

Retirement Plan Considerations for the Wisconsin Uniform Transfers to Minors Act

Under the Uniform Transfers to Minors Act (UTMA), property and assets, including retirement plan benefits, cannot be distributed directly to a minor. Instead, the UTMA permits retirement plan sponsors to transfer benefits owed to a minor to an adult custodian to safeguard until the minor reaches the age of majority. For retirement plan sponsors, the UTMA is an important law to protect transfers of benefits of a plan participant and ensure benefits owed to a minor child are held securely by a custodian on the minor's behalf.

While the UTMA is designed to create a uniform process, some states maintain differences in the legal process or required language. For simplicity purposes, this article focuses on the Wisconsin UTMA. To ensure compliance with applicable state law, plan sponsors should exercise caution and pay special attention to requests from custodians to obtain benefits owed to minors.

Background on the Wisconsin UTMA

The Wisconsin UTMA applies when the minor, custodian or retirement benefits are a resident of or located in Wisconsin. The Wisconsin UTMA will apply even if the custodian, minor or property subsequently relocates outside of Wisconsin after the transfer. Plan sponsors may be required to transfer benefits to a custodian on behalf of a minor child under a variety of circumstances, such as when a death benefit of a deceased participant is payable to a minor child.

Transfers of Retirement Plan Benefits under the Wisconsin UTMA

- In Wisconsin, certain elements are required to validly transfer benefits to minors under the UTMA. Additional documentation may be required if a child is entitled to benefits at or above \$10,000.
- Custodial property: Custodial property, such as retirement plan benefits, is any property payable to a minor transferred to an adult custodian until the child reaches majority.
- Custodian: In Wisconsin, benefits owed to a minor must be held by a legal or

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financial custodian. Although a custodian is typically a family member of the minor, a custodian may be any adult who has attained the age of 21. A custodian is required to uphold a prudent standard of care over the property and has all powers and authority that an owner would have over their property. Wisconsin custodian requirements vary depending on whether the benefit amount payable to the child is below or above \$10,000.

- Legal custodian if benefit is below \$10,000: If the benefit amount is less than \$10,000, Wisconsin law permits payment to be made to any legal custodian of the child. To establish legal custody of the child, an individual could provide a court ordered child custody agreement, or guardianship or conservatorship appointment.
- Financial custodian if benefit is above \$10,000: A parent or legal guardian is not a financial custodian under the UTMA without a court appointment. If the benefit amount exceeds \$10,000, payment may only be made to a court appointed financial custodian. The Wisconsin UTMA requires an order appointing a financial custodian to incorporate specific statutory language and state that the appointment be for a custodian under the Wisconsin UTMA. To appoint a financial custodian, the order must specifically state a custodian is appointed "as custodian for _____ (name of minor) under the Wisconsin Uniform Transfers to Minors Act."
- Transfer document: Wisconsin law requires a transfer document to authorize a plan sponsor to transfer benefits owed to a minor to their custodian. Generally, the transfer document is a signed, dated acknowledgment that the plan sponsor transferred the minor's benefits to a custodian. Plan sponsors may not transfer a minor's benefits to a custodian without a transfer document. Generally, plan sponsors that, in good faith, make a transfer of retirement benefits to a custodian upon receipt of valid documentation, and in the absence of knowledge, are exempted from liability.

UTMA Compliance Considerations

It is important to note that UTMA cases are not a one-size-fits-all. Accordingly, plan sponsors should be mindful of the following common circumstances that may accompany UTMA transfer requests. A participant's trust or estate planning documents can legally appoint a custodian for UTMA purposes. Participants may also designate a UTMA custodian using the plan's beneficiary designation form.

- Multiple custodians: The plan administrator should be mindful when multiple individuals provide documentation or advise that they are the appointed custodian or desire to be the appointed custodian. Under Wisconsin law, only one person may act as a custodian for a minor child.
- Multiple minors: The plan administrator should be mindful when plan benefits are owed to multiple minors. Under Wisconsin law, each minor child must have their own custodian. Although a custodian may be a custodian for multiple minors, each child must have an individual order establishing the appointment.
- Lack of sufficient documentation: The plan administrator should be mindful when an alleged custodian cannot or refuses to supply documentation establishing their appointment. Plan sponsors should not permit the transfer of plan benefits without sufficient documentation, even if the alleged custodian is the biological parent of the minor.
- Paternity establishment concerns: While not specific to the UTMA, the plan administrator should be mindful when ambiguous circumstances surround a deceased participant's paternity and benefits are payable to their minor child. Plan sponsors should request additional documentation and contact legal counsel if a participant is unlisted on a birth certificate or did not otherwise establish paternity prior to their death.

To ensure that documentation purports to appoint a custodian under the respective state law, is currently effective, and authorizes a custodian to safeguard benefits owed to a minor child, plan sponsors should contact their Reinhart attorney with questions regarding the validity of UTMA documentation or the authority granted to a custodian.

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