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FOR DISCUSSION ONLY

Uniform Transfers to Minors Act (20__)

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Uniform Transfers to Minors Act (20__)

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Uniform Transfers to Minors Act (20__)

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Uniform Transfers to Minors Act (20__)

Prefatory Note

The Uniform Transfers to Minors Act (20__), updates one of the Conference's most successful products, some version of which has been enacted in every American jurisdiction. This version maintains the overall structure and operation of the Act and preserves existing language wherever possible. The revisions to the Act are intended to improve the Act's clarity, expand its utility given legal and technological developments, promote uniformity by integrating adaptations adopted by states, and harmonize the act with other uniform laws.

The original version of the Act, titled the Uniform Gifts to Minors Act (UGMA), was adopted by the Conference in 1956 and closely followed a model "Act concerning Gifts of Securities to Minors" sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms. The UGMA broadened this model act to cover gifts of money as well as securities. In 1965 and 1966 the Conference revised UGMA to expand the types of financial institutions that could serve as depositories of custodial funds, to facilitate the designation of successor custodians, and to add life insurance policies and annuity contracts to the types of property (cash and securities) that could be made the subject of a gift under the Act.

In response to limited adoption of the 1960s revisions and an increasing number of state-specific revisions, the Conference undertook a major revision of the Act in 1983. The revision followed the expansive approach taken by several states allowing any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodian for the benefit of a minor. In addition, it permitted such transfers not only by lifetime outright gifts, but also from trusts, estates and guardianships and from other third parties indebted to a minor who does not have a conservator. For this reason, and to distinguish this statute from the 1956 and 1966 versions of UGMA, the title of the Act was changed to the Uniform Transfers to Minors Act (UTMA). A minor amendment to the UTMA was enacted in 1986, but the Act has otherwise remained unchanged.

This version of the Act retains the structure and much of the language of the original UTMA. However, it incorporates several substantive changes. These include amendments to Section 14 governing the use of custodial property, which now explicitly authorizes custodians to transfer custodial property to 529 accounts and qualified minor's trusts for the benefit of the minor. The same section also allows a custodian for a minor with a disability to transfer property to a 529 ABLE account or special needs trusts for the minor's benefit. Section 20, following the examples of several states that have extended the duration of custodianships, permits transferors who create custodianships via transfers by gift, the exercise of a power of appointment, or by express provision under will or trust to create custodianships that do not terminate until the minor reaches age 25.

Several other provisions have been significantly revised, but with the goal of furthering existing objectives. Section 9 governing transfers, for example, has been thoroughly revised to clarify and modernize the Act's language, while preserving its substantive operation. Similarly, the Act's provisions regarding the appointment and removal of custodians have been updated to enhance clarity and usability, while largely maintaining the Act’s substance (see Section 3, Section 18). Similarly, Section 12 regarding a custodian’s duty of care has been updated to clarify the standard and to address the perennial challenge of custodians using custodial property to satisfy their own support obligations to the minor.

The Act retains the overarching objective of providing an accessible mechanism for transferring assets of all kinds to minors. Property transferred to a custodian for the benefit of a minor under the Act must be administered, invested, and distributed in accordance with the terms of the Act. Likewise, the termination of a custodianship is governed by the Act, and custodial property must be distributed to the minor or the minor’s estate as directed. People who desire greater customization or who seek to hold property for longer periods of time will be better served by more sophisticated arrangements, such as trusts.

Uniform Transfers to Minors Act (20__)

Section 1. Title; Definitions

(a) This [act] may be cited as the Uniform Transfers to Minors Act (20____).

(b) In this [act]:

(1) "Adult" means an individual who has attained the age of [21] years.

(2) "Agent" means a person appointed by a minor to act on behalf of the minor for financial matters. The term includes an attorney-in-fact under a durable or nondurable power of attorney.

(3) "Benefit plan" means an employer's plan for the benefit of an employee or partner. The term includes a pension benefit plan, welfare benefit plan, deferred compensation plan, employment agency arrangement, stock bonus, option, or profit-sharing plan and any other contract, plan, system account, or trust, for the benefit of an employee or partner.

(4) "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].

(5) "Court" means [court with jurisdiction over matters arising under this [act]].

(6) "Custodial property" means:

(A) any interest in property transferred to a custodian under this [act]; and

(B) the income from and proceeds of the interest.

(7) "Custodian" means a person so designated under Section 9 or 18. If an individual, a custodian must be an adult who has not been determined to be incapacitated.

(8) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(9) “Financial institution” means an organization authorized to do business under other law relating to financial institutions. The term includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(10) “Governing instrument” means a record that is a deed, will, trust, insurance or annuity policy, account with a pay on death designation, security registered in transfer on death beneficiary form, transfer on death deed, pension, profit-sharing, retirement, or benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of a similar type.

(11) “Guardian” means a person [appointed or qualified by a court to act as a guardian of the person of a minor. The term includes a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor’s person or a person legally authorized to perform substantially the same functions].

(12) “Legal representative” means an individual’s personal representative or conservator.

(13) “Member of the minor’s family” means:

(A) a minor’s spouse, parent, stepparent, or grandparent; or

(B) a descendant of a minor’s parent, stepparent, or grandparent.

(14) “Minor” means an individual for whose benefit a transfer is made and who has not attained the age at which the custodianship for the benefit of the individual will terminate under Section 20.

(15) “Minor with a disability” means a minor who is medically eligible for, or a recipient of, benefits under Title II of the Social Security Act, 42 U.S.C. Sections 401 through 434[, as amended], or Title XVI of the Social Security Act, 42 U.S.C. Sections 1381 through

1383f[, as amended].

(16) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) "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.

(18) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium that is retrievable in perceivable form.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(20) "Termination date" means the date a custodian is required to deliver custodial property to the minor under Section 20.

(21) "Transfer" means a transaction that creates custodial property under Section 9.

(22) "Transferor" means a person who makes a transfer under this [act].

(23) "Trust company" means a person authorized to serve as a fiduciary under other law of this state. The term includes a financial institution or other entity authorized to exercise trust powers[, and a private licensed fiduciary].

Legislative Note: *In paragraph (1), the state should insert in the brackets the age the state determines an individual is eligible to serve as custodian or to exercise certain other rights under this act.*

If the bracketed text in paragraph (4) accurately describes the role of a conservator in the state, the brackets should be removed. If it does not, the state should replace it with text that is consistent with other state law that describes the role.

The bracketed text in paragraph (5) may be replaced with the name of the court in the state that has jurisdiction over matters arising under this act.

If the bracketed text in paragraph (11) accurately describes the role of a guardian of the person in the state, the brackets should be removed. If it does not, the state should replace it with text that is consistent with other state law that describes the role.

It is the intent of this act to incorporate future amendments to the federal laws cited in paragraph (15) and elsewhere in this act. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase ", as amended" wherever it appears. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.

