



Patti Goroski

Custodial Accounts for Children Under Age 21: Montana Uniform Transfers to Minors Act (UTMA)

By Marsha A. Goetting, PhD, CFP®, Montana State University Professor and Extension Family Economics Specialist

The Montana Uniform Transfers to Minors Act (UTMA) allows a parent or other adult to make gifts of assets during life, bequests with a will, or distributions from a trust to a custodial account for the benefit of a child who is under 21 years of age.

DURING THEIR LIFETIMES, MANY PARENTS, grandparents or other adults wish to give assets such as money or property to a minor child. Then, after death, some may use a Will* to make a bequest to a minor child. Others may use distributions from a revocable or testamentary trust as a gift.

Children under 18 (the legal age of adulthood in Montana) may receive gifts of assets (such as cash, mutual funds, stocks, and bonds) and hold title to real and personal property. However, Montana law significantly limits their legal capacity to act on their own behalf. Children under 18 cannot sign binding contracts, such as a purchase agreement for real estate, a credit card agreement, or a loan contract.

In Montana, minor children can gain complete control and access to their deceased parents' property at age 18, unless the parent sets up a trust or custodianship. Many adults believe that age 18 is too young for a child to take control of a large sum of money or other assets. They may believe the child's lack of financial experience could result in unwise use of the property, especially money.

A **custodial account** is one alternative for a parent or other adult who wants to gift assets during the adult's lifetime, make a bequest in a Will, or make distributions from a trust for the benefit of a child who is under 21 years of age. This MontGuide explains how custodial accounts are allowed under the Montana Uniform Transfers to Minors Act (UTMA) and answers common questions about setting up a custodial account.

If the custodianship is created by an authorization in a Will or trust, or by lifetime gifts, the custodianship can continue until the child reaches age 21. If the custodianship is created

under a Will or trust when there is no express authorization, or if the custodianship is created by a person who holds property of or owes a debt to a minor, the custodianship can only continue until the child reaches age 18. If the amount is more than \$10,000, a court order is needed to allow the transfer to a custodial account.

What is a custodial account?

The term 'custodial account' generally refers to an account controlled by an adult representative for a minor. An individual who gifts assets to a custodial account is called a **transferor**. A **custodian** manages the property gifted to a custodial account for the benefit of the child. The custodian can be the person making the gift (such as a parent or grandparent), another adult, or a trust company.

Custodial accounts include savings and checking accounts at a financial institution (such as a bank or credit union) and investments in mutual funds or with brokerage firms. Although assets placed in the account are for the benefit of the child, control over the accounts is not handed over until the child reaches age 21.

Is there an alternative if a person believes age 21 is still too young for a child to wisely manage large sums of money?

Many adults believe age 21 is still too young to give a person control of substantial sums of money or property. If a person plans to make substantial gifts of money to a child over a period of time, this may even be more of a concern. If a parent or grandparent wants to delay a child's access to property beyond age 21, they could create a revocable or testamentary trust as opposed to a custodial account.

A **trustee** named in a trust instrument manages trust assets for the purposes outlined in the trust agreement. The document often provides for a trustee to use the assets for

*Will is capitalized to indicate the importance of having one

health, maintenance, support, and education for a child. A trust usually involves more complexity and expense than setting up a custodial account. A trust agreement is a legal document that should be prepared by an attorney. For further information, read the MSU Extension MontGuides, *Revocable Trusts* (MT199612HR) store.msuxextension.org/Products/Revocable-Trusts-MT199612HR__MT199612HR.aspx and *Testamentary Trusts in Montana* (MT202113HR) store.msuxextension.org/Products/Testamentary-Trusts-in-Montana-MT202113HR__MT202113HR.aspx.

What type of assets can be gifted to a custodial account?

Almost any type of property can be gifted to a custodial account: real estate, securities (stocks, bonds, and mutual funds), certificates of deposit, savings or checking accounts, and US savings bonds. In addition, a custodial account may be the beneficiary of life insurance policies, annuities, pensions, or profit-sharing plans. Any income from the custodial property, such as interest, dividends, or rental income, becomes a part of the custodial account.

Who should be selected as custodian?

The custodian can be the person making the gift, another adult, or a trust company. Montana law places a limit of one custodian for each custodial account. The person making the gift may also name another person or entity to whom the property transfers if the first custodian dies, is unable to manage the account, declines the appointment, or is ineligible to serve. The substitute or successor custodian then takes over management of the custodial account.

What are the responsibilities of a custodian?

The custodian manages, registers or records titles to custodial property (if appropriate, such as in the case of real property). The custodian has a fiduciary responsibility to collect, hold, manage, invest, and reinvest custodial property (such as in the case of real estate or securities). A custodian keeps records of all transactions for the custodial property, including information necessary for the preparation of income tax returns for the child.

A custodian must use a standard of care exercised by a “prudent person” when dealing with property of another. The custodian must keep custodial assets separate from the custodian’s property. A custodian may not pledge a custodial account as collateral for any loans to themselves.

