

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

*relating to*

**Uniform Transfers to Minors Act**

**January 1984**

**CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306**

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## CALIFORNIA LAW REVISION COMMISSION

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January 21, 1984

To: THE HONORABLE GEORGE DEUKMEJIAN  
*Governor of California* and  
THE LEGISLATURE OF CALIFORNIA

This recommendation proposes the enactment of the Uniform Transfers to Minors Act in California. This new Uniform Act has been drafted by and is recommended by the National Conference of Commissioners on Uniform State Laws to replace the old Uniform Gifts to Minors Act. This recommendation also proposes conforming revisions in existing California statutes.

This recommendation is made pursuant to 1980 Cal. Stats. res. ch. 37.

Respectfully submitted,

DAVID ROSENBERG  
*Chairperson*



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# RECOMMENDATION

*relating to*

## UNIFORM TRANSFERS TO MINORS ACT

### Introduction

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

The Uniform Act provides a simple and inexpensive method of making a gift to a minor and administering the property transferred.<sup>5</sup> This is the reason that some version of the Uniform Gifts to Minors Act has been enacted in every state.<sup>6</sup> But many states, like California, have substantially revised the Uniform Act.<sup>7</sup> The new Uniform Transfers to Minors Act is recommended for enactment by all the states to eliminate the 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.<sup>8</sup>

<sup>1</sup> This new Uniform Transfers to Minors 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.

<sup>2</sup> 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.

<sup>3</sup> 1959 Cal. Stats. ch. 709 (codified, as amended, as Civil Code §§ 1154-1165).

<sup>4</sup> 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.

<sup>5</sup> See 3 B. Witkin, Summary of California Law *Personal Property* § 97, at 1694 (8th ed. 1973). 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.*

<sup>6</sup> See Prefatory Note to UTMA.

<sup>7</sup> *Id.*

<sup>8</sup> *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

The essential feature of the existing and new Uniform Acts is the 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."<sup>9</sup> The custodian is governed by a "prudent man" investment rule,<sup>10</sup> and the custodian's power to use the property for the minor's benefit is practically unlimited.<sup>11</sup> Persons dealing with the custodian are protected by a provision eliminating any duty of inquiry.<sup>12</sup>

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

### 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 would make some important substantive changes in existing California law. These changes are discussed below.<sup>17</sup>

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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.

<sup>9</sup> 3 B. Witkin, Summary of California Law *Personal Property* § 99, at 1695 (8th ed. 1973). See *infra* under "Care of Custodial Property," "Powers of Custodian," and "Use of Custodial Property."

<sup>10</sup> See *infra* under "Care of Custodial Property."

<sup>11</sup> See *infra* under "Use of Custodial Property."

<sup>12</sup> See *infra* under "Protection of Third Person From Liability."

<sup>13</sup> Civil Code § 1157; UTMA § 11(b).

<sup>14</sup> See *infra* under "Age at Which Custodianship Terminates."

<sup>15</sup> Civil Code § 1158(d). The comparable provision is UTMA § 20.

<sup>16</sup> *Id.*

<sup>17</sup> Less significant and technical changes to existing law are noted in the Comments following each section of the Commission recommended legislation.

## 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.<sup>18</sup> This is consistent with existing law.<sup>19</sup>

## Nomination of Custodian to Receive Property Upon Occurrence of Future Event

The new Act<sup>20</sup> permits a custodian for a minor to be nominated<sup>21</sup> to receive a distribution in the future under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. (pay-on-death) 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 trustee<sup>22</sup> or on the insurance company or other obligor who contracts to pay in the future.<sup>23</sup>

<sup>18</sup> See UTMA § 1(6); Prefatory Note to UTMA. See also the Comment to UTMA § 1 ("The definition of 'custodial property' has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or 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 as 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.").

<sup>19</sup> The California statute lists various kinds of property that may be custodial property. The list concludes 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.

<sup>20</sup> UTMA § 3.

<sup>21</sup> 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.

<sup>22</sup> 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).

<sup>23</sup> 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

The existing California statute permits a testator to devise any kind of property to a custodian subject to the Uniform Gifts to Minors Act.<sup>24</sup> 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 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.<sup>25</sup>

### 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.<sup>26</sup>

—A transfer from a trust, estate, or guardianship, whether or not specifically authorized in the governing instrument.<sup>27</sup>

—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

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§ 7(c) and the Comment thereto. See also UTMA § 1(10) ("Member of the minor's family" defined).

<sup>24</sup> Prob. Code §§ 6340-6349 (operative January 1, 1985), continuing the substance of former Prob. Code §§ 186-186.9.

<sup>25</sup> 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.

<sup>26</sup> UTMA § 4.

<sup>27</sup> UTMA §§ 5, 6.

holding a deposit, or an insurance company that issued a policy payable on death to a minor.<sup>28</sup>

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.<sup>29</sup> The California statute also authorizes the traditional lifetime gift.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> This is consistent with the existing 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.<sup>33</sup> 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 law.<sup>34</sup>

<sup>28</sup> UTMA § 7.

<sup>29</sup> See Comment to UTMA § 4.

<sup>30</sup> 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 minor or another minor and would be consistent with Section 63 of the Civil Code.

<sup>31</sup> 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).

<sup>32</sup> 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.

<sup>33</sup> Prob. Code §§ 6340-6349 (operative January 1, 1985), continuing the substance of former 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, continuing the substance of former Prob. Code § 186.

<sup>34</sup> 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

**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 or trust that does not contain an authorization to do so.<sup>35</sup> 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.<sup>36</sup> These transfers of trust or estate property are permitted only where the fiduciary making the transfer determines in good faith and in a fiduciary capacity that the custodianship will be in the best interests of the minor.<sup>37</sup> A transfer may not be made if prohibited by, or inconsistent with, the terms of any governing instrument.<sup>38</sup>

Where the value of the property to be transferred from the trust or estate does not exceed a stated amount (\$10,000), the new Act permits the transfer to be made without prior court approval.<sup>39</sup> 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.<sup>40</sup> The more liberal authorization of 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

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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. Civil Code § 2279.1; Prob. Code § 1120.6. See also *supra* under "Nomination of Custodian to Receive Property Upon Occurrence of Future Event."

<sup>35</sup> UTMA § 6(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.

<sup>36</sup> UTMA § 6(b).

<sup>37</sup> UTMA § 6(c) and Comment thereto.

<sup>38</sup> 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.

<sup>39</sup> See UTMA § 6(c).

<sup>40</sup> 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



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. Except as indicated above, 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.<sup>41</sup> 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.<sup>42</sup> The enactment of the new Act in California would give the court the additional option to order that money or other property be paid or delivered from the

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

<sup>41</sup> Prob. Code §§ 3410-3413. 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*.

<sup>42</sup> 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. See Prob. Code § 3410.

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.<sup>43</sup>

(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.<sup>44</sup>

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

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<sup>43</sup> See *supra* under "Nomination of Custodian to Receive Property Upon Occurrence of Future Event."

<sup>44</sup> UTMA § 7(c) and Comment thereto.

insurance company holding life insurance benefits payable to a minor beneficiary.<sup>45</sup>

Existing 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.<sup>46</sup> 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).<sup>47</sup> 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 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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> Neither

<sup>45</sup> 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 § 8. See also UTMA § 16 (exemption of third person from liability).

<sup>46</sup> See note 40 *supra*.

<sup>47</sup> UTMA § 7(c). See also UTMA § 1(10) ("Member of the minor's family" defined).

<sup>48</sup> Prob. Code §§ 3410-3413.

<sup>49</sup> Prob. Code §§ 3600-3612.

<sup>50</sup> 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 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,

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.<sup>51</sup>

### **Manner of Creating Custodial Property and Effecting Transfer**

The new Act<sup>52</sup> provides more detailed rules than existing California law<sup>53</sup> 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 existing California law by registering it in the name of custodian as custodian.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

**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.<sup>57</sup> Existing law permits a transfer to be made "by

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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)).

<sup>51</sup> See *supra* under "Other Transfer by Fiduciary."

<sup>52</sup> UTMA § 9.

<sup>53</sup> Civil Code § 1156.

<sup>54</sup> Civil Code § 1156(a)(1).

<sup>55</sup> UTMA § 9(a)(1)(ii) ("Custodial property is created and a transfer is made whenever . . . a certificated 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].").

<sup>56</sup> See the Comment to UTMA § 9.

<sup>57</sup> UTMA § 9(a)(5).

executing and delivering in the appropriate manner a deed, assignment, or similar instrument” to the custodian.<sup>58</sup> 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.<sup>59</sup> Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.<sup>60</sup> California has no comparable provision and it is unclear exactly how such a transfer must be accomplished.<sup>61</sup>

**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 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.<sup>62</sup> The transfer is effective upon delivery of written notification to the payor, issuer, or other obligor that the right is transferred to the custodian.<sup>63</sup> The new Act also includes a provision for making a revocable nomination of a future custodian as the beneficiary of a power of appointment of such payment rights.<sup>64</sup> The existing statute has no comparable provisions.