A state that does not recognize private licensed fiduciaries should strike the bracketed text in paragraph (23). A state that recognizes private licensed fiduciaries should remove the brackets and, if necessary, replace the term "private licensed fiduciary" with the proper term.

Comment

This section has been updated to facilitate substantive revisions to the Act and to modernize language where it is possible to do so without unnecessarily disturbing the existing structure and meaning of the Act.

Paragraph (2). The definition of "agent" is new. The act now recognizes that in situations where the minor is given authority to act, a minor's agent may likewise be permitted to act. This is likely to become more relevant because custodianships may not terminate until the minor is 25, meaning that the minor for whom a custodianship is held under the Act may be an adult with capacity to appoint an agent under other law.

Paragraph (3). The definition of "benefit plan" incorporates illustrative examples that were previously included in the comment to this definition. It is also revised to incorporate terms from the Employee Retirement Income Security Act of 1974 (ERISA). These are not intended as substantive revisions, but rather as clarifications to carry forward the Act's expansive definition.

Paragraph (4). The term "conservator" is employed in the Act to conform to Uniform Probate Code terminology. The term includes a guardian of the minor's property, whether general, limited or temporary, and includes a committee, tutor, or curator of the minor's property.

Paragraph (6). The definition of "custodial property" is intended 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, individual retirement accounts, 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.

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 2 between that state and the transferor, the minor or the custodian.

Paragraph (7). The definition of "custodian" is amended to clarify that an individual who has been deemed to be incapacitated is unable to serve as custodian. The Act does not require that the incapacity determination be made by a court.

In addition, a custodian must be eligible to serve in the role under other provisions of the Act. For example, in some circumstances, a transferor is not eligible to serve as custodian (see Section 5(c) and Section 6(b)); in other situations, a successor custodian must be selected from among a list of possible custodians (see Section 18).

Paragraph (8). The defined term "electronic" is new. It incorporates the definition of "electronic" adopted in the Uniform Electronic Transactions Act and the Uniform Electronic Wills Act to facilitate the use of electronic records.

Paragraph (9). The definition of "financial institution" is modernized. It accords with the definition adopted by the Uniform Multiple-Person Accounts Act, which is incorporated in the Uniform Probate Code.

Paragraph (10). This paragraph is new and incorporates the definition of "governing instrument" to clarify and streamline provisions in the Act. The definition is based on the definition adopted in the Uniform Probate Code, updated to include electronic versions of the relevant instruments. In this Act, the term refers broadly to instruments that transfer custodial property or nominate custodians.

Paragraph (11). The definition of "guardian" is new and refers to a guardian of the person of the minor. Although the term was used in the prior version of the Act, it was not defined.

Paragraph (13). This paragraph is restyled and is revised to modernize and expand the definition of "member of the minor's family." The individuals identified are eligible to serve as custodians in the scenario described in Section 7, can designate or petition the court to designate a successor custodian as directed in Section 18, and may request an accounting pursuant to

Section 19. The revised definition includes “a descendant of a grandparent of the minor” which expands the definition to include cousins and the descendants of the minor’s siblings as well as an aunt, uncle, or sibling of a minor. In addition, the definition is amended to include descendants of a stepparent, including, for example, stepsiblings. In states that have adopted the Uniform Parentage Act, a de facto parent would also qualify as a “member of the minor’s family.”

Paragraph (14). The definition for “minor” is revised. The definition will vary in relation to the age of the minor when the custodianship will terminate under Section 20. This revision is necessary to facilitate custodianships that extend beyond age 21 as permitted under the revisions to Section 20.

Paragraph (15). The defined term “minor with a disability” is new. It is used in Section 14, which authorizes a custodian for a minor with a disability to transfer custodial property to a special needs trust, pooled trust, or 529 ABLE account.

Paragraph (16). This paragraph is revised to adopt the current Uniform Law Commission definition of “person.”

Paragraph (18). This paragraph is new. It incorporates the definition of “record” adopted in the Uniform Electronic Transactions Act and the Uniform Electronic Wills Act to facilitate the use of electronic records.

Paragraph (20). The defined term “termination date” is new. It identifies the date on which a custodianship will terminate under Section 20.

Paragraph (21). The 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 permitted by this Act.

Paragraph (22). The definition of “transferor” is required because it 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.” 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 the minor’s benefit or for the benefit of another minor.

Paragraph (23). The definition of “trust company” has been revised and expanded to reflect developments in fiduciary practice. The updated definition includes all people authorized to serve as fiduciaries under other laws of the enacting state. This includes financial institutions and entities authorized to exercise trust powers. Where so indicated by the enacting state, this may also include private licensed fiduciaries.

Section 2. Scope and Jurisdiction

(a) This [act] applies to a transfer that refers in substance to this [act] in the designation under Section 9 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 [act] 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 [act] 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 this [act] or any prior version of 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

This section is unchanged. It attempts to resolve uncertainties and conflict-of-laws questions that may arise due to non-uniformity in the enacted versions of this Act.

This section provides that a choice of the UTMA of the enacting state is appropriate and effective if any of the nexus factors specified in subsection (a) exists at the time of the transfer. This Act continues to govern, and subsection (b) makes the custodian accountable and subject to personal jurisdiction in the courts of the enacting state for the duration of the custodianship, despite subsequent relocation of the parties or the property.

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

If the choice of law under subsection (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.

Section 3. Future Transfer of Property

(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 in a record followed in substance by the words: "as custodian for (name of minor) under the [name of enacting state] Uniform Transfers to Minors Act (20____)." The nomination may name one or more persons as alternate nominees, with the nomination to pass to the persons in the order named if a nominee dies, declines, or becomes unable to serve as custodian before the occurrence of the event. The transferor may revoke, revise, or amend the nomination at any time before the occurrence of the event. The nomination may be made in a governing instrument, or in a record designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) The nomination of a custodian under subsection (a) does not create custodial property until a transfer to the nominated custodian is completed under Section 9. 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 under Section 9.

Comment

This section provides the means to put in place a custodianship to receive property transferred upon the occurrence of a future event. It allows a transferor to nominate a future custodian 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, individual retirement account, or similar future payment right. An unrevoked nomination under this section is binding on a personal representative or trustee (see Section 5(b)) and on insurance companies and other obligors who contract to pay in the future (see Section 7(b)).

Subsection (a) identifies the circumstances under which a transferor may nominate a person to serve as custodian for property to be transferred upon the occurrence of the future event, and describes the form and substance of the nomination. A nomination under this section must be made before the occurrence of the triggering event, and the nomination may not be revoked or amended after the occurrence of such event even if it is before the transfer has been completed under Section 9.

