Points of Law

Number 2003-2 June 20, 2003

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NOTE TO READERS

Adults continue to place title to property in the names of minor children. The most usual form is a bank deposit containing a gift from relatives. However, it is common for minors=names to appear on real property deeds, vehicle titles, share certificates and bonds. When adults later find that a conservator is required to make a binding disposition of the minor=s property interest, they are often upset and occasionally simply ignore the requirement by ordering the minor to sign or in some cases signing the minor=s name themselves. While such conduct sometimes saves the expense of establishing a conservatorship, occasionally the results are disastrous.

WHO IS A MINOR?

NMSA 28-6-1 provides that anyone who has not reached his 18th birthday is a minor. Until June 18, 1971, anyone who had not reached his 21st birthday was a minor (the age of majority remains at 21 for certain purposes including the Transfers to Minors Statute NMSA 46-7-12).

WHY BE CONCERNED?

Contracts made by minors are voidable at the minor=s option after the minor reaches the age of majority. New Mexico statutes of limitation are extended so that a minor has a minimum of one year after reaching majority to bring an action to seek redress. That means that issues such as forgery of the minor=s signature, voiding of deeds or agreements signed by a minor, or acts that have deprived minors of property to which they are rightfully entitled may result in litigation many years in the future.

ESTATE OF DURAN

Estate of Duran, 2003-NMSC-008, illustrates some of the problems that can ensue when the rights of minors are ignored. Macarita Sanchez died in 1932. She owned real property and was survived by five children, four of whom were minors. The property was divided into five parcels and each of the children were given one of the parcels. The estate was never probated. At the time of the deeding, two of the children remained minors. Three of the parcels were taken by the county for tax delinquency and deeded to the state in 1940. Two were redeemed by Macarita=s children. One was purchased by a Mr. Martinez. The deeds to the redeemed parcels were set aside in 1973 for inadequate property descriptions. Macarita=s second child had remained in possession of all the property until his death. Prior to his death he had treated the property as his own. He had paid all real property taxes due on it. In 1978, he had made a deed conveying the property in joint tenancy to himself and his wife.

Seventy years after Macarita died, the Supreme Court held that:

- The property had passed in co-tenancy to the five children on Macarita=s death in 1932.
- The deeds to the minors had not affected the co-tenancy.
- The tax deeds had not affected the co-tenancy.
- No event had occurred by which the minor=s had rejected or ratified the deeds.
- The second child had held and his successors continued to hold the land in constructive trust for the benefit of the remaining co-tenants.

You can easily imagine the disastrous consequences that may follow such a decision.

SUGGESTIONS

When gifting property to minors, it is best to place the property in a trust for their benefit so that proper decisions as to the disposition of it may be made by the Trustee. Gifting to a custodian for the minor under the Transfers to Minors Act can work well for small sums of money, but the arrangements are less flexible than a trust could provide.

An Internal Revenue Code Section 529 educational fund can be used to provide considerable flexibility of funding family members who elect higher education and to save income taxes on the earnings of such funds. In particular it avoids the Akiddie tax@ for children under the age of 14.

Various other arrangements are used to hold funds for minors. Before gifting property to minors, it is best to determine the purpose for which the property is being given. Once the purpose is known, the donor should be advised to consult with an attorney to determine how the property might best be held to accomplish the purpose.