A custodian may resign at any time by delivering a written notice to the beneficiary and financial institution where the account was set up. The successor custodian must also be notified of the resignation of the primary custodian.

In addition to responsibility for investing the custodial assets, a custodian decides when funds may be withdrawn for the benefit of the child. A custodian may spend as much of the custodial property as the custodian considers advisable for the use and benefit of the minor. If, for example, a child is experiencing medical expenses or she has increased educational expenses, then the custodian can pay those expenses for the child’s benefit. The custodian can also pay for any item that helps the child, such as sports activities, registrations, camps, and piano lessons.

What wording is used on a custodial account?

A person can choose a custodian to manage assets for a child by naming the custodian on the account, followed by the words “as custodian for (name of the minor) under the Montana Uniform Transfers to Minors Act.” Most financial institutions provide forms developed by their legal counsel.

What happens to a custodial account when the child reaches age 21?

When a child reaches age 21, the custodian handles closing the account, not the entity holding the funds. The custodian transfers the property to the 21-year-old beneficiary, who can now use the funds for any purpose. Neither the person making the gift nor the custodian can place any conditions on the use of the custodial assets after the child reaches age 21. When the custodianship ends, the child’s creditors can access the funds to pay the child’s debts (if any). Some preplanning can be helpful because many institutions require a medallion signature (a specific type of signature verification) to close a custodial account, which can be difficult to obtain in Montana.

What are the tax effects of a custodianship?

INCOME TAX

A custodial account is not treated as a separate taxpayer. Any income earned, such as interest, dividends or proceeds derived from any sale of custodial property, is taxable to the child at the state and federal levels. The custodian may use custodial funds to pay any income tax due on the earnings in the account.

If a child’s parent is still living, then certain children who recognize unearned income (interest, dividends for capital

gains from certificate of deposit, stocks, or mutual funds, for example) in excess of a base amount (\$1,450 in 2025) pay tax (often referred to as the “kiddie tax”) on this income. They use a unique tax table that considers the child’s unearned income and earned taxable income. The tax is reported on the child’s return and their parent’s tax return. If no parent of the child is living, then the “kiddie tax” does not apply and the child reports all the income as an individual.

In situations where a child only has unearned income that totals less than \$13,500 (in 2025), then their parent may choose to report the child’s interest and dividend income on the parent’s return, which would mitigate the need for the child to file a return.

Due to the complexities involved in each unique situation, it is best to contact a legal or accounting tax professional for information about unique tax filing options.

Check with the Internal Revenue Service, Topic Number 553, Child’s Investment and other Unearned Income instructions as amounts may change in 2026 and beyond. www.irs.gov/taxtopics/tc553

FEDERAL ESTATE TAX

If a parent gifts property to a custodial account and the custodian is someone other than the parent (such as a grandparent, brother, or sister of the child beneficiary), then the value of the gift is not included in the parent’s taxable estate upon the parent’s death. If, however, a parent appoints themselves as custodian and dies while serving in this capacity, the value of the custodial property is included in the parent’s estate for federal estate tax calculation purposes.

However, if an estate is valued at less than \$13,990,000 (current as of 2025 but subject to change), federal estate taxes are not due. In the past, the exemption amount increased each year based on the Consumer Price Index, but it will drop to \$5,000,000 adjusted for inflation in 2026 if Congress does not act to extend the current law. If the potential custodian’s estate value is over this limit, they may want to appoint another adult or a trust company as the custodian. This eliminates the value of the custodial property from being included in the donor’s taxable estate for federal estate tax calculation purposes.

FEDERAL GIFT TAX

An individual may place gifts of up to \$19,000 annually (as of 2025) in custodial accounts for each minor child without triggering a federal gift tax liability. For married taxpayers, the annual exclusion is \$38,000 for each child.

Example: Rod set up custodial accounts for each of his five grandchildren. He plans to make a gift of \$19,000

to each grandchild’s account annually. Rod’s wife, Nora, also plans to give \$19,000 to each grandchild each year. With these two gifts, Nora and Rod are lowering the value of their estate by \$190,000 annually ($\$38,000 \times 5$ grandchildren = \$190,000).

There are special rules applying to gifts of life insurance to a custodial account. The person making the gift of life insurance must live three years after making the gift to have the proceeds excluded from their estate.

Example: Fred gifted a life insurance policy with a value of \$250,000 to the custodial account of his minor child in 2024. Fred died in 2025. Fred’s wife was worried about the IRS including the proceeds from the policy (\$250,000) in his estate because he did not live for three years after making the gift. However, Fred’s wife was relieved to learn no federal estate tax was due because the value of Fred’s estate was less than the \$13,990,000 exclusion (2025).

What if money gifted to the custodial account is needed for a family financial hardship situation?

After the assets are transferred to a custodial account, the money cannot be retrieved. The assets in the account now belong to the child. For example, parents who set up a custodial account for their daughter cannot access those funds to help the family, even if the parents are experiencing a financial hardship caused by one parent losing their job or other unforeseen family financial emergencies.

