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# THE UNIFORM TRANSFERS TO MINORS ACT—NEW AND IMPROVED, BUT SHORTCOMINGS STILL EXIST

Thomas E. Allison\*

## I. INTRODUCTION

In 1983, the National Conference of Commissioners on Uniform State Laws proposed the Uniform Transfers to Minors Act.<sup>1</sup> The prefatory note promulgated by the Conference<sup>2</sup> describes the Act as a revision and restatement of the Uniform Gifts to Minors Act, which was originally proposed by the Conference in 1956 and then revised in 1966.<sup>3</sup> The Uniform Gifts to Minors Act was in turn developed from the Model Gifts of Securities to Minors Act, sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms to promote *inter vivos* gifts of securities to minors.<sup>4</sup> To describe the Act as a revision and restatement, however, may not do it justice. The new Act so significantly expands the scope and overall utility of the old law that it should be treated as a major change in the area of transferring property to minors.

The new Act is rapidly gaining acceptance by many state legislatures. Every state, the District of Columbia and the Virgin Islands adopted a version of either the 1956 or the 1966 Uniform Gift to Minors Act.<sup>5</sup> The New Act has been adopted by twenty-six states, in-

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1. UNIF. TRANSFERS TO MINORS ACT (UTMA), 8A U.L.A. 153 (Supp. 1987).

2. *Id.* at 153-54.

3. UNIF. GIFTS TO MINORS ACT (1956 UGMA), 8A U.L.A. 405 (1983); UNIF. GIFTS TO MINORS ACT (1966 UGMA), 8A U.L.A. 317 (1983).

4. 1956 UGMA prefatory note, 8A U.L.A. at 405; *Report of Subcommittee on Uniform Gifts to Minors Act*, 103 TR. & EST. 983, at 991-92 (October, 1964) [hereinafter *Report*]. The Model Act was also referred to as the "Uniform Gifts of Securities to Minors Act." For a discussion of the operation of the Model Act, see Moore, *Uniform Gifts of Securities to Minors Act: A Consideration of its Merits*, 33 U. DET. L.J. 298 (1956); Note, *Recent Legislation to Facilitate Gifts of Securities to Minors*, 69 HARV. L. REV. 1476, 1481-82 (1956).

5. Reference is made herein to those jurisdictions in which these statutes have since been repealed as the enacting jurisdictions adopted the UTMA. See *infra* note 6 for citations to the UTMA adoptions in these jurisdictions. The codifications of the UGMA versions are as follows: ALA. CODE §§ 35-5-1 to -10 (1975) (repealed 1986); ALASKA STAT. §§ 45.60.011-.101 (1980 & Supp. 1986); ARIZ. REV. STAT. ANN. §§ 44-2071 to -2080 (1967 & Supp. 1986); ARK. STAT. ANN. §§ 50-901 to -910 (1971) (repealed 1985); CAL. CIV. CODE §§ 1154-1165 (West

cluding Arkansas, California, Florida, Massachusetts, and Illinois.<sup>6</sup> This article does not attempt to explain in detail the operation of the

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1982) (repealed 1984); COLO. REV. STAT. §§ 11-50-101 to -112 (1973) (repealed 1984); CONN. GEN. STAT. §§ 45-101 to -109b (1987); DEL. CODE ANN. tit. 12, §§ 4501-4511 (1979 & Supp. 1986); D.C. CODE ANN. §§ 21-301 to -311 (1981) (repealed 1986); FLA. STAT. §§ 710.01-.10 (1983) (repealed 1985); GA. CODE ANN. §§ 44-5-110 to -124 (1982 & Supp. 1987); HAW. REV. STAT. §§ 553-1 to -9 (1976) (repealed 1985); IDAHO CODE §§ 68-801 to -810 (1980) (repealed 1984); ILL. ANN. STAT. ch. 110 1/2, ¶¶ 201-211 (Smith-Hurd 1978) (repealed 1986); IND. CODE ANN. §§ 30-2-8-1 to -10 (West 1979 & Supp. 1986); IOWA CODE ANN. §§ 565A.1-.11 (West 1950 & Supp. 1980) (repealed 1986); KAN. STAT. ANN. §§ 38-901 to -912 (1973 & Supp. 1979) (repealed 1985); KY. REV. STAT. ANN. §§ 385.011-.101, 385.110-.200 (Michie/Bobbs-Merrill 1972 & Supp. 1984) (repealed 1986); LA. REV. STAT. ANN. §§ 9:735 to :742 (West 1965 & Supp. 1987); ME. REV. STAT. ANN. tit. 33, §§ 1001-1010 (1964 & Supp. 1986); MD. EST. & TRUSTS CODE ANN. §§ 13-301 to -310 (1974 & Supp. 1986); MASS. ANN. LAWS ch. 201A, §§ 1-11 (Law. Co-op. 1981) (repealed 1986); MICH. COMP. LAWS ANN. §§ 554.451-.461 (West 1967 & Supp. 1987); MINN. STAT. ANN. §§ 527.01-.11 (West 1975) (repealed 1985); MISS. CODE ANN. §§ 91-19-1 to -19 (1972 & Supp. 1987); MO. ANN. STAT. §§ 404.010-.100 (Vernon 1979) (repealed 1985); MONT. CODE ANN. §§ 72-26-101 to -404 (1984) (repealed 1985); NEB. REV. STAT. §§ 38-1001 to -1010 (1978); NEV. REV. STAT. §§ 167.010-.110 (1984) (repealed 1985); N.H. REV. STAT. ANN. §§ 463-A:1 to :10 (1983) (repealed 1985); N.J. STAT. ANN. §§ 46:38-13 to -41 (West Supp. 1987); N.M. STAT. ANN. §§ 46-7-1 to -10 (1978 & Supp. 1984); N.Y. EST. POWERS & TRUSTS LAW §§ 7-4.1 to .13 (McKinney 1967 & Supp. 1987); N.C. GEN. STAT. §§ 33-68 to -77 (1984 & Supp. 1986); N.D. CENT. CODE §§ 47-24-01 to -10 (1978) (repealed 1985); OHIO REV. CODE ANN. §§ 1339.31-.39 (Anderson 1979) (repealed 1986); OKLA. STAT. ANN. tit. 60, §§ 401-410, 415-419 (West 1971 & Supp. 1980) (repealed 1986); OR. REV. STAT. §§ 126.805-.880 (1984) (repealed 1985); 20 PA. CONS. STAT. ANN. §§ 5301-5310 (Purdon 1975 & Supp. 1987); R.I. GEN. LAWS §§ 18-7-1 to -11 (1981) (repealed 1985); S.C. CODE ANN. §§ 20-7-140 to -240 (Law. Co-op 1985 & Supp. 1986); S.D. CODIFIED LAWS ANN. §§ 55-10-1 to -39 (1980) (repealed 1986); TENN. CODE ANN. §§ 35-7-101 to -110 (1984 & Supp. 1987); TEX. PROP. CODE ANN. §§ 141.001-.014 (Vernon 1984 & Supp. 1987); UTAH CODE ANN. §§ 75-5-601 to -610 (1978 & Supp. 1987); VT. STAT. ANN. tit. 14, §§ 3201-3209 (1974 & Supp. 1987); VA. CODE ANN. §§ 31-26 to -36 (1985 & Supp. 1987); V.I. CODE ANN. tit. 15, §§ 1241-1250 (1964); WASH. REV. CODE §§ 11.93.010 to .920 (1985); W. VA. CODE §§ 36-7-1 to -11 (1985) (repealed 1986); WIS. STAT. ANN. §§ 880.61-.71 (West 1986); WYO. STAT. §§ 34-13-101 to -110 (1977) (repealed 1987).

6. ALA. CODE §§ 35-5A-1 to -24 (Supp. 1986); ARK. STAT. ANN. §§ 50-933 to -956 (Supp. 1985); CAL. PROB. CODE §§ 3900-3905 (West 1987); COLO. REV. STAT. §§ 11-50-101 to -126 (1986); D.C. CODE ANN. §§ 21-301 to -324 (Supp. 1987); FLA. STAT. §§ 710.101-.126 (1985 & Supp. 1986); HAW. REV. STAT. §§ 553A-1 to -24 (1985 & Supp. 1986); IDAHO CODE §§ 68-801 to -825 (Supp. 1987); ILL. ANN. STAT. ch. 110 1/2, ¶¶ 251-274 (Smith Hurd Supp. 1987); IOWA CODE ANN. §§ 565B.1-.25 (West Supp. 1987); KAN. STAT. ANN. §§ 38-1701 to -1726 (1986); KY. REV. STAT. ANN. §§ 385.012-.252 (Michie/Bobbs-Merrill Supp. 1986); MASS. ANN. LAWS ch. 201A, §§ 1-24 (Law. Co-op. Supp. 1987); MINN. STAT. ANN. §§ 527.21-.44 (West Supp. 1987); MO. ANN. STAT. §§ 404.005-.094 (Vernon Supp. 1987); MONT. CODE ANN. §§ 72-26-501 to -803 (1985); NEV. REV. STAT. §§ 167.010-.100 (1986); N.H. REV. STAT. ANN. §§ 463-A:1 to :26 (Supp. 1986); N.D. CENT. CODE §§ 47-24.1-01 to -22 (Supp. 1987); OHIO REV. CODE ANN. §§ 1339.31-.39 (Anderson Supp. 1986); OKLA. STAT. ANN. tit. 58, §§ 1201-1226 (West Supp. 1987); OR. REV. STAT. §§ 126.805-.886 (Supp. 1987); R.I. GEN. LAWS §§ 18-7-1 to -26 (Supp. 1986); S.D. CODIFIED LAWS ANN. §§ 55-10A-1 to -26 (Supp. 1987); W. VA. CODE §§ 36-7-1 to -24 (Supp. 1987); WYO. STAT. §§ 34-13-114 to -137 (Supp. 1987).

