

# e-Newsletter

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August 2012 – Issue 2

## Florida Uniform Transfers to Minors Act: An Easy Way to Put Funds in Trusts for Minors

Most everyone who has ever thought about doing their estate plan in Florida has at least heard about the use of trusts. Trusts can be created during one's lifetime (living trusts) or at one's demise (testamentary trusts). However, many clients want to create trusts for minor children or grandchildren with relatively small amounts of money without going through the entire process of creating a full-fledged trust document. If you are that person you may want to consider the Florida Uniform Transfers to Minors Act (UTMA) found in Florida Statutes Chapter 710.

Creating a trust under this law is relatively easy. One goes to his or her financial advisor or a bank and requests the opening of an account for the benefit of an individual. These accounts are commonly used by grandparents to create funds to help grandchildren with their education. It is as simple as opening an account.

Someone has to be in charge of that account, but instead of calling that individual a trustee the statute calls the person a custodian. The account must also have a taxpayer identification number, and that is the social security number of the individual for whom the account is being created. In creating such an account it is generally recommended that the individual creating the account not be the custodian. The reason is because if the creator of the account is also the custodian and then dies before the account has been transferred to the beneficiary then the value of the account is deemed to be part of the creator's gross estate for federal estate tax purposes. The creation of the account is a gift but it does qualify for the gift tax annual exclusion. So if the transfer is limited to the annual exclusion amount, currently \$13,000, a gift tax return would not have to be filed.

During the time the account is open the custodian has a great deal of authority over the account. A custodian can use any part or even all of the account for the benefit of the minor as the custodian deems advisable. When creating this account it should be noted that this account can be



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attached as an asset of the minor if the minor were sued and a judgment obtained against the minor. When does this account come to an end? When an account ends depends on how the property was transferred into the account. If it came into the account as a gift or came in by virtue of a provision in someone's will or trust then the statute requires the account terminate when the minor turns twenty-one years old. However, if the money came into the account by virtue of intestate succession, or by a will or trust that had no specific authorization to create an account, or from someone who owes a liquidated debt to the minor, then the account must end when the minor attains the age of eighteen years. If there is no provision in the will or trust requiring the gift to be held under the UTMA and the gift is greater than \$10,000 in value then a court order is required.

Currently there are proposals being considered by the Real Property, Probate and Trust Law Section of The Florida Bar to offer the creator of the account the option of extending the age of termination of the account to twenty-five years. That is not the law now but it potentially could be in the future.

A UTMA account can be a good way to get the benefits of a trust for a child or grandchild without the whole process of creating a separate trust document. However, It is generally recommended that the amounts be kept relatively low as a distribution of funds to a child or grandchild at age eighteen or twenty-one may not be the most prudent estate planning idea when substantial funds are involved.



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