

TRANSFERRING ASSETS FOR THE BENEFIT OF MINORS

Individuals may want to make gifts to minors for many reasons, including reducing the size of their estate for estate tax purposes. Such gifts are often structured in a manner to qualify for the gift tax annual exclusion (which currently permits qualifying annual gifts of \$13,000 per donee to pass free of gift tax consequences). However, gifts to minors should most often not be made directly to them because minors have a very limited ability to deal with their property. Some of the common alternatives for making indirect lifetime gifts for the benefit of a minor are discussed below.

- **529 PLANS** – 529 Plans are state-sponsored plans that allow a donor to contribute cash amounts for the benefit of the designated beneficiary’s qualified expenses (typically, tuition, fees, books, supplies and limited room and board) at an eligible educational institution. Similar to most retirement plans, income on the 529 Plan assets accumulates income tax free. A contribution to a 529 Plan may qualify for the gift tax annual exclusion.
- **COLORADO UNIFORM TRANSFERS TO MINORS ACT (CUTMA)** - Under the CUTMA, a gift can be made to an adult as “custodian” to hold property for the benefit of a minor “beneficiary.” During the custodianship, the custodian has a fiduciary duty to reasonably protect and invest the property, and, if any funds are distributed from the custodianship, they must be used for the needs of the named beneficiary. When the beneficiary reaches age 21, or if the beneficiary dies before reaching age 21, the custodianship is terminated and the custodian must turn over the property to the beneficiary or the beneficiary’s estate. A contribution under the CUTMA for the benefit of a minor beneficiary can also qualify for the gift tax annual exclusion.
- **“CRUMMEY TRUSTS”** – This type of trust (named for the court case that approved its use) allows at least part of the gift to qualify for the gift tax annual exclusion (which is typically not available for gifts in trust). Under this approach, after a donor makes a contribution to the trust, the beneficiary is given a present limited right to withdraw the contribution. Notice of the contribution and the withdrawal right must be given to the beneficiary (or to a designated adult capable of making the withdrawal for a minor beneficiary), and the withdrawal right must be in existence for a reasonable period of time. After the lapse of the withdrawal right, the contributed assets can remain in trust subject to the terms of the trust agreement. This means that distributions from the trust can be limited to the extent desired, and trust assets can be held in trust until the beneficiary reaches an older age (above age 21), or kept in trust for distribution to a beneficiary’s future descendants. Because of this characteristic, Crummey Trusts are often combined with generation-skipping transfer (GST) tax planning.
- **2503(C) TRUSTS** – Under the Internal Revenue Code, a gift to this type of trust will qualify for the gift tax annual exclusion if the trust assets and income: (i) may be expended by, or for the benefit of one named beneficiary until he or she reaches age 21, and (ii) will pass to the beneficiary when he or she reaches age 21 (or, if the beneficiary dies before reaching age 21, will be payable to the beneficiary’s estate or as the beneficiary may appoint under a general power of appointment). Placing assets in a discretionary 2503(c) Trust generally provides greater protection against a minor’s creditors than a CUTMA account. However, once the trust assets are ultimately distributed to the beneficiary (*e.g.*, at age 21) a beneficiary’s creditors will be able to reach those assets.

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