



CHICAGO TITLE INSURANCE COMPANY

TOPIC:	<u>North Carolina Uniform Transfers to Minors Act for Dirt Lawyers</u>
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The North Carolina Uniform Transfers to Minors Act (herein referenced as “UTMA” or “the Act”) (Chapter 33A of the North Carolina General Statutes [NCGS]) can be an effective tool for transferring title to real property for the benefit of a minor. Title can be irrevocably and indefeasibly vested in the minor but can remain somewhat freely alienable without costly and perhaps lengthy proceedings before the clerk. Effective use of the UTMA can save the client time and money. The real property practitioner should be familiar with the basic concepts of the Act so he can properly advise a client wishing to convey real property to or purchase real property from a minor.

IMPORTANT DEFINITIONS (*See NCGS 33A-1*)

Adult – an individual who has attained the age of 21 years.

Custodial Property – (i) any interest in property transferred to a custodian under this [NCGS Chapter 33A] and; (ii) the income and proceeds of that interest in property.

Custodian – a person so designated under Section 33A-9 or a successor or substitute custodian designated under Section 33A-18.

Minor – for purposes of UTMA only, an individual who has not attained the age of 21 years.

Transfer – a transaction that creates custodial property under NCGS 33A-9.

Transferor – a person who makes a transfer under UTMA

PROBLEMS WITH CONVEYANCES DIRECTLY TO OR BY A MINOR

A minor who has not attained the age of majority (18 years of age) may hold title to real property. Such minor may also convey real property; but any conveyance by a minor under the age of 18 will be subject to the right of the minor to disaffirm the conveyance for a period of three (3) years after the minor reaches the age of 18. Thus, a deed executed by a minor is voidable (*see Weeks v. Wilkins*, 139 N.C. 215 (1905)).

To affect an irrevocable transfer of real property held in the name of a minor, a guardian must be appointed under a special proceeding before the clerk. This process can be both lengthy and costly. See the discussion of Conveyance of Real Property by Minors and Incompetents herein for more information on this process.

TRANSFERRING PROPERTY TO THE MINOR UNDER UTMA

The transferor can convey property to a minor under the Act by nominating a custodian in a will, a trust, or a deed. The requisite language to properly create a transfer to a minor under the Act is contained in NCGS 33A-9(a)(5) and set forth below.

_____ as custodian for _____ (name of minor)
under the North Carolina Uniform Transfers to Minors Act.

In the typical real property conveyance to a minor, this language would be used to describe the grantee. The resulting transfer is irrevocable and indefeasibly vests title in the minor.

CUSTODIANS

The custodian may be the transferor, an adult other than the transferor, or a trust company. The validity of a transfer made in this way is not affected by the death or incapacity of the named custodian or by the designation of an ineligible custodian (Note: one exception to this rule is contained in NCGS 33A-9(a) but is not applicable to transfers of real property). A transfer may be made for only one minor and only one person may be the custodian.

In those instances where the custodian is either unable (deceased or incompetent) or unwilling to serve as custodian, the Act provides for the appointment of a successor custodian (*see* NCGS 33A-18). An appointed custodian may decline to serve by giving a written disclaimer to the transferor or may designate a successor custodian by executing and dating a written “instrument of designation”. A custodian may resign at any time.

If a custodian is ineligible, dies, or becomes incapacitated and the minor has attained the age of 14 years, the minor may designate a successor custodian in those instances when the previous custodian has not otherwise designated a successor. The nominee of the minor must be either an adult member of the minor’s family, a court appointed guardian or a trust company. If the minor has not attained the age of 14 years or fails to designate a successor within 60 days, the guardian becomes the successor custodian. If there is not a guardian or if the guardian declines

to serve, the original transferor, an adult member of the minor's family or other interested person may petition the court to appoint a successor custodian.

A custodian may be removed for cause and a successor appointed by the court. Either the minor 14 years or older, a guardian, the transferor or an adult member of the minor's family may petition the court to remove the custodian.

POWERS AND OBLIGATIONS OF THE CUSTODIAN

NCGS 33A-13 provides that the custodian shall have "all the rights, powers and authority over custodial property that unmarried adult owners have over their own property". This allows the custodian very broad powers with which to manage the minor's property.

The standard of care enacted is that of a "prudent person dealing with property of another" but is otherwise not limited by any other statute restricting investments by fiduciaries. It is perhaps important to note that if the custodian has any special skill or expertise that the custodian is obliged to utilize that skill or expertise in the exercise of the duties of custodian. Thus, if a real property lawyer were to serve as custodian of a minor's real property, the standard of care may be raised from that of the prudent person to that of the prudent lawyer. (*See* NCGS 33A-12(b)).

The custodian is obliged under the Act to take control of a custodial property and to register or record title to the property when appropriate. Otherwise, the custodian may "collect, hold, manage, invest, and reinvest custodial property" (NCGS 33A-12). Beyond this limitation, the custodian may expend for the minor's benefit "so much of the property as the custodian considers advisable for the use and benefit of the minor, without court order" (NCGS 33A-14).

TERMINATION OF CUSTODIANSHIP

Where the property was transferred to the custodian by gift (NCGS 33A-4) or by a will or trust (NCGS 33A-5), it is important to note that a custodial relationship under the UTMA continues until the minor reaches the age of 21 (NCGS 33A-20). This seems incongruous with NCGS 48A-2 which defines a minor as one who has not reached the age of 18. However, the Act does provide that a grant under the Act may expressly direct the custodian to "transfer [the] property to [minor] when he reaches the age of ____" (see NCGS 33A-20). This provision allows the custodian to transfer the property to the ward once he reaches the specified age so long as it is after 18 and prior to 21.

Property transferred to the custodian by other fiduciaries (NCGS 33A-6) or by an obligor (NCGS 33A-7) shall be transferred by the custodian to the minor once she has reached the age of 18 (NCGS 33A-20(2)).

Upon the death of the minor, the custodian is obligated to transfer the property to the estate of the minor (NCGS 33A-20(3)).

TAKING TITLE FROM THE MINOR / CUSTODIAN

In those situations in which real property is held by the custodian for the benefit of a minor under the UTMA, third persons may deal with the custodian without a court order authorizing a sale. Pursuant to NCGS 33A-16, the buyer, in good faith and without contrary knowledge, is not obliged to inquire as to:

1. the validity of the purported custodian's designation;
2. the propriety of, or the authority under [the Act], for any act of the purported custodian;
3. the validity or propriety under [the Act] of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
4. the propriety of the application of any property of the minor delivered to the purported custodian.

Thus, in dealing with a custodian named in a prior recorded deed, the buyer is not obliged to inquire as to the authority of that person to act as custodian and may rely on the representations of the custodian, absent knowledge to the contrary.

The caveat to this rule is that the UTMA applies to transfers within the scope of the Act and occurring after October 1, 1987 (NCGS 33A-21). The Act may be applied to the following transfers:

1. The transfer purports to have been made under the Uniform Gifts to Minors Act of North Carolina; or
2. The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this Chapter is necessary to validate the transfer.

The grantor of a deed given for a minor under the Act would be executed by the custodian "as custodian for _____ (name of the minor) under the North Carolina Uniform Transfers to Minors Act". The record should also reflect any changes to the custodian as a result of the appointment of a successor.