

DAVIDSON, DAWSON & CLARK LLP
C O U N S E L L O R S A T L A W

CLIENT MEMORANDUM

GIFTS TO CHILDREN
UNDER THE
NEW YORK UNIFORM TRANSFERS TO MINORS ACT

Gifts to children may be advantageous for a number of reasons, but they also present a number of practical problems. Banks and brokers may refuse to open large accounts for minors, since minors technically cannot enter into a binding deposit or custody agreement. A guardianship or trust may introduce legal fees, Surrogate's Court supervision, or tax and accounting complexities. The New York Uniform Transfers to Minors Act (UTMA) is designed to avoid all of these drawbacks.

Briefly, a transfer of property to a child under the UTMA takes the form of an *irrevocable* gift to a "Custodian" for the child. The Custodian has powers and duties over the property similar to those the law imposes on trustees. The Custodian must unconditionally release the property to the child at age 21.

A gift under the Uniform Act is subject to the following rules:

1. Creation of the "Custodianship"

A Custodianship may be created simply by making a gift to an adult or a trust company "as Custodian for" a named minor "under the New York Uniform

Transfers to Minors Act." Any adult person (the "Donor") may make such a gift. Custodianships may also be created by Trustees distributing trust assets to a minor, or by persons indebted to a minor or holding assets belonging to a minor.

2. Selection of Custodian

Any adult person or trust company may be the Custodian. *However, if the Donor acts as Custodian, the custodial property will remain taxable in his estate in the event of his death during the period of Custodianship, and for three years thereafter if the Custodianship is resigned.* The Donor therefore should not be the Custodian in most cases.

3. Types of Property that May be Held by a Custodian

A Custodian may hold any type of property, subject to the rules on investing prudently (See section 7 below).

4. Transfer of Assets to the Custodianship

In general, the only step necessary to create the statutory relationship of Custodian is to register the property in the Custodian's name, as described above. In a few unusual cases the statute outlines special procedures for making gifts of certain types of property. Stocks, bonds, bank accounts and cash are not affected by these special rules.

A donor may make a bequest by Will to a Custodian.

Any gift to a Custodian is irrevocable. Custodians are not authorized to make gifts, even back to the original Donor.

5. Termination of Custodianship; Definition of "Minor"

Custodial property must be distributed to the minor at age 21. The New York law defining the age of majority as 18 does not lower this age of distribution.

Following distribution, the child owns the property outright and may dispose of it as he or she wishes. If the Donor prefers to delay distribution of the property until the child is older, the Donor can initially put the property in a trust for the child instead of using the UTMA, or the Donor may be able to persuade the child to create a new "protective trust" for himself or herself after reaching 21.

6. Only One Custodian

Only one person or bank at a time may act as Custodian for a child with respect to any particular property. The same person may be Custodian for more than one child, but separate records must be established for each Custodianship.

7. Powers of the Custodian

The Custodian can hold the assets and invest them, and has the powers necessary to sell or otherwise manage property.

The Custodian generally is held to a "prudent" investment standard "as would be observed by a prudent person dealing with property of another". The Custodian may be liable to the child for losses on speculative investments, although the Custodian may always retain the specific assets received from a donor.

The Custodian may use the custodial property, and any income earned by it, as the Custodian deems advisable for the minor's "use and benefit," without regard to other resources the minor may own or the duty of others to support the minor. This is broad and permissive power to use assets, by trust law standards.

A Custodian may charge reasonable compensation and expenses, but compensation is waived if not claimed currently.

A number of interested parties (including the minor, a parent, a donor, and a successor Custodian) may require a Custodian to account in court. Custodians must therefore keep complete records of their transactions.

The income from Custodial assets is reported directly by the minor. The Custodian is not responsible for filing any separate tax reports or returns.

8. Successor Custodians

If the Custodian resigns, dies, or for some other reason ceases to act, a successor must be named. Any person over age 21, or any trust company, may be the successor Custodian. Either the Donor or the original Custodian may designate the successor.

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DESIGNATION OF A SUCCESSOR CUSTODIAN

_____ [Successor Custodian] _____ is designated as successor Custodian of the property now held by _____ [Present Custodian] _____ for _____ [the minor] _____ under the New York Transfers to Minors Act in the event _____ [Present Custodian] _____ ceases to act as Custodian.

_____, Custodian

Witness

Date: _____