

Memorandum 89-108

Subject: Study L-3030 - Duration of Custodianship under Uniform
Transfers to Minors Act

The Commission's *Tentative Recommendation Relating to Miscellaneous Probate Code Revisions* includes a recommendation that a person making an irrevocable gift under the California Uniform Transfers to Minors Act be permitted to continue the custodianship until the time the minor attains 25 years of age. Under existing law, the custodianship created by an irrevocable gift may not continue after the minor reaches the age of 21 years. For all other types of transfers, the custodianship may continue to age 25 under existing law. The effect of the recommendation is to establish a uniform 25 year maximum age for all types of transfers under the uniform act. We have prepared this recommendation in the form of a separate Recommendation which is attached.

The Tentative Recommendation was distributed to our list of interested persons and organizations for review and comment. We received only one letter expressing concern about this particular recommendation. Peter L. Muhs raises two matters in connection with the Commission's recommendation. These matters are discussed below.

Muhs comments:

With respect to the duration of custodianship under the Uniform Transfers to Minors Act, §3920.5, I think increasing the age to twenty-five creates a substantial risk that these "automatic" accounts would inadvertently cause immediate taxable gifts. Of course, for the majority of those involved, the consequences will not increase their ultimate tax because of the applicability of the unified estate and gift tax credit. Nevertheless, since it seems unlikely that there is a ready way to warn those who might create such accounts, retaining limit on inter vivos gifts to age twenty-one would be desirable. The consequence is that for substantial regular gifts, the donor will need to create a trust if the gifts are to continue beyond age twenty-one. Perhaps an alternative would be to create a procedure for a Crummey gift, allowing a Uniform Transfers to Minors Act transfer to be subject to notice to the donee and immediate short-term right of withdrawal.

The Tentative Recommendation that was distributed for comment recognized that an irrevocable gift to a custodianship that continues beyond age twenty-one does not qualify for the \$10,000 annual gift tax exclusion. The Tentative Recommendation states:

The reason for the limitation to age 21 in the case of an irrevocable gift is that an irrevocable gift held beyond age 21 will not qualify for the \$10,000 annual gift tax exclusion under Internal Revenue Code Section 2503(c). However, a person may wish to make a gift to a minor in custodianship that continues until age 25, even though it means paying a gift tax. The law should not assume that avoidance of gift tax liability is always the controlling factor, but should allow a donor to extend custodianship of an irrevocable gift to age 25, if desired. For this reason, the Commission recommends that the existing general age limitation be adopted for irrevocable gifts.

Although the Tentative Recommendation was sent to 268 persons and organizations (in addition to the State Bar Section), only one person expressed concern about the Commission's proposal to increase the maximum age for duration of the custodianship to age 25. The reason given in support of this objection is recognized and pointed out in the Tentative Recommendation that was distributed for comment. The staff recommends that the Commission approve the attached recommendation for printing and submission to the 1990 Legislature.

Muhs raises suggests another revision of the Uniform Transfers to Minors Act:

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

As the staff understands this comment, Muhs is suggesting that the uniform act be revised to permit creation of a custodianship by a transfer made at any time before the "minor" reaches age 25, so that the custodianship will have a duration from the time created until age 25. If the Commission and the groups that advise us believe that this might be a desirable revision, the staff can prepare a tentative recommendation for consideration by the Commission and, if approved by the Commission, for distribution to interested persons for review and comment. The staff is concerned that effectuating the suggestion will add complexity to the uniform act. Also, the Commission should be aware that there is another uniform act (Uniform Custodial Trust Act) designed to provide for a custodianship for adults, using the same basic concepts used in the Uniform Transfers to Minors Act. Assembly Bill 1818 was introduced at the 1989 session proposing enactment of the Uniform Custodial Trust Act and but the bill was not enacted. The State Bar Section opposed the bill. Does the Commission wish to review the Uniform Custodial Trust Act or to give further consideration to the suggestion that the Uniform Transfers to Minors Act be revised to permit transfers to a person over the age of 18?

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

**Duration of Custodianship Under
Uniform Transfers to Minors Act**

December 1989

**CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739**

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Duration of Custodianship Under Uniform Transfers to Minors Act*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
PALO ALTO, CA 94303-4739
(415) 494-1335

EDWIN K. MARZEC
CHAIRPERSON
ROGER ARNEBERGH
VICE CHAIRPERSON
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VAUGHN R. WALKER

December 1, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

Under the California Uniform Transfers to Minors Act, a custodianship continues until the minor reaches age 18 unless the transfer to the custodian specifically provides that the custodianship continues thereafter until the minor reaches a specified age, which may not be later than the maximum age specified in the act. In case of an irrevocable gift, the maximum age is 21. For a transfer by will, trust, nomination, or irrevocable exercise of a power of appointment, the maximum age is 25.

