

UNIFORM GIFTS TO MINORS ACT (UGMA) 14 Vt. Stat. Ann. §§ 3201 to 3209
versus
UNIFORM TRANSFERS TO MINORS ACT (UTMA): H.23 (2015)

H.23: Section 1

These are the substantive provisions of the Act as described below. The two major differences between UTMA and UGMA are (1) the age at which property is distributed, *i.e.*, at age 21 rather than 18 and (2) the types of property which can be transferred to a minor, *i.e.*, any type of property. UTMA also expands the types of transfers that are allowed, for example from a will or trust.

H.23: Section 2

Repeals UGMA.

H.23: Section 3

Effective date: July 1, 2015. This ensures that UTMA takes effect on the same day that UGMA is repealed.

SECTION 3211: DEFINITIONS

This section contains definitions used throughout the act. A number of definitions are new or different from UGMA to reflect the increased types of property that can be held in custodianship and increased methods for transferring property to minors under this act. Some definitions in UGMA have been deleted as unnecessary given the increased scope of UTMA.

- (1) “Adult” is an individual who has attained age 21.
- (11) “Minor” means an individual who has not attained age 21.

UGMA provides that an adult is a person who has attained the age of majority, which is 18 in Vermont. These provisions are a major change. Note that these provisions apply only “as used in this chapter” and, thus, do not change the age of majority in other statutes.

- (6) “Custodial property” means any interest transferred under the act and the income and proceeds from that property.

UGMA was limited to transfers of securities, money, life insurance, and annuity contracts. UTMA allows the transfer of any type of legal or equitable interest in property, whether real or personal, tangible or intangible. Sections 3214 through 3217 are new and describe the types of transfers allowed by UTMA.

- (2) “Benefit plan”
- (8) “Financial institution”
- (9) “Legal representative”
- (13) “Personal representative”
- (15) “Transfer”
- (16) “Transferor”

These definitions are new in UTMA and reflect the increased scope of property that can be transferred to minors.

- (12) “Person”
- (14) “State”

These definitions are new and are standard Uniform Law language.

- (4) “Conservator”

This term is used in other Uniform Laws instead of guardian. The term “guardian” could be substituted to coincide with other Vermont statutes.

SECTION 3212: SCOPE AND JURISDICTION

This section is new; UGMA had no similar provision. It resolves jurisdiction and conflicts of laws issues. It provides that Vermont law applies if, at the time of the transfer, the minor or the custodian is a Vermont resident or the custodial property is located in Vermont. Once a transfer is made under Vermont’s UTMA, it remains subject to Vermont law even if the minor or custodian move or the property is moved.

Subsection (b) provides that the custodian is subject to personal jurisdiction in Vermont.

Subsection (c) allows a Vermont resident to make an UTMA transfer in another jurisdiction. The minor or the custodian must be a resident of the other state or the property must be located in that state.

SECTION 3213: NOMINATION OF CUSTODIAN

This section is new. It allows the transfer of property in the future, for example, under a will or trust. The nomination is not a transfer until a transfer under a will or trust is actually made. The nomination is revocable until the transfer occurs and does not create the transfer.

SECTION 3214: TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT

This section corresponds to §3202(a) of UGMA and allows outright gifts.

This section expands the type of transfers allowed to include the exercise of a power of appointment in favor of a custodian. It provides for the actual transfer of the property subject to the power of appointment and is not the same as nominating a custodian.

SECTION 3215: TRANSFER AUTHORIZED BY WILL OR TRUST

SECTION 3216: OTHER TRANSFER BY FIDUCIARY

SECTION 3217: TRANSFER BY OBLIGOR

These sections are new and reflect the increased scope of UTMA. These sections not only allow an individual to provide for an UTMA transfer in a will or trust, but they also allow a person who is the personal representative, the trustee, or holding property for the benefit of a minor to transfer that property under UTMA rather than to someone as legal guardian of the minor.

SECTION 3218: RECEIPT FOR CUSTODIAL PROPERTY

This section is new. It discharges the transferor from further responsibility for the property. It does not authorize the custodian to settle or release claims of a minor against a third party. That power remains with the parent or other person, such as a legal guardian or a guardian ad litem, authorized by other law.

SECTION 3219: MANNER OF CREATING . . .

This section is analogous to §3202 of UGMA. It is more detailed because UTMA allows more types of property to be held in custodianship.

SECTION 3220: SINGLE CUSTODIANSHIP

The first sentence is the same as §3202(b) of UGMA, restricting custodianships to one custodian for the benefit of one minor. The second sentence allows additional transfers to the same custodian for the benefit of the same minor without the need to create a new custodianship.