The subsection also allows the transferor to nominate one or more persons to serve as alternates. In the event that a nominated custodian dies, declines, or becomes unable to serve before the occurrence of the triggering event, any such alternates shall become the nominated custodian in the order named. Such person is a custodian "nominated ... under Section 3" to whom the transfer must be made under Sections 5(b) and 7(b). For the designation of a custodian if no person nominated under this Section is willing or able to serve at the occurrence of the triggering event, and for the nomination of successor custodians, see Section 18.

Subsection (b) clarifies that the 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 Section 11(b).

Section 4. Transfer by Gift or Exercise of Power of Appointment

A person may make a transfer to a custodian for the benefit of a minor under Section 9 by:

(1) making an irrevocable gift; or

(2) irrevocably exercising a power of appointment.

Comment

Section 4 has been reformatted and revised to increase clarity. These changes are not intended as substantive alternations.

To emphasize the different kinds of transfers that create presently effective custodianships under this Act, they are separately described in Sections 4, 5, 6 and 7. Section 4 governs the creation of custodianship via transfers by gift or the exercise of power of appointment. It includes only the 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 3.

Section 5. Transfer Authorized by Will or Trust

(a) A personal representative or trustee may make an irrevocable transfer under Section 9 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 3(a) that is willing and able to serve as custodian, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 3(a), or all persons so nominated as custodian die, decline, or are unable to serve, the personal representative or trustee shall designate as custodian:

(1) if the property is the type described in Section 9(a)(1), the personal representative or trustee, another adult, or a trust company; or

(2) if the property is the type described in Section 9(a)(2), another adult or trust company.

Comment

This section incorporates minor stylistic revisions and conforming amendments.

Subsection (a) validates the creation of custodianships through 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.

Subsection (b) provides that any nomination of a future custodian under Section 3(a) must be respected.

Subsection (c) covers the designation of the initial custodian whenever the settlor or testator fails to make a nomination, or the future custodian nominated under Section 3(a) and any persons named as alternates fail to qualify. This subsection is revised to accord with revisions to Section 9. However, it maintains the existing limitation on personal representatives and trustees self-designating as custodians in the case of transfers made under this section where no engagement with third parties is required to effectuate the transfer (see Section 9).

Section 6. Other Transfer by Fiduciary

(a) Subject to subsection (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 under Section 9:

(1) in the absence of a will; or

(2) under a will or trust that does not contain an authorization to do so, if the transfer is not prohibited by, or inconsistent with, provisions of the will or trust.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor under Section 9.

(c) A transfer under subsection (a) or (b) may be made:

(1) if the value of the property to be transferred does not exceed $[50,000], if the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor; or

(2) if the value of the property to be transferred exceeds $[50,000], if the court approves the transfer as being in the best interest of the minor.

Legislative Note: *The state should insert in the brackets in subsection (c)(1) and (2) the maximum value that may be transferred to a custodian for the benefit of a minor under this section without court approval.*

Comment

Section 6 is reformatted and revised. Except for the change to the bracketed amount in subsection (c), these revisions are intended to clarify the Act and are not intended as substantive reforms.

This section permits custodianships to be used as guardianship or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes 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 certain criteria are met. First, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section.

Second, if the value of the property transferred does not exceed the amount identified in subsection (c)(1), 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. No court approval of the transfer is required. Because of the limited value transferred, the increase in accessibility offsets the lack of court supervision and the typically stricter investment standards that would apply to the conservator otherwise.

Alternatively, if the value of the property to be transferred exceeds the amount identified in subsection (c)(1), subsection (c)(2) permits the transfer to a custodian with court approval if the court determines that the transfer would be in the best interests of the minor.

Subsection (c) is revised to increase the default value that may be transferred by a personal representative or trustee without court approval from $10,000 to $50,000. This value is consistent with the default amount that may be distributed under Section 414 of the Uniform Trust Code regarding the modification or termination of uneconomic trusts. In deciding whether to retain the bracketed default amount, state legislatures may wish to consider statutory authority for termination or modification of uneconomic trusts in their jurisdiction, as well as the amount that may be transferred to a guardian for the benefit of a minor from a trust or estate without establishing a conservatorship.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority of the enacting state apart from this Act, i.e., at the same age a conservatorship of the minor would end (see Section 20).

Section 7. Transfer by Obligor

(a) Subject to subsections (b) and (c), a person not subject to Section 5 or 6 that 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 under Section 9 if the value of the property does not exceed $[50,000].

(b) If a person having the right to do so under Section 3(a) has nominated a custodian under that section that is willing and able to serve as custodian, the transfer must be made to that person.

(c) If no custodian has been nominated under Section 3(a), or before the transfer all persons so nominated die, decline, or become unable to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company, as custodian. The transfer may be made without court approval.

Legislative Note: *The state should insert in the brackets in subsection (a) the maximum value* *that may be transferred to a custodian for the benefit of a minor under this section without court approval.*

Comment

Section 7 includes minor revisions. Except for the change to the bracketed amount in subsection (a), these revisions are not intended as substantive reforms.

This section permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts, and existing guardianships covered by Sections 5 and 6. For example, a tort judgment debtor of a minor, a bank holding a joint or POD account of which a minor is the surviving payee, an insurance company holding life insurance policy or benefit plan proceeds payable to a minor, or the administrator of an individual retirement account payable to the minor may create a custodianship under this section.

However, this is true only if the value of the property to be transferred does not exceed $50,000 in value. The recommended default amount that may be transferred to a custodian under this Section has been increased from $10,000 to $50,000. This mirrors the recommended change in Section 6(c), which permits transfers to custodians by personal representatives or trustees without court approval in the absence of a will or under a will or trust that does not contain an authorization to make such transfers.

Use of this section is mandatory when a future custodian has been nominated under Section 3(a) 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 appointment of a conservator to receive payment. It allows the obligor to transfer to a custodian unless the property exceeds the stated value, in which case a conservator must be appointed to receive it.

Section 8. Receipt for Custodial Property

A custodian's acknowledgment in a record of delivery to the custodian of custodial property constitutes a sufficient receipt and discharges the transferor from further responsibility under this [act] for the custodial property transferred. The record does not settle or release any claim of the minor against the transferor or a third party.

Comment

Section 8 has been revised to increase clarity and to account for the potential use of electronic records.

This section discharges transferors from further responsibility for custodial property that is delivered to and receipted for by the custodian. It is revised to accord with the use of electronic records. It has also been amended, by introducing into the blackletter material that was previously contained in the comments, to clarify the existing position that discharge under this section is not a release of liability. See also Section 16 which protects transferors and other third parties dealing with custodians.

This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under Section 7, to settle or release a claim of the minor against a third party. Only a conservator, guardian ad litem or other person authorized under other law to act for the minor may release such a claim.

