

2. Assets and Benefits of Minor Children

Immigrants may hold, in a capacity as a “custodian” or “trustee,” assets for a child who is a U.S. citizen (“citizen child”) in the hopes that the citizen child will have a greater ability to protect the assets under U.S. law. Immigrants may also hold significant assets in their own name that they desire to leave to their citizen child upon deportation. This section highlights certain issues related to the protection of assets for the benefit of a citizen child (or children) and provides general guidance, including:

[The Effect of Deportation on Your Child’s Assets and General Considerations for Protecting Those Assets](#) > [Specific Considerations for Protecting Certain Common Assets](#) > [Unclaimed Property Laws](#) > [Checklist: Assets and Benefits of Minor Children](#)

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

The Effect of Deportation on Your Child's Assets and General Considerations for Protecting Those Assets

Generally, minor children (those under 18 years of age, depending on state laws) cannot own property because they are not old enough to enter into legal contracts. Therefore, property in a minor's possession is typically owned by a parent. Deportation of a parent can thus disrupt the child's possession or use of the property, including access to a bank account, vehicle, home, and other personal property. While you should consider granting power of attorney to a trusted individual who will remain in the U.S. to handle financial matters in case of deportation, you might also consider transferring assets for the benefit of the citizen child. Similarly, if you currently hold property for the benefit of your minor child, you should consider transferring custodianship or trusteeship to an individual who will remain in the U.S. in case you are deported. When assets are currently held in trust for the citizen child and the trustee is not subject to deportation, action may not be needed.

The Uniform Transfers to Minors Act

Every state has adopted some form of the Uniform Transfers to Minors Act (UTMA). The UTMA permits the transfer of a wide variety of property—including real or personal and tangible or intangible property—to a custodian for the benefit of a minor.

Transfers under the UTMA are irrevocable and leave the donor with no legal or equitable rights in the property. The owner transfers "legal title" of the property to an adult (custodian) while the minor retains "equitable title." Equitable title means that the child gets the benefits of the property but cannot sell or mortgage the property until becoming a legal adult.

The custodian has broad powers regarding the use of the assets for the child. For example, the custodian may use the funds toward the child's rent, utilities, car payments and repair bills, activities, and spending money, in addition to expenses such as education and medical care. However, the custodian has a fiduciary duty to the child to manage the funds as "would be observed by a prudent person dealing with property of another." Accordingly, the custodian can be personally responsible for losses of the child's property if found to have acted imprudently. The child generally has a right of accounting, which requires the custodian to document what has happened to the child's

property. Most state laws hold that an account under UTMA must be turned over to the child when they turn 21. In some states, this can be extended to age 25.

UTMA agreements are popular because they can be made with a simple writing, can appoint additional adults as substitute custodians, and generally do not require an attorney. However, in order for the state Transfers to Minors Act (TMA) to apply to a transfer, the agreement must explicitly state that the agreement is made pursuant to the state TMA. Assets may be identified by general description, but property not included in the document or inadequately identified will not be transferred.

As a general rule, custodial accounts under the TMA should not be used for significant gifts or for a series of gifts that will grow over time. UTMA accounts do not guarantee that funds will be used for a specific purpose and the entire amount of the account will be transferred to the child for uninhibited use at the age of maturity. Also, when a significant amount of assets—more than a few thousand dollars—are transferred in a TMA agreement, courts may intervene to create a trust for management of the assets. Courts may require investment of assets for return at a later time, or create a “blocked” account that permits withdrawals only by a court order.

Trusts, Guardianships, and Conservatorships

State law also provides for the creation of more formal arrangements for the management of assets, including: trusts; co-signed accounts or title documents; guardianships; or conservatorships. These arrangements are generally more appropriate for assets of significant value or when more complex schemes are desired to protect property from transferring to your citizen child immediately upon their reaching the age of maturity (generally, 21), or by creating special restrictions that assets be used for a specific purpose (e.g., education).

