

## **Section 40 - Transfers to Minors and Personal Custodian Law**

### **40.10 Missouri Transfers to Minors Law**

#### **40.10.1 In General**

This section discusses the most basic procedural and legal issues related to the Missouri Transfers to Minors Law, §§ 404.005 to 404.094. This is a very complex area and the reader is cautioned to thoroughly review the statute, and Chapter 14, "Missouri Transfers to Minors Law," 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.).

The Missouri Transfers to Minors Law provides one method for transferring money or property to a minor. For the purpose of this chapter minor is defined as an individual who has not attained the age of twenty-one years. See Section 38 for a discussion of the various options available for transferring property to a minor. The process involves the designation of a custodian to hold the property of the minor. This designation may be made by a donor, or if there is no conservator of the minor's estate, by the minor or an obligor as set out in Section 40.10.4.

NOTE: Upon attaining age 18 years, a minor may request delivery of property held by a custodian if the transferor was an obligor.

References: §§ 404.005 to 404.094

#### **40.10.2 Creation**

A minor's custodianship is created whenever property is placed in the name of a person by a writing that uses in substance the words "as custodian for (name of minor) under the Missouri Transfers to Minors Law."

Although acceptance of the custodial designation by the custodian is not necessary, the careful practitioner may want to obtain a writing from the designated custodian acknowledging that he will administer the custodial property for the minor as prescribed by §§ 404.005 - 404.094.

Reference: § 404.047

#### **40.10.3 Types of Property**

Any type of property may be transferred to a custodian for a minor. Section 404.047, provides specific methods for transferring various types of property.

Reference: §§ 404.007(17), 404.011, 404.047

#### **40.10.4 Transferors**

Any person or corporation may transfer property to a minor by designating a custodian. There are three categories of transferors: (a) donors, (b) obligors and (c) minors.

#### 40.10.4(a) Donors

A donor may make a present or future transfer of property to a minor.

A donor making a present transfer of property to a minor may designate and transfer any amount of money or value to a custodian for a minor.

A donor making a future transfer of property to a beneficiary, who may be a minor at the time the property becomes transferable, may revocably designate a custodian for the beneficiary. The donor may also grant to another the power to revocably designate a custodian. This designation may be made in a will, trust, deed, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay or transfer on death direction. If, at the time the property becomes transferable, the minor beneficiary has attained twenty-one years of age, the custodial designation shall lapse and the property may be transferred directly to the former minor.

Note: Substitute custodians may be designated by a donor in certain situations. For a discussion on the designation of successor and substitute custodians, see Chapter 14, "Missouri Transfers to Minors Law," 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.).

References: §§ 404.023, 404.027

#### 40.10.4(b) Obligors

An obligor is one indebted to a minor or any person holding property belonging to a minor and may include a personal representative, trustee, benefit plan, insurance company, agency of any state or of the United States or any person holding property belonging to a minor. An obligor may designate and transfer the property to a custodian for the benefit of a minor under the age of 18 years. However, the property must be transferred to the minor's conservator, if one has been appointed.

Court approval is required if the value of the property at the time of transfer exceeds \$10,000 and the designated custodian is not a financial institution. See Section 40.10.7 regarding court approval.

Reference: §§ 404.007(9), 404.031

#### 40.10.4(c) Minors

A minor may designate and transfer his own property to a custodian, if no conservator has been appointed for him.

Court approval is required if the value of the property at the time of transfer exceeds \$10,000 and the designated custodian is not a financial institution. See Section 40.10.7 regarding court approval.

Reference: §§ 404.007(9), 404.031

#### 40.10.5 Custodians

Any adult person, twenty-one years and older, may be designated custodian including the donor, the obligor, if a member of the minor's family, and any financial institution authorized to do business in this state. However, the designated custodian must be a person or institution who or which is qualified to be appointed conservator of the estate of a minor pursuant to § 475.055. There is no provision for joint custodians.

