RECENT CHANGES TO GIFTS TO MINORS OR HEALTHCARE SURROGATES

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Have you ever wanted to transfer property to a minor as part of your Will, Trust or an outright gift, but did not want to burden the Executor or Trustee with the obligations necessary to control the gift; or maybe the minor is simply too immature to manage such gift. Back in 1985, there was a movement among various States of the Union to create a uniform manner of transferring gifts to minors. Florida adopted the Uniform laws which came to be known as the Uniform Transfer to Minors Act ("UTMA"), Chapter 710, Fla. Stat. While the law has been around for many years, it is sometimes forgotten as a useful tool to make a gift to a grandchild and allow others or even the parent to control such gift for the benefit of the minor.

An example of how the UTMA can be used occurs when a minor is involved in an accident and is receiving compensation (e.g. broken arm) because of the negligence of someone else. The compensation could be placed into an account designated as the minors with the nominated custodian as the manager of the account and managed until the minor reaches 21 years of age.

The most common example of when the UTMA is used occurs when a person, either directly or through their Will or Trust nominates a person (or entity) to act as the custodian for a gift to a minor. The custodian is then given the ability to make distributions to the minor for the minor's benefit until he or she reaches majority or a certain age. The gifting person can specify the age at which the minor can take control of the gift which must be at least over the age of 14 up to a maximum age of 25.

There are alternatives to a custodianship such as the appointment of a guardian for a minor; but obtaining a guardianship for a minor can be expensive and with some drawbacks. The difference between UTMA and a guardianship account for a minor is that under a guardianship, when the minor obtains the age of 18, his or her incapacity terminates and the funds are released to their possession. This gives the18 year old minor the ability to use the funds for anything (including the purchase of a Ferrari). Under the UTMA, the custodian can hold the funds until the minor becomes more mature.

Although the UTMA does allow an age restriction to 25 years of age before the minor has the absolute right to take possession of their gift, this restriction is limited. The limitation is that the minor is given the right to take possession at age 21; but only if they fail to take possession of the gift following proper notice of the right to withdraw and close the custodial account. Notice of the right to take full withdrawal must be provided to the minor by the custodian at least 30 days before their 21st birthday and no later than 30 days after their 21st birthday.

Of course you could always have a Trust or Will prepared that would accomplish the same thing for gifts (and even put more restrictions in place such as age or amounts to be

provided over time). However, the additional restrictions would increase the cost of your Will or Trust as opposed to placing the gift with a parent or financial institution with the similar restrictions.

Lastly, keep in mind that gifts to a UTMA account which are less than $14,400.00 do not require a gift tax return and if the custodian is a person other than the transferring individual then the custodial account is not included in their estate upon his or her death.

CHANGES TO HEALTHCARE SURROGATE DIRECTIVES

Historically, Florida's Chapter 765, Fla. Statutes made it mandatory that a surrogate could only take control as the agent of the person who signed the Healthcare document (the "principal") upon a finding of the principal's incompetency. Incompetency could be determined by the principal's medical doctor or through Florida's guardianship laws.

Florida's legislature has now made it possible for the principal to designate that their medical decisions and access to the principal's medical records by their agent can occur at any time. So what happens if your surrogate and you disagree on a medical procedure while you are competent, your wishes take preference.

An even more important change to Chapter 765, Fla. Stat., is the ability of the parents of a minor to designate surrogates for their children. Why is this important? Suppose your children are taking an extended vacation and you agree to take care of your grandchildren during their absence. Suppose something horrible goes wrong while they are in your custody and the grandchild is hospitalized. The healthcare facility may not allow you to make medical decisions for the grandchild. This inability could mean the difference between a good outcome and one that ends up troubling you for the rest of your life.

The above recent changes have been needed for a long time. If you are thinking of making a gift to a minor or worry about being put into the position of having to make a medical decision for a minor, talk to the attorney of your choice and let them know what possible changes are taking place in your life or how you want to change a minor's life with a gift. It may be the best consultation you make.

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