Uniform Acts,<sup>7</sup> but focuses instead on the major changes made by the new Act and the still unresolved problems in transferring property to minors pursuant to the terms of the new Act.

The Uniform Gifts to Minors Act was originally conceived as a means of providing a simple, inexpensive procedure for making lifetime gifts of securities to a minor while protecting third parties dealing with the property belonging to the minor.<sup>8</sup> As an alternative to establishing a trust or a guardianship for the benefit of the minor,<sup>9</sup> the scope of the original 1956 Act was expanded to include cash, annuities and similar types of intangible personal property.<sup>10</sup> The two versions of the Uniform Gifts to Minors Act and the new Uniform Transfers to Minors Act were generally designed to be used for relatively small amounts of cash or securities, where a trust or guardianship would not be cost-effective,<sup>11</sup> but the Acts themselves contain no

7. See generally Burkhardt, *Colorado Uniform Transfers to Minors Act*, 13 COLO. LAW. 2223 (1984) (Colorado version of the Uniform Transfers to Minors Act); Downing, *Minor's Property: A Statutory Trust*, 58 OKLA. B.J. 1497 (1987) (Oklahoma passage of the Uniform Transfers to Minors Act); Eickhoff, *Transfers to Minors Law*, 41 J. MO. BAR 441 (1985) (Missouri passage of the Uniform Transfers to Minors Act); Newman, *The Uniform Gifts to Minors Act in New York and Other Jurisdictions—Tax Consequences, Possible Abuses, and Recommendations*, 49 CORNELL L.Q. 12, 18-30 (1963) (discussing the 1956 version of the Uniform Gifts to Minors Act); Report, *supra* note 4 (1956 version of the Uniform Gifts to Minors Act); Allison, *The Florida Uniform Transfers to Minors Act—A Viable Alternative*, 60 FLA. B.J., Dec. 1986, at 49 (Florida version of the Uniform Transfers to Minors Act); Note, *Administration of Estates; Uniform Transfers to Minors Act*, 16 PAC. L.J. 473 (1985) (California enactment of the Uniform Transfers to Minors Act).

8. 1956 UGMA prefatory note, 8A U.L.A. at 405-06; 1966 UGMA prefatory note, 8A U.L.A. at 318; Day, *Stock Transfers Under Custodian Statutes*, 31 CONN. B.J. 40, 41 (1957); Moore, *supra* note 4, at 298-301; Newman, *supra* note 7, at 30-32.

9. 1956 UGMA prefatory note, 8A U.L.A. at 405-06; 1966 UGMA prefatory note, 8A U.L.A. at 318; Moore, *supra* note 4, at 301-06.

10. 1966 UGMA § 1(e), 8A U.L.A. at 329.

11. In its Prefatory Note to the 1956 Act, the Commissioners commented on the need for the Uniform Gifts to Minors Act by noting the alternative which existed at that time and stating:

The net result [of these alternatives] is to discourage, if not prevent, small gifts of securities to minors.

.....

Regulations or statutes eliminate these complications when the subject of the gift is a United States Savings Bond or, in many states, money deposited in a banking institution. The Model Act seeks a similar result when the subject of the gift is a security.

1956 UGMA prefatory note, 8A U.L.A. at 406.

In adopting the 1956 UGMA, the Commissioners limited deviation from the Model Act to items which were of a conforming nature, and items which were needed to "supply apparent deficiencies, to meet apparently well founded objections and to conform terminology, wherever possible, to that of other Uniform Acts." *Id.* at 407. These changes did not go to the underlying intent in the adoption of the Uniform Act.

In its 1966 revision, the Commissioners adopted changes relating to the permitted custo-

such restrictions.<sup>12</sup>

The two Uniform Gifts to Minors Act versions provided that property donated to the custodianship was considered to be owned by the minor.<sup>13</sup> It is well established that any income produced by the property is taxed to the minor unless it is used to provide for his support, in which case it is taxed to the person who is obligated to support the minor.<sup>14</sup> For purposes of the federal gift tax, the transfer of the property to the custodian constitutes a completed gift upon conveyance,<sup>15</sup> with the transfer meeting the requirements for the annual exclusion under section 2503(b) of the Internal Revenue Code.<sup>16</sup> The transferred property is also removed from the gross estate of the donor for estate tax purposes, unless the donor serves as custodian or the property is used to satisfy the donor's support obligation; in these cases, the property is taxed in the donor's estate under sections 2036

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dians under the Uniform Act, the nature of the property which may be the subject of a gift, and the provisions for designating successor custodians, but these changes were intended to be in the nature of improvements on the 1956 Act, rather than a change in purpose of the Uniform Act. 1966 UGMA prefatory note, 8A U.L.A. at 321.

The Commissioners stated that the Uniform Transfers to Minors Act

restates and rearranges, rather than amends, the 1966 Act. The addition of other forms of property and other forms of dispositions made adherence to the format and language of the prior act very unwieldy. In addition, the 1966 and 1956 Acts closely followed the language of the earlier model act, which had already been adopted in several states, even though it did not conform to Conference style. It is hoped that this rewriting and revision of UGMA will improve its clarity while also expanding its coverage.

UTMA, 8A U.L.A. 153, 154 (Supp. 1987).

12. Neither the 1956 nor the 1966 versions of the UGMA nor the UTMA contain any ceiling on the amount of property which may be held by a custodian. Therefore, even though the uniform acts were designed to facilitate the transfer of relatively small amounts of property to a minor, see 1956 UGMA prefatory note 8A, U.L.A. at 406, they are not restricted to this purpose and may, in fact, hold considerable amounts of property. See Newman, *Tax and Substantive Aspects of Gifts to Minors*, 50 CORNELL L.Q. 446, 457-59 (1965); *Report, supra* note 4, at 994-95.

13. 1956 UGMA § 3, 8A U.L.A. at 421; 1966 UGMA § 3, 8A U.L.A. at 366.

14. Rev. Rul. 56-484, 1956-2 C.B. 23; Mahoney, *The Uniform Gifts to Minors Act: A Patent Ambiguity*, 34 VAND. L. REV. 495, 517-20 (1981); Newman, *supra* note 7, at 41; *Report, supra* note 4, at 993.

15. Rev. Rul. 56-86, 1956-1 C.B. 449; Mahoney, *supra* note 14, at 516-17; Newman, *supra* note 7, at 38-40; *Report, supra* note 4, at 991-92. For gift tax purposes, the question which would be presented is whether the transfer of the property from the donor to the custodian constituted the relinquishment of the donor's dominion and control. This issue is answered in the affirmative under UGMA § 3(a) (1956, revised 1966). See *supra* note 13 and accompanying text.

16. The donor would be entitled to the annual exclusion if he conveyed a present interest in the property to the minor. Under I.R.C. § 2503(b) (1986), this requires that the minor have the right to the immediate use and enjoyment of the property which was the subject of the gift. See generally R. STEPHENS, G. MAXFIELD & S. LIND, FEDERAL ESTATE AND GIFT TAXATION ¶ 9.04 (5th ed. 1983) [hereinafter R. STEPHENS].

and 2038 of the Internal Revenue Code.<sup>17</sup>

The tax ramifications of these donative transfers remain unchanged under the Uniform Transfers to Minors Act.<sup>18</sup> However, since other types of transfers now operate to invoke the provisions of the new Act,<sup>19</sup> the tax effects of these other property transactions under the new Act may be less obvious. Federal tax considerations prompted some of the provisions of the new Act;<sup>20</sup> these tax consequences should always be reviewed when considering a transaction under any of the uniform acts.

## II. MAJOR CHANGES IN THE NEW ACT

Despite the Conference's characterization of the new Act as a restatement and revision of the Uniform Gifts to Minors Act,<sup>21</sup> the new Act differs from the former acts in several key respects. These differences require careful review to determine their effect on the development of this area of the law.

### A. Minority

The former acts provided that a minor was a person who had not yet attained his twenty-first birthday.<sup>22</sup> However, many jurisdictions deviated from the official text and reduced this age to eighteen or nineteen, in accordance with the general national trend for removing the disabilities of nonage.<sup>23</sup> Recognizing that federal gift tax law establishes age twenty-one as the age of majority for purposes of setting

17. *Prudowsky v. Commissioner*, 55 T.C. 890 (1971), *aff'd per curiam*, 465 F.2d 62 (7th Cir. 1972); Rev. Rul. 57-366, 1957-2 C.B. 618; R. STEPHENS, *supra* note 16, at ¶ 9.04(5)(c); Mahoney, *supra* note 14, at 520-30; Newman, *supra* note 7, at 41-43; *Report*, *supra* note 4, at 992.

18. UTMA, 8A U.L.A. 153 (Supp. 1987). The provisions of the UTMA were designed to take advantage of the terms of the Internal Revenue Code. See *infra*, for example, text accompanying notes 22-31. In certain situations, the income from this property may become subject to the "Kiddie Tax" under I.R.C. § 1(i) (1986), as enacted in § 1411 of the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, 2714 (1986).

19. See *infra* text accompanying notes 40-58.

20. See *infra* notes 22-28, 98-111 and accompanying text.

21. See *supra* note 2.

22. 1956 UGMA § 1(k), 8A U.L.A. at 413; 1966 UGMA § 1(m), 8A U.L.A. at 330.