Section 9. Manner of Creating Custodial Property; Effecting Transfer to Custodian

(a) Custodial property is created and a transfer to a custodian is made when, consistent with other law governing transfer of property:

(1) if the property is of a type that a transferor must register, assign, issue, or comply with other formalities to transfer, the transferor complies with the formalities; or

(2) if the property is of a type that a transferor is not required to comply with any other formalities to transfer, the transferor delivers the property and a record giving notice of the transfer to the custodian.

(b) If property is of a type described in subsection (a)(1), an instrument required to comply with the transfer formalities may identify as recipient the custodian, followed in substance by the words: “as custodian for (name of minor) under the [Name of enacting state] Uniform Transfers to Minors Act” (20___).

(c) If property is of a type described in subsection (a)(2), a record in the following form satisfies the requirements of that subsection: “TRANSFER UNDER THE [NAME OF ENACTING STATE] UNIFORM TRANSFERS TO MINORS ACT (20____)

I, (name of transferor or name and representative capacity if a fiduciary), hereby transfer to (name of custodian), as custodian for (name of minor) under the [name of enacting state]

Uniform Transfers to Minors Act (20____), the following: (insert a description of the custodial property sufficient to identify it).

Dated:

(Signature)

(name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the [name of enacting state] Uniform Transfers to Minors Act (20___).

Dated:

(Signature of Custodian)"

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

Comment

The language of Section 9 has been significantly revised. It is intended to be substantively consistent with the prior version of the Act.

Subsection (a) adopts a general provision in place of the asset-specific provisions included in the prior version of the Act. This change is intended to improve the legibility of the Act and to clarify its application to new forms of property interests.

The reference to "other law governing the transfer of property" in subsection 9(a) is intended to clarify that the Act does not abrogate requirements under other law relating to transfers of the kinds described in Sections 4, 5, 6, and 7. For example, common law requirements of donative intent on the part of the transferor, acceptance by the custodian on behalf of the minor, and delivery to the custodian, to the extent not contradicted by the Act, remain in force. A transfer that complies with Section 9 will nevertheless fail and the nominated custodian will not become custodian if these requirements are not met. This is consistent with the approach taken by most jurisdictions. *But see* Sternlicht v. Sternlicht, 876 A.2d 904, 911 (Pa. 2005) (holding that "transfers made to a custodian pursuant to [the state's version of the Act] are not controlled by common law requirements of delivery and acceptance of the gift").

In contrast to these general requirements relating to the transfer of property, paragraphs (1) and (2) maintain the distinction in the existing Act between types of property where state or federal laws impose formalities to effectuate a transfer and property that may be transferred without any such formalities. Paragraph (1) requires that where formalities are required, the transferor must satisfy them to effectuate the transfer to the custodian. Paragraph (2) directs that where formalities are not required to effectuate the transfer, the transferor must deliver the custodial property and a record providing notice of the transfer of property to the custodian to create custodial property. Perfection of title is not required to effectuate a transfer to the custodian, but the custodian has a duty to perfect transfers to protect the property as to third parties (see Section 12(a)(2)).

Thus, a transferor who wished to transfer real property to a custodian to be administered for the benefit of the minor would be required to comply with state laws recording the transfer of title to real property, because it is a form of property for which formalities are required to effectuate a transfer. A transferor who instead wished to transfer tangible personal property not subject to any formalities under state or federal law to effectuate a transfer would be required to deliver the property to the custodian along with a record documenting the transfer.

> Example 9.1: Grandfather wishes to transfer the parcel of real property known as Blackacre to Daughter as custodian for Grandson, who is a minor. Grandfather must execute a deed transferring the property to Daughter as custodian for the benefit of Grandson. Execution and delivery of the deed to Daughter effectuates the transfer under Section 9(a)(1) and establishes the custodianship. Daughter, as custodian, has a duty to record the deed under Section 12, to protect Grandson's interest in the property against third parties.

> Example 9.2: Grandfather wishes to transfer jewelry to Daughter as custodian for Grandson, who is a minor. Grandfather delivers the jewelry to Daughter and executes and delivers to Daughter a record describing the transfer of the property to Daughter, as custodian for the benefit of Grandson. This effectuates the transfer under Section 9(a)(2) and establishes the custodianship.

As in the prior version of the Act, subsection (a) not only describes *how* a transfer to create custodial property must be accomplished but also affects *who* may serve as custodian under other provisions of the Act. Specifically, Section 5, through its reference to subsection 9(a)(1), has the effect of preventing transferors under Section 5 from designating themselves as custodians if the transfer is not subject to transfer formalities under other law.

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

Section 10. Single Custodianship

(a) A custodianship must be for the benefit of only one minor. Only one person may be the custodian of a transfer to a minor. All custodial property held under this [act] by the same custodian for the benefit of the same minor with the same termination date constitutes a single custodianship.

(b) If a transferor conveys property or a property interest to multiple persons in a single transaction, the share allocated to a minor constitutes a transfer to that minor.

Comment

This section requires sole custodians, mandates that transfers may have only one minor beneficiary, and ensures that custodianships are for the benefit of a single minor. It is amended to require that all custodial property within a custodianship has the same termination date.

The requirement that a transfer may be made for only one minor does not prevent transferors from benefitting multiple beneficiaries. Instead, it requires that the share of property allocated to a minor constitutes a separate transfer for purposes of the Act. For example, a will provision allocating the residue of the decedent's estate to a class of beneficiaries that includes multiple minors and allows for distributions to a custodianship for the benefit of a minor is a permissible form of transfer under Section 5. This section requires that the share of the residue allocated to each minor constitutes a separate transfer, and thus a separate custodianship, for the benefit of that minor.

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, if they share the same termination date. This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under Section 18 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfers made "under this Act." Gifts previously made under an earlier version of the enacting state's Act or UGMA or under the UGMA or UTMA 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.

As amended, this section provides that custodial property subject to different termination dates may not be merged into a single custodianship. This is a substantive change. The comments to the 1986 UTMA provided that multiple transfers to a single custodian made "under this Act" through transfers under different sections of the Act could be combined into a single custodianship, even if subject to different termination dates. It required only that "custodial property transferred under Sections 6 and 7 must be accounted for separately from property transferred under Sections 4 and 5 because the custodianships may terminate at different times." Section 10, as amended, prevents the consolidation of property with different termination dates into a single custodianship. This change is motivated by amendments to Section 20 allowing transferors to designate termination dates other than the defaults created by the Act, expanding the possibility of different termination dates for different items of custodial property.

Mindful of the move in a minority of states to allow co-custodians, the Drafting Committee retained the single custodianship requirement. This accords with the goal of maintaining custodianships as a simple and easily administered tool for transferring property to minors. It also reflects a desire to avoid the potential litigation hazards generated by co-custodianships. States that decide to depart from this recommendation and permit co-custodians should attend to the many issues that this approach raises, including whether custodians may act alone, what happens in the event that custodians disagree on a proposed action, whether co-custodians are jointly liable, and how succession is handled in the event that a co-custodian dies or becomes unable or unwilling to serve.