**Transferor as custodian.** The existing statute does not reflect any consistent rule as to when a transferor may create a custodianship by naming himself or herself as

<sup>58</sup> Civil Code § 1156(a) (5).

<sup>59</sup> UTMA § 9(a) (6).

<sup>60</sup> See Comment to UTMA § 9.

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

<sup>62</sup> UTMA § 9(a) (4) and Comment thereto.

<sup>63</sup> See 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.

<sup>64</sup> See *supra* under “Nomination of Custodian to Receive Property Upon Occurrence of Future Event.”

custodian.<sup>65</sup> 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 and consummation of the transfer.<sup>66</sup> The new Act requires that the custodian be a person other than the transferor unless the transfer is reflected in the public records<sup>67</sup> or notice of transfer is given to an appropriate third person.<sup>68</sup> Unlike the

<sup>65</sup> 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 *id.* §§ 84-91, 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 P. 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-established 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.

<sup>66</sup> UTMA § 9. See Comment to UTMA § 9 ("despite the fact that this . . . Act permits it in the case of registered securities, money, life insurance, real estate, 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.").

<sup>67</sup> The transferor of an interest in real property may serve as custodian since the transfer must be recorded to be effective. See 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).

<sup>68</sup> 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)(3)(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. UTMA § 9(a)(4).

literal language of existing law,<sup>69</sup> 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.<sup>70</sup> The substitution of the new rule for the inconsistent California provisions would eliminate uncertainty<sup>71</sup> and would be consistent with existing law concerning gifts of personal property generally.<sup>72</sup>

**Guardian of the minor as custodian.** The existing statute permits a transfer to a "guardian of the minor" as custodian for the minor.<sup>73</sup> This provision was added in 1982,<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup> 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

<sup>69</sup> "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).

<sup>70</sup> See UTMA § 9.

<sup>71</sup> 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 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*.

<sup>72</sup> See note 65 *supra*.

<sup>73</sup> Civil Code § 1156(a) (1), (2), (3), (5), (6).

<sup>74</sup> 1982 Cal. Stats. ch. 591, § 2.

<sup>75</sup> 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 (8th ed. 1973) ("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)").

<sup>76</sup> *E.g.*, Prob. Code §§ 2400-2644.

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.<sup>77</sup>

**Acceptance by custodian.** The new Act includes a form of transfer document<sup>78</sup> that contains an acceptance that, with some exceptions,<sup>79</sup> must be executed by the custodian to make the disposition effective. Existing law requires an acceptance executed by the person designated as custodian in the case of a gift of a security not in registered form<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup> 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

<sup>77</sup> 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.

<sup>78</sup> UTMA § 9(b). See also the Comment to UTMA § 9.

<sup>79</sup> The acceptance is not required in the following cases:

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

(2) Where money is paid or delivered for credit to an account in the name of the custodian. See UTMA § 9(a) (2).

(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. See UTMA § 9(a) (3), (4).

(4) Where the property is an interest in real property. See UTMA § 9(a) (5).

(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. See UTMA § 9(a) (6).

<sup>80</sup> Civil Code § 1156(a) (2).

<sup>81</sup> Civil Code § 1156(a) (6).

<sup>82</sup> See 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 *infra* under "Disclaimer, Resignation, Death, or Removal of Custodian; Designation of Successor Custodian."



years to 21 years.<sup>83</sup> This increase does not apply where the transferor is to be the custodian; 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.<sup>84</sup> 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"<sup>85</sup> 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.<sup>86</sup> The new rule also adds a slightly higher standard for professional fiduciaries.<sup>87</sup> 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.<sup>88</sup> The new Act does not include the provision of existing law<sup>89</sup> 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

<sup>83</sup> 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").

<sup>84</sup> 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 benefit or for the benefit of another minor."). See also note 30 *supra*.

<sup>85</sup> UTMA § 12(b).

<sup>86</sup> Civil Code § 1158(e). See Comment to UTMA § 12.

<sup>87</sup> 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 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 Prob. Code § 2401 (guardian or conservator).

<sup>88</sup> Uniform Probate Code § 7-302.

<sup>89</sup> Civil Code § 1159(e).

failure to maintain the standard of prudence in investing the custodial property provided in this [Act].” This provision should be continued in the new California Uniform Transfers to Minors Act. The protection the provision gives to the noncompensated custodian reflects what is most likely to be the desire of most donors.<sup>90</sup> Since the donor who makes a transfer under the Uniform Act accepts the provisions of the Act, the inclusion of the California immunity provisions avoid the need to use a trust to accomplish what the donor’s desire to provide a lesser standard of liability for the noncompensated custodian.

Existing law permits a custodian to retain any security received without the obligation to diversify investment.<sup>91</sup> The new Act extends that rule to any property received.<sup>92</sup>

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.<sup>93</sup>

In order to eliminate any uncertainty, the new Act 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.<sup>94</sup>

The new Act adds the requirement that income tax information be maintained and made available for preparation of the minor’s tax returns.<sup>95</sup>

The new Act adds a provision requiring that custodial property consisting of an undivided interest be held as tenant in common.<sup>96</sup> 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

<sup>90</sup> “Many lawyers believe that a family member or friend acting as a trustee without compensation should not be liable for his misconduct or alleged misconduct.” Drafting California Revocable Inter Vivos Trusts § 6.84, at 245 (Cal. Cont. Ed. Bar 1972).

<sup>91</sup> Civil Code § 1158(e).

<sup>92</sup> UTMA § 12(b).

<sup>93</sup> UTMA § 12(a).

<sup>94</sup> 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.

<sup>95</sup> UTMA § 12(e).

<sup>96</sup> UTMA § 12(d).

“jumbo” certificate of deposit.<sup>97</sup> The new Act does not permit investment in property held in joint tenancy with a right of 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.<sup>98</sup>

### **Powers of Custodian**

The new Act would replace the specific list of custodian’s powers in existing law<sup>99</sup> with a provision that grants the custodian the very broad and general powers of an unmarried adult owner of the property.<sup>100</sup> 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.<sup>101</sup> 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.<sup>102</sup> 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.”<sup>103</sup> 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 law concerning the use of custodial property:

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<sup>97</sup> See Comment to UTMA § 12.

<sup>98</sup> *Id.*

<sup>99</sup> Civil Code § 1158(f).

<sup>100</sup> UTMA § 13(a) (custodian “has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property”).

<sup>101</sup> UTMA § 13(b).

<sup>102</sup> Comment to UTMA § 13.

<sup>103</sup> *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."<sup>104</sup> This replaces the existing standard that permits the property to be used "for the support, maintenance, education, and benefit of the minor."<sup>105</sup> The change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.<sup>106</sup>

(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.<sup>107</sup> This provision is designed to avoid the attribution of custodial property income to the person obligated to support the minor.<sup>108</sup>

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.<sup>109</sup> Although it is uncertain whether the section accomplished its purpose,<sup>110</sup> continuance of the section in the new California Uniform Transfers to Minors Act would be desirable.

### Compensation of Custodian

The new Act gives a nondonor custodian a noncumulative election during each calendar year to

<sup>104</sup> UTMA § 14.

<sup>105</sup> Civil Code § 1158(b). See also Civil Code § 1158(c).

<sup>106</sup> 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.

<sup>107</sup> UTMA § 14(c).

<sup>108</sup> See Comment to UTMA § 14.

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

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

charge reasonable compensation for services performed during that year.<sup>111</sup> Existing law<sup>112</sup> 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.<sup>113</sup> 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."<sup>114</sup>

The new Act omits as surplusage the standards contained in the existing statute (which are the same as an optional provision of the Uniform Gifts to Minors Act)<sup>115</sup> 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.<sup>116</sup>

### Protection of Third Person from Liability

The new Act<sup>117</sup> would continue the substance of the existing provisions<sup>118</sup> that protect a third person from liability where the 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

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

<sup>112</sup> Civil Code § 1159(c).

<sup>113</sup> See Comment to UTMA § 15.

<sup>114</sup> Comment to UTMA § 15.

<sup>115</sup> See Civil Code § 1159(c) and Comment to UTMA § 15.

<sup>116</sup> "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 determined by agreement, by reference to a statute or by court order, without the need to so state in this Act." Comment to UTMA § 15.

<sup>117</sup> UTMA § 16. 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 § 16.

<sup>118</sup> Civil Code §§ 1158(f), 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 16 of the UTMA.

minor to third persons.<sup>119</sup> No counterpart is included in the Uniform Gifts to Minors Act<sup>120</sup> or in existing law.<sup>121</sup>

The new provision is based on a provision of the Uniform Probate Code,<sup>122</sup> 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.<sup>123</sup> The minor incurs personal liability only for actual fault.<sup>124</sup>

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.<sup>125</sup> The new provision appears to be consistent with existing law concerning tort liability of a guardian,<sup>126</sup> but may restrict existing liability of the custodian who makes a contract in the custodial capacity.<sup>127</sup>

### Age at Which Custodianship Terminates

A custodianship terminates under existing law when the minor attains the age of 18 years.<sup>128</sup> The age was lowered

<sup>119</sup> UTMA § 17.

