

## Memorandum 85-104

Subject: Study L-618 - Estates and Trusts Code (Uniform Transfers to Minors Act)

At the January 1985 meeting, the Commission considered Memorandum 85-16. That memorandum had attached an article that appeared in the Estate Planning & California Probate Reporter. The article, by John W. Schooling, suggested a number of revisions in the new California Uniform Transfers to Minors Act. This new act was enacted upon recommendation of the California Law Revision Commission.

At the suggestion of the staff, the Commission determined to recommend legislation in 1985 to permit the transferor to designate, at the time the custodianship is created, successor custodians in case the original custodian is unable, declines, or is ineligible to serve or resigns, dies, becomes incapacitated, or is removed. The recommended legislation was enacted.

The staff recommended that consideration of Mr. Schooling's other suggestions for revision of the new act be deferred. The staff believed that the other suggestions presented complex policy issues and difficult statute drafting problems. At the direction of the Commission, the staff wrote to Mr. Schooling to ask that he give these other suggestions further study and prepare a draft of legislation to effectuate the suggestions. Mr. Schooling agreed to prepare drafts of any further legislation needed to deal with problems in the new act.

We have received the attached letter from Mr. Schooling. He has concluded that no additional revisions should be made in the new act. He is willing to assist the Commission with respect to any technical problems in the new act that come to our attention in the future. You should read his letter which indicates the reasons that he recommends no additional revisions.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

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October 21, 1985

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
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Dear Mr. DeMouilly:

For some time now you have had a request in my hands to prepare drafts of further legislation concerning California's Uniform Transfers to Minors Act.

The major modification that needed to be made has now been accomplished, being the amendment to give the donor the power to nominate a successor custodian in the instrument of transfer. This was in California's prior law, and has now been restored.

I have been in the process of developing material for the topic of the California Uniform Transfers to Minors Act as part of my presentation as a panelist on CEB's current Conservatorships, Guardianships and Other Devices for Handling Incapacity course. As a result of this effort, I had planned to prepare the proposals for your consideration. However, the result of my considerations is that the act should not be changed. I will outline the modifications which I had been considering:

Although custodianships created by future transfers such as Will, life insurance beneficiary clause or the like can continue until age 25, gifts can be only created until age 21. I had suggested that this age be opened to age 25, upon the election by the donor of a waiver of the Internal Revenue Code Section 2503(c) tax benefits. My decision is that this should not be permitted in that it would require the filing of a federal gift tax return because of the gift of the future interest without the \$10,000 annual exemption. Since custodianships are now so easily prepared and since this requirement would so often be overlooked, I think it is safer to require a donor to create an irrevocable trust if a gift until an age older than 21 is required.

I have also suggested that provisions be made for co-custodians to serve. However, the complexities of this are numerous and varied in each factual situation. Again, I believe the matter is better left to the

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creation of an irrevocable trust so that the individual circumstances could be taken into consideration and the document tailored for the particular needs of the co-trustees. The ability to name an alternate custodian which is now in the law goes far towards satisfaction of one of the reasons for having co-custodians, which is to have a successor in place in the event of the death or disability of a custodian.

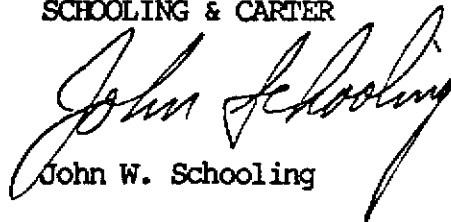
The last of my major suggestions involved the fact that the custodianship assets are liable to pay the minor's debts. This, however, is consistent with the concept that the custodianship is really an alternate for a court guardianship, and not an alternate for an irrevocable trust. After consideration in this point, I came to the conclusion that if my suggestion of the optional spendthrift clause were inserted in the custodianship, it would drastically change the entire nature of the custodianship with far-reaching tax implications that we would not want.

In summary, I believe that we now have an excellent act. We need to recognize it for what it is, use it as such and be ready to use an irrevocable trust if we want a different result. I think from this point forward the only modifications to the act will be minor ones for correction of unforeseen technical problems that may arise.

Thank you for your patience, and please do let me know if you would like my assistance with respect to any technical problems that are called to your attention in the future.

Very truly yours,

PETERS, FULLER, RUSH,  
SCHOOLING & CARTER

  
John W. Schooling

JWS/lmd