When the Departing Parent is the Custodian or Trustee

If you are facing deportation and are the custodian or trustee of your child’s property, and your child is remaining behind in the U.S., you should have an alternate custodian named to control and protect the assets. If an alternate custodian was named in the original document, they may simply step into the role of custodian. In California, if the child has reached the age of 14, the child may appoint a new custodian who is a member of the minor’s family. Other states may have similar or additional rules. For other situations, the court may need to approve the new custodian or trustee, depending on the assets and the nature of the trust or custodial property.

If your child is leaving the U.S. with you and you are the trustee of their property, you should confer with an attorney experienced in this area before cashing-out the assets and taking them out of the country. As the trustee or custodian, you are obligated to protect the assets for your child, and the specific requirements for protection will vary depending on the specifics of the original arrangement. The specific rules of states may vary.

Restrictions on Transfer

Other laws, such as those governing the transfer of securities or investments, may require additional action for a transfer to be effective and enforceable. In an effort to protect the greatest amount of property, you should aim to include all potential property in a transfer, knowing that some transfers may be affected by other laws.

Taxes

Generally, special tax rules apply to assets held by minors. In some circumstances a minor will be taxed at the parent's or guardian's tax rate, and in other circumstances, special exclusions and tax rates may apply. If the minor's assets produce an income or a capital gain over a certain amount, taxes must be paid. Moreover, tax rates change regularly.

Personal Liability

The transfer of some property (e.g., real estate and motor vehicles) may create personal liability. For example, personal injury claims may be made against the owner of a motor vehicle or property even when the owner is a minor.

Emancipation

Emancipation is the legal process through which a minor, typically not less than the age of 16, can petition a court to be legally recognized as an adult. An emancipated minor may fully own property and enter into legally binding contracts. Because of the gravity of the order, the minor must demonstrate that they are sufficiently mature to manage their own financial and health-related affairs. If your citizen child is supported by family and friends who will remain in the U.S., emancipation may not be needed. However, in some cases, emancipation avoids the use of a custodian to transfer property or create a trust.

Specific Considerations for Protecting Certain Common Assets

The following provides specific considerations for protecting certain common assets. This is not an exhaustive list, and you should make an inventory of all possible assets, not just those listed below, and attempt to determine how each asset will be handled if you are deported. If possible, you should consult an attorney for guidance on state-specific property laws.

Personal Property

Your child may acquire other valuable personal property, such as jewelry, computers, electronics, and other consumer products. Legally, this type of property is typically owned by you as the child's parent or guardian. Although personal property may be owned by a minor in some circumstances, a minor generally is not old enough to enter into legal contracts relating to the property or to exercise all of the rights associated with owning the property. The UTMA allows transfer of most all personal property to a custodian for the benefit of the child. When considering what property to include in a transfer under the UTMA or in connection with the creation of a trust, you should think broadly about all assets and personal property including cell phones and gifts, payroll, or other prepaid cards. Property not described will not be transferred.

Bank Accounts

Banks and other financial institutions (such as credit unions) may be chartered under state or federal law. Accordingly, laws regarding account ownership vary among financial institutions. Generally speaking, however, if you are a joint account holder with your citizen child and you face deportation, you should consider modifying the account or transferring the funds to an account that allows another trusted adult to serve as a custodian. The institution will likely have a special form used to adjust ownership.

In many instances, bank accounts for minors reflect the UTMA. Accounts are held by “(the adult) as custodian for (the minor) under the (applicable state) Uniform Transfers to Minors Act.” Once opened, the account immediately becomes the property of the minor and cannot be undone. The account is automatically transferred to the minor upon reaching adulthood, and a custodian may use the proceeds of the account only for the benefit of the minor.