<sup>120</sup> See Comment to UTMA § 17.

<sup>121</sup> 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 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.").

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

<sup>123</sup> UTMA § 17(b).

<sup>124</sup> UTMA § 17(c).

<sup>125</sup> "Because 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 or acquire 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 claims of third parties to recourse against the custodial property, as third parties dealing with a trust are generally limited to recourse against the trust corpus." Comment to UTMA § 17.

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

<sup>127</sup> 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*, 151 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).

<sup>128</sup> Civil Code § 1158(d).

from 21 to 18 in 1972 to conform to the lowered age of majority.<sup>129</sup>

The new Act<sup>130</sup> 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 trust<sup>131</sup> unless the transfer is made pursuant to authority in a will or trust<sup>132</sup> 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.<sup>133</sup> These custodianships terminate at the age of 18 because they are substitutes for a guardianship that otherwise would terminate at that time.<sup>134</sup>

The new Act<sup>135</sup> would raise the age of termination from 18 to 21 where the custodianship is created by a lifetime gift<sup>136</sup> or by a transfer authorized by a will or trust.<sup>137</sup> 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.<sup>138</sup> 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.<sup>139</sup> Continuing the custodianship until age 21

<sup>129</sup> 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.

<sup>130</sup> UTMA § 20(2).

<sup>131</sup> See text *supra* at notes 35-38.

<sup>132</sup> See text *supra* at notes 32-34.

<sup>133</sup> See text *supra* at notes 43-45.

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

<sup>135</sup> UTMA § 20(1).

<sup>136</sup> See 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.

<sup>137</sup> See text *supra* at notes 32-34.

<sup>138</sup> 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).

<sup>139</sup> *E.g.*, Sacks, *Inter Vivos and Testamentary Trusts*, in *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 when the client wishes to make the gift for a particular purpose, *e.g.*, education. A . . . 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.").

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.<sup>140</sup>

### Accounting by and Determination of Liability of Custodian

The class of persons who under existing law<sup>141</sup> 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 representative of the transferor, the minor's guardian of the person, and the successor custodian.<sup>142</sup> This is a desirable expansion.

The new Act contains no counterpart to the existing 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."<sup>143</sup> 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 former custodians from harassment.<sup>144</sup>

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

<sup>140</sup> 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.

<sup>141</sup> Civil Code § 1162(a).

<sup>142</sup> UTMA § 19(a), (b).

<sup>143</sup> Civil Code § 1162(a).

<sup>144</sup> Comment to UTMA § 19.



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.<sup>145</sup> No comparable provision is found in existing law.

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

The new Act<sup>146</sup> consolidates and simplifies the existing provisions relating to resignation, death, or removal of the custodian and the appointment of a successor custodian.<sup>147</sup> 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 decline to serve.<sup>148</sup> 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.<sup>149</sup> Existing 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 donor as successor custodian.<sup>150</sup> This broadens existing law which provides that only an adult member of the minor's family, a guardian of

<sup>145</sup> UTMA § 19(a).

<sup>146</sup> UTMA § 18.

<sup>147</sup> Civil Code § 1161.

<sup>148</sup> UTMA § 18(a).

<sup>149</sup> UTMA § 18(c).

<sup>150</sup> UTMA § 18(b).

the minor, or a trust company may be designated as a successor custodian.<sup>151</sup> However, the designation of a successor custodian by a minor who has attained the age of 14 years remains subject to this limitation,<sup>152</sup> 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.<sup>153</sup>

**Order to show cause.** Existing law<sup>154</sup> contains a provision, not found in the new Act, relating to petitions to remove a custodian 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.<sup>155</sup>

## 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.<sup>156</sup> 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

<sup>151</sup> Civil Code § 1161(b) (last sentence).

<sup>152</sup> UTMA § 18(d).

<sup>153</sup> Compare Civil Code § 1155(l) with UTMA § 1(10).

<sup>154</sup> Civil Code § 1161(h).

<sup>155</sup> 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." UTMA § 18(d).

<sup>156</sup> Civil Code §§ 1161, 1162.

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.<sup>157</sup>

### **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.<sup>158</sup> 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.<sup>159</sup>

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.<sup>160</sup>

### **Recommended Legislation**

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

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<sup>157</sup> Civil Code § 1162.5(c).

<sup>158</sup> UTMA § 22(b).

<sup>159</sup> See the Comment to UTMA § 22.

<sup>160</sup> UTMA § 22(a). 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.

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, 3412, 3413, 3602, 3611, 6341, 6348, and 6349 of, to amend the heading of Chapter 9 (commencing with Section 6340) of Part 1 of Division 6 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:*

**Civil Code §§ 1154-1165 (repealed)**

**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.

**Comment.** Civil Code Sections 1154-1165 (the California Uniform Gifts to Minors Act) are replaced by Part 9 (commencing with Section 3900) of Division 4 of the Probate Code (California Uniform Transfers to Minors Act).

**Probate Code § 3303 (added). Provisions of California Uniform Transfers to Minors Act not limited**

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

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

**Comment.** Section 3303 is added to make clear that nothing in this part limits the provisions of the California Uniform Transfers to Minors Act. However, some provisions of this part may expand the scope of the Uniform Act. See Sections 3412(b), 3413(b), 3602(c) (2), 3611(e).

**Probate Code § 3400 (technical amendment). “Total estate of the minor” defined**

**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 1151) 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.

**Comment.** Section 3400 is amended to substitute a reference in subdivision (b) (1) to the California Uniform Transfers to Minors Act which supersedes the former California Uniform Gifts to Minors Act. See also Prob. Code § 3923 (application of new Uniform Act to transfers made under superseded Uniform Act).

**Probate Code § 3410 (technical amendment).** Application of article; computing "money belonging to the minor"

**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 1151) 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.

**Comment.** Section 3410 is amended to substitute a reference in subdivision (b)(1) to the California Uniform Transfers to Minors Act which supersedes the former California Uniform Gifts to Minors Act. See Prob. Code § 3923 (application of new Uniform Act to transfers made under superseded Uniform Act).

**Probate Code § 3412 (amended).** Order of court where guardianship of estate

**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).

**Comment.** Section 3412 is amended to add new subdivision (b) to give the court the alternative of ordering that all or part of the money be transferred to a custodian to be subject to the California Uniform Transfers to Minors Act. Under prior law, such a transfer apparently could be made to a custodian under the former California Uniform Gifts to Minors Act only where the money of the guardianship estate did not exceed \$20,000 under the provision which is now subdivision (c) of Section 3412.

**Probate Code § 3413 (amended). Order of court where no guardianship of estate**

**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.

~~(c)~~

(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).

**Comment.** Section 3413 is amended to add new subdivision (b) to give the court the alternative of ordering that all or part of the money be transferred to a custodian to be subject to the California Uniform Transfers to Minors Act. Under prior law, such a transfer apparently could be made to a custodian under the former California Uniform Gifts to Minors Act only where the money belonging to the minor did not exceed \$20,000 under the provision which is now subdivision (c) of Section 3413.

**Probate Code § 3602 (amended). Disposition of remaining balance**

**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 and other 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.

**Comment.** Section 3602 is amended to add paragraph (2) to subdivision (c) to give the court the alternative of ordering that all or any part of the money and other property be transferred to a custodian to be subject to the California Uniform Transfers to Minors Act. This alternative gives the custodian more flexibility in handling money (by avoiding the need for court authorization for any withdrawal) and permits a custodian to handle other property (rather than requiring it in every case to become a part of the guardianship estate).

Nothing in the California Uniform Transfers to Minors Act gives a custodian under that Act any authority to settle or release a claim of the minor against a third party. Only a guardian of the estate (Prob. Code §§ 2500-2507) or guardian ad litem or other person authorized under other law (see, e.g., Code Civ. Proc. § 372; Prob. Code § 3500) to act for the minor may settle or release such a claim. See Uniform Law Commissioners' Comment to Uniform Transfers to Minors Act § 8.

**Probate Code § 3611 (amended). Order of court**

**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 any part of the money and 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).***

**Comment.** Subdivision (e) is added to Section 3611 to give the court the alternative of ordering that all or any part of the money and other property be transferred to a custodian to be subject to the California Uniform Transfers to Minors Act. Under prior law, such a transfer apparently could be made to a custodian under the former California Uniform Gifts to Minors Act only where the money and other property did not exceed \$20,000 under subdivision (c) of Section 3611.

**Probate Code §§ 3900-3925 (added)**

**SEC. 9.** 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. Short title**

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

**Comment.** Section 3900 is the same as Section 24 of the Uniform Transfers to Minors Act.

**§ 3901. Definitions**

**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.

**Comment.** Section 3901 is the same in substance as Section 1 of the Uniform Transfers to Minors Act with two exceptions:

(1) "Court" is defined in subdivision (e) to mean "the superior court." This continues the definition of former Civil Code § 1155(d).

(2) The definition of "financial institution" in subdivision (h) is expanded to include "an industrial loan company licensed and supervised under the laws of this state." This continues a provision of the definition of former Civil Code § 1155(g).

