition to any powers now or hereafter conferred upon trustees by law, the trustee shall have all the powers listed in Section 1120.2. The trustee may exercise those powers without

court authorization.

(2) In addition to the powers granted in the foregoing paragraph, the trustee may:

(A) Hire and pay from the trust the fees of investment advisors, accountants, tax advisors, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

(B) On any distribution of assets from the trust, the trustee shall have the discretion to partition, allot, and distribute the assets (i) in kind, including undivided interests in an asset or in any part of it, or (ii) partly in cash and partly in kind, or (iii) entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(C) The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act of any state.

(3) The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of

this paragraph.

(c) TRUST ADMINISTRATIVE PROVISIONS. The following provisions shall apply to any trust created by a California statutory will with trust:

(1) The interests of trust beneficiaries are not transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or other legal process to the fullest extent permissible by law.

(2) The trustee is entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(3) All persons who have any interest in a trust under a California statutory will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the California statutory will with trust.

SEC. 10. Section 6340 of the Probate Code is repealed.

~~6340. A testator may devise securities, money, life or endowment policies, annuity contracts, real estate, tangible personal property, or any other type of property,~~

as these terms are defined or used in the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 4454) 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.

SEC. 11. Section 6341 of the Probate Code is amended to read:

6341. If a testator's will provides that devised property shall be paid or delivered or transferred to a custodian subject to the California Uniform Gifts to Minors Act, all or the California Uniform Transfers to Minors Act:

(a) All of the provisions of that act the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900) of Division 4, including, but not limited to, the definitions and the provisions concerning powers, rights, and immunities contained in that act, are applicable to the devise during the period prior to distribution of the property.

(b) NA the person named as the minor for whose benefit the property is held attains the age of 21 years prior to the order of distribution, the devise shall be deemed to be a direct devise to the person named as the minor for whose benefit the property was to be held.

Unless the will clearly requires otherwise, if

(c) 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 devised property in the form and manner provided by the California Uniform Transfers to Minors Act.

(d) If a vacancy in the custodianship exists prior to full distribution of the devised property by the executor or administrator, a successor custodian shall be appointed for any undistributed property in the manner provided by the California Uniform Transfers to Minors Act.

SEC. 12. Section 6342 of the Probate Code is repealed.

~~6342.~~ The devise 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 devise as a devise permitted by this chapter. A variation in the wording of the devise from the wording set forth in this section shall be disregarded if the testator's intent to make a devise pursuant to this chapter appears from the

will as a whole or from the wording of the devise.

SEC. 13. Section 6343 of the Probate Code is repealed.

6343. Unless the will clearly requires otherwise, a devise which does not comply with the provisions of Sections 6340, 6341, and 6342, or a devise to a person who becomes an adult prior to the order for distribution, shall be deemed to be a direct devise to the person named as the minor for whom the property was to be held.

SEC. 14. Section 6344 of the Probate Code is repealed.

6344. If a testator provides for a devise 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 devised property in the form and manner provided by the California Uniform Gifts to Minors Act.

SEC. 15. Section 6346 of the Probate Code is repealed.

6346. If a vacancy in the custodianship exists prior to full distribution of the devised property 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.

SEC. 16. Section 6348 of the Probate Code is amended to read:

6348. 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 Transfers to Minors Act ^{s/o type} in the same manner ~~as if it had been a lifetime gift.~~ X

SEC. 17. Section 6349 of the Probate Code is amended to read:

6349. (a) This chapter shall not be construed as providing an exclusive method for making devises to or for the benefit of minors.

(b) Nothing in this chapter ~~affords~~ ^{s/o type} limits

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any provision of the California Uniform Transfers to
Minors Act, Part 9 (commencing with Section 3900) of
Division 4.