23. For a complete list of these changes, see 1956 UGMA, 8A U.L.A. at 414-15; 1966 UGMA, 8A U.L.A. at 332-43. In summary, the adopting jurisdictions made the following changes relating to the age of minority: Alabama, age 19; Arizona, age 18; Arkansas, age 18 for females and age 21 for males; California, age 18; Delaware, age 18; District of Columbia, age 18; Florida, age 18; Hawaii, age 18; Idaho, age 18; Indiana, age 18; Kansas, age 18; Kentucky, age 18; Maine, age 18; Maryland, age 18; Michigan, age 18; Minnesota, age 18; Montana, age 18; Nebraska, age 19; Nevada, age 18; North Carolina, age 18; North Dakota, age 18; South Carolina, age 18; Virginia, age 18; Washington, age 18; West Virginia, age 18; Wisconsin,

up a trust for the benefit of a minor which qualifies for the annual exclusion,<sup>24</sup> and realizing that custodial accounts are often used as substitutes for formal trusts,<sup>25</sup> the Commissioners retained age twenty-one as the age of majority for purposes of the Act.<sup>26</sup> They did so despite the fact that the general age of majority for other purposes may remain at eighteen or some other age less than age twenty-one.<sup>27</sup> The Commissioners determined that the Act would be more useful to donors and would more closely fit their desires if the age of required distribution were postponed for as long as permitted under the Internal Revenue Code.<sup>28</sup> It appears that most state legislatures will accept this determination.<sup>29</sup> As explained below,<sup>30</sup> however, the importance of the definition of minority is somewhat diminished because the Act may require that a custodianship terminate while the minor beneficiary still meets the definition of a minor under the Act.<sup>31</sup>

## B. Custodian Property

The 1966 Act restricted the types of property transferable into a custodial account to "securities, life insurance policies, annuity contracts and money," the income they produced and the proceeds from their transfer.<sup>32</sup> While these restrictions resulted from the historical context of the development of the original Uniform Gifts to Minors Act,<sup>33</sup> many jurisdictions recognized the appropriateness of custodianships holding other types of property. They accordingly expanded the scopes of their particular versions of the uniform act to allow real property and tangible and intangible personalty to be held in custodial

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sin, age 18. The definition of minority was omitted in Massachusetts and Vermont, and defined in Texas by reference to general state law for removal of the disability of minority.

24. I.R.C. § 2503(c) (1986).

25. 1956 UGMA prefatory note, 8A U.L.A. at 405-06; 1966 UGMA prefatory note, 8A U.L.A. at 318; Moore, *supra* note 4, at 301-06. See *supra* text accompanying note 9.

26. UTMA § 1(11), 8A U.L.A. at 157.

27. *Id.* § 1 comment at 158.

28. *Id.*

29. For a complete list of the changes to these provisions, see UTMA, 8A U.L.A. at 158-60. In summary, the following variations in this definition were enacted among the adopting jurisdictions: California, age 18; District of Columbia, age 18; Kentucky, age 18; Montana, age 18; Nevada, age 18; Oklahoma, age 18; Rhode Island, age 18; South Dakota, age 18. Of the twenty-six adopting jurisdictions, therefore, eight have changed the definition of a minor.

30. See *infra* notes 119-35 and accompanying text.

31. See *infra* notes 119-35 and accompanying text.

32. 1966 UGMA § 1(e), 8A U.L.A. at 329. This represented a liberalization of the rules of the 1956 Act, which restricted custodial property to "securities and money," the income which they produced and the proceeds from their sale. 1956 UGMA § 1(e), 8A U.L.A. at 412-13.

33. Newman, *supra* note 7, at 12; Report, *supra* note 4, at 983.

form.<sup>34</sup> The experiences in these jurisdictions,<sup>35</sup> and the goal of regaining uniformity, led the Conference to redefine custodial property to include “any interest in property” which is transferred to the custodian, along with “the income from and proceeds of that interest in property.”<sup>36</sup> This represents a major change in the direction of the custodial form of ownership; anything capable of ownership may now be held for the benefit of a minor in a custodial account under the Uniform Transfers to Minors Act. This change alone can be expected to increase the attractiveness of custodial accounts to potential donors. The custodianship is a much more flexible and inexpensive device for transferring and maintaining this interest in property than are the trust and guardianship alternatives,<sup>37</sup> so this change should result in more frequent use of the custodial method of property ownership.

### C. Permitted Transfers and Transferors

Under the two versions of the Uniform Gifts to Minors Act, custodial accounts could only be established by a donor in a transaction constituting an *inter vivos* gift.<sup>38</sup> This limited the utility of the old acts, but again reflected their development from the Model Act sponsored by the New York Stock Exchange.<sup>39</sup>

Once again, the legislatures of several jurisdictions recognized that only the context in which the uniform acts were developed prevented a custodian of property from receiving property from other sources. These legislatures amended their versions of the Uniform Gifts to Minors Act to expand the class of parties permitted to establish custodial accounts and the situations in which they could transfer

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34. In commenting on the reasons which led to the adoption of the UTMA, the Commissioners noted that

[M]any states since 1966 have substantially revised their versions of UGMA to expand the kinds of property that may be [sic] made the subject of a gift under the Act, and a few states permit transfers to custodians from other sources, such as trusts and estates, as well as lifetime gifts. As a result, a great deal of non-uniformity has arisen among the states. . . .

This Act follows the expansive approach taken by several states and allows 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.

UTMA prefatory note, 8A U.L.A. at 154 (citation omitted).

35. There are no reported cases reflecting litigation resulting from a jurisdiction expanding the definition of custodial property beyond that contained in either version of the UGMA.

36. UTMA § 1(6), 8A U.L.A. at 157.

37. See *supra* text accompanying note 11; *infra* text accompanying notes 83-97.

38. 1956 UGMA § 2(a), 8A U.L.A. at 416; 1966 UGMA § 2(a), 8A U.L.A. at 344.

39. 1956 UGMA prefatory note, 8A U.L.A. at 405; Moore, *supra* note 4, at 298; Note, *supra* note 4, at 1481-82; Report, *supra* note 4, at 991-92.



property to the accounts.<sup>40</sup> The new Act builds upon the concepts reflected in these amendments and enlarges the classes of permitted transfers and transferors.<sup>41</sup> These changes will have little effect in those states where prior expansion of the terms of the Gifts to Minors Act already covered the spirit of these changes; the major impact of the change adopted in the new Act is the anticipated return to uniformity in the area. The donative transfer situation encompassed by the Uniform Gifts to Minors Acts is retained,<sup>42</sup> but four additional types of designations of custodianship and transfers of property are now permitted under the Uniform Transfers to Minors Act.

The first additional type of designation provides that a person having the right to designate the recipient of property upon the occurrence of a future event may make a revocable designation of a custodian to receive such a transfer for the benefit of a minor recipient.<sup>43</sup> Such a designation may appear in a will, a trust instrument, a deed, an instrument exercising a power of appointment, or in a writing related to a contract having "payable on death" provisions.<sup>44</sup> This designation, since it is revocable and is not accompanied by any immediate transfer of property to the designated custodian, creates no rights and imposes no duties upon the designated custodian until property is actually transferred upon the occurrence of the future event.<sup>45</sup> The owner of a life insurance policy, for instance, is permitted under the new Act to name a custodian for his minor child as the beneficiary of the insurance policy.<sup>46</sup> When the proceeds become payable upon the death of the insured, if the beneficiary is still a minor then the custodianship would become effective and the policy proceeds would be paid to the custodian.

A second type provides that if specific authorization is given in the governing instrument, a personal representative or a trustee may transfer property to a custodian for the benefit of a minor beneficiary

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40. In discussing the factors which led to the adoption of the UTMA, the Commissioners stated that "a few states permit transfers to custodians from other sources, such as trusts and estates, as well as lifetime gifts." UTMA prefatory note, 8A U.L.A. at 154.

41. *Id.* §§ 4-7 at 162-64.

42. *Id.* § 4 at 162. In addition to the traditional gift transfer, this section also covers "the irrevocable exercise of a power of appointment." *Id.* § 4 comment at 162.

43. *Id.* § 3(a) at 161.

44. *Id.*

45. *Id.* § 3(c) & comment at 161. See also *id.* § 9 comment at 167, concerning the distinction between the irrevocable designation of a custodian and the revocable nomination of a future custodian under UTMA § 3.

46. *Id.* § 3(a).

of the estate or trust.<sup>47</sup> Such authorization is of great use to estate planners and should regularly be granted.<sup>48</sup> It enables the fiduciary having control over property to determine, at the latest possible date, the manner of distribution of the property to the minor. If the circumstances at that time<sup>49</sup> warrant the formalities of a guardianship, then that vehicle can be chosen; if not, then a custodianship can be used and the greater expenses and formalities of a guardianship can be avoided.<sup>50</sup>

The third additional type of transfer makes it acceptable for a personal representative, trustee, or conservator<sup>51</sup> to make such a transfer even if the governing document fails to expressly authorize a fiduciary to transfer property to a custodian for the minor. The transfer is allowed if it is not prohibited by, or inconsistent with, the terms of the instrument,<sup>52</sup> provided the fiduciary determines that it would be in the best interest of the minor to distribute property to him through the use of a custodial account.<sup>53</sup> Presumably, custodial accounts are used for relatively small amounts of money or for short durations, while guardianships are more desirable if large amounts of money are involved or if the money is to be held for an extended time period. This would give the minor the protection of court review afforded by a guardianship<sup>54</sup> when the amount in question or other circumstances justifies such protection. The Act recognizes this possibility by requiring that court approval of the transfer to the custodial account be obtained if there is no specific authorization for the transfer in any governing document and the amount of the transfer exceeds \$10,000 in value.<sup>55</sup> In drafting a will or a trust, if the testator or grantor wants to make certain that a minor beneficiary receives the protective measure of court supervision afforded by a guardianship,<sup>56</sup> then the instrument should eliminate the possibility of a transfer under this provision by specifically stating that the fiduciary may not transfer

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47. *Id.* § 5 at 162.

48. *See infra* text accompanying notes 56-57.

