

The Estate Planning Advisor

Gifts in Trust for Grandchildren (or, Gifts With Strings Attached)

By Richard J. Shapiro, J.D.

Making a substantial gift to a grandchild is a joyous, life-affirming experience. But that joy often turns to angst when the gift is squandered by the often immature recipient. Or, perhaps the grandchild is quite young, and the grandparent wishes to help fund college education costs, either instead of, or in conjunction with, a 529 college savings program.

In making gifts to grandchildren, many people set up “Uniform Trusts for Minors” or “UTMA” accounts. These accounts allow a person to set up and control an account for the benefit of a minor. A drawback of these UTMA accounts is that the minor is entitled to full control of the account assets at age 21. Many parents and grandparents see the entire account wiped-out when the minor turns 21 and gains complete control over the account assets, often through impetuous purchases such as sports cars. Put plainly, many (if not most) minors are ill-prepared to handle large sums of money, even in young adulthood. But there is an alternative to the UTMA account dilemma.

One powerful method of making controlled gifts to grandchildren is the use of what we call a “Minor’s Trust.” This is a particular type of irrevocable trust which works as follows: The grandparent(s), as trustmaker(s), create the trust, usually naming a trusted family member or professional advisor (e.g., the minor beneficiary’s parent) as the Trustee. While a single trust can be made for multiple grandchildren, it is usually better to create separate trusts for each grandchild to whom gifts are to be made.

Once the trust is established, it can be funded. Often, a yearly gift up to the annual gift tax exemption amount (presently \$11,000) is made to the trust. In order to ensure that the gift remains qualified for the annual exclusion amount (and hence does not result in any reduction of the lifetime \$1,000,000 individual gift tax exemption or \$1,500,000 estate tax exemption), the gift must be a gift of a “present interest.” To make a gift into a trust a gift of a present interest requires providing the beneficiary with the right to withdraw the gift within a certain period of time (often 30-days) after it is made. While the child is a minor, the child’s parent or legal guardian can be provided with the right to immediately withdraw the gift amount from the trust. If the designated time period elapses and the withdrawal right has not been exercised, the assets may remain in the trust, with specific instructions provided to the Trustee on how the trust assets may be utilized. The Trustee may be afforded complete discretion to use the assets for any need of the beneficiary, or distribution options may be more narrowly tailored to specific “needs” (typically health, education and maintenance).

A great advantage of a minor's trust is that, unlike an UTMA account or another type of trust called the 2503(c) trust, the beneficiary does *not* need to be afforded with the right to withdraw assets from the trust at age 21 — or any other stated age. Gifts can continue to be made to the trust by the grandparent (or anyone else) for as long as the trust exists. Trust distributions need not be restricted to educational purposes (as is the case with a 529 account). If permitted by the trust, they can also be used for myriad purposes, such as helping the beneficiary purchase a home, pay for a wedding (usually restricted to a first wedding!), starting a business, or any other use the trustmaker wishes to provide. The trust can also permit the beneficiary to become a Co-Trustee upon reaching a designated age, thereby allowing a “training period” for the beneficiary to learn how to manage his or her assets. Finally, the assets in a properly structured minor's trust will be protected from the beneficiary's creditors — including a divorcing spouse.

Minor's trusts are fabulous, but in my experience underutilized, planning tools. If you are interested in learning more about these devices, contact an estate planning attorney experienced in this planning technique.

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