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SEC. 5. Section 3412 of the Probate Code is amended to read:

3412. If the minor has a guardian of the estate and the sole asset of the guardianship estate is money, the court may order that the guardianship of the estate be terminated and, if the court so orders, the court in its discretion shall also order any one or more of the following:

(a) That the money be deposited in a bank in this state or a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

~~(b)~~

(c) If the money of the guardianship estate does not exceed twenty thousand dollars (\$20,000), that the money be held on such other conditions as the court in its discretion determines to be in the best interests of the minor.

~~(e)~~

(d) If the money of the guardianship estate does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

SEC. 6. Section 3413 of the Probate Code is amended to read:

3413. If the minor has no guardian of the estate and there is money belonging to the minor, the court may order that a guardian of the estate be appointed and that the money be paid to the guardian or the court may order any one or more of the following:

(a) That the money be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

~~(b)~~

(c) If the money belonging to the minor does not exceed twenty thousand dollars (\$20,000), that the money be held on such other conditions as the court in its discretion determines to be in the best interests of the minor.

~~(e)~~

(d) If the money belonging to the minor does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

INSERT 2 - ADDITION ON PAGE 21 TO SECTION 3911

(d) A person is not precluded from being a custodian for a minor under this part with respect to some property because the person is a conservator of the minor with respect to other property.

(e) A person who is the conservator of the minor is not precluded from being a custodian for a minor under this part because the custodial property has or will be transferred to the custodian from the guardianship estate of the minor. In such case, for the purposes of Section 3909, the custodian shall be deemed to be "an adult other than the transferor."

(f) In the cases described in subdivisions (d) and (e), with respect to the property transferred to the custodian, this part applies to the extent it would apply if the person to whom the custodial property is transferred were not and had not been a conservator of the minor.

INSERT 3 - ADDITION ON PAGE 25 TO SECTION 3914

(d) In lieu of the powers and duties described in subdivision (a), a transferor who is also the custodian may elect to govern his or her custodial powers and duties under this subdivision. If such election is made, the custodian shall not pay over to the minor for expenditure by the minor, nor expend for the minor's use or benefit, any part of the custodial property for any purpose prior to the time specified in Section 3920, except by order of the court upon a showing that the expenditure is necessary for the support, maintenance, or education of the minor. When the powers and duties of the custodian are governed by this subdivision, the transferor-custodian shall file with the clerk of the court a declaration in substantially the following form:

Declaration Under the California
Uniform Transfers to Minors Act

I, _____, as
(Name of transferor-custodian)
custodian for _____ under the California
(Name of minor)
Uniform Transfers to Minors Act, hereby irrevocably elect to be governed
under subdivision (d) of Section 3914 of the Probate Code in my custodial
capacity over the following described property _____
(Description of custodial property).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____, 19__

(Signature of transferor-custodian)

INSERT 4 - ADDITION ON PAGE 29 TO SECTION 3918

(g) Upon the filing of a petition under subdivision (d) or (f), the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

INSERT 5 - ADDITION ON PAGE 31

3921. Subject to the power of the court to transfer actions and proceedings as provided in the Code of Civil Procedure, a petition filed under this part shall be heard and proceedings thereon held in the superior court in the proper county, which shall be determined as follows:

(a) If the minor resides in this state, in either of the following counties:

- (1) Where the minor resides.
- (2) Where the custodian resides.

(b) If the minor does not reside within this state, in any of the following counties:

- (1) Where the transferor resides.
- (2) Where the custodian resides.

(3) Where the estate of a deceased or legally incapacitated custodian is being administered.

- (4) Where a parent of the minor resides.

(c) If neither the minor, nor the transferor, nor any parent resides within this state, and no estate of a deceased or legally incapacitated custodian is being administered within this state, in any county.

INSERT 6 ON PAGE 32 - ADDITION TO SUBDIVISION (C)
OF SECTION 3922 - RENUMBERED AS 3923

Sections 3901 and 3920 with respect to the age of a minor for whom custodial property is held under this part do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 years after March 7, 1973, and before January 1, 1985.

INSERT 7 ON PAGE 33 - ADDS NEW SECTION 3925

3925. This part shall not be construed as providing an exclusive method for making gifts or other transfers to minors.