



## UNIFORM TRANSFERS TO MINORS ACT

In 1956, the ULC promulgated the Uniform Gifts to Minors Act. There were further amendments in 1965 and 1966. All states and jurisdictions in the United States have adopted this Act in one of its prior forms. Some states have, also, added non-uniform amendments, expanding the scope of the Gifts to Minors Act. In response to these non-uniform amendments, the ULC promulgated the Uniform Transfers to Minors Act (UTMA) in 1983. Although it incorporates the predecessor Gifts to Minors Act, its expanded provisions require it to be treated as more than an amended Gifts to Minors Act. It is a different Act, superseding all the earlier Gifts to Minors Acts.

Transfers of property to minors create significant problems. To begin with, most transferrors do not wish to place valuable property under the control of inexperienced children. The probability of mismanagement, or no management whatsoever, remains a significant specter to those who would make such transfers. Somehow, control of the property must be retained in competent hands. Further, third parties often will not deal with minors, even if they are technically competent to manage their own affairs. Minors can disaffirm contracts, and third parties do business with them only with some risk. Yet, certain transfers to minors are very advantageous, particularly for the purposes of estate planning.

A trust, in which control and management reside with a trustee, for the designated beneficiaries, offers one solution. But trusts are complex and expensive to create and manage. For smaller property transfers, they are not a satisfactory alternative. Formal guardianships or conservatorships are, also, not generally useful for the purpose. What the Gifts to Minors Act proposed, and what the new UTMA continues, is a custodianship, in an adult or appropriate institution, of property that otherwise transfers directly to the minor. The custodianship remains until the minor becomes 21. The custodial relationship is created by executing a rather simple document, the form of which is provided in the Act itself. The minor does not obtain control of the property. The custodian has certain statutory authority to deal with it on the minor's behalf, and third parties have no occasion to be uncertain about dealing with the custodian. And the transfer is a complete and irrevocable transfer to the minor, satisfying the requirements of tax law.

The new UTMA differs significantly from the earlier Acts in these ways:

(1) Any kind of property may be transferred to a minor under this Act, whether real or personal, tangible or intangible. The earliest Gifts to Minors Act permitted gifts of securities only. An expansion of property subject to that Act came with the 1965 and 1966 amendments. UTMA eliminates all restrictions on kinds of property.

(2) The earlier Gifts to Minors Act contemplated present gifts from adult persons only. UTMA permits transfers based on the occurrence of a future event. It allows transfers by powers of appointment. Transfers may be made by a personal representative or a trustee pursuant to the

authorization of a will or trust instrument. Anybody obligated to a minor for property held, or for a liquidated debt, can make a transfer under UTMA. A gift, as a kind of transfer, does not encompass all the possible transfers contemplated under the new Act.

(3) UTMA provides for jurisdiction over transfers under this Act and choice of law rules. None of the Gifts to Minors Acts dealt with these conflict of law problems. UTMA applies to a transfer in any enacting state, if that state is the residence of the transferor, the minor, or the custodian, or if the custodial property is located in that state. Any transfer made pursuant to the law of another state that has adopted UTMA, a version of the Gifts to Minors Act, or anything substantially similar, remains subject to that law.

(4) Under UTMA, because the kinds of property which may be transferred have been expanded, the liability of custodians is, also, to be limited.

Although UTMA makes these significant changes over the earlier Gifts to Minors Acts, the UTMA still serves the same purposes as the earlier Acts. Irrevocable transfers can be made to minors to satisfy tax requirements. Control can be placed in responsible hands until the minor comes of age. These matters can be accomplished by the execution of a simple, inexpensive document. The Uniform Transfers to Minors Act simply makes marked improvements on these basic functions.

For further information about the Uniform Transfers to Minors Act, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or [krobinson@uniformlaws.org](mailto:krobinson@uniformlaws.org).