Section 3901 supersedes former Civil Code Section 1155 which provided definitions for the former California Uniform Gifts to Minors Act. To reflect the broader scope and the unlimited types of property to which the new California Uniform Transfers to Minors Act applies, a number of definitional changes have been made from the old California Uniform Gifts to Minors Act. In addition, several definitions in the old Act specifically applicable to limited types of property (cash, securities, and insurance policies) covered before the expansion of the scope of the Uniform Act have been omitted as unnecessary. These omitted definitions include the definitions of "bank," "issuer," "life or endowment insurance policies and annuity contracts," "savings and loan association," "security," and "transfer agent." No change in the meaning or construction of those terms as used in this part is intended by such omissions. See Uniform Law Commissioners' Comment to Uniform Transfers to Minors Act § 1. The substantive effect of the definition of "[l]ife or endowment insurance policies and annuity contracts" in the old Act is superseded by Probate Code Section 3901(f) and subdivision (b) (3) of Section 3912 of the Probate Code (right to retain property transferred to custodian) and subdivision (c) of Section 3912 of the Probate Code (right to invest in or pay premiums on insurance or endowment policies). The definition of "insured financial institution" has been omitted because the prudent person rule of Section 3912(b) may dictate the use of insured institutions or depositories, without having the Act so specify. See Uniform Law Commissioners' Comment to Uniform Transfers of Minors Act § 1.

The principal changes or additions to the remaining definitions contained in former Civil Code Section 1155 are discussed below. These Comments are drawn from the Uniform Law Commissioners' Comment to Section 1 of the Uniform Transfers to Minors Act.

*Subdivision (a).* The primary effect of the definition of "adult" is to require that an individual custodian (other than a transferor-custodian be 21 years of age or older. The former minimum age requirement for a custodian was 18. See former Civil Code §§ 1155(a), 1156(a) (introductory clause). The

increase from 18 to 21 is consistent with the new provision that the custodianship continues under some circumstances until the minor beneficiary attains the age of 21. See Section 3920. Requiring the custodian to be at least 21 also provides more assurance that the custodian will have the maturity and ability to manage the custodial property which may now include any kind of property.

The new minimum age requirement (21 years) does not apply where the transferor is the custodian. Under this Act, a transferor may be a custodian without regard to age so long as the transferor has the capacity to make the transfer. The requirement of former law—Civil Code Section 1156(a)—that the donor be an “adult” is not continued in this Act. 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 or her own benefit or for the benefit of another minor. 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 makes clear that an emancipated minor can make a transfer to a custodian for the minor’s own benefit or for the benefit of another minor and can also serve as the custodian for custodial property the minor transfers under this Act for the benefit of another minor.

The new minimum age requirement (21 years) is also used to determine persons who may file petitions under this Act. See Section 3918, subdivision (d) (“adult member of the minor’s family” may petition the court to designate a successor custodian), subdivision (f) (“adult member of the minor’s family” may petition the court to remove the custodian for cause and to designate a successor custodian or to require the custodian to give appropriate bond), Section 3919(a) (“adult member of minor’s family” may petition for accounting or determination of custodian’s liability). See also the discussion of subdivision (k) (defining “minor”), *infra*.

**Subdivision (b).** The definition of “benefit plan” is new and is intentionally very broad and is meant to cover any contract, plan, system, account or trust such as a pension plan, retirement plan, death benefit plan, deferred compensation plan, employment agency arrangement, or stock bonus, option or profit sharing plan.

**Subdivision (d).** The term “conservator” is defined instead of “guardian” to conform to the Uniform Transfers to Minors Act. For California purposes, the term means the guardian of the estate of the minor. As applied to other states, it includes a committee, tutor, or curator of the minor’s property.

*Subdivision (f).* The definition of “custodial property” has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real property and tangible or 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 as 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 3903). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as was the case under former Civil Code Section 1155(e).

Custodial property is defined without reference to the physical location of the property, even if it has one. No useful purpose would be served by restricting the application of the Act to, for example, real estate “located in this state,” since a conveyance recorded in the state of the property’s location, if done with proper formalities, should be effective even if that state has not enacted this Act. The rights, duties and powers of the custodian should be determined by reference to the law of the state under which the custodianship is created, assuming there is sufficient nexus under Section 3902 between that state and the transferor, the minor, or the custodian.

*Subdivision (j).* The definition of “member of the minor’s family” expands the definition under former Civil Code Section 1155 to include the minor’s stepparent and spouse.

*Subdivision (k).* A “minor” is defined as an individual who has not attained the age of 21 years (notwithstanding that the age of majority has been lowered from 21 to 18 in California), because the custodianship continues until the minor reaches the age of 21 where the custodianship is created by a lifetime gift or by a transfer authorized by a will or trust. See Section 3920(a). See also the Comment to Section 3920. Under former Civil Code Section 1155(m), the age had been lowered from 21 to 18 (1972 Cal. Stats. ch. 579) to conform to the lowering of the age of majority from 21 to 18 (1971 Cal. Stats. ch. 1748, § 23).

*Subdivision (m).* The new definition of “personal representative” is based upon that definition in Section 1-201 (30) of the Uniform Probate Code.

*Subdivision (o).* The new definition of “transfer” is necessary to reflect the application of the Act not only to gifts, but also to

distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by this Act.

*Subdivision (p).* The new definition of "transferor" is required because the term includes not only the maker of a gift, *i.e.*, a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in this Act requires that a transferor be an "adult." See the Comment to subdivision (a) *supra*.

*Subdivision (q).* The new definition of "trust company" replaces the definition of former Civil Code Section 1155 (which defined a trust company by reference to Sections 107 and 109 of the Financial Code).

Only entities authorized to exercise "general" trust powers qualify as "trust companies"; that is, the authority to exercise only limited fiduciary responsibilities, such as the authority to accept Individual Retirement Account deposits, is not sufficient.

## § 3902. Scope and jurisdiction

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.

**Comment.** Section 3902 is the same as Section 2 of the Uniform Transfers to Minors Act. The section, which is new,



attempts to resolve uncertainties and conflicts-of-laws questions that have frequently arisen because of the present non-uniformity of Uniform Gifts to Minors Act in the various states and which may continue to arise during the transition from the Uniform Gifts to Minors Act to the Uniform Transfers to Minors Act.

The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under subdivision (a) of Section 3909. Section 3902 provides that a choice of the California Uniform Transfers to Minors Act is appropriate and effective if any of the nexus factors specified in subdivision (a) exists at the time of the transfer. The California Uniform Transfers to Minors Act continues to govern, and subdivision (b) makes the custodian accountable and subject to personal jurisdiction in the courts of this state for the duration of the custodianship, despite subsequent relocation of the parties or the property.

Subdivision (c) recognizes that residents of California may elect to have the law of another state apply to a transfer. That choice is valid if a nexus with the chosen state exists at the time of the transfer. If personal jurisdiction can be obtained in California under other law apart from this Act, the custodianship may be enforced in a California court, which is directed to apply the law of the state elected by the transferor.

If the choice of law under subdivision (a) or (c) is ineffective because of the absence of the required nexus, the transfer may still be effective under the Act of another state with which a nexus does exist. See Section 21 of the Uniform Transfers to Minors Act (Cal. Prob. Code § 3922).

### § 3903. Nomination of custodian

**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.

**Comment.** Section 3903 is the same as Section 3 of the Uniform Transfers to Minors Act. The section permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a 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. Nomination of a future custodian does not constitute a “transfer” under this Act and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a “transfer” is irrevocable and indefeasibly vests ownership of the interest in the minor under subdivision (b) of Section 3911.

Instead, Section 3903 permits a revocable beneficiary designation that 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. However, an unrevoked nomination under Section 3903 is binding on a personal representative or trustee (see subdivision (b) of Section 3905) and on insurance companies and other obligors who contract to pay in the future (see subdivision (b) of Section 3907).

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. Such a substitute future custodian is a custodian “nominated . . . under Section 3903” to whom the transfer must be made under subdivision (b) of Section 3905 and subdivision (b) of Section 3907.

Any person nominated as future custodian may decline to serve before the transfer occurs and may resign at any time after the transfer. See Section 3918.

No provision like Section 3903 was included in the former California statute. But see former Probate Code Section 6340 which permitted a person to designate in his or her will the custodian to receive property devised under the will to a minor to be transferred to a designated custodian for the benefit of a minor.

#### **§ 3904. Transfer by gift or exercise of power of appointment**

**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.

**Comment.** Section 3904 is the same as Section 4 of the Uniform Transfers to Minors Act.

To emphasize the different kinds of transfers that create presently effective custodianships under this Act, they are separately described in Sections 3904, 3905, 3906, and 3907.

Section 3904 in part corresponds to subdivision (a) of former Civil Code Section 1156 and covers the traditional lifetime gift that was the only kind of transfer authorized by that provision. Section 3904 does not continue the requirement of former Civil Code Section 1156 that the donor be an “adult person.” See the Comment to subdivision (a) of Section 3901.

Section 3904 also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under Section 3903.

A custodianship created under this section will terminate upon the minor’s attainment of the age of 21. See Section 3920(a) and the Comment thereto.