49. Factors such as the amount of funds, the age of the minor beneficiary, or the absence of a suitable custodian would be important considerations.

50. *See infra* text accompanying notes 74-82.

51. A "conservator" is defined for purposes of the UTMA as "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." UTMA § 1(4), 8A U.L.A. at 157.

52. *Id.* § 6 at 163.

53. *Id.*; *see id.* § 6 comment at 163.

54. *See infra* notes 87-90 and accompanying text.

55. UTMA § 6(c), 8A U.L.A. at 163.

56. *See infra* notes 87-90 and accompanying text.

property to a custodian for a minor beneficiary.<sup>57</sup>

Finally, the fourth additional type of transfer permits a person owing a liquidated debt to a minor, or holding property of the minor, to transfer property to a custodian if the minor has no conservator.<sup>58</sup> This provision would, for instance, allow a life insurance company owing policy proceeds to a minor beneficiary<sup>59</sup> to distribute the policy proceeds to a custodian for the minor beneficiary. Since the transfer would otherwise be made to the minor's conservator,<sup>60</sup> this provision could again dispense with the necessity of naming a guardian of the property of the minor to receive the transfer. As noted above,<sup>61</sup> the Commissioners recognized that the added procedural safeguards of the formal guardianship may be desired when the amount in question is large; this type of transfer, therefore, is not permitted if the amount of the transfer exceeds \$10,000 in value.<sup>62</sup>

This liberalization of the types of permitted transfers of property to custodial accounts and the resulting expansion in the class of persons who may make transfers to custodianships should make this form of ownership much more common. In addition, it could eliminate the need in many cases for establishing a guardianship for the benefit of the minor. In the future, such guardianships may be restricted to situations in which the amount in question is substantial, the use of a guardianship has been specifically required, or some other circumstances warrant the additional safeguards afforded by the guardianship statutes.<sup>63</sup>

#### D. Permitted Custodians

Both versions of the Uniform Gifts to Minors Act generally permitted any adult, a trust company, or, in situations in which the subject of the gift was money, a broker to serve as custodian.<sup>64</sup> However, they also contained alternate language which was much more restric-

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57. Such a statement would invoke the provisions of UTMA § 6(c)(ii), which prevents a transfer under UTMA § 6 if it is "prohibited by, or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument." UTMA § 6(c)(ii), 8A U.L.A. at 163.

58. *Id.* § 7 at 164.

59. This assumes that no designation of a custodian for the minor beneficiary has been made pursuant to the provisions discussed *supra* in text accompanying notes 43-46.

60. *See supra* note 51.

61. *See supra* text accompanying note 55.

62. UTMA § 7(c), 8A U.L.A. at 164.

63. *See generally* Moore, *supra* note 4, at 303-04; *see also supra* note 49; *infra* notes 83-97 and accompanying text.

64. 1956 UGMA § 2(a), 8A U.L.A. at 416-17; 1966 UGMA § 2(a), 8A U.L.A. at 344-45.

tive in the scope of permitted custodians.<sup>65</sup> Under this alternate language, which was adopted in several states,<sup>66</sup> only an adult member of the minor's family, the minor's guardian, a bank or a trust company, and, in cases of monetary transfers, a broker, could serve as custodian.<sup>67</sup> The minor was somewhat protected by these restrictions, which again reflected that the Act was originally developed around the concept of *inter vivos* gifts.<sup>68</sup> These restrictions assumed that a family member generally would have the best interests of the minor at heart,<sup>69</sup> a court would oversee a guardian's activities,<sup>70</sup> and the trust company and broker would generally have sufficient assets against which a damaged minor could recover.<sup>71</sup>

The new Act deletes this restrictive alternate language and retains the original provisions. These permit any adult, a trust company as defined in the Act, or, for transfers of money, a broker as defined in the Act to serve as custodian.<sup>72</sup> This decision should be embraced, as the restrictive language of the former Acts precluded the use of an individual custodian, who would likely serve without compensation, if there were no willing and able adult family members available.<sup>73</sup> Although a custodian need not be a resident of the state in which a custodianship is established, the property is located, or the transferor

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65. *See supra* note 64.

66. Of the eight jurisdictions which retained the 1956 UGMA as of 1983, six had enacted variations in the official text for § 2. 1956 UGMA § 2, 8A U.L.A. at 419-20. Of the forty-four jurisdictions which adopted the 1966 UGMA in 1983, thirty-one of these jurisdictions adopted language which varied from the official text in a manner which restricted the class of persons who could serve as custodian in certain instances. 1966 UGMA § 2, 8A U.L.A. at 346-64.

67. 1956 UGMA § 2(a), 8A U.L.A. at 416-17; 1966 UGMA § 2(a), 8A U.L.A. at 344-45.

68. 1956 UGMA prefatory note, 8A U.L.A. at 405-06; 1966 UGMA prefatory note, 8A U.L.A. at 318; *see also* Day, *supra* note 8 at 41; Moore, *supra* note 4, at 298-301; Newman, *supra* note 7, at 30-32.

69. This is probably generally true, but regrettably, this may not always be an accurate assumption. *See, e.g., In re Levy*, 412 N.Y.S.2d 285 (Sur. Ct. 1978), in which the court noted

The paucity of cases . . . is itself a good indication that the purpose of the Gifts to Minors Act generally, and in New York particularly, has been fulfilled. The vast majority of children do not sue their parents or family members who are custodians. The very looseness and liberality of the intra-family relationships encourages use of the custodial device but unfortunately when there is a family breakdown the court becomes involved.

*Id.* at 288.

70. *See infra* notes 83-97 and accompanying text.

71. These entities, defined in UTMA § 1(3), (17), 8A U.L.A. at 157 are regulated by the states and the federal government for the protection of those depositing funds. This may still be a problem, however. *See infra* note 208.

72. UTMA § 9(a), 8A U.L.A. at 165-66.

73. *Id.* § 9 comment at 167.

or beneficiary resides,<sup>74</sup> the custodian is subject to personal jurisdiction in the state in which the custodianship is established.<sup>75</sup> Therefore, the minor has what is probably a convenient forum, in that he may seek recovery in the courts of that state.<sup>76</sup>

The only qualifications under the new Act concerning which individuals may serve as custodians address the issue of whether the transferor of property himself may serve as custodian.<sup>77</sup> In recognition that there must be an objective means of determining whether a completed transfer has in fact been made and whether the minor's rights in the subject property are enforceable,<sup>78</sup> the Act permits a transferor of property to serve as custodian only if the ownership of the property is registered or recorded.<sup>79</sup> Under the requirements of the Act, if ownership of the property is not registered or recorded then the transferor is not permitted to serve as custodian and the property would have to be delivered to some other custodian.<sup>80</sup> This delivery would serve as the objective evidence of the completed transfer. It is hoped that this requirement will eliminate any questions as to whether a custodial account has been established,<sup>81</sup> but this result is far from certain.<sup>82</sup>

#### E. Fees and Expenses of the Custodian

Once the custodian accepts the property, he is given full rights of ownership on behalf of the minor,<sup>83</sup> and he may deal with the prop-

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74. A sufficient nexus exists for the application of UTMA if either "the transferor, the minor, or the custodian is a resident of [the jurisdiction] or the custodial property is located in [the jurisdiction]." *Id.* § 2(a) at 160.

75. *Id.* § 2(b) at 160.

76. *Id.* This provision is not exclusive, however. The UTMA provides this forum to the minor, but does not preclude the use of any other forum in which the minor may have a right to bring an action. *Id.*

77. *Id.* § 9 at 165-67.

78. Upon the transfer of the property to the custodian, "the custodial property is indefeasibly vested in the minor." *Id.* § 11(b) at 170.

79. *Id.* §§ 9(a)(1)(ii), 9(a)(3)(ii), 9(a)(6)(ii), 9(a)(7) at 165-66.

80. *Id.* § 9 comment at 167.

81. This has been a recurring problem under the two versions of the UGMA. *See, e.g., In re Marriage of Stephenson*, 162 Cal. App. 3d 1057, 209 Cal. Rptr. 383 (Ct. App. 1984); *In re Marriage of Jacobs*, 128 Cal. App. 3d 273, 180 Cal. Rptr. 234 (Ct. App. 1982); *In re Marriage of Hopkins*, 74 Cal. App. 3d 591, 141 Cal. Rptr. 597 (Ct. App. 1977); *Golden v. Golden*, 434 So. 2d 978 (Fla. Dist. Ct. App. 1983); *Gordon v. Gordon*, 70 A.D.2d 86, 419 N.Y.S.2d 684 (App. 1978), *aff'd* 52 N.Y.2d 773, 417 N.E.2d 1009, 436 N.Y.S.2d 621 (1980). The problem does not yet appear to be solved, as discussed *infra* in text accompanying notes 145-55.

82. *See infra* text accompanying notes 157-68.

83. UTMA § 13(a), 8A U.L.A. at 173.

erty without court order.<sup>84</sup> The custodian is expected to discharge his duties without supervision.<sup>85</sup> No accounting need be filed with any court or rendered to the minor or his representative unless required by court order.<sup>86</sup>

These informal procedures are the key elements distinguishing custodial accounts from formal guardianships. The custodian is not subject to the strict court review of a guardian of the property of a minor,<sup>87</sup> and he has substantially greater powers which may be exercised without court approval.<sup>88</sup> Similarly, the absence of the requirement of providing a regular accounting to the beneficiary distinguishes the custodianship from a trust.<sup>89</sup> While the custodian is a fiduciary and is held to a fiduciary standard of care,<sup>90</sup> he is not described as a trustee.<sup>91</sup> The relative informality of the custodial method of holding property and the absence of these safeguards, which exist with trusts and guardianships, are the primary reasons why court approval of the use of a custodial account is required if

84. *Id.* § 14(a) at 174.