Reference: § 404.035

#### 40.10.6 Custodial Designation on Distribution from a Decedent's Estate

Where a probated will creates a custodianship or a personal representative designates a custodian for a minor devisee, the final decree of distribution must use in substance the words "(Name of Custodian) as custodian for (name of minor) under the Missouri Transfers to Minors Law." The personal representative must obtain a receipt from the custodian of the custodial property for filing with the Court prior to discharge the personal representative. See Section 24, Distribution and Discharge.

References: §§ 404.027, 404.031

#### 40.10.7 Court Approval - Property in Excess of \$10,000

Any designation by any obligor or a minor of a custodian that is not financial institution must be approved by the Court where the value of the property at the time of transfer exceeds \$10,000.

Court approval may be obtained by filing a petition in the Probate Division. Such a petition is an independent adversary civil proceeding and is not ancillary to a related decedent's estate administration and may not be filed in any related decedent estate, except that a will construction involving distribution to a designated custodian may be filed in a pending decedent's estate administration. Service must be obtained on parents of the minor and the proposed custodian, if other than a parent. The Court may refuse to approve the proposed custodian or may provide in its approval that the custodian serve with or without bond and with or without court supervision, or require that the custodial property be restricted by court order, upon terms as the Court may require.

Reference: §§ 404.007(9), 404.031

#### 40.10.8 Termination

Where a donor designates a custodian or grants to another the power to designate a custodian, the custodianship terminates at twenty-one years of age.

Where the minor or an obligor designates the custodian, the custodial property shall be delivered to the minor on attaining the age of eighteen years if the minor requests the property.

Reference: § 404.051.5

## 40.20 Missouri Personal Custodian Law

### 40.20.1 In General

This section is intended to touch on the most basic procedural and legal issues related to the Missouri Personal Custodian Law, §§ 404.405 to 404.650. This is a complex area and the reader is cautioned to thoroughly review the statute, and Chapter 15, "Missouri Personal Custodian Law," 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.).

The Missouri Personal Custodian Law provides one method for transferring money or property to an adult beneficiary, including an adult incapacitated person. The process involves the designation of a custodian to hold the property of the beneficiary. This designation may be made by a donor, or if there is no conservator of the beneficiary's estate, by the property owner or an obligor as set out in Section 40.20.4.

Reference: § 404.410(8), 404.490

### 40.20.2 Creation

A personal custodianship is created whenever property is placed in the name of a person or institution by a writing that uses in substance the words custodian for (name of beneficiary) under the Missouri Personal Custodian Law."

Although acceptance of the custodial designation by the custodian is not necessary, the careful practitioner may want to obtain a writing from the designate custodian acknowledging that he will administer the custodial property for the beneficiary as prescribed by §§ 404.400 through 404.650.

Reference: § 404.540

### 40.20.3 Types of Property

Any type of property and any type of interest in property, such as joint interest with right of survivorship, may be transferred to a custodian for a beneficiary. Section 404.540 provides specific methods for transferring various types of property. See Chapter 15, 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.) discussion regarding the type of interest, i.e., joint tenancy, that may be transferred to personal custodian.

References: §§ 404.007(17), 404.540, 404.565

### 40.20.4 Transferors

Any person or corporation may transfer property to a beneficiary by designating a custodian.

There are three categories of transferors: (a) donors, (b) obligors and (c) property owners.

#### 40.20.4(a) Donors

A donor may make a present or future transfer of property to an adult beneficiary.

A donor making a present transfer of property to a beneficiary may designate and transfer any amount of money or value of property to a custodian for the beneficiary.

A donor making a future transfer of property to a beneficiary, who may be incapacitated at the time the property becomes transferable, may revocably designate a custodian for the beneficiary. The donor may also grant to another the power to revocably designate a custodian. This designation may be made in a will, trust, deed, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay a death direction. If, at the time the property becomes transferable, and if the beneficiary is not an incapacitated person, the custodial designation shall lapse and the property may be transferred directly to the beneficiary.

