



**GERNER &  
KEARNS** CO.,  
L.P.A.  
Attorneys at Law



# Seminar Materials

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Margie Cunningham, Attorney

mcunningham@gernerlaw.com



## Minor Accounts – Guardian, Custodian, Trust & Representative Payee

### Helping Families Save Their Homes Act of 2009, Title VII

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(513) 241-7722

**Gerner & Kearns Co., L.P.A.** [www.gernerlaw.com](http://www.gernerlaw.com)

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One Riverfront Place  
6th Floor  
Newport, KY 41071

335 East Third Street  
Newport, Kentucky 41071

215 West Ninth Street  
Cincinnati, Ohio 45202

Minor Accounts:

1) Guardian (Court Order)

- a) How/What – Appointed by Court to be responsible for another person (ward) and/or another person's property; answers to Court for providing proper care and management.
- b) Why – minor, physically or mentally disabled adult; voluntary/involuntary
- c) Types – guardian of person, guardian of the estate, limited guardian, interim guardian, emergency guardian, conservator

2) Custodial Accounts (Uniform Transfer to Minors Act (formerly Uniform Gift to Minors Act)

- a) How – Grantor gives "To \_\_ (custodian) \_\_ as custodian for \_\_ (minor) \_\_ under the Ohio Transfer to Minors Act." (ORC 5814.02(A))
- b) Who – Custodian is an adult who will manage the property until the child reaches the age when control passes to the child.
- c) What – The custodian manages the property, making decisions concerning buying and selling, reinvesting earnings and so forth. The custodian may also take money from the account to spend for the "benefit of the minor."
- d) Minor
  - i) Ownership – A transfer under the Uniform Act "is irrevocable, and the custodial property is indefeasibly vested in the minor."
  - ii) Recourse – can petition Court for payment, accounting, and other.
- e) Custodian
  - i) Duties – legal duty to preserve the assets for the minor (except to the extent properly expended for the benefit of the minor) and to turn the assets over to the minor at the age designated under the law of the relevant state.
    - (a) OH – 21/Death (or any age between 18 & 21 if designated by grantor in writing)
    - (b) KY – 18/ Death
    - (c) IN – 21/ Death
  - ii) Possible Consequences of taking Money for Own Purposes – Criminal Act, Personal Liability, Tax Liability
- f) Bank
  - i) No duties.
- g) Change of Custodian (ORC 5814.07)
  - i) May Resign and Designate Successor
  - ii) May Petition the Court for:
    - (a) Permission to resign and
    - (b) Designation of a successor custodian.
  - iii) May Designate Successor by Will – designation is effective at the custodian's death.

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- iv) If Intestate/Incompetent –
  - (a) the custodian’s legal representative may designate successor upon court approval;
  - (b) effective as of date of death/incompetency.
- v) If a not eligible, renounces or dies and does not have a legal representative:
  - (a) Guardian of the minor shall be successor
  - (b) If no guardian – one of following to petition Court to appoint:
    - (i) a donor or transferor, the legal representative of the donor or transferor, the legal representative of the custodian, a member of the minor’s family who is eighteen years of age or older, or the minor, if the minor has attained the age of fourteen years, may petition the court for the designation of a successor custodian.
- vi) May be removed and successor designated – upon petition and proof of wrongdoing

3) Other Alternatives:

- a) Trust Account – Trustee of a Trust opens account for Trust.
  - (1) Pro: Greater Protection & Flexibility; Suitable for Larger sums of money
  - (2) Con: More Expensive, Complicated, and time consuming.
- b) Representative Payeeship – representative/authorized representative who receives state/federal benefits on behalf of another; annual accounting to government service.
  - (1) Pro: If only significant income is SSI, do not need guardian appointed
  - (2) Con: only for certain state/federal benefit/entitlement programs; can manage no other money
  - (3) Examples: Social Security, Social Security Disability Insurance, VA benefits, Railroad Retirement Benefits, welfare benefits, etc.

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Helping Families Save Their Homes Act of 2009, Title VII, effective May 20, 1009. (S.B. 896, P.L. 111-22)

1. What – requires the purchaser of a Foreclosure property to allow bona fide tenants to stay in the property for remainder of lease term; or if no lease, for 90 days.
2. Who – Bona Fide Tenants:
  - i. Tenants who are not the Mortgagor or a member of Mortgagor’s immediate family;
  - ii. With Leases/Tenancy that is result of Arm’s Length Transaction;
  - iii. Lease/Tenancy requires rent that is not less than fair market rent, unless it is reduced by Federal, State or local subsidy.
3. How to Comply –
  - i. Determine if there is reason to believe that the property is owner or tenant occupied.
  - i. Send Notice.
    1. If the property is owner occupied, or we have reason to believe that it is owner occupied, we send the Owner Occupied Notice, with 3 days notice.
    2. If the property is tenant occupied, or we have reason to believe that it is tenant occupied, we send the Tenant Occupied Notice, with 90 day notice with a request for documentation.
    3. If the occupancy status is unknown, we send the Notice based on the type of property.
      - Single Family Unit – Owner Occupied Notice – 3 day notice
      - Multi Family Unit – Tenant Occupied Notice – 90 day notice with request for doc

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