#### **§ 3905. Transfer authorized by will or trust**

**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 or 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.

**Comment.** Section 3905 is the same as Section 5 of the Uniform Transfers to Minors Act. Former Section 6340 of the Probate Code permitted a testator to devise any kind of property to a custodian subject to the California Uniform Gifts to Minors Act. Section 3905 expands the authorization of former Probate Code Section 6340 to include not only a testamentary disposition but also to make clear that a trustee may make a transfer to a custodian for the benefit of a minor as authorized in the governing trust. Section 3905 also authorizes the personal representative or trustee to designate the custodian whenever the settlor or testator fails to make a nomination or whenever a future custodian nominated under Section 3903 (and any alternate named) fails to qualify. See also Section 3918(a).

A custodianship created under this section will terminate upon the minor's attainment of the age of 21. See Section 3920(a) and the Comment thereto.

#### § 3906. Other transfer by fiduciary

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.

**Comment.** Section 3906 is the same as Section 6 of the Uniform Transfers to Minors Act. Section 3906 had no counterpart in prior California law. It covers a new concept to permit custodianships to be used as guardianship substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. Subdivision (a) permits an executor or administrator of an estate or a trustee to transfer estate property to a custodian for the benefit of a minor in the absence of a will or under a will or trust that does not contain an authorization to do so. Subdivision (b) permits the guardian of the estate of a minor to transfer the minor's own property to a new or existing custodianship for the purpose of convenience or economies of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the fiduciary making the transfer must determine in good faith and in his or her fiduciary capacity that a custodianship will be in the best interests of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. 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. Third, the amount of property transferred (as measured by its value) must be of such relatively small amount that the lack of court supervision and the typically stricter investment standards that would apply to a guardianship will not be important. However, if the property is of significant size,

transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the age of 18, the same age at which a guardianship of the estate would end. See Section 3920(b) and the Comment thereto.

#### § 3907. Transfer by obligor

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.

**Comment.** Section 3907 is the same as Section 7 of the Uniform Transfers to Minors Act. Prior California law contained no counterpart. But see Sections 3400-3402, 3410-3413, 3600-3612.

Like Section 3906, Section 3907 permits a custodianship to be established as a substitute for a guardianship to receive payments due a minor from sources other than estates, trusts, and existing guardianships covered by Sections 3905 and 3906. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Use of this section is mandatory when a future custodian has been nominated under Section 3903 as a named beneficiary of an insurance policy, benefit plan, deposit account, or the like, because the original owner of the property specified a

custodianship (and a future custodian) to receive the property. If that custodian (or any alternate named) is not available, if none was nominated, or none could have been nominated (as in the case of a tort judgment payable to the minor), this section is permissive and does not preclude the obligor from requiring the establishment of a guardianship of the estate to receive payment. The section merely allows the obligor to transfer to a custodian unless the property exceeds the stated value, in which case a guardian of the estate must be appointed to receive it or some other procedure used (see Sections 3410-3413, 3600-3612).

### **§ 3908. Receipt for custodial property**

**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.

**Comment.** Section 3908 is the same as Section 8 of the Uniform Transfers to Minors Act. The section discharges transferors from further responsibility for custodial property delivered to and receipted for by the custodian. See also Section 3916 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative transfer is not necessary, this section had no counterpart in the prior statute. But see Section 3402 (effect of written receipt of parent).

Section 3908 does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under Section 3907, to settle or release a claim of the minor against a third party. Only a guardian, guardian ad litem or other person authorized under other law to act for the minor may release such a claim. See the Comment to Section 3602.

### **§ 3909. Manner of creating custodial property and effecting transfer; designation of initial custodian; control**

**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,



**Dated:** \_\_\_\_\_

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(Signature)

\_\_\_\_\_ acknowledges receipt of the  
(name of custodian)  
property described above as custodian for the minor  
named above under the California Uniform Transfers to  
Minors Act.

Dated: \_\_\_\_\_

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(Signature of Custodian)

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

**Comment.** Section 3909 provides more detailed rules than  
former Civil Code Section 1156 concerning the manner of  
creating custodial property and effecting the transfer. Section  
3909 is the same in substance as Section 9 of the Uniform  
Transfers to Minors Act.

*Subdivision (a)*

Subdivision (a), which supersedes subdivision (a) of former  
Civil Code Section 1156, describes how the property is to be  
transferred and persons eligible to serve as custodian.

*Paragraph (1).* This paragraph continues the substance of  
paragraphs (1) and (2) of subdivision (a) of former Section 1156  
relating to securities and also permits a transfer of securities in  
registered form to be accomplished without registering the  
transfer in the name of the custodian. This addition will permit  
transfers to be accomplished more expeditiously and will permit  
securities that may be held by custodians in street names.  
However, although the transferor may serve as the custodian  
when the security is registered in the name of the custodian  
under subparagraph (A) of paragraph (1), the transferor may  
not serve as a custodian if the security is transferred in the  
manner provided in subparagraph (B) of paragraph (1). This is  
consistent with prior law under paragraphs (1) and (2) of  
subdivision (a) of former Civil Code Section 1156.

*Paragraph (2).* This paragraph continues the substance of  
paragraph (3) of subdivision (a) of former Civil Code Section  
1156 relating to money credited to a custodial account.

*Paragraph (3).* This paragraph covers the irrevocable  
transfer of ownership of life and endowment insurance policies

and annuity contracts. It supersedes paragraph (4) of subdivision (a) of former Civil Code Section 1156, which provided that such a policy or contract could be transferred by being "assigned" to the custodian. The new provision provides for registration with the issuer in the name of the custodian (in which case the transferor is eligible to serve as custodian) or for an assignment in writing delivered to the custodian (in which case the transferor is not eligible to serve as custodian).

*Paragraph (4).* This paragraph covers the *irrevocable* exercise of a power of appointment and the *irrevocable* present assignment of 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). 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 to the payor, issuer, or other obligor that the right is transferred to the custodian. Former law had no provision comparable to paragraph (4). Compare Section 3903 and the Comment thereto for the procedure for *revocably* "nominating" a future custodian as a beneficiary of a power of appointment or such payment rights.

*Paragraph (5).* This paragraph provides the exclusive method for the transfer of real property, including a disposition made by a will. The transfer of an interest in real property must be recorded in the name of the custodian in order that the transfer be an effective transfer for the purposes of this Act. This changes the former law which required that the transfer be made "by executing and delivering in the appropriate manner a deed, assignment, or similar instrument" to the custodian. Former Civil Code § 1156(a) (5).

*Paragraph (6).* This paragraph is new to California law and covers the transfer of tangible personal property (such as automobiles and aircraft) subject to registration of ownership with a state or federal agency. Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.

*Paragraph (7).* This paragraph, comparable to paragraph (6) of subdivision (a) of former Civil Code Section 1156, is a residual classification, covering all property not otherwise covered in the preceding paragraphs. Examples would include partnership interests and tangible personal property not subject to title certificates. Unlike former California law, the transferor is not eligible to be a custodian of property transferred under this paragraph.

*Subdivision (b)*

The form of transfer document set forth in subdivision (b) contains an acceptance that must be executed by the custodian to make the disposition effective. While such a form of written acceptance is not specifically required in the case of registered securities under subdivision (a) (1), money under subdivision (a) (2), insurance contracts or interests under subdivision (a) (3) or (4), real estate under subdivision (a) (5), or titled personal property under subdivision (a) (6), it is certainly the better and recommended practice to obtain the acknowledgment, consent, and acceptance of the designated custodian on the instrument of transfer, or otherwise. Former California law did not provide for the form for a transfer instrument except for the gift of a security not in registered form under former Civil Code Section 1157(a) (2).

*Transferor as custodian*

A transferor may create a custodianship by naming himself or herself as custodian, except for transfers of securities under subdivision (a) (1) (B), insurance and annuity contracts under subdivision (a) (3) (B), and titled personalty under subdivision (a) (6) (B), which are made without registering them in the name of the custodian, and transfers of the residual class of property covered by subdivision (a) (7). In all of these cases a transfer of possession and control to a third party is necessary to establish donative intent and consummation of the transfer, and designation of the transferor as custodian renders the transfer invalid under Section 3911(a) (2).

Note, also, that the Internal Revenue Service takes the position that custodial property is includable in the gross estate of the donor if the donor appoints himself or herself custodian and dies while serving in that capacity before the minor attains the age of 21. Rev. Rul. 57-366, 1957-2 C.B. 618; Rev. Rul. 59-357, 1959-2 C.B. 212; Rev. Rul. 70-348, 1970-2 C.B. 193; *Estate of Prudowsky v. Comm'r*, 55 T.C. 890 (1971), *aff'd per curiam*, 465 F.2d 62 (7th Cir. 1972).