Section 11. Validity and Effect of Transfer

(a) The validity of a transfer made in a manner prescribed in this [act] is not affected by:

(1) the failure of the transferor to comply with Section 9(d) concerning possession and control; or

(2) the death, declination, or inability to serve of a person nominated under Section 3 or designated under Section 9 as custodian.

(b) A transfer made under Section 9 is irrevocable and the custodial property is indefeasibly vested in the minor. The custodian has all the rights, powers, duties, and authority provided in this [act], and neither the minor nor the minor's agent or legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this [act].

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this [act] 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 [act].

Comment

This section has been reformatted. Subsection (a) has also been revised to accord with the revisions to Section 9 and subsection (a)(2) is updated to refer to the 'declination' of the office of custodian rather than 'disclaimer' to harmonize with other provisions of the Act.

Subsection (b) makes clear that custodial property is indefeasibly vested in the minor. This clarifies that the UTMA is not a bailment. However, subsection (b) 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. The concept is important because of the kinds of property, particularly real estate, subject to custodianship. If the minor is married, it would be possible for homestead, dower, or community property rights to attach to real estate (or other property) acquired after marriage by the minor through a transfer to a custodianship for his benefit. The quoted language qualifying the minor’s interest in the property is intended to override these rights insofar as they may conflict with the custodian’s ability and authority to manage, sell, or transfer such property while it is custodial property. Upon termination of the custodianship and transfer of the custodial property to the former minor, the custodial property would then become subject to such spousal rights for the first time.

For a list of the immunities enjoyed by third persons under subsection (c), see Section 16 and the Comment thereto.

Section 12. Care of Custodial Property

(a) A custodian shall take possession and control of custodial property and take all actions necessary to protect the minor’s interest in the property against the claims or interests of third parties.

(b) A custodian shall invest and administer custodial property as a prudent custodian acting in the best interest of the minor would, considering the circumstances of the minor and the characteristics of the custodial property. In satisfying this standard, a custodian shall exercise reasonable care, skill, and caution. 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 exercise that skill or expertise.

(c) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor’s interest is ascertainable. 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 (name of minor) under the [name of enacting state] Uniform Transfers to Minors Act (20___)."

(d) A custodian shall keep records of all transactions with respect to custodial property, consistent with the custodian's duty to provide an accounting under Section 19. The custodian shall provide information necessary for the preparation of tax returns for the minor, the minor's estate, and any other person subject to potential tax liability arising from custodial property.

Comment

Subsection (a) addresses the custodian's duties to care for custodial property at inception and thereafter. Among these duties is the obligation to perfect transfers of custodial property under Section 9, so as to protect the minor's interest against the claims or interests of third parties. For a real property asset other than a fixture but including the interest of a seller or purchaser under a contract for the sale of the asset, the custodian must take all actions necessary such that a good-faith purchaser of the asset cannot acquire an interest in the asset that is superior to the interest of the minor. For an asset that is not real property or that is a fixture, the custodian must take all actions necessary such that a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the custodian.

> Example 12.1: Grandfather wishes to transfer the parcel of real property known as Blackacre to Daughter as custodian for Grandson, who is a minor. Grandfather executes and delivers to Daughter, but does not record, a deed transferring the property to Daughter, as custodian for the benefit of Grandson. This effectuates the transfer under Section 9 and establishes the custodianship. Daughter, as custodian, has a duty to record the deed under Section 12 to perfect the interest of the minor against any competing interests in Blackacre.

Subsection (b) adopts a standard modeled on the modern prudent investor standard, using language similar to that adopted in the Uniform Trust Code and the Uniform Prudent Investor Act. The prudent custodian standard varies considering the circumstances of the minor and the characteristics of the custodial property. The value of the custodial property is among the characteristics that the custodian may consider in managing and investing custodial property. This is important given the modest size of many custodial accounts. In such cases, investment fees and costs, for example, must be considered against the potential benefits of diversification and more sophisticated investment strategies.

This version of the Act amends subsection (b) to refer to the custodian's duty to "invest" custodial property in addition to administering it. This version also removes language explicitly authorizing the custodian to retain custodial assets transferred by the transferor. These changes are not intended to suggest that a custodian may not, in appropriate circumstances, retain initiation assets. Rather, the changes are intended to clarify that the custodian must be guided by the prudent custodian standard in managing custodial property. Where, considering the circumstances of the minor and the characteristics of the property, the custodian determines that it is in the minor's best interests to retain property transferred by the transferor, the custodian is free to do so. This may include, for example, situations where the primary value of custodial property is sentimental.

Subsection (c) 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 may retain a joint tenancy interest so received if the retention is in the best interests of the minor.

Subsection (d) requires that custodians maintain records as part of their duty of care regarding custodial property. This section is amended to explicitly connect this duty to the duty to account under Section 19.

In addition, subsection (d) includes the requirement that information required for the preparation of tax returns be preserved and made available. It is amended to acknowledge that it is not only the minor who may have tax liability arising from custodial property. For example, if a transferor dies while serving as custodian, custodial property may need to be included in the transferor's taxable estate. In addition, a parent may elect to claim income or gains attributable to custodial property held for the benefit of their dependent.

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.

Section 13. Powers of Custodian

(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that an unmarried adult owner has over the adult owner's own property, but a custodian may exercise those rights, powers, and authority in the custodian's custodial capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 12.

Comment

Section 13 is not substantively altered. Subsection (a) grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the investment and administration standard and to the duties of segregation and record keeping specified in Section 12. 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. The ability to make decisions on behalf of the minor regarding custodial property, such as in the case of making elections regarding the distribution of interests in individual retirement accounts and qualified retirement accounts, is also included within these powers.

Subsection (a) further specifies that the custodian's powers or incidents of ownership in custodial property may be exercised only in his 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 own life for the benefit of a minor will have the policy taxed in his estate. See, Section 2042, I.R.C.; but compare *Terriberry v. U.S.*, 517 F.2d 286 (5th Cir.1975), and *Rose v. U.S.*, 511 F.2d 259 (5th Cir. 1975).

Section 14. Use of Custodial Property

(a) Except as provided in subsection (g), a custodian, without court order, may deliver or pay to the minor or expend for the benefit of the minor so much of the custodial property as the custodian considers advisable for the use and benefit of the minor.

(b) A custodian, without court order, may convey so much of the custodial property as the custodian considers advisable for the benefit of the minor to:

(1) an account created by the custodian that satisfies the requirements of Section 529 of the Internal Revenue Code of 1986, 26 U.S.C. Section 529[, as amended] and provides that the minor is the exclusive beneficiary of the account; or

(2) the trustee of a trust for the benefit of the minor, created by the custodian or another person, that satisfies the requirements of Section 2503(c) of the Internal Revenue Code of 1986, 26 U.S.C. Section 2503(c)[, as amended].