85. *Id.* §§ 14, 19 at 174, 180.

86. *Id.* § 19 at 180.

87. Under the Uniform Guardianship and Protective Proceedings Act, for example, the guardian (referred to in the Act as the conservator) must file an inventory with the court within 90 days of his appointment, must provide accounting to the court upon termination of the disability and at such other times as the court requires, and may have his powers granted under the Act limited by court action. UNIF. GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT §§ 2-317, -318, -323, -325, 8A U.L.A. 443, at 502, 503, 507, 513 (1983). The substance of these provisions are also promulgated as the UNIF. PROBATE CODE §§ 5-417, -418, -423, -425, 8 U.L.A. 22, at 493, 498, 504 (1983).

88. Under the Uniform Guardianship and Protective Proceedings Act, for example, the guardian (referred to in the Act as the conservator) may have the powers which are granted under the Act limited by court action. UNIF. GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT, §§ 2-323, -325, 8A U.L.A. at 507, 513 (1983) also codified as UNIF. PROBATE CODE, 8 U.L.A. §§ 5-423, -425, 8A U.L.A. at 498, 504 (1983). Some states are much more restrictive than the uniform acts in the powers which the guardian may exercise without court approval. *See, e.g.,* FLA. STAT. §§ 744.441, .444 (1985), which delineate the powers which the guardian may exercise without court approval and those which require court order.

89. Under the Uniform Probate Code, a trustee is required to account to a trust beneficiary "annually and on termination of the trust or change of the trustee." UNIF. PROBATE CODE § 7-303(c), 8 U.L.A. at 557. The variations among the states on this issue is further discussed in G.T. BOGERT & G.G. BOGERT, TRUSTS AND TRUSTEES §§ 965-68 (rev. 2d ed. 1983 & Supp. 1986). This contrasts with the absence of any required court accounting under the UTMA. UTMA § 19, 8A U.L.A. at 180.

90. UTMA § 12(b), 8A U.L.A. at 171. The standard of care for a custodian under § 12(b) is virtually identical to the standard established for trustees under UNIF. PROBATE CODE § 7-302, 8 U.L.A. at 555.

91. The custodian is not a trustee. For a discussion on the distinctions between trustees and custodians under the 1956 and 1966 UGMA, see *Report, supra* note 4, at 985; Stubbs, *The Custodian as a Fiduciary*, 7 GA. ST. B.J. 175 (1970). These distinctions in the duty of care are eliminated in the UTMA. UTMA § 12(b) & comment, 8A U.L.A. at 171-72.

there is no express provision for its use and the amount of the transfer exceeds \$10,000.<sup>92</sup>

Reflecting the fact that custodial accounts are intended to be operated somewhat informally, often involve intrafamily transactions, and should not involve any undue burden on a custodian, the custodian is only given limited rights to fees.<sup>93</sup> A transferor who is serving as custodian may not be compensated for his service,<sup>94</sup> and a non-transferor custodian may be compensated only if he so elects during a calendar year.<sup>95</sup> In an effort to prevent the potential transition of gratuitous services into compensated services,<sup>96</sup> this right of a non-transferor custodian to elect fees is noncumulative; if not asserted during the calendar year, it lapses.<sup>97</sup>

#### F. The Support Obligation

One major area of controversy under the two versions of the Uniform Gifts to Minors Act was the use of custodial property for the support of the minor beneficiary.<sup>98</sup> This problem arises in the contexts of dissolution of marriage<sup>99</sup> and the probate of estates.<sup>100</sup> In addition, there are tax issues involving the use of custodial property for this purpose.<sup>101</sup>

The new Act attempts to settle this problem in two ways. First, the statutory standard for the use of the custodial property has been changed from "the support, maintenance, education and benefit of the minor"<sup>102</sup> to "the use and benefit of the minor."<sup>103</sup> This change

92. UTMA § 6(c)(iii), 8A U.L.A. at 163; *see supra* text accompanying note 55.

93. *Id.* § 15 & comment at 175.

94. *Id.* § 15(b) & comment at 175.

95. *Id.*

96. If a family member were serving as custodian for a minor and the custodian was angry with the minor at a time when distribution was required, it would be possible for him (in the absence of any protective provisions) to assert a fee for services which he had rendered over the past several years. He may have intended these services to have been gratuitous at the time they were rendered, but the custodian could use his right to a fee as a means to vent his anger with the beneficiary by reducing the amount of property available for distribution. This provision is designed to eliminate this possibility. *Id.* § 15 & comment at 175.

97. *Id.* § 15(b) at 175.

98. Mahoney, *supra* note 14, *passim*.

99. *See, e.g., In re Marriage of Wolfert*, 42 Colo. App. 433, 598 P.2d 524 (Ct. App. 1979); *Weisbaum v. Weisbaum*, 2 Conn. App. 270, 477 A.2d 690 (App. Ct. 1984); *Butcher v. Butcher*, 544 S.W.2d 249 (Mo. Ct. App. 1976); *Sutliff v. Sutliff*, 339 Pa. Super. 523, 489 A.2d 764 (Super. Ct. 1985), *appeal granted* 509 Pa. 436, 502 A.2d 1231 (1985).

100. *See, e.g., In re Zeigher's Estate*, 95 Misc. 2d 230, 406 N.Y.S.2d 977 (Sur. Ct. 1978); *In re Estate of Schwartz*, 449 Pa. 112, 295 A.2d 600 (1972).

101. *See* sources cited *supra* note 14.

102. 1956 UGMA § 4(b), 8A U.L.A. at 422; 1966 UGMA § 4(b), 8A U.L.A. at 369.

should eliminate the arguments under the former Acts that the custodial property could only be used for the basic support needs of the minor.<sup>104</sup> It should also give statutory expression to the concept that the custodian may use the property for the minor beneficiary in the same way that the minor could use the property himself if he owned it directly.<sup>105</sup> As noted below,<sup>106</sup> however, this goal is not yet achieved.

Second, specific statutory language added in the new Act states that the use of custodial property for the benefit of the minor does not affect any regular obligation to support the minor,<sup>107</sup> and courts should not consider it as a substitution for any support obligation.<sup>108</sup> This language is designed to satisfy the requirements relating to the tax effects of the transfer.<sup>109</sup> It also answers an issue which arose in the marital dissolution context, in which one spouse claimed that property previously conveyed to a custodianship for a minor child should be considered by the court in determining the level of child support payments to be established upon the dissolution of the marriage of the parents.<sup>110</sup> The addition of this language should lessen, if not eliminate,<sup>111</sup> the force of this claim.

### G. Liability to Third Parties

Along with the expansion of the types of property which may be held in custodial accounts<sup>112</sup> comes an increased exposure to liability on the part of the custodian, the minor beneficiary, and the custodial property itself. Since a minor generally does not have the legal capacity to disclaim an interest in property, including a transfer to a custodianship for his benefit,<sup>113</sup> he should not be subjected to any personal liability resulting from a property interest being held in the custodial account. The new Act protects the minor from such liability unless he is determined to be personally at fault.<sup>114</sup> Similarly, recovery on

103. UTMA § 14(a), 8A U.L.A. at 174.

104. *Id.* § 14 comment at 174. See also, Mahoney, *supra* note 14, at 499-508, for a discussion of possible interpretations of this language.

105. This is the concept behind the trust for minors established in I.R.C. § 2503(c) (1986); R. STEPHENS, *supra* note 16, at ¶ 9.04(5)(a).

106. See *infra* text accompanying notes 183-94.

107. UTMA § 14(c), 8A U.L.A. at 174.

108. *Id.*

109. See sources cited *supra* note 14; UTMA § 14 comment 1, 8A U.L.A. at 174.

110. Mahoney, *supra* note 14; see cases cited *supra* note 99.

111. See *infra* text accompanying notes 183-94.

112. See *supra* notes 32-37.

113. UTMA § 17 comment, 8A U.L.A. at 177; I.R.C. § 2518 (1986); UNIF. DISCLAIMER OF PROPERTY INTERESTS ACT § 2(c), 8A U.L.A. 86, 87 (1983).

114. UTMA § 17(c), 8A U.L.A. at 177.



such a claim may only be made against the property held in the custodial account; a creditor may not attach other property of the minor.<sup>115</sup>

In recognition of his position as a fiduciary, and in order to prevent the imposition of undue burdens against him,<sup>116</sup> a custodian is not liable to third parties unless there has been some personal derogation of duty on his part.<sup>117</sup> A claim may be asserted against the custodial property in a proceeding brought against the custodian in his custodial capacity.<sup>118</sup>

## H. Termination

Despite the fact that the new Act defines a minor to be "an individual who has not attained the age of 21 years,"<sup>119</sup> an age which was chosen to conform with the definition of minority under the federal gift tax law,<sup>120</sup> the Act does not retain age twenty-one as the sole qualifying age for the termination of the custodianship and the transfer of the custodial property to the minor. Instead, the new Act provides that the property is to be transferred to the minor when he attains either the general age of majority or age twenty-one, depending upon the nature of the original transfer of property to the custodian.<sup>121</sup> This means that the custodian could be required to distribute the property to a beneficiary who still meets the definition of minority under the Act.<sup>122</sup> This possibility is logical when the circumstances under which it would occur are considered.

If the property were originally transferred to the custodian as an *inter vivos* gift or pursuant to specific authority contained in a will or trust,<sup>123</sup> the Act provides that the custodianship will not terminate until the minor attains age twenty-one.<sup>124</sup> In these types of transfers, the custodian received the property through the express authority of the grantor, who presumably was aware of the definitions contained

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115. *Id.* § 17 comment at 177. Of course, if the minor is personally liable on a claim, *id.* § 17(c) at 177, the creditor may seize other property of the minor because of this personal liability.