This recommendation proposes that a person making an irrevocable gift under California Uniform Transfers to Minors Act be permitted to continue the custodianship until the time the minor attains 25 year of age. Raising the age to 25 years makes the rule for irrevocable gifts consistent with the limitation applicable to custodianships created by other types of transfers.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980

Respectfully submitted,

Edwin K. Marzec
Chairperson

RECOMMENDATION

Under the California Uniform Transfers to Minors Act,¹ the general rule is that the custodianship terminates when the minor reaches 18 and the property is transferred to the minor.² However, a person who transfers property under the act by will, trust, nomination, irrevocable exercise of power of appointment, or irrevocable gift may specify that the custodianship is to extend beyond the age of 18. Under Probate Code Section 3920.5, the age may be extended to 25, except in the case of an irrevocable gift, in which case it may be extended only to age 21.

The reason for the limitation to age 21 in the case of an irrevocable gift is that an irrevocable gift held beyond age 21 will not qualify for the \$10,000 annual gift tax exclusion under Internal Revenue Code Section 2503(c). However, a person may wish to make a gift to a minor in custodianship that continues until age 25, even though it means paying a gift tax. The law should not assume that avoidance of gift tax liability is always the controlling factor, but should allow a donor to extend custodianship of an irrevocable gift to age 25, if desired. For this reason, the Commission recommends that the existing general age 25 limitation be adopted for irrevocable gifts.

The recommended legislation amends a section of the new Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759. The recommended legislation will become operative at the same time as the new

1. Prob. Code §§ 3900-3925. This uniform act was enacted upon recommendation of the California Law Revision Commission. See *Recommendation Relating to Uniform Transfers to Minors Act*, 17 Cal. L. Revision Comm'n Reports 601 (1984). See also *Report of Senate Committee on Judiciary on Assembly Bill 2492*, 18 Cal. L. Revision Comm'n Reports 105 (1986). As to the construction of provisions drawn from uniform acts, see Prob. Code § 2.

2. Prob. Code § 3920.

PROPOSED LEGISLATION

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

Probate Code § 3920.5 (amended). Duration of custodianship

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

(b) To specify a delayed time for transfer to the minor of the custodial property, the words

"as custodian for _____

(Name of Minor)

until age _____

(Age for Delivery of Property to Minor)

under the California Uniform Transfers to Minors Act" shall be substituted in substance for the words

"as custodian for _____

(Name of Minor)

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

(c) The time for transfer to the minor of custodial property transferred under or pursuant to Section 3903 or 3905 may be delayed under this section only if the governing will or trust or nomination provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age, and in that case the governing will or trust or nomination shall determine the time to be specified in the transfer pursuant to Section 3909.

(d) The time for transfer to the minor of custodial property transferred ~~by the irrevocable exercise of a power of appointment~~ under Section 3904 may be delayed under this

section only if the transfer pursuant to Section 3909 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age.

~~(c) The time for transfer to the minor of custodial property transferred by irrevocable gift under Section 3904 may be delayed under this section only if the transfer pursuant to Section 3909 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 21 years of age.~~

(f) (e) If the transfer pursuant to Section 3909 does not specify any age, the time for the transfer of the custodial property to the minor under Section 3920 is the time when the minor attains 18 years of age.

~~(g) If the transfer pursuant to Section 3909 provides in substance that the duration of the custodianship is for a time longer than the maximum time permitted by this section for the duration of a custodianship created by that type of transfer, the custodianship shall be deemed to continue only until the time the minor attains the maximum age permitted by this section for the duration of a custodianship created by that type of transfer.~~

(f) *The amendments made to this section by the 1990 act that amended this section apply only to transfers made on or after the operative date of the 1990 act. Transfers made prior to the operative date are governed by the law applicable prior to the operative date.*

Comment. Section 3920.5 is amended to authorize extension of the custodianship in case of an irrevocable gift to age 25, rather than to age 21. This makes the rule for an irrevocable gift the same as for other custodianships that may be continued under Section 3920.5.

Former subdivision (g) has been deleted because this subdivision is no longer needed. As amended, Section 3920.5 now provides a uniform maximum age limitation (25 years) on the continuance of the custodianship. This uniform limitation eliminates any confusion that

might have existed under section before it was amended when there were two different maximum age limitations, and the applicable limitation depended on the type of transfer.

Note. This amendment to Section 3920.5 is made to Section 3920.5 of the Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759.