(c) If the custodianship is for the benefit of a minor with a disability, the custodian, without court order, may convey so much of the custodial property as the custodian considers advisable for the benefit of the minor to:

(1) an account created by the custodian that satisfies the requirements of Section

529A of the Internal Revenue Code of 1986, 26 U.S.C. Section 529A[, as amended] and provides that the minor is the exclusive beneficiary of the account; or

(2) the trustee of a special needs trust established solely for the benefit of the minor created by the custodian or another person, including a trust that satisfies the requirements of Section 642(b)(2)(C)(ii) of the Internal Revenue Code of 1986, 26 U.S.C. Section 642(b)(2)(C)(ii)[, as amended];

(3) the trustee of a trust established solely for the benefit of the minor created by the custodian or another person, including a trust that satisfies the requirements of Section 1917(d)(4)(A) of the Social Security Act, 42 U.S.C. Section 1396p(d)(4)(A)[, as amended]; or

(4) the trustee of a pooled trust created by the custodian or another person, including a trust that satisfies the requirements of Section 1917(d)(4)(A) of the Social Security Act, 42 U.S.C. Section 1396p(d)(4)(A)[, as amended] or Section 1917(d)(4)(C) of the Social Security Act, 42 U.S.C. Section 1396p(d)(4)(C)[, as amended], if the joinder agreement establishes a separate trust share for the benefit of the minor.

(d) The conveyance of custodial property to an account under subsection (b)(1) or (c)(1) does not terminate the custodianship as to the property conveyed, and the custodian remains obligated to ensure that custodial property so conveyed is held or used for the benefit of the minor until the termination date. The conveyance of custodial property to a trustee under subsection (b)(2) or (c)(2), (3), or (4) terminates the custodianship as to the property conveyed.

(e) The minor or the minor's agent, if the minor has attained age 14 years, or any interested person, may petition the court to order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(f) A delivery, payment, or expenditure under this section may be made without regard to the duty or ability of any person to support the minor or any other income or property of the minor that may be available for the minor's support.

(g) A custodian may not use custodial property to satisfy any legal support obligation owed to the minor by the custodian.

Comment

Section 14 is significantly revised. In addition to revisions aimed at increasing the clarity of the Act, the Section now follows several states in permitting transfers of custodial property to qualified minor's trusts and 529 accounts. In the case of a minor with a disability, it permits distributions of custodial property to 529 ABLE accounts and several forms of trusts.

Subsection (a) retains the broad standard used in the existing Act. However, it incorporates an explicit reference to subsection (g) which provides that a custodian with a legal support obligation to the minor may not use custodial property to satisfy the custodian's personal obligation to support the minor.

It refers to "the benefit of the minor," rather than "the support, maintenance, education and benefit of the minor" to avoid the implication that custodial property can be used only for the required support of the minor. This 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.

Custodial property is also available for payment of the minor's legally enforceable obligations such as tax obligations. Custodians must make distributions for the purposes of satisfying tax obligations generated by custodial property if so requested by the minor's legal representative.

Subsection (b) is new. Following the examples of several states, it allows custodians to deliver custodial property to qualified minor's trusts and 529 accounts. Paragraph (1) allows custodians to transfer custodial property to qualified minor's trusts. Section 2503(c) of the Internal Revenue Code imposes several restrictions on such trusts that make their use consistent with custodians' obligations under the Act.

Paragraph (2) allows custodians to transfer custodial property to specialized custodial 529 accounts that provide that the minor is the sole beneficiary. Federal law permits the owner of a 529 account to change the beneficiary of 529 accounts. However, specialized 529 accounts that prevent the owner of the account from changing the beneficiary may be created using custodial property. Paragraph (2) is intended to limit the transfer of custodial property to 529 accounts that satisfy this requirement and are thus consistent with the custodian's obligations under this Act.

Subsection (c) is new. It allows a custodian managing a custodianship for the benefit of a minor with a disability to transfer custodial property to a 529 ABLE account, special needs trust, or pooled trust. In each case, the disabled minor must be the sole beneficiary or, in the case of a pooled trust, the sole beneficiary of a trust share.

Subsection (d) is new. It clarifies that the conveyance of custodial property to a 529 account or a 529 ABLE account does not constitute a termination of the custodianship as to the custodial property transferred. This is to ensure that the custodian remains under fiduciary obligation to administer the account for the benefit of the minor until the earlier of (i) the distribution of the account property for the benefit of the minor, or (ii) the transfer at the termination date of ownership of the account to the minor or the minor's legal representative.

In contrast, transfers to a qualified minor's trust or a trust described in section (c) for the benefit of a minor with a disability terminates the custodianship as to the custodial property transferred. Existing remedies for breach of trust, the protections enshrined in other law, and the requirements under this Act that the trust be for the benefit of the minor ensure that the minor's interest is subject to ongoing fiduciary administration.

Subsection (e) is renumbered but is not altered. An "interested person" entitled to seek court ordered distributions under subsection (e) 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.

Subsection (f) was previously contained in subsection (a). It retains the broad freedom afforded to custodians to make distributions for the use and the benefit of the minor without regard for alternative sources of support. For example, a custodian may make a distribution for the benefit of the minor even if the minor is the beneficiary of a trust under the terms of which the trustee is authorized to make a similar distribution.

Subsection (g) was previously contained in subsection (a). It emphasizes the longstanding prohibition on custodians who have a legal support obligation using custodial funds to satisfy that obligation. For example, a divorced parent who has a legal obligation to provide support payments for the benefit of the minor may not use custodial funds to satisfy that obligation. Allegations of such improper use of custodial property account for the bulk of litigation arising under the Act, most commonly in the context of divorced parents where a legal support obligation has expressly been created pursuant to a child support decree. This revision further emphasizes that custodial property is indefeasibly vested in the minor and is not to be used by parent-custodians to satisfy parental support obligations.

Section 15. Custodian's Expenses, Compensation, and Bond

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) A custodian that makes a transfer under Section 4 may not receive compensation for acting with respect to the transferred custodial property. In all other situations, a custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as required by the court, a custodian need not give a bond. The following persons may petition the court to require the custodian to give appropriate bond:

(1) a transferor or the legal representative of a transferor;

(2) an adult member of the minor's family;

(3) the minor's conservator;

(4) the minor's guardian;

(5) if the minor has attained the age of 14 years, the minor or the minor's agent; or

(6) any interested person.

Comment

To prevent abuse, subsection (b) denies compensation to a custodian who is also the donor of the custodial property under Section 4.

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 to avoid the accumulation of a large unanticipated claim for compensation exercisable at termination of the 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.

