

Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #19(b)

<u>REQUESTED ACTION</u>: Approval of an affirmative legislative proposal from the Trusts and Estates Law Section to amend the Surrogate's Court Procedure Act.

Attached is a report from the Trusts and Estates Law Section to amend SCPA §1724. The amendment would eliminate a reference to the Uniform Gifts to Minors Act sections of the Estates, Powers and Trusts Law. As noted by the Section, the Uniform Gifts to Minors Act was repealed in 1997.

The report will be presented by Jennifer Hillman, a member of the Section's Executive Committee.

NEW YORK STATE BAR ASSOCIATION TRUSTS AND ESTATES LAW SECTION

Proposed Legislation

It is hereby recommended that Surrogate's Court Procedure Act §1724 be amended to read as follows:

Custodians.

An infant or a custodian acting under EPTL 7-6.1 to 7-6.26 inclusive shall be subject to the jurisdiction of the court in accordance with the provisions of such law.

The foregoing shall be effective upon enactment.

Memorandum in Support

In its current form, SCPA § 1724 specifically references the Uniform Gifts to Minors Act ("UGMA") sections of the Estate Powers and Trusts Law ("EPTL"). *See* repealed sections EPTL §7-4.1 to 7-4.9. UGMA was repealed (1997 N.Y. Laws 535) and replaced by Uniform Transfers to Minors Act ("UTMA") (1996 N.Y. Laws 304). See EPTL § 7-6.1 to 7-6.26

When UTMA was first enacted, UGMA was left intact because UTMA directed that UGMA would continue to apply to transfers made before December 31, 1996. However, that overlap proved to be unwieldy for practitioners. UGMA was repealed the following year and UTMA was made applicable to existing UGMA accounts. *See* EPTL 7-6.22. Despite this change, SCPA § 1724 still remains with the reference to the now repealed sections of the EPTL.

Arguably, the purpose of SCPA § 1724 is largely superceded by EPTL § 7-6.2 which details and defines the scope and jurisdiction of UTMA. However, it is preferable not to repeal SCPA § 1724.

As a general (and historical) matter, SCPA contains most of the procedural and jurisdictional provisions of estate law. Article 17 of the SCPA contains procedural statutory authority related to guardians and custodians. Practitioners searching for the jurisdictional authority for UTMA may begin their search with SCPA. Regardless, it is confusing and incorrect to have a statute which references a now repealed section of the EPTL.

Resolutions

Trusts and Estates Law Section, New York State Bar Association

Opinions expressed are those of the Section preparing these resolutions and do not represent those of the New York State Bar Association unless and until they have been adopted by its Executive Committee.

TO: Executive Committee, New York State Bar Association

FROM: Executive Committee, Trusts and Estates Law Section

DATED: October 14, 2013

RE: Reports for January, 2014 Meeting

RESOLVED, that the NYSBA Trusts and Estates Law Section supports the following Amendment to SCPA § 1724:

Custodians.

An infant or a custodian acting under EPTL 7-6.1 to 7.6.26 inclusive shall be subject to the jurisdiction of the court in accordance with the provisions of such law.

RESOLVED, that the NYSBA Trusts and Estates Law Section is in favor of the above amendment for the reasons set forth in the accompanying Memorandum in Support, without further comment.

Resolution Prepared By: Jennifer F. Hillman,

Robert M. Harper, and Ian W. MacLean

Approved By: Vote of the Executive Committee of the NYSBA Trusts

and Estates Law Section

Section Chair: Carl Baker