116. *Id.* § 17 comment at 177. It would be difficult to convince a person to serve as custodian unless he were protected from individual liability for acts which were beyond his control. Certainly, such convincing would involve a prohibitively higher fee being paid to the custodian for his service.

117. *Id.* § 17(b) at 176, 177.

118. *Id.* § 17(a) at 176.

119. *Id.* § 1(11) at 157.

120. I.R.C. § 2503(c) (1986); *see supra* text accompanying notes 22-31.

121. UTMA § 20, 8A U.L.A. at 181.

122. *See infra* text accompanying notes 126-32.

123. UTMA §§ 4, 5, 8A U.L.A. at 162; *see supra* text accompanying notes 42, 47-50.

124. UTMA § 20(1), 8A U.L.A. at 181.

in the Act. It is thus appropriate that the property be held until age twenty-one, the age of majority specified in the Act.<sup>125</sup>

If the custodian receives the property from an obligor of the minor,<sup>126</sup> from someone who was holding property belonging to the minor,<sup>127</sup> or from a personal representative, trustee, or conservator who is acting without express authorization,<sup>128</sup> then the custodial property is to be distributed when the minor attains the general age of majority.<sup>129</sup> In these situations, the person conveying the property (who is not the donor of the property) had the option of establishing a guardianship for the benefit of the minor or delivering the property to the custodian, and he had no express authorization from the donor of the property as to which method should be used.<sup>130</sup> If a guardianship were established, it would terminate when the minor ward attained the general age of majority or for some other reason had the disabilities of nonage removed.<sup>131</sup> The Commissioners determined that in such a case the property should not be withheld from him beyond that time due to a decision made by one who was acting without express direction from the donor who created the property interest.<sup>132</sup>

If the minor should die before attaining the age for distribution of the property held by the custodian, the custodian is to transfer the property to the estate of the deceased minor.<sup>133</sup> The property would then generally pass according to the rules of intestate succession,<sup>134</sup> but the possibility exists that the minor could have the legal capacity to make a will governing the disposition of the custodial property, even though he was not entitled to possession of the property during his lifetime.<sup>135</sup>

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125. *Id.* § 20 comment at 181.

126. *Id.* § 7(a) at 164.

127. *Id.*

128. *Id.* § 6 at 163.

129. *Id.* § 20(2) at 181.

130. *See supra* text accompanying notes 51-62.

131. UNIF. PROBATE CODE §§ 5-210, -429, 8 U.L.A. 22 at 456, 508 (1983).

132. UTMA § 20 comment, 8A U.L.A. at 181.

133. *Id.* § 20 at 181.

134. The Uniform Probate Code establishes age 18 as the minimum age for having the capacity to make a will. UNIF. PROBATE CODE § 2-501 & comment, 8 U.L.A. at 102. With the possible exception, therefore, of situations involving the death of a minor (as defined under the UTMA) who has attained age 18 and has property held for his benefit in a custodial account which terminates at age 21, the rules of intestate succession would apply because the decedent did not have the capacity to make a will.

135. *Id.* If the custodianship had not terminated but the decedent had reached age 18 prior to his demise, he would have had the capacity to make a will under the Uniform Probate Code, with the result that he could have been able to control the testamentary disposition of the

## III. PRIOR TRANSFERS AND EXISTING CUSTODIANSHIPS

As a relief measure, and in an attempt to simplify and standardize the law in the area of gifts to minors,<sup>136</sup> the Commissioners provided that the new Act is to apply to virtually all custodial accounts.<sup>137</sup> This provision has the potential of making the Act applicable to situations in which no previous authority existed. For example, as noted above, two major changes from the terms of the Uniform Gifts to Minors Act are the expanded definition of custodial property<sup>138</sup> and the increase in the types of permitted transfers.<sup>139</sup> The Act provides that a transfer of a type which was not authorized under the former law<sup>140</sup> but was in fact made, will be validated, *ab initio*, if it is authorized under the new Act.<sup>141</sup> Similarly, if a property interest which was not authorized under the former Act<sup>142</sup> had been conveyed, and the property interest meets the definitions contained in the new law,<sup>143</sup> then the original transfer is validated by the new Act.<sup>144</sup>

The provisions of the new Act apply to all custodianships created under the prior law, except to the extent that such application would impair constitutionally vested rights or would extend the duration of a custodianship created under the former law.<sup>145</sup> With the exceptions of these two areas, the new law will apply to an existing custodianship without regard to the desires of those interested in the transaction and regardless of any preference on their part to retain the applicability of the former law.<sup>146</sup> Thus, the provisions of the new Act will generally apply to all custodianships, but a custodianship created under one of the former uniform acts may terminate at an age younger than twenty-one if the state had elected the earlier age in defining minority under the prior law.<sup>147</sup>

Even though a previously established custodianship will be gov-

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property held in the custodial account even though he had no right to demand possession of the property while he was alive.

136. UTMA §§ 21-22 comments, 8A U.L.A. at 182-83.

137. *Id.* §§ 21-22 at 182-83.

138. *See supra* notes 32-37.

139. *See supra* text accompanying notes 38-63.

140. *See supra* notes 43-63.

141. UTMA § 22(a), 8A U.L.A. at 183.

142. *See supra* notes 32-37.

143. *See supra* notes 32-37.

144. UTMA § 22(a), 8A U.L.A. at 183.

145. *Id.* § 22(b) at 183.

146. *Id.* § 22 comment at 183. This creates another situation, therefore, in which a custodian may be required to transfer custodial property to a beneficiary who is still a minor under the UTMA. *See supra* text accompanying notes 22-31, 119-35.

147. UTMA § 22 comment, 8A U.L.A. at 183.

erned by the terms of the new Act, the property held in the custodianship may not be consolidated with property transferred after the enactment of the new Act. The new Act permits property held "under this Act" by the custodian for the benefit of a minor to be held in a single custodianship,<sup>148</sup> even if received from different sources in different types of transfers. It does not permit the commingling of property received by the custodian under the jurisdiction's version of the Uniform Gifts to Minors Act or pursuant to another state's version of the Uniform Transfers to Minors Act.<sup>149</sup> In these situations, therefore, the custodian will be forced to hold any property so received in a separate custodianship,<sup>150</sup> with separate accounting for each custodianship.

The custodian may further be required to separately account for various portions of the custodial property which he is holding.<sup>151</sup> If property is transferred to the custodian in different types of conveyances, the termination dates for the different property interests may vary.<sup>152</sup> The custodian would be able to hold all of this property in a single custodial account, but he would need to separately account for these property interests so that they can be transferred to the minor at the appropriate times.<sup>153</sup>

It must be noted that the new Act is unforgiving in one respect. Former law provided that a custodial account may only be established for a single minor beneficiary, with only one person serving as custodian.<sup>154</sup> These limitations are retained in the new Act.<sup>155</sup> An attempted conveyance which violated these provisions, therefore, would not be cured by the enactment of the new Act, which is one of the problems which remain under the Uniform Transfers to Minors Act.<sup>156</sup>

#### IV. UNSOLVED PROBLEMS AND POTENTIAL RESOLUTION

##### Transfers and attempted transfers under the Uniform Gifts to

148. *Id.* § 10 at 169.

149. This results from the use of the phrase "under this Act" in § 10 of the UTMA, which restricts the custodianship to holding property which was conveyed pursuant to the version of the UTMA which was enacted in the jurisdiction. *Id.* § 10 & comment at 169-70.

150. *Id.*

151. *Id.* §§ 10, 20 comments at 169, 181.

152. *See supra* text accompanying notes 119-35.

153. UTMA §§ 10, 20 comments, 8A U.L.A. at 169-70, 181.

154. 1956 UGMA § 2(b), 8A U.L.A. at 417; 1966 UGMA § 2(b), 8A U.L.A. at 345.

155. UTMA § 10, 8A U.L.A. at 169.

156. *See infra* notes 170-81.

Minors Act have not been a major source of litigation,<sup>157</sup> but the reported cases do indicate the problem areas which exist in this area of the law. In drafting the Uniform Transfers to Minors Act, the Commissioners dealt with some of these problems, but their efforts do not appear to have solved them all.

#### A. Establishing the Custodial Account

The procedures for establishing a custodial account are set forth in the Act.<sup>158</sup> Decisions under the former Acts recognized that following these procedures is evidence that the grantor intended to invoke the custodianship provisions.<sup>159</sup> Despite the clear expression of intent required by these provisions,<sup>160</sup> courts have held that following this procedure raises only a presumption;<sup>161</sup> it is not conclusive evidence that the grantor intended to establish a custodianship.<sup>162</sup>

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157. The few cases which have construed the two versions of the UGMA are noted in 8A U.L.A. as annotations to the sections which were construed, and are further discussed in Annotation, *Construction and Effect of Uniform Gifts to Minors Act*, 50 A.L.R.3d 528-42 (1973 & Supp. 1986).

158. UTMA § 9, 8A U.L.A. at 165.

159. See, e.g., *In re Marriage of Stephenson*, 162 Cal. App. 3d 1057, 209 Cal. Rptr. 383 (Ct. App. 1984); *In re Marriage of Jacobs*, 128 Cal. App. 3d 273, 180 Cal. Rptr. 234 (Ct. App. 1982); *In re Marriage of Hopkins*, 74 Cal. App. 3d 591, 141 Cal. Rptr. 597 (Ct. App. 1977); *Golden v. Golden*, 434 So. 2d 978 (Fla. Dist. Ct. App. 1983); *Gordon v. Gordon*, 70 A.D.2d 86, 419 N.Y.S.2d 684 (App. Div. 1979), *aff'd*, 52 N.Y.2d 773, 417 N.E.2d 1009, 436 N.Y.S.2d 621 (1980).