Subsection (c) allows certain parties to petition the court to require the custodian to give bond. Otherwise, no bond is required. This provision was previously included in Section 18.

Section 16. Exemption of Third Person from Liability

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:

(1) the validity of the purported custodian's designation;

(2) the propriety of, or the authority under this [act] for, any act of the purported custodian;

(3) the validity or propriety under this [act] of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

Comment

This section is unchanged. It excludes from its protection persons with knowledge of the irregularity of a transaction. This section 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.

Section 17. Liability to Third Persons

(a) A claim 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, if the claim arises out of:

(1) a contract entered into by the custodian acting in the custodial capacity;

(2) an obligation arising from the ownership or control of custodial property; or

(3) a tort committed during the custodianship.

(b) A custodian is not personally liable:

(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; or

(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

This section includes stylistic changes. It is not substantively altered.

Because some forms of custodial property 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.

The custodian incurs personal liability only as provided in subsection (b) for actual fault or for failure to disclose his custodial capacity "in the contract" when contracting with third parties. In oral contracts, oral disclosure of the custodial capacity is sufficient. The minor, on the other hand, incurs personal liability under subsection (c) only for actual fault.

When custodial property is subjected to claims of third parties under this section, the minor or his 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 19.

Section 18. Declination, Resignation, and Removal of Custodian; Successor Custodian

(a) A person nominated under Section 3 or designated under Section 9 as custodian may decline to serve by providing notice in a record to the person that made the nomination or designation.

(b) An acting custodian may resign at any time by delivering notice in a record to the minor if the minor has attained the age of 14 years and:

(1) if a successor custodian has been designated, to the successor custodian; or

(2) if a successor custodian has not been designated, to an adult member of the minor's family, the minor's conservator, or the minor's guardian.

(c) The following persons may petition the court to remove the custodian for cause and designate a successor custodian:

(1) the transferor or the legal representative of the transferor;

(2) an adult member of the minor's family;

(3) the minor's conservator;

(4) the minor's guardian;

(5) if the minor has attained the age of 14 years, the minor or the minor's agent; or

(6) any interested person.

(d) An acting custodian at any time may designate as successor custodian a trust company or an adult other than a transferor under Section 4. The designation must be in a record. The designation of the successor custodian does not take effect until any acting custodian dies, resigns, is removed, or becomes unable to serve.

(e) If no person nominated under Section 3 or designated under Section 9 as custodian is able and willing to act, or the acting custodian dies, resigns, is removed, or becomes unable to serve without the effective designation of a successor, the following rules apply:

(1) If after the termination date, the individual for whose benefit the custodianship was created is the custodian.

(2) If before the termination date:

(A) The transferor or the transferor's legal representative may designate as custodian any person other than a transferor under Section 4. The designation must be in a record.

(B) If a custodian is not designated under subparagraph (A) and the minor has attained the age of 14 years, the minor or the minor's agent may designate as successor custodian an adult member of the minor's family, the minor's conservator, the minor's guardian, or a trust company. The designation must be in a record.

(C) If a custodian is not designated under subparagraph (A) and the minor has not attained the age of 14 years or fails to designate a custodian under subparagraph (B) within [60] days of the event giving rise to the vacancy, the minor's conservator, if any, is the successor custodian.

(D) If a custodian has not been designated under subparagraphs (A) through (C), or no person designated is able and willing to act, the transferor, the legal representative of the transferor, the legal representative 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.

(f) A custodian that resigns or is removed or the legal representative of a custodian that dies or becomes unable to serve shall deliver, as soon as practicable, the custodial property and records to the possession and control of the successor custodian. The successor custodian may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

Comment

Section 18 describes the processes through which custodians can decline to serve or resign, and how they may be removed. It also indicates how successor custodians are designated. It has been significantly revised.

Subsection 18(e)(1) is a substantive addition to the Act. It addresses a situation that has arisen in practice in which a custodial account held by a financial institution is inadvertently held beyond the termination date because there is no acting custodian. This provision allows the minor to become custodian and thus direct the institution to terminate the custodianship and distribute the assets, without requiring court intervention to appoint a new custodian or recourse to unclaimed property procedures (see also Section 20(c)).

Section 19. Accounting by Custodian; Determination of Liability

(a) The minor or the minor's agent if the minor has attained the age of 14 years, the minor's legal representative, the minor's guardian, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

(1) for an accounting by the custodian or the custodian's legal representative; or

(2) for 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 17 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 a prior custodian.

(c) The court, in a proceeding under this [act] or in any other proceeding, may require or permit the custodian or the custodian's legal representative to provide an accounting.

(d) If a custodian is removed under Section 18(c), the court may require an accounting and order delivery of any custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

Comment

Section 19 is largely unchanged. There is a substantive revision in subsection (b) expanding a successor custodian's right to petition for an accounting to all prior custodians, rather than only the immediately preceding custodian. Because the minor and other persons mentioned in subsection (a) may also seek an accounting from previous custodians at any time, it is anticipated that the exercise of this right by the successor should be rare.

Subsection (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 17, unless that issue has already been adjudicated in an action under that section to which the minor was a party.

Subsection (d) is revised to provide that a court 'may,' rather than 'should,' order an accounting upon the removal of a custodian. This provides the court with discretion to determine whether such an accounting is necessary, and to order the delivery of custodial property as is appropriate under the circumstances.

This section does not contain a separate statute of limitations precluding petitions for accounting after termination of the custodianship. 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. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect former custodians from harassment.

The Act does not impose an affirmative duty on the custodian to produce accountings. Nor does it impose a duty to otherwise disclose the existence of the custodianship to the minor prior to the custodianship's termination (except potentially in the case of designation of a successor custodian). Such requirements could reduce the potential for malfeasance by custodians who fail to deliver custodial property that is legally vested in the minor but are unlikely to be widely adopted. The Act provides a mechanism through which a minor can compel a custodian to account, providing a basis for legal action to compensate the minor for any loss of custodial property.

Section 20. Termination of Custodianship

(a) The custodian shall deliver the custodial property to the minor in an appropriate manner:

(1) with respect to custodial property transferred under Section 4 or 5:

(A) if the transfer was made before [the effective date of this [act]], when the minor attains the age of [21] years; or

(B) if the transfer was made on or after [the effective date of this [act]], when the minor attains the age of [25] years or an age over the age of [21] years specified in the governing instrument, whichever occurs first, if the governing instrument uses the following words in substance: "The custodian shall deliver (description of property) to (name of minor) when (name of minor) attains (age) years of age", but not before the minor's attainment of [21] years of age; or

(2) with respect to custodial property transferred under Section 6 or 7, when the minor attains the age of [18 years or other statutory age of majority of enacting state] or the minor's emancipation under other law of this state, whichever occurs first.

(b) If the minor dies before attaining the applicable age under subsection (a), the custodian shall deliver the custodial property to the minor's estate within a reasonable time after the death.

