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The Best Kept Secret In Legal Hollywood *Guardianship provisions of the probate law protects children in the entertainment and sports world*

BY BRUCE SIRES

Children have been earning large sums in entertainment and sports for years and only a small fraction of those children and their parents have handled their finances as required by the laws which protect a child with money. This article deals only with children who enter into contracts described in Family Code §6750. Generally speaking, this includes children who are employed in any aspect of film, theater, television, sports, radio, music or literary industries. Interestingly, it does not include models.

Up until Jan. 1, 2000, the earnings of these children belonged to their parents and were not the child's money. Only the money set aside in Coogan accounts, if any, was the child's money. However, in the case of many contracts which were court-approved, the parents were required by the court to relinquish their rights to the child's earnings, and under those contracts the child's earnings did belong solely to the minor.

Production companies seek court approval of minor's contracts so that the child cannot exercise his or her legal right to disaffirm the contract before attaining the age of majority, currently age 18. Prior to Jan. 2, 2000, the minor owned his or her earnings under such contracts which included this clause. Under those contracts and all minor's contracts after that date, whether or not court approved, 100 percent of the minor's earnings now belong to the minor.

Many people thought that the required set aside for children whose contracts were approved by the courts better protected those children than those whose contracts were not court-approved; so the amendments to the Coogan law effective on Jan. 1, 2000, have been believed to better protect such children by expanding the set aside to all such contracts. However, it only is a small fraction of the child's money set aside. Prior to 2000, 25 percent of a minor's earnings from a court-approved contract were generally set aside for the minor; in some cases 30 percent was set aside. Today, only 15 percent is required to be set aside, without regard to court approval (Family Code §6752).

Earnings belong to the minor

However, the real advantage in protecting children and their earnings is that all of their earnings belong to them and the laws which protect these minors and those third parties that deal with these minors are the guardianship laws under the California Probate Code.

Where a minor is to be paid money, it is incumbent upon the minor's parents, who are entitled to receive the money under Family Code §6750, to seek authority from the Probate Court under the guardianship law to determine how the money is to be held, managed, invested and spent (Probate Code §§3411 and 3413). This article assumes that no guardianship exists. The minor's funds include all monies belonging to the minor plus any amount to be paid to him or her including monies which are to be set aside under the Coogan law. It does not include funds held under a custodianship under the California Uniform Transfers to