Credit Cards

Generally, U.S. credit card companies do not issue credit cards to minors as primary account holders. However, credit card companies may issue credit cards to minors as authorized users on an adult's account, when the adult is responsible for paying all debts incurred on the account. Transfer of the account is likely prohibited by the adult's cardmember agreement. If you are deported, your child's continued use of your credit card can have negative consequences if any incurred debts are not paid. If you want your child to have access to credit, they should become an authorized user on your account (if keeping your credit card account open) or the account of another adult. See [Chapter 5 on Credit Cards, Prepaid Cards, and Debit Cards](#) for more information on what to do with your credit card account if deported.

Motor Vehicles

State laws vary on the age at which a person can legally own a motor vehicle. Generally, a minor cannot be the sole owner. Some states allow minors to register a car at the age of 16, while others require a parent or guardian to sign (e.g., the registration or car loan) on behalf of a minor. Insurance companies may also restrict when a minor may qualify for insurance coverage. If you are facing deportation and are currently the co-signer on your child's car registration, car loan, or insurance policy, you should have a different adult serve as the adult co-signer.

Real Property (Land, House, or Condo)

Ownership of land, a house, or a condominium is governed by state law. In many states, a minor may own this property but cannot directly purchase, sell or make contracts relating to the property—this must be done indirectly through a trust, guardianship or conservatorship. If you are facing deportation and are the trustee, guardian, or conservator of your child's property, you should consider transferring the title to another adult for the benefit of the minor.

Lawsuit Settlements, Investment, and Inheritance

If a minor is the recipient of property or money from a legal judgment, a guardian or conservator is usually appointed to receive and manage those assets on behalf of the minor. Similarly, minors generally cannot own or manage stocks, bonds, mutual funds, annuities, life insurance policies, patents, or royalties. If a minor receives property or money due to inheritance, the assets will either be placed in trust (for the benefit of the minor) or a court may supervise the administration of the assets. If you are facing

deportation and are the guardian or conservator for any of these assets on behalf of your child, you should appoint a new guardian or conservator to assume that role.

Child Support and Custody Orders

Family courts—which deal with issues such as divorce, custody, and child support—operate separately from immigration courts. In most cases, there is no communication between family and immigration courts. Therefore, a family court order will not automatically be modified upon a parent’s deportation. If a family court order will be affected by deportation—including custody or child support—you must petition the court that created the order for modification. Child custody and related issues are discussed in more detail in Chapter 1 of this guide.

Maintenance of child support payments can be a complicated problem depending on whether the obligee (person receiving money) or obligor (person owing money) is deported, whether the citizen child accompanies the deported parent, and whether the destination country recognizes a foreign child support order.

If you are receiving child support and face deportation, and your citizen child will remain in the U.S., you should immediately petition the family court for modification of the order to ensure that your child will continue to receive support through a new guardian. If you have full custody of your citizen child and want them to accompany you outside of the U.S., you must typically receive permission from the court.

Numerous countries have reciprocal child support agreements with the United States, including: Australia, Brazil, Canada, Czech Republic, Ecuador, El Salvador, Finland, Honduras, Hungary, Ireland, Israel, Netherlands, Nicaragua, Norway, Philippines, Poland, Portugal, Slovak Republic, Switzerland, and The United Kingdom of Great Britain and Northern Ireland. If a parent owing child support money is deported to one of these countries, a U.S. child support order can be enforced in the foreign court. Also, if the child lives in one of these countries, the foreign court may issue an order enforceable against a parent owing child support money who remains in the U.S.

Education Savings Plans

An education savings plan is different from a regular bank account set up for saving for school. Depending on the type of plan, special transfer rules may apply.

Education Savings Accounts (ESAs)

An Education Savings Account, also called a Coverdell Education Savings Account, is considered an asset of the minor's parent or guardian. For a minor leaving the country with the deported parent, the account may generally be "liquidated" – that is, turned to cash – if this is not specifically prohibited by the account creation conditions, but penalties or taxes may be owed. The funds may be used for non-educational purposes, but there may be an associated penalty. For a minor child remaining in the country, care should be taken to ensure that a remaining parent or guardian is aware of the account. A financial consultant from the firm hosting the account should be able to ensure a smooth transition of account control.