160. Both versions of the Uniform Gifts to Minors Act required that the transferor transfer the property to the custodian in a manner which clearly indicated that a custodial account existed. The Acts provided suggested language for this documentation, the details of which depended on the nature of the property which was being transferred. In essence, the Acts required that the transfer document indicate the name of the transferee "followed, in substance, by the words: 'as custodian for (name of minor) under the (name of enacting state) Uniform Gifts to Minors Act.'" 1956 UGMA § 2, 8A U.L.A. at 416-17; 1966 UGMA § 2, 8A U.L.A. at 344-45. Substantial compliance with this language was sufficient. In *Stephenson*, for example, the California Court determined that a designation of "Roy Stephenson as trustee for Cathy L. Stephenson UGMA" was sufficient to invoke the custodianship provisions of the UGMA. *In re Marriage of Stephenson*, 162 Cal. App. 3d 1057, 1068 n.6, 209 Cal. Rptr. 383, 390 n.6 (Ct. App. 1984).

161. The test which is applied here is best summarized in *Golden*, which states that

Both courts held that even where a bank account is opened in a manner which satisfies the UGMA, there is no absolute bar to the introduction of extrinsic evidence to show fraud or mistake, or to otherwise demonstrate a contrary intent. We are persuaded by those holdings, and adopt the same as the law of this case.

*Golden v. Golden*, 434 So. 2d 978, 978 (Fla. Dist. Ct. App. 1983) (citing *In re Marriage of Jacobs*, 128 Cal. App. 3d 273, 180 Cal. Rptr. 234 (Ct. App. 1982); *Gordon v. Gordon*, 70 A.D.2d 86, 419 N.Y.S.2d 684 (App. Div. 1979), *aff'd*, 52 N.Y.2d 773, 417 N.E.2d 1009, 436 N.Y.S.2d 621 (1980)).

162. Once a court determines that a transfer has in fact been made pursuant to the Uniform Gifts to Minors Act, that transfer is irrevocable. 1956 UGMA § 3(a), 8A U.L.A. at 421;

The new Act does not make any substantive changes in this area.<sup>163</sup> The necessary mechanics are revised,<sup>164</sup> but the Act contains no clear statement that such a transfer is determinative of the intent of the transferor to establish a custodianship. Because of the property implications<sup>165</sup> and the resulting tax ramifications<sup>166</sup> of establishing a custodial account, such a transfer should have a conclusive effect. Although exceptions must be made to allow for cases of fraud or undue influence,<sup>167</sup> any transfer purportedly invoking the provisions of the Act should constitute conclusive evidence that the transferor had such an intent. Similar provisions have been enacted in cases of joint accounts,<sup>168</sup> and they also appear proper in this situation. The courts have been reluctant to impose such restraints,<sup>169</sup> so the legislatures should act so as to provide certainty to the area.

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1966 UGMA § 3(a), 8A U.L.A. at 366. The difficulty, however, is with the threshold question of whether a transfer pursuant to the Uniform Gifts to Minors Act has been made. As noted *supra* in notes 146 & 148, extrinsic evidence has been permitted to show the intent of the purported transferor in answering this threshold question.

163. UTMA § 9 & comment, 8A U.L.A. at 165-68.

164. The substance of the provisions for creating custodial property under the UTMA and the purpose of the provisions of the Act are the same as those under the UGMA versions. New provisions are inserted to provide a means of "handling the additional types of property now subject to the Act" and the additional types of transfers which are now permitted. *Id.*

165. A transfer to a custodian under the UTMA "is irrevocable, and the custodial property is indefeasibly vested in the minor." These rights of the minor in the property are subject, however, to the "rights, powers, duties, and authority" of the custodian pursuant to the terms of the UTMA. *Id.* § 11(b), 8A U.L.A. at 170.

166. *See supra* text accompanying notes 14-18.

167. These equitable principles must be applied in any analysis of donative transfers, whether the transfer is *inter vivos* or testamentary. These issues are most frequently analyzed in the areas of testamentary transfers. *See* Rein-Francovich, *An Ounce of Prevention: Grounds for Upsetting Wills and Will Substitutes*, 20 GONZ. L. REV. 1, 32-46 (1984-85). The same concepts, however, would apply to *inter vivos* transfers. "The grounds for setting aside *inter vivos* transfers are basically the same as those for setting aside wills." *Id.* at 57.

168. *See, e.g.*, FLA. STAT. § 665.063(1)(a) (1985), which states that opening an account in a savings association as joint tenants "shall, in the absence of fraud or undue influence, be conclusive evidence. . . of the intention of all of the parties to the account to vest title to such account and the additions thereto in such survivor or survivors." The Florida Statutes create a different presumption for joint accounts in banks and trust companies, stating that the presumption of survivorship "may be overcome only by proof of fraud or undue influence or clear and convincing proof of a contrary intent." FLA. STAT. § 658.56(2) (1985).

Florida, therefore, maintains the unjustifiable position that the character of the depository institution determines the level of the presumption of intent to establish a joint tenancy. This distinction was determined to be constitutional in a questionable decision, *In re Estate of Gainer*, 466 So. 2d 1055 (Fla. 1985). The concept that the titling of property in a manner which raises the legal issue of the right of survivorship is conclusive in establishing that right, however, is not unusual. *See* 4A R. POWELL & P. ROHAN, *THE LAW OF REAL PROPERTY* ¶ 616 (1986 & Supp. 1987).

169. *See supra* note 162.

## B. Only One Beneficiary and One Custodian

Both the Uniform Transfers to Minors Act and the two versions of the Uniform Gifts to Minors Act provide that there may be only one minor beneficiary of a custodianship and only one custodian of the account.<sup>170</sup> These restrictions are strictly historical, carried over from the similar provisions contained in the Model Act,<sup>171</sup> but they have been adopted in virtually every jurisdiction.<sup>172</sup> Such restrictions do achieve the laudable goal of simplicity,<sup>173</sup> but they also create a trap for the unwary transferors and intermediaries who are not familiar with them. There is no reported litigation involving attempted transfers violating these restrictions.<sup>174</sup> If faced with such an issue, a court would be forced either to void the transfer on the grounds that it violated the Act or to allow it under the doctrine of substantial compliance or as a statutory trust or guardianship. Reliance on these theories to uphold the transfer would open new issues, however, since most states require that accountings be provided to a court or to beneficiaries in the cases of guardianships or trusts.<sup>175</sup> As these require-

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170. 1956 UGMA § 2(b), 8A U.L.A. at 417; 1966 UGMA § 2(b), 8A U.L.A. at 345; UTMA § 10, 8A U.L.A. at 169.

171. By implication, the Model Act restricted its application to a single beneficiary and a single custodian. 1956 UGMA § 2 comment, 8A U.L.A. at 419.

172. There is some variation in the language of the statutes enacted in the various jurisdictions, but the substance of the single beneficiary/single custodian restriction is maintained, with the following exceptions: Nevada omits this section in its adoption of the UTMA, NEV. REV. STAT. §§ 167.010-100 (1986), and Virginia omits the phrase "and only one person may be the custodian" in its adoption of the 1966 UGMA. VA. CODE ANN. § 31-27(b) (1985).

173. The single beneficiary aspect of the rule can be justified on the basis that it eliminates the problems of allocating income, expenses and the ownership of property among account beneficiaries, and the problem of making partial distribution of account proceeds when one of the beneficiaries reaches the appropriate age for distribution. This is handled on a regular basis by trustees who have more than one trust beneficiary, but the UTMA is not designed for such sophisticated applications. Stubbs, *supra* note 91, at 188.

The single custodian rule is more difficult to justify. While it does remove the possible problem of obtaining the signatures of more than one custodian in order to take action related to the custodial property, it also creates the problem of having to name a successor custodian in the event of the demise of the original custodian. See UTMA § 18, 8A U.L.A. at 177-78; Day, *supra* note 8, at 49; Newman, *supra* note 7, at 33-35; Report, *supra* note 4, at 988.

174. It is possible that any problems with these requirements which were discovered would be solved by the parties involved, without resort to court action. The fact that a problem arose would indicate that a mistake was made on the part of the transferor, the custodian, or the entity which is holding the property and which quite possibly promoted the custodial concept. As noted *infra* in the text accompanying notes 175-82 the correction of an error of this nature does involve legal issues, and self-help is not the appropriate remedy to the problem, but self-help is one solution which as a practical matter would be welcomed and perhaps even initiated by the depository holding the funds. It quite possibly, therefore, would never come to the attention of an attorney.

175. See *supra* text accompanying notes 85-91.

ments are absent from the Uniform Transfers to Minors Act,<sup>176</sup> the custodian (or guardian or trustee) would likely have violated the provisions of the other statutes which the courts would be relying on to uphold the transfer.<sup>177</sup>

Since the Uniform Act is designed to operate without formal review<sup>178</sup> and is often promoted and used by those who have no legal background, it seems desirable to make it as easy as possible for potential transferors to take advantage of the statutory provisions.<sup>179</sup> It would be useful, therefore, to insert into the Act a relief provision to the effect that if a transfer to a custodian is attempted but inadvertently fails for a technical reason, such as naming more than one minor beneficiary or more than one custodian,<sup>180</sup> then the technical defect will be cured by the court upon application of an interested party. If more than one beneficiary were named, for example, the court could partition the property between the minor beneficiaries. If more than one custodian were appointed, the court could determine which of the named parties should serve as custodian. Such a relief provision would clarify the present uncertainty and would be superior to the present risk of having the transfer fail because of an inadvertent violation of the statute,<sup>181</sup> or even because of an intentional violation in an attempt to obtain some imagined advantage.<sup>182</sup> The person who bears the greatest potential loss under the current statutory provisions is the minor beneficiary, who is the most innocent of the involved parties.