This Act has been drafted in an attempt to avoid income attribution to the parent or inclusion of custodial insurance policies on a custodian's life in the estate of the custodian through the changes made in the standards for expenditure of custodial property and the custodian's incidents of ownership in custodial property. See Section 3913 and 3914 and the Comments thereto. However, the much greater problem of inclusion of custodial property in the estate of the donor who serves as custodian

remains. Therefore, despite the fact that this section permits the donor to serve as custodian in the case of registered securities, money, life insurance, real estate, and personal property subject to titling laws, it is generally still inadvisable for a donor to appoint himself or herself custodian or for a parent of the minor to serve as custodian. See, generally Sections 2036 and 2038 I.R.C. and rulings and cases cited above; with respect to gifts of closely held stock when a donor retains voting rights by serving as custodian, see I.R.C. Section 2036(b), overruling *United States v. Byrum*, 408 U.S. 125 (1972).

*Subdivision (c)*

Subdivision (c) supersedes the requirement of subdivision (c) of former Civil Code Section 1156 that the transferor “promptly do all things within his power” to complete the transfer, and replaces it with the requirement that such action be taken “as soon as practicable.” This change is intended only to reflect the fact that possession and control of property transferred from an estate can rarely be accomplished with the immediacy that the term “promptly” may have implied. In the case of inter vivos transfers, no relaxation of the former requirement is intended, since “prompt” transfer of dominion is usually practicable.

**§ 3910. Single custodianship**

**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.

**Comment.** Section 3910 is the same as Section 10 of the Uniform Transfers to Minors Act. The first sentence of Section 3910 continues subdivision (b) of former Civil Code Section 1156. The second sentence of Section 3910 states what was implicit in the former law, that additional transfers at different times and from different sources may be made to an existing custodian for the minor and do not create multiple custodianships. This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under Section 3918 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfers made “under this part.” Gifts previously made under the California Uniform Gifts to Minors Act or under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of another state must be

treated as separate custodianships, even though the same custodian and minor are involved, because of possible differences in the age of distribution and custodian's powers under those other Acts.

Even when all transfers to a single custodian are made "under this part" and a single custodianship results, custodial property transferred under Sections 3906 and 3907 must be accounted for separately from property transferred under Sections 3904 and 3905 because the custodianship will terminate sooner with respect to the former property. See Section 3920 and the Comment thereto.

### § 3911. Validity and effect of transfer

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.

(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.

**Comment.** Subdivisions (a), (b), and (c) of Section 3911 are the same as Section 11 of the Uniform Transfers to Minors Act. Subdivisions (d), (e), and (f) of Section 3911 are not included in the Uniform Act.

Subdivision (a) of Section 3911 generally continues the substance of the last portion of subdivision (c) of former Civil Code Section 1156, except that the transferor's designation of himself or herself as custodian of property for which he or she is not eligible to serve under subdivision (a) of Section 3909 makes the transfer ineffective. See Comment to Section 3909.

The balance of Section 3911 generally continues former Civil Code Section 1157 with a number of necessary, and perhaps significant, changes required by the new kinds of property subject to custodianship. Former Civil Code Section 1157 provided that a transfer made in accordance with its terms "conveys to the minor indefeasibly vested legal title to the custodial property." Because equitable interests in property may be the subject of a transfer under this Act, the reference to "legal title" has been deleted, but no change concerning the effect or finality of the transfer is intended. However, subdivision (b) of Section 3911 qualifies the rights of the minor in the property by making them subject to "the rights, powers, duties, and authority" of the custodian under this Act, a concept that may have been implicit and intended in former Civil Code Section 1157, but not expressed.

For a list of the immunities enjoyed by third persons under subdivision (c), see Section 3916 and the Comment thereto.

Subdivisions (d), (e), and (f) of Section 3911 are not included in the Uniform Transfers to Minors Act. These subdivisions replace provisions contained in paragraphs (1), (2), (3), (5), and (6) of subdivision (a) of former Civil Code Section 1156 that

authorized a transfer to a “guardian of the minor” as custodian for the minor. Subdivisions (d), (e), and (f) are included in Section 3911 to make clear that (1) a person serving as guardian of the estate of the minor may also serve as custodian under this Act and 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 this Act and in such case the property is no longer a part of the guardianship estate but instead is governed solely by this Act.

### **§ 3912. Care of custodial property**

**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 except that:

(1) 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.

(2) If a custodian is not compensating for his or her services, the custodian is not liable for losses to custodial property unless they result from the custodian’s bad faith, intentional wrongdoing, or gross negligence, or from the custodian’s failure to maintain the standard of prudence in investing the custodial property provided in this section.

(3) 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.

**Comment.** Section 3912 is the same in substance as Section 12 of the Uniform Transfers to Minors Act.

Subdivision (a) of Section 3912 expands subdivision (a) of former Civil Code Section 1158 to include the duties to take control and appropriately register or record custodial property in the name of the custodian.

Subdivision (b) of Section 3912 restates and makes somewhat stricter the prudent man fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property of *another*" rather than one "who is seeking a reasonable income and preservation of *his* capital," as under subdivision (e) of former Civil Code Section 1158 (emphasis added). The rule also adds a slightly higher standard for professional fiduciaries. The rule parallels Section 7-302 of the Uniform Probate Code in order to refer to the existing and growing body of law interpreting that standard. Subdivision (b) (2) of Section 3912 continues subdivision (e) of former Civil Code Section 1159—a special immunity from liability for the

custodian for losses to custodial property where the custodian is not compensated. This provision is included because it is likely to reflect the desires of the donor who makes a transfer to a custodian who serves without compensation. Subdivision (e) of former Civil Code Section 1158 permitted a custodian to retain any security received, without the obligation to diversify investment. Subdivision (b) (3) of Section 3912 extends that rule to any property received.

In order to eliminate any uncertainty that existed under the former law, subdivision (c) of Section 3912 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 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 the beneficiary of such policies.

Subsection (d) of Section 3912 generally continues subdivision (g) of former Civil Code Section 1158, but adds the provision requiring that custodial property consisting of an undivided interest be held as a tenant in common. This provision permits the custodian to invest custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit. Investment in property held in joint tenancy with right of survivorship is not permitted, but the Act does not preclude a transfer of such an interest to a custodian, and the custodian is authorized under subdivision (b) to retain a joint tenancy interest so received.

Subdivision (e) of Section 3912 continues subdivision (h) of former Civil Code Section 1158, but adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

### **§ 3913. Powers of custodian**

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.

**Comment.** Section 3913 is the same as Section 13 of the Uniform Transfers to Minors Act. Subdivision (a) of Section 3913 replaces the specific list of custodian's powers contained in subdivisions (f), (i), and (j) of former Civil Code Section 1158. The Uniform Law Commissioners determined not to expand the list to try to deal with all forms of property now covered by the Act and to specify all powers that might be appropriate for each kind of property, or to refer to an existing body of state law, such as a statutory provision stating powers of a trustee, since such powers would not be uniform. Instead, this provision grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the prudent person rule and to the duties of segregation and record keeping specified in Section 3912. (See subdivision (b) of Section 3913.) This approach 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.

Subdivision (a) further specifies that the custodian's power or incidents of ownership in custodial property such as insurance policies may be exercised only in the capacity as custodian. This provision is intended to prevent the exercise of those powers for the direct or indirect benefit of the custodian, so as to avoid as nearly as possible the result that a custodian who dies while holding an insurance policy on his or her own life for the benefit of a minor will have the policy taxed in his estate. See I.R.C. Section 2042; but compare *Terriberry v. United States*, 517 F.2d 286 (5th Cir. 1975), and *Rose v. United States*, 511 F.2d 259 (5th Cir. 1975).

#### § 3914. Use of custodial property

**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.

(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, and shall not 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:

(Signature of transferor-custodian)

**Comment.** Subdivisions (a), (b), and (c) of Section 3914 are the same as Section 14 of the Uniform Transfers to Minors Act. Subdivision (d) of Section 3914 is not included in the Uniform Act.

Subdivisions (a) and (b) continue subdivisions (b) and (c) of former Civil Code Section 1158, with two changes. The standard for expenditure of custodial property is revised to substitute “for the use and benefit of the minor” for the language “for the support, maintenance, education, and benefit of the minor” used in former Section 1158. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor. The “use and benefit” standard in subdivisions (a) and (b) 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.

Subdivision (b) expands the authority to file a petition under former Civil Code Section 1158 to permit a petition to be filed by “an interested person.” An “interested person” would include not only the parent or conservator or guardian of the minor and a transferor or a transferor’s legal representative, but also a public agency or official with custody of the minor and a third party to whom the minor owes legally enforceable debts.

The Internal Revenue Service has taken the position that the income from custodial property, to the extent it is used for the support of the minor-donee, is includable in the gross income of any person who is legally obligated to support the minor-donee, whether or not that person or parent is serving as the custodian. Rev. Rul. 56-484, 1956-2 C.B. 23; Rev. Rul. 59-357, 1959-2 C.B. 212. However, Treasury Regulation § 1.662(a)-4 (1980) provides that the term “legal obligation” includes a legal obligation to support another person if, and only if, the obligation is not affected by the adequacy of the dependent’s own resources. Thus, if under local law a parent may use the resources of a child for the child’s support in lieu of supporting the child himself or herself, no obligation of support exists, whether or not income is actually used for support, at least if the child’s resources are adequate. See 3 B. Bittker, *Federal Taxation of Income, Estates and Gifts*, ¶ 80.4.4 (1981). For this reason, subdivision (c) has been included in Section 3914 to specify that distributions or expenditures may be made for the minor without regard to the duty or ability of any other person to support the minor and that distributions or

expenditures are not in substitution for, and shall not affect, the obligation of any person to support the minor. No comparable provision was found in prior California law.