SECTION 3221: VALIDITY AND EFFECT OF TRANSFER

This section is analogous to §3202(c) and §3203 of UGMA with changes to reflect the increased scope of property that can be transferred pursuant to UTMA. This section provides, as did UGMA, that a transfer is irrevocable and vests property in the minor. This section clarifies what was implicit in UGMA that the minor's rights are subject to the rights, powers, duties, and authority of the custodian. Because the custodian has legal title, spousal rights, for example, would not attach to real property held in custodianship if the minor were married. Those rights would attach when the property is distributed to the minor at age 21.

SECTION 3222: CARE OF CUSTODIAL PROPERTY
SECTION 3223: POWERS OF CUSTODIAN
SECTION 3224: USE OF CUSTODIAL PROPERTY

These sections correspond to §3204 of UGMA and, again, are expanded to reflect the increased types of property that can be transferred under UTMA. Section 3222(b) defines the standard of care as that of a prudent person “dealing with the property of another.” This is slightly different from UGMA, which provided that the standard was one “who is seeking a reasonable income and the preservation of his or her capital.” (The prudent person standard is also found in The Uniform Prudent Investor Act and Unitrust, 14A Vt. Stat. Ann. §902.) This subsection establishes a somewhat higher standard for professional fiduciaries or anyone with “special skill or expertise.”

Section 3223 replaces the list of specific powers with a broad grant of power that is the same as the rights of an unmarried adult. The custodian is still limited by the prudent investor rule described above. UTMA provides sufficient detail that custodians, who are often not experienced fiduciaries, do not need to look beyond these provisions to understand their duties and responsibilities. UTMA does provide that the custodian can only exercise powers over custodial property in the capacity as custodian and not as an individual.

Section 3224 expands the custodian’s ability to use property “for the use and benefit of the minor.” UGMA was limited to “support, maintenance, education, and the benefit of the minor.” Under UGMA some believed that custodial property could only be used for the support of the minor. UTMA clarifies that the use can be broader than merely support. It also clarifies that UTMA property can be used without regard to the custodian’s personal obligation to support the minor and it is not designed to be a substitute for that obligation of support.

SECTION 3225: CUSTODIAN’S EXPENSES, COMPENSATION, AND BOND

This section is analogous to §3205 of UGMA. It allows for, but does not require, reasonable compensation to the custodian. The custodian can waive compensation but if the custodian does not, the custodian must exercise the right to compensation each year. It is not cumulative.

SECTION 3226: EXEMPTION OF THIRD PERSON FROM LIABILITY

This section is analogous to §3206 of UGMA.

SECTION 3227: LIABILITY TO THIRD PERSONS

This section is new, reflecting the increased types of property that may be held in a custodianship. It protects both the minor and the custodian by generally limiting liability to the value of the custodial property. The custodian would be personally liable for failing to reveal the custodianship or actual fault. A minor is liable only for actual fault.

SECTION 3228: RENUNCIATION (ETC) OF CUSTODIAN; DESIGNATION OF SUCCESSOR CUSTODIAN

This section is analogous to §3207 of UGMA. It broadens the definition of custodian to any person as opposed to an adult member of the minor's family. A minor can appoint a successor custodian if the minor is 14 or older, but can only designate an adult member of his or her family.

SECTION 3229: ACCOUNTING BY AND DETERMINATION OF LIABILITY OF CUSTODIAN

This section is analogous to §3208 of UGMA. It broadens the class of parties who may require an accounting to include anyone who made a transfer.

SECTION 3230: TERMINATION OF CUSTODIANSHIP

This section is analogous to §3204(d) of UGMA. It provides that custodianships created by gifts, wills, trusts, or the exercise of a power of appointment terminate at age 21.

It provides that custodianships created by a transfer from a fiduciary that are not specifically required by the will or trust and those created by an obligor terminate at age 18. The custodians that terminate at age 18 are substitutes for guardianships that would otherwise have been created by state law because no trust or custodianship had been designated.

SECTION 3231: APPLICABILITY

This section is new and validates transfers made after the effective date that refer to UGMA rather than UTMA. It also validates transfers attempted under the UGMA of another state that would not allow the source or type of property. This second provision is unlikely to ever be needed as only one state retains UGMA other than Vermont.

SECTION 3222: EFFECT ON EXISTING CUSTODIANSHIPS

This section is new. It validates transfers prior to the effective date of UTMA if that transfer was not valid under UGMA but would be valid under UTMA.

Subsection (b) provides that existing custodianships under UGMA terminate at age 18.

SECTION 3223: UNIFORMITY OF APPLICATION AND CONSTRUCTION

SECTION 3224: SEVERABILITY

These sections are analogous to §3209 of UGMA.