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176. See *supra* text accompanying notes 85-91.

177. This violation would be of a technical nature, and should not be the source of liability to the custodian holding the funds, regardless of whether the court classifies him as a guardian of the property of the minor or as a trustee for the benefit of the minor. If the court cares to classify the purported custodian as a guardian or as a trustee, then it would be appropriate for the court to require compliance with the statutory provisions governing a guardianship or a trust, beginning with the rendition of the court's order.

178. See *supra* text accompanying notes 83-91.

179. Report, *supra* note 4, at 991.

180. This is forbidden under the language of the UTMA and both versions of the UGMA. See *supra* note 170, and accompanying text.

181. See *supra* notes 172-74.

182. A person might think, for instance, that he could establish a custodial account in the name of his two children, have his children pay the tax which is owed on the income of the custodial account, see *supra* note 14, and then recover the property before the beneficiaries reach the age for required distribution. This would be done either without the children's knowledge that the account ever existed or under the theory that the transfer was void because it violated the one beneficiary/one custodian rule. This theory is, of course, without merit, but concern over these types of transactions has been expressed. Day, *supra* note 8, at 50; Moore, *supra* note 4, at 310; Newman, *supra* note 7, at 43-45; Note, *supra* note 4, at 1481-82.



### C. The Support Obligation

One of the major problems under the former Act was the question of whether property held in a custodial account should be considered in determining the support of the minor beneficiary.<sup>183</sup> Although this issue has tax ramifications,<sup>184</sup> they only become relevant if the property is in fact used for this purpose.<sup>185</sup> The question thus arose mainly in the marital dissolution context<sup>186</sup> when determining the support obligations of a noncustodial divorced parent.

The Commissioners have attempted to solve this problem by stating that an action taken in a custodial account is "in addition to, not in substitution for, and does not affect any obligation of a person to support the minor."<sup>187</sup> This provision does seem to solve the problem for tax purposes, in that it severs the chain which would tie either the transfer of the property to the custodian, or its use by the custodian on behalf of the minor, back to the transferor.<sup>188</sup> It does not, however, solve the problem from the property law viewpoint. The Act itself does not give the minor or the custodian any right to force the person obligated to support the minor to do so, as opposed to having to expend custodial property for this support.<sup>189</sup> The Act represents a compromise on this issue,<sup>190</sup> and it is one which unfortunately works against the best interests of the minor. Although the minor may have other available means of enforcing this right to support,<sup>191</sup> it is unfortunate that the issue of providing support for a minor under this Act has been subrogated to concerns for maintaining simplicity.<sup>192</sup> The specific assertion of a cause of action would not be difficult,<sup>193</sup> particu-

183. See *supra* text accompanying notes 98-111.

184. See sources cited *supra* note 14.

185. See sources cited *supra* note 14.

186. See cases cited *supra* note 99.

187. UTMA § 14(c), 8A U.L.A. at 174.

188. See sources cited *supra* note 14.

189. UTMA § 14 comment, 8A U.L.A. at 174.

190. *Id.* The ambiguity which existed under the two versions of the UGMA is discussed in Mahoney, *supra* note 14.

191. Some jurisdictions permit a child to bring an action against his parent to enforce the parent's obligation to support the child. *McQuade v. McQuade*, 145 Colo. 218, 358 P.2d 470 (1960); Annotation, *Maintenance of Suit by Child, Independently of Statute, against Parent for Support*, 13 A.L.R.2d 1142 (1950), as cited in H. CLARK, LAW OF DOMESTIC RELATIONS § 6.3 (1968).

192. The Commissioners recognized that one of the possibilities on this issue would be to provide that the use of custodial property for the support of the minor "gives rise to a cause of action by the minor against his parent to the extent that custodial property or income is so used," but this possibility was rejected "as too cumbersome." UTMA § 14 comment, 8A U.L.A. at 174.

193. Despite the tenor of the Official Comment, *id.*, it would not appear to be too cumber-

larly when compared to the potential benefit granted to the minor.<sup>194</sup> Such a cause of action could be accompanied by a limitations period commencing when the minor reaches the age of majority<sup>195</sup> (as defined in the new Act) so as to reduce any burden on the custodian. Such a provision is warranted.

#### D. Old Property, New Rules?

As noted above,<sup>196</sup> the new Act provides that its terms will apply to existing custodianships which were established under the Uniform Gifts to Minors Act, with the exceptions of those changes which would impair constitutionally vested rights or extend the duration of a custodianship created under the former Act.<sup>197</sup> This provision is desirable, in that it results in current law being applied to all custodianships except for the limited circumstances listed above.<sup>198</sup> The provision does have some side effects, however, which may run counter to the intent of the transferor in establishing the custodial account or choosing the custodian.

Under the two versions of the Uniform Gifts to Minors Act, the property which could be transferred to the custodian<sup>199</sup> and the manner in which it could be transferred to him<sup>200</sup> were very limited. Under the Uniform Transfers to Minors Act, on the other hand, any interest in property may be transferred to the custodian or held by him.<sup>201</sup> It is not unrealistic to imagine that a transferor of property to a custodian under one of the versions of the former Act may have chosen that person as custodian with the understanding that his options in dealing with the custodial property would be limited. If the custodian had broader powers, and were able to receive additional property from a variety of other sources, as is the case under the new

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some to insert a clause stating that the use of custodial property by the custodian for the support of the minor beneficiary gives the minor a cause of action against the person obligated to provide such support, which action may be brought within (for example) one year of his reaching the age of majority under the Act.

194. To deny this benefit is to require, in essence, that the minor support himself during his minority with what is, under the Act, his own property. See *infra* note 104.

195. See *supra* note 193.

196. See *supra* text accompanying notes 136-56.

197. UTMA § 22(b), 8A U.L.A. at 183.

198. The Commissioners recognized that "it will be more orderly to subject gifts or other transfers under the prior Act to the procedures of this Act, rather than to keep both Acts in force." *Id.* § 22 comment at 183.

199. See *supra* note 32.

200. See sources cited *supra* note 38.

201. See *supra* note 36.

Act,<sup>202</sup> then the transferor may have chosen a different custodian or used a trust or guardianship vehicle in order to give additional protection to the minor beneficiary.<sup>203</sup> Once the transfer was made the transferor lost control over the custodian and the property,<sup>204</sup> so this change in the law means that the custodian now has much broader powers than the transferor might have envisioned or desired.

The new Act could have protected the transferor from this possibility by providing that the former law would apply to all custodianships established pursuant to its provisions, but the Commissioners felt that concerns for uniformity and simplicity outweighed the need to protect the transferor on this matter.<sup>205</sup> This is an appropriate decision, particularly when the fiduciary standard of care for dealing with custodial property is considered.<sup>206</sup> The minor is protected to the extent of having a cause of action against a custodian who makes imprudent investments with custodial property.<sup>207</sup> This protection may be illusory,<sup>208</sup> but the basic goals of the Act appear to be met with this balancing of interests.

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202. See *supra* text accompanying notes 43-62.

203. See *supra* text accompanying notes 83-91. As discussed there, there is a difference in the levels of supervision and court review which are provided to a guardianship, a trust, or a custodianship. A transferor would presumably recognize these distinctions, and use the vehicle which he felt best served his purposes under the law as it existed at that time. This is one of the reasons for the distinction between the UTMA rules governing transfers to a custodianship when authorization has been granted in the governing instrument and those rules which apply when no such authorization is specifically set forth. See *supra* text accompanying notes 54-62.

204. The effect of a transfer under the UGMA was to give to the minor "indefeasibly vested legal title to the security or money given." 1956 UGMA § 3(a), 8A U.L.A. at 421; 1966 UGMA § 3(a), 8A U.L.A. at 366. The official text of the UTMA retains this concept, but revises the official language to read "the custodial property is indefeasibly vested in the minor." UTMA § 11(b), 8A U.L.A. at 170. The effect of such a transfer to a custodian would be to remove any control which the transferor had over the property and its investment, and transfer those rights to the custodian.

205. See *supra* text accompanying notes 136-56.

206. Although a custodian "has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property," in dealing with this property "a custodian shall observe the standard of care that would be observed by a prudent person dealing with the property of another, and is not limited by any other statute restricting investments by fiduciaries." UTMA §§ 13(a), 12(b), 8A U.L.A. at 173, 171. See *supra* text accompanying notes 90-91.

207. See, e.g., *In re Rothko*, 43 N.Y.2d 305, 372 N.E.2d 291, 401 N.Y.S.2d 449 (1977), in which the beneficiaries of an estate recovered damages in excess of \$15,000,000 against the executors of the estate of Mark Rothko. See also G.T. BOGERT & G.G. BOGERT, *supra* note 89, § 543(V), at 862.

208. The trustee may be judgment-proof, so that the beneficiary will be unable to recover any damages.

## V. SUMMARY

The Uniform Transfers to Minors Act should serve to increase the utility of custodial accounts for the benefit of minors, and the changes which it brings to this area of the law should be welcomed. The Act does not solve all of the problems which were experienced under the Uniform Gifts to Minors Act, and statutory revisions are warranted in the areas of establishing the transferor's intent,<sup>209</sup> providing for the support rights of the minor,<sup>210</sup> and providing for inadvertent violations of the terms of the Act.<sup>211</sup>

The new Act does, however, make custodial accounts much more likely to be used as alternatives to the more expensive and cumbersome guardianship or trust procedures. It clarifies the law in this area and should provide a welcome return to uniformity. In doing so, the Uniform Transfers to Minors Act represents a major step forward in promoting the transfer of property to a minor.

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209. See *supra* text accompanying notes 158-69.

210. See *supra* text accompanying notes 183-95.

211. See *supra* text accompanying notes 170-82.