Subdivision (d) of Section 3914 is a provision not found in the Uniform Transfers to Minors Act. The subdivision continues the substance of former Civil Code Section 1158.5. This provision permits a transferor who is also a custodian to elect to eliminate the authority of the custodian to distribute property for the minor's use or benefit except pursuant to a court order. The section was added to the California statute in an effort to solve the tax problems that may arise when the transferor makes a transfer to a minor under the Act and designates himself or herself as custodian. For a discussion of the provision, see Review of Selected 1965 Code Legislation, at 52-53 (Cal. Cont. Ed. Bar 1965).

#### **§ 3915. Custodian's expenses, compensation, and bond**

**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.

**Comment.** Section 3915 is the same as Section 15 of the Uniform Transfers to Minors Act. Section 3915 supersedes former Civil Code Section 1159. Section 3915 does not continue the statement in the former section that a custodian may act without compensation for services, since that concept is implied in the retained provision that a custodian has an "election" to be compensated. However, to prevent abuse, the latter provision for permissive compensation is denied to a custodian who is also the donor of the custodial property.

The custodian's election to charge compensation must be exercised (although the compensation need not be actually paid) at least annually or it lapses and may not be exercised later. This 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.

Section 3915 omits as surplusage the standard contained in subdivision (c) of former Civil Code Section 1159 for determining “reasonable compensation” which included, “in the order stated,” a direction by the donor, statutes governing compensation of custodians or guardians, or court order. This was an optional provision of the Uniform Gifts to Minors Act and was not continued in the Uniform Transfers to Minors Act. 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 determined by agreement, by a provision in a will (see Section 6345), by reference to a statute or by court order, without the need to so state in this Act.

**§ 3916. Exemption of third person from liability**

**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 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.

**Comment.** Section 3916 is the same as Section 16 of the Uniform Transfers to Minors Act. It carries forward, but shortens and simplifies, former Civil Code Section 1160, with no substantive change intended. The former section permitted a 14-year old minor to appoint a successor custodian and specifically provided that third parties were entitled to rely on the appointment. Because Section 3916 refers to any custodian, and “custodian” is defined to include successor custodians (subdivision (g) of Section 3901), a successor custodian appointed by the minor is included among those upon whom third parties may rely.

Similarly, because Section 3916 protects any “third person,” it is not necessary to specify here or in subdivision (c) of Section 3911 that the protection extends to any “issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution,” as did former Section 1160. See the definition of “person” in subdivision (1) of Section 3901.

Section 3916 excludes from its protection persons with “knowledge” of the irregularity of a transaction, a concept not expressed but probably implied in former Civil Code Section 1160. See, *e.g.*, *State ex rel. Paden v. Carrel*, 597 S.W.2d 167 (Mo. App. 1980), disapproving the pledge of custodial property to secure a personal loan to the custodian.

Similarly, Section 3916 does not alter the requirements for bona fide purchaser or holder in due course status under other law for persons who acquire from a custodian custodial property subject to recordation or registration.

#### **§ 3917. Liability to third persons**

**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.

**Comment.** Section 3917 had no counterpart in former law. The section is the same as Section 17 of the Uniform Transfers to Minors Act and is based upon Section 5-429 of the Uniform Probate Code, relating to limitations on the liability of conservators.



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.). Section 3917 is included to protect the minor and other assets the minor might have or acquire from such liabilities, since the minor is unable to disclaim a transfer to a custodian for the minor's 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 claims of third parties to recourse against the custodial property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

The custodian incurs personal liability only as provided in subdivision (b) for actual fault or for failure to disclose the custodial capacity "in the contract" when contracting with third parties. In oral contracts, oral disclosure of the custodial capacity is sufficient. The new provision appears to be consistent with California law concerning the tort liability of a guardian. See *Campbell v. Bradbury*, 179 Cal. 364, 176 P. 685 (1918). But the provision may restrict the liability under prior law of the custodian who makes a contract in the custodial capacity. See *Hall v. Jameson*, 151 Cal. 606, 91 P. 518 (1907) (trustee personally liable on contract unless contract stipulates trustee not liable). The minor, on the other hand, incurs personal liability under subdivision (c) only for actual fault.

When custodial property is subjected to claims of third parties under this section, the minor or the minor's legal representative, if not a party to the action by which the claim is successfully established, may seek to recover the loss from the custodian in a separate action. See Section 3919 and the Comment thereto.

**§ 3918. Renunciation, resignation, death, or removal of custodian; designation of successor custodian**

**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 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, 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.

(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.

**Comment.** Section 3918 is the same in substance as Section 18 of the Uniform Transfers to Minors Act with the addition of subdivision (g). The section tracks but condenses former Civil Code Section 1161 to provide that the custodian, or if the custodian does not do so, the minor if the minor is 14, may appoint the successor custodian, or failing that, that the guardian of the estate of the minor or a court appointee shall serve. The section also covers disclaimer of the office by designated or successor custodians or by nominated future custodians who decline to serve.

This Act broadens the category of persons the initial custodian may designate as successor custodian from an adult member of the minor's family, the guardian of the minor, or a trust company to any adult other than the donor or a trust company. However, the minor's designation remains limited to an adult member of the minor's family (expanded to include a spouse and a stepparent, see subdivision (j) of Section 3901), the guardian of the minor's estate, or a trust company. Subdivision (g), which is not contained in the Uniform Transfers to Minors Act, continues subdivision (h) of former Civil Code Section 1161. See also Sections 3905(c), 3907(c).

**§ 3919. Accounting by and determination of liability of custodian**

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

**(e)** The right to petition for an accounting shall continue for one year after the filing of a final accounting by the custodian or the custodian's legal representative and delivery of the custodial property to the minor or the minor's estate.

**Comment.** Section 3919 is the same as Section 19 of the Uniform Transfers to Minors Act [with the addition of subdivision (e)]. The section carries forward former Civil Code Section 1162, but expands the class of parties who may require an accounting by the custodian to include any person who made a transfer to the custodian (or any such person's legal representative), the minor's guardian of the person, and the successor custodian.

Subdivision (b) authorizes but does not obligate a successor custodian to seek an accounting by the predecessor custodian. Since the minor and other persons mentioned in subdivision (a)

may also seek an accounting from the predecessor at any time, it is anticipated that the exercise of this right by the successor should be rare.

Subdivision (a) also gives the same parties (other than a successor custodian) the right to seek recovery from the custodian for loss or diminution of custodial property resulting from successful claims by third persons under Section 3917, unless that issue has already been adjudicated in an action under that section to which the minor was a party.

Subdivisions (c) and (d) continue the substance of subdivision (b) of former Civil Code Section 1162.

Subdivision (e) is not found in the Uniform Transfers to Minors Act. This provision continues the second sentence of subdivision (a) of former Civil Code Section 1162.

### § 3920. Termination of custodianship

**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.

**Comment.** Section 3920 is the same in substance as Section 20 of the Uniform Transfers to Minors Act. It supersedes former subdivision (d) of former Civil Code Section 1158.

Subdivision (a) raises the age of termination from 18 to 21 where the custodianship is created by a lifetime gift (see Section 3904) or by a transfer authorized by a will or trust (see Section 3905). Even though the statutory age of majority is 18, Section 3920 reverts to 21 for these transfers since most transferors who specifically authorize a custodianship wish to preserve the custodianship as long as possible. 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. *E.g.*, Sacks, *Inter Vivos and Testamentary Trusts*, in *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 when the client wishes to make the gift for a particular purpose, *e.g.*, education. A . . . 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."'). 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.

Subdivision (b) retains 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 trust unless the transfer is made pursuant to authority in a will or trust (see Section 3906) and (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 (see Section 3907). These custodianships terminate at the age of 18 because they are substitutes for a guardianship that otherwise would terminate at that time (see Section 1600).

Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Comment to Section 3910.

### § 3921. Venue

**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 the minor, the transferor, and any parent all do not reside within this state, and no estate of a deceased or legally incapacitated custodian is being administered within this state, in any county.

**Comment.** Section 3921 continues and expands the venue provision of former Civil Code Section 1162.5. No comparable provision is included in the Uniform Transfers to Minors Act.

The former provision is liberalized to add the county where the custodian resides as a proper county, whether or not the minor resides in this state. However, even where the custodian resides in this state, the venue is proper in any county if neither the minor, nor the transferor, nor any parent reside in this state, and no estate of a deceased or legally incapacitated custodian is being administered in this state.