(c) If the custodian has not initiated the process to deliver custodial property to the individual for whose benefit the custodianship was created after the termination date, the individual may act as custodian to effectuate the delivery of the custodial property to the individual.

Legislative Note: *In subsection (a)(1)(A) and (B) where the bracketed default termination age of 21 years appears, the state should insert the age at which a custodianship created by a transfer under Section 4 or 5 will terminate. In subsection (a)(1)(B) where the bracketed maximum termination age of 25 appears, the state should insert the maximum termination age for a custodianship created by a transfer under Section 4 or 5.*

Comment

Mindful of the variation across states regarding the termination of custodianships, the Drafting Committee considered several possible approaches to Section 20. Ultimately, the Drafting Committee decided not to adopt any default termination ages above age 25 and declined to allow custodians to extend custodianships beyond their expected termination dates. In part, this reflects the perspective that extending custodianships for longer periods would require greater attention to issues relating to investment and distribution that are better addressed using trusts.

Subsection (a) identifies the age at which the custodian must deliver custodial property to the minor. Paragraph (1) deals with custodianships created by transfer via gift, the exercise of a power of appointment, or authorized by will or trust. Custodianships of this type created prior to the enactment of this version of the Act terminate when the minor attains age 21. Custodianships of this type created after the enactment of this version of the Act terminate at the earlier of age 25 or the age indicated in the governing instrument, but not earlier than age 21.

Paragraph (2) deals with custodianships created by transfers under Sections 6 or 7, which serve as alternatives to conservatorships or guardianships. The Act retains the default termination age of 18 or the age of majority for these custodianships. It is revised to address the situation of emancipated minors.

Subsection (c) is new and addresses the situation in which the custodial property is not delivered to the minor within a reasonable time after the termination date. In that situation, the minor may act as custodian to effectuate the delivery of custodial property to the minor.

The provisions contained in the prior version of subsection (c) were removed as unnecessary given new language added in Section 10 which should prevent a single custodianship from holding property with different delivery dates.

A custodian may transfer so much or all of the custodial property as is in the best interests of the minor to a trust or account for the benefit of the minor (Section 14). Such a conveyance does not terminate the custodianship as to the custodial property conveyed, and the custodian retains a fiduciary obligation over the conveyed custodial property until the termination date. In contrast, distributions made by the custodian to or for the benefit of the minor prior to the termination date terminates the custodianship as to the property distributed. If the distributions exhaust the custodial property, the custodianship will terminate completely.

> Example 20.1: Custodian is the custodian of an UTMA account for the benefit of Minor. Custodian conveys $50,000, the entirety of the custodial property, to a 529 account for the benefit of Minor in accordance with Section 14(b)(1). Custodian must continue to administer the conveyed custodial property, by monitoring the management and investment of the 529 account and tracking increases in custodial property held in the account, until the termination date.

> Example 20.2: Custodian is the custodian of an UTMA account for the benefit of Minor. Custodian distributes $10,000 each year for five years to pay for supplemental educational activities for Minor. After the fifth payment, the custodial property is exhausted and the custodianship terminates.

Section 21. Applicability

(a) This [act] applies to a transfer made on or after the effective date of this [act] if:

(1) the transfer purports to have been made under this [act] or [cite to the state's Uniform Transfers to Minors Act in effect prior to the effective date of this [act]] [cite to the state's Uniform Gifts to Minors Act]; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Transfers to Minors Act" or "as custodian under the Uniform Gifts to Minors Act" of any other state, and the application of this [act] is necessary to validate the transfer.

(b) To the extent this [act], by virtue of Section 22(b), does not apply to transfers made in a manner prescribed in [cite to the state's Uniform Transfers to Minors Act in effect prior to the effective date of this [act]] [cite to the state's 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 [cite to the state's Uniform Transfers to Minors Act in effect prior to the effective date of this [act]] [cite to the state's Uniform Gifts to Minors Act] does not affect those transfers or those powers, duties, and immunities.

Legislative Note: *The state should only include reference to the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act, as enacted in the state, in paragraph (1) and in Sections 22 and 26.*

Comment

This section operates as a "savings clause" to validate transfers made after the effective date of this version of the Act which mistakenly refer to the prior version of this Act or the enacting state's UGMA rather than to this Act. In addition, it validates transfers attempted under the Act of another state or the UGMA of another state which would not permit transfers from that source or of property of that kind or under the UTMA of another state with no nexus to the transaction, provided in each case that the enacting state has a sufficient nexus to the transaction under Section 2.

Section 22. Transitional Provision

(a) Any transfer of custodial property made before [the effective date of this [act]] is valid notwithstanding that there was no specific authority in [cite to the state's Uniform Transfers to Minors Act in effect prior to the effective date of this [act]] [cite to the state's 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.

(b) This [act] applies to all transfers before the effective date of this [act] made in a manner and form prescribed in [cite to the state's Uniform Transfers to Minors Act in effect prior to the effective date of this [act]] [cite to the state's 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 [act].

Comment

Subsection (a) validates gifts of real estate and partnership interests made prior to their inclusion as "custodial property" under the UGMA and purports also to validate prior transfers of the kind covered by the prior version of this Act, i.e., transfers from estates, trusts, guardianships, and obligors.

All states have previously enacted some version of the UTMA or UGMA, and it will be more orderly to subject gifts or other transfers under prior Acts to the procedures of this Act, rather than to keep both Acts in force, presumably for 18 or 21 years until all custodianships created under prior law have terminated. Subsection (b) is intended to apply this version of the Act to prior gifts and transfers and existing custodianships insofar as it is constitutionally permissible to do so.

However, prior custodianships will continue to terminate at the age prescribed under the prior Act (see Section 20). The Act is not intended to provide a mechanism for resurrecting custodianships that have previously terminated, even if the termination date that would apply under this Act has not occurred.

Section 23. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among the states that enact it.

Comment

This section has been updated to the current Uniform Law Commission language regarding application and construction. No substantive change is intended.

[Section 24. Severability]

[If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note*: Include this section only if the state lacks a general severability statute or a decision by the highest court of the state stating a general rule of severability.*

Section 25. Repeals

[Cite to [the state's Uniform Transfers to Minors Act in effect prior to the effective date of this [act]] [cite to the state's Uniform Gifts to Minors Act] is hereby repealed. To the extent this [act], by virtue of Section 22(b), does not apply to transfers made in a manner prescribed in [cite to the state's Uniform Transfers to Minors Act in effect prior to the effective date of this [act]] [cite to the state's 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 [cite to the state's Uniform Transfers to Minors Act in effect prior to the effective date of this [act]] [cite to the state's Uniform Gifts to Minors Act] does not affect those transfers or those powers, duties, and immunities.

Section 26. Effective Date

This [act] takes effect [. . .].