If, however, the daughter is experiencing medical expenses or she has increased educational expenses, then the custodian can pay those expenses out of the custodial account for the daughter’s benefit. The custodian can also pay for items that benefit the child, such as sports activities, camps, and piano lessons.

Are there circumstances where the custodial account could be turned over to the child before age 21?

There are some circumstances that could result in the closure of a custodial account between the ages of 18 and 21, with the balance passing to the child. If the custodian dies and the personal representative of the custodian, a trustee, or a conservator determines that the transfer is in the best interest of the minor, the custodial account may pass to the child. If the account exceeds \$10,000 in value, a district court judge must authorize the transfer to the child.

What happens to assets in a custodial account if a child dies before reaching age 21?

The property held in a custodial account becomes a part of the estate of the child. If the child dies without a Will, the assets are not returned to the person who made the gift. Assets in the account pass to the child's heirs according to Montana intestate statutes which direct who receives a deceased child's real and personal property. Parents are the priority heirs of a minor child under Montana law. For further information, go to the MSU Extension "Dying Without a Will in Montana" website at montana.edu/dyingwithoutawill. A child who reaches age 18 can have an attorney write a Will naming individuals to receive assets, including those in the custodial account.

Payable-on-death (POD) designations and transfer-on-death (TOD) registrations are ways to name a beneficiary to receive an account balance after the owner's death. While Montana law allows PODs and TODs on most financial accounts, these beneficiary designations are not available for custodial accounts.

What happens to the account if the custodian dies?

If the custodian dies before the child reaches the age of 14, and if a successor custodian was not previously designated, then the conservator for the child becomes the successor custodian. A **conservator** is an individual appointed by a district court judge to manage assets left to a child until they reach the age of 18.

If the district court judge appoints a conservator as custodian, then the assets are managed by the individual until the child reaches age 21. If the child does not have a conservator or if the conservator declines the appointment, the following persons may petition the court to appoint a successor custodian:

- the person making the gift
- the legal representative of the transferor
- the legal representative of the custodian
- an adult member of the child's family; or
- any other interested person

If the custodian dies and the child is aged 14 or older, and if a successor custodian was not previously designated, then the child may choose an adult member of the minor's family, a conservator of the minor, or a trust company to serve as custodian.

Does a custodian receive compensation for managing the custodial account?

A custodian may charge reasonable compensation annually for services performed for the custodial account, unless the custodian is also the person who made the gift of the property. If a friend or relative is named as a custodian, the custodian's compensation is often decided in advance.

By separate agreement, a person can provide for the custodian to receive a fixed annual fee or an annual fee of a specified percentage of the value of the custodial assets. Trust companies generally have rate scales for computing compensation based on the value of custodial property.

What if the custodian is not managing the custodial account appropriately?

The person who made the gift, a minor child who is the owner of the custodial account (if the child is at least 14 years of age), or an adult member of the child's family may petition the district court judge for an accounting of the use of funds in the custodial account. The district court judge may remove a custodian if the person fails to maintain and provide proper records. The district court judge would then appoint another custodian from the following:

- the legal representative of the person making the gift (such as a personal representative or conservator)
- the legal representative of the custodian (such as a personal representative or conservator)
- an adult member of the child's family; or
- any other interested person

A minor child who is owner of the custodial account (if the child is at least 14 years of age) or an adult member of the child's family, may petition the court to compel the custodian pay to the minor or expend for the minor's benefit as much of the custodial property as the court considers advisable for the use and benefit of the minor.

Summary

A custodial account is a savings or checking account at a financial institution (such as a bank or credit union), or investments in mutual funds or a brokerage firm controlled by a custodian for a minor in Montana who has not reached the age of 21.

The Montana Uniform Transfers to Minors Act (UTMA) applies to gifts of property to a child while the transferor is alive, as well as a bequest in a written Will. UTMA also

applies to distributions to a custodial account for the benefit of a child from a trust arranged while the person making the gift is alive or from a testamentary trust set up by a Will. Consult an estate planning or tax attorney, certified public accountant, or other financial planning professional for legal and tax implications of custodial accounts specific to the donor's situation.

Acknowledgment

Representatives from the following professional associations have reviewed this MontGuide and recommend its reading by Montanans who want to learn more about custodial accounts under the Uniform Transfer to Minors Act.

- Business, Estates, Trusts, Tax, and Real Property Section, State Bar of Montana
- Montana Credit Union Network

Disclaimer

This publication is not a substitute for legal advice. Rather, it provides information about custodial accounts made possible by the Montana Uniform Transfers to Minors Act. Future changes in state and federal laws are not predictable. Statements within this fact sheet are based solely upon those laws in force on the date of the publication.

References

Montana Code Annotated 2023, Title 72, Chapter 26, Parts 5–8. https://archive.legmt.gov/bills/mca/title_0720/chapter_0260/parts_index.html

The logo for Montana State University Extension. It features a stylized blue 'M' with a yellow sunburst above it, followed by the text 'MONTANA STATE UNIVERSITY' in blue, and 'EXTENSION' in a smaller blue font to the right, separated by a vertical line.

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