529 Savings Plans

In contrast to the Coverdell ESA, a 529 plan remains in the control of the party creating the account. Because of this, the funds may not be considered an asset of either the minor or the minor's guardian, and the funds may become unavailable to the minor unexpectedly if the controlling party decides to remove them or change the beneficiary of the 529 plan. If a 529 plan designating the minor exists, a parent facing deportation or another parent or guardian may wish to discuss the minor's future educational plans with the party who created the 529 savings plan. If it is the parent being deported who created the 529 plan, such parent may wish to name a successor owner of the plan, recognizing that the successor owner has the ability to redirect the funds away from the minor. This may allow the minor to know if they may rely on the funds in the future despite any changed circumstances.

Government Benefits

A citizen child may be receiving benefits, grants, or financial aid from federal, state, county, and/or local governmental programs. Eligibility for these programs might be adversely affected by the deportation of a parent or guardian. Parents who are immigrants should investigate whether eligibility for the programs is conditional and whether action is necessary to maintain eligibility upon the parent's deportation. Parents should also investigate whether their citizen child may qualify for assistance through other programs, including those that provide benefits to "unaccompanied" youths or minors. Where possible, a description for obtaining or maintaining these benefits should be provided to the citizen child and/or a guardian or custodian. A guardian may need to apply to become a representative payee of a minor.

Unclaimed Property Laws

Unclaimed property laws, also known as “escheat” laws, require financial institutions to report when personal property (for example, money) has been abandoned or unclaimed after a period of time under state law—often five years. Before assets can be considered abandoned, the institution must make a diligent effort to try to locate the owner. After the property is abandoned, the state keeps record of the asset and the owner may make a claim to retrieve the property. The National Association of Unclaimed Property Administrators maintains databases to search for unclaimed property and state law may have special restrictions. Diligently drafted agreements and up-to-date records (as well as making sure that bank accounts and other types of financial accounts are not closed due to inactivity) may prevent the loss of these assets, though citizen children, custodians, and those with power of attorney should be aware that escheated property may be retrieved if later discovered.

Checklist: Assets and Benefits of Minor Children

Property held by a minor is generally governed by state law. Where possible, consult a lawyer for advice on state-specific property laws and your individual best course of action.

- If you currently hold assets as custodian in the name of your minor child who is a U.S. citizen, consider transfer of the custodianship to a trusted individual who will remain in the U.S. should you be deported.
- Create a list of all available assets not currently protected that may be transferred or otherwise protected for the benefit of your minor child (including real and personal, tangible and intangible property). Where practicable, consider consolidating assets for easier management and transfer.
- Draft an agreement for the transfer of the identified assets to a custodian for the minor under the Uniform Transfers to Minors Act (UTMA) to be executed immediately or, at a minimum, before deportation (including during detention, if needed).
- If in possession of significant or unique assets (including real estate), consult a lawyer to consider the formation of a trust, guardianship, or conservatorship for the benefit of your minor child with a trustee who will remain in the U.S.
- Investigate whether any government benefits your minor child receives may be affected by your deportation, whether your child may qualify for additional benefits upon your deportation, and leave instructions for your minor child and/or your child's guardian for maintaining and/or obtaining these benefits.
- If possible, ensure all bank accounts are jointly-held by your minor child and a custodian whom you trust and who will remain in the U.S. to ensure your citizen child has continued access.

- Consider granting power of attorney to someone who will remain in the U.S. to handle the disposition of any other assets in your absence.
- If your minor child is leaving the country with you during deportation, a professional with expertise should be consulted to determine if and how your child's assets may be sold and taken out of the country with him or her.
- You and your child may request an accounting from any custodian or trustee managing your child's assets in order to ensure that the assets are safe and are being managed appropriately.