### § 3922. Applicability

**3922.** 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.

**Comment.** Section 3922 is the same as Section 21 of the Uniform Transfers to Minors Act. No comparable provision was included in former California law. The section has two purposes. First, it operates as a "savings clause" to validate transfers made after its effective date which mistakenly refer to the California Uniform Gifts to Minors Act rather than to this Act. Second, it validates transfers attempted under the Uniform Gifts to Minors Act of another state which would not permit transfers from that source or of property of that kind or under the Uniform Transfers to Minors Act of another state with no nexus to the transaction, provided in each case that California has a sufficient nexus to the transaction under Section 3902.

### § 3923. Effect on existing custodianships

**3923.** (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 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. 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.

(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.

**Comment.** Subdivision (b) of Section 3923 is the same as subsection (a) of Section 22 of the Uniform Transfers to Minors Act. This subdivision attempts to validate any transfer of custodial property made before the effective date of this part 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. The subdivision would, for example, validate a transfer from an inter vivos trust by a trustee to a custodianship pursuant to an express provision in the trust instrument giving the trustee that authority. It was not clear under prior law that such a transfer created a valid custodianship.

The first sentence of subdivision (c) is the same as subsection (b) of Section 22 of the Uniform Transfers to Minors Act. This



sentence makes this part 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 this part. This provision avoids having two bodies of law in force—one applicable to prior custodianships and the other to custodianships created under this part—for 18 more years until all custodianships created under the California Uniform Gifts to Minors Act have terminated. The second sentence of subdivision (c) is the same in substance as subsection (c) of Section 22 of the Uniform Transfers to Minors Act. Its purpose is to avoid resurrecting custodianships for persons not yet 21 which terminated during the period that the age of 18 governed termination.

Subdivision (d) is the same as the second sentence of Section 27 of the Uniform Transfers to Minors Act. It preserves prior law for matters not governed by this part.

#### **§ 3924. Uniformity of application and construction**

**3924.** 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.

**Comment.** Section 3924 is the same as Section 23 of the Uniform Transfers to Minors Act and is a standard provision included in Uniform Acts.

#### **§ 3925. Method cumulative**

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

**Comment.** Section 3925 continues the substance of subdivision (b) of former Civil Code Section 1163. No comparable provision is found in the Uniform Transfers to Minors Act.

**Heading for Chapter 9 (commencing with Section 6340) of Part 1 of Division 1 of the Probate Code (amended)**

**SEC. 9.5.** The heading of Chapter 9 (commencing with Section 6340) of Part 1 of Division 1 of the Probate Code is amended to read:

**CHAPTER 9. DEVISE SUBJECT TO *CALIFORNIA*  
UNIFORM ~~GIFTS~~ *TRANSFERS* TO MINORS ACT**

**Probate Code § 6340 (repealed).** Devises to minors under California Uniform Gifts to Minors Act

**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 1151) 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.~~

**Comment.** Section 6340 is superseded by Sections 3903 and 3905.

**Probate Code § 6341 (amended).** Devises to minors under California Uniform Gifts to Minors Act or California Uniform Transfers to Minors Act

**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) Unless the will clearly requires otherwise, if 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.*

*(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.*

Comment. The introductory clause of Section 6341 is revised so that Section 6341 will apply whether the testator's will refers to the California Uniform Transfers to Minors Act or to the superseded California Uniform Gifts to Minors Act. This avoids the requirement that the will be modified to refer to the new Act.

Subdivision (a) is revised to make the California Uniform Transfers to Minors Act applicable to a devise to a minor that the will makes subject to either the old or the new Uniform Act.

Subdivision (b) continues the substance of former Section 6343 but the age has been raised from 18 to 21 to conform to the California Uniform Transfers to Minors Act. See Section 3920(a).

Subdivision (c) continues the substance of former Section 6344. Subdivision (d) continues the substance of former Section 6346.

**Probate Code § 6342 (repealed). Designation of custodian**

**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.~~

**Comment.** Former Section 6342 is omitted as unnecessary because the manner of making transfers to a custodian for the benefit of a minor and designating custodians is comprehensively covered by the California Uniform Transfers to Minors Act. See Sections 3903, 3905, 3906, 3909, 3911, and 3918.

**Probate Code § 6343 (repealed).** Noncomplying devise; devise to adult

**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.~~

**Comment.** The portion of former Section 6343 that related to a devise to a person who becomes an adult prior to the order for distribution is superseded by subdivision (b) of Section 6341. See the Comment to that section. The remainder of the section is unnecessary in view of Sections 3903, 3911, and 3918 and other provisions of the California Uniform Transfers to Minors Act.

**Probate Code § 6344 (repealed).** Distribution of property

**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.~~

**Comment.** The substance of former Section 6344 is continued in subdivision (c) of Section 6341.

**Probate Code § 6346 (repealed).** Vacancy in custodianship

**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.~~

**Comment.** The substance of former Section 6346 is continued in subdivision (d) of Section 6341.

**Probate Code § 6348 (amended).** Jurisdiction of court

**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 ~~in the same manner as if it had been a lifetime gift.~~

**Comment.** Section 6348 is amended to substitute a reference to the California Uniform Transfers to Minors Act in place of the reference to the superseded California Uniform Gifts to Minors Act and to delete the phrase “in the same manner as if it had been a lifetime gift.” The omitted phrase is unnecessary since the new Uniform Act covers gifts made by will.

**Probate Code § 6349 (amended).** Alternative method

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

**Comment.** Subdivision (b) is added to Section 6349 to make clear that nothing in this chapter limits the California Uniform Transfers to Minors Act. See, e.g., Section 3906 (transfer to custodian by executor or administrator in the absence of a will or under a will that does not contain an authorization to do so).



# DISPOSITION OF EXISTING SECTIONS OF CALIFORNIA UNIFORM GIFTS TO MINORS ACT

## § 1154 (repealed). Transitional provision

**Comment.** Former Section 1154 is not continued. The California Gifts of Securities to Minors Act was repealed in 1959, so all minors for whom a custodianship was created under that act have reached majority.

## § 1155 (repealed). Definitions

**Comment.** Former Section 1155 is superseded by Probate Code Section 3901.

## § 1156 (repealed). Manner of making gifts

**Comment.** Subdivision (a) of former Section 1156 is superseded by Probate Code Section 3904 and by subdivisions (a) and (b) of Probate Code Section 3909. Subdivision (b) of former Section 1156 is continued in the first sentence of Probate Code Section 3910. Subdivision (c) of former Section 1156 is superseded by subdivision (c) of Probate Code Section 3909 and by subdivision (a) of Probate Code Section 3911.

## § 1157 (repealed). Effect of gift

**Comment.** Subdivision (a) of former Section 1157 is superseded by subdivision (b) of Probate Code Section 3911. Subdivision (b) of former Section 1157 is continued in substance in subdivision (c) of Probate Code Section 3911.

## § 1158 (repealed). Powers and duties of custodian

**Comment.** Subdivision (a) of former Section 1158 is superseded by subdivision (a) of Probate Code Section 3912. Subdivisions (b) and (c) of former Section 1158 are superseded by subdivisions (a) and (b) respectively of Probate Code Section 3914. Subdivision (d) of former Section 1158 is superseded by Probate Code Section 3920. Subdivision (e) of former Section 1158 is superseded by subdivision (b) of Probate Code Section 3912. Subdivision (f) of former Section 1158 is superseded by subdivision (a) of Probate Code Section 3913. Subdivision (g) of former Section 1158 is superseded by subdivision (d) of Probate Code Section 3912. Subdivision (h) of former Section 1158 is continued in subdivision (e) of Probate Code Section 3912. Subdivision (i) of former Section 1158 is superseded by subdivision (a) of Probate Code Section 3913. Subdivision (j) of former Section 1158 is superseded by subdivision (c) of Probate Code Section 3912 and by subdivision (a) of Probate Code Section 3913.

## § 1158.5 (repealed). Election by donor-custodian of alternate powers and duties

**Comment.** Former Section 1158.5 is continued in subdivision (d) of Probate Code Section 3914.

## § 1159 (repealed). Compensation

**Comment.** Former Section 1159 is superseded by Probate Code Section 3915.

## § 1160 (repealed). No duty of inquiry by third person

**Comment.** Former Section 1160 is superseded by Probate Code Section 3916.

## § 1161 (repealed). Successor custodian

**Comment.** Former Section 1161 is superseded by Probate Code Section 3918.

## § 1162 (repealed). Accounting by custodian

**Comment.** Former Section 1162 is superseded by Probate Code Section 3919.

**§ 1162.5 (repealed). Venue**

**Comment.** Former Section 1162.5 is continued in Probate Code Section 3921.

**§ 1163 (repealed). Construction of article**

**Comment.** Subdivision (a) of former Section 1163 is continued in substance in Probate Code Section 3924. Subdivision (b) of former Section 1163 is continued in substance in Probate Code Section 3925.

**§ 1164 (repealed). Citation of article**

**Comment.** Former Section 1164 is superseded by Probate Code Section 3900.

**§ 1165 (repealed). Severability**

**Comment.** Former Section 1165 is not continued in the California Uniform Transfers to Minors Act (Prob. Code §§ 3900-3925), since severability is governed by a general provision in the Probate Code. See Prob. Code § 11.