

First Supplement to Memorandum 89-108

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

The State Bar Estate Planning, Trust and Probate Law Section advises with respect to the above listed recommendation:

The Executive Committee in general opposes this proposed change because of likely adverse tax consequences.

Under the California version of the uniform act, the duration of the custodianship can be continued until the maximum age 25 if the custodianship is created by a transfer by will, trust, nomination, or irrevocable exercise of a power of appointment. The recommendation proposes to extend this authority to a custodianship created by an irrevocable gift, thereby making the 25-year maximum age apply uniformly to all transfers.

The Executive Committee would preclude continuing the duration until age 25 for an irrevocable gift because of possible adverse tax consequences. The Commission's Recommendation is based on the premise that 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." In this connection, it should be noted that there may be tax consequences of creating a custodianship for a minor under age 14, yet the statute does not preclude this.

With one exception (noted in Memorandum 89-108), there were no objections to the Commission's recommendation from the 268 persons (in addition to the State Bar Section) to whom the recommendation was distributed.

Respectfully submitted,

John H. DeMouilly
Executive Secretary