Note: Substitute custodians may be designated by a donor in certain situations. For a discussion on the designation of successor and substitute custodians, see Section 15.29, 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 supp.).

References: §§ 404.007(8), 404.460, 404.470, 404.480

#### 40.20.4(b) Obligors

An obligor is one indebted to an incapacitated beneficiary or any person holding property belonging to an incapacitated beneficiary which may include a personal representative, trustee, benefit plan, insurance company, agency of any state or of the United States. Any obligor may designate and transfer the property to a custodian. However, the property must be transferred to the beneficiary's conservator if one has been appointed.

Court approval is required if the value of the property at the time of transfer exceeds \$10,000 and the designated custodian is not a financial institution. See Section 40.20.8 regarding court approval.

Reference: §§ 404.410(9), 404.490

#### 40.20.4(c) The Property Owner

The property owner may designate and transfer his own property to a custodian if no conservator has been appointed for him. See Sec. 40.20.10 Termination.

Reference: § 404.420

#### 40.20.5 Court Designation of Custodian

If the Court determines under Chapter 475 that full administration of an incapacitated person's estate is not required, the Court may designate a custodian. See Section 15.10, 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.) for examples of situations where the Court

may prefer a custodianship rather than a conservatorship. The Court may direct that all or part of the incapacitated person's property be transferred to the custodian. The custodian may be a court appointed conservator or guardian.

The Court may direct the custodian to serve with or without bond and with or without court supervision, upon the terms and conditions as the Court may require.

Reference: § 404.510

#### 40.20.6 Custodians

Any adult person, twenty-one years old may be designated custodian including the donor, the obligor, if a member of the beneficiary's family, an any financial institution authorized to do business in Missouri, may be designated custodian. However, the designated custodian must be a person or institution who or which is qualified to be appointed conservator of the estate of the beneficiary pursuant to §475.055. There is no provision for joint custodians.

Reference: § 404.530

#### 40.20.7 Custodial Designation on Distribution from a Decedent's Estate

Where a probated will creates a custodianship or a personal representative designates a custodian for an incapacitated devisee, the final decree of distribution must use in substance the words "(Name of Custodian) as custodian for (name of incapacitated person) under the Missouri Personal Custodian Law." The personal representative must obtain a receipt from the custodian of the custodial property for filing with the Court prior to discharge of the personal representative. See Section 24, Distribution and Discharge.

References: §§ 404.480, 404.490

#### 40.20.8 Court Approval - Property in Excess of \$10,000

Any designation by an obligor of a custodian that is not a financial institution must be approved by the Court where the value of the property at the time of transfer exceeds \$10,000.

Court approval may be obtained by filing a petition in the Probate Division. Such a petition is an independent adversary civil proceeding and is not ancillary to any related decedent's estate administration and may not be filed in any related decedent's estate. (An exception to the foregoing statement relates to an action by the personal representative or others to construe decedent's will if the construction affects distribution to a designated custodian.) Service must be obtained on the beneficiary and the designated custodian. An ad litem may be appointed to represent the beneficiary. The Court may refuse to approve the proposed custodian or may provide in its approval that the custodian serve with or without bond and with or without court supervision, or may require that the custodial property be restricted, upon terms as the Court may require.

Reference: § 404.490

#### 40.20.9 Effect of Incapacity of Beneficiary

The incapacity of a beneficiary who has transferred property to a personal custodian does not alter the custodianship. The personal custodian shall continue to hold and administer the custodial property in accordance with the provisions of §§ 404.405 to 404.650, applicable to incapacitated beneficiaries and the provisions of any written agreement between the beneficiary and the personal custodian.

Reference: § 404.430

#### 40.20.10 Termination

An adult beneficiary with capacity may terminate a custodianship on demand.

The custodian shall deliver the remaining custodial property to the beneficiary pursuant to a written agreement with the personal custodian executed by a competent beneficiary, or to the beneficiary's estate, upon the beneficiary's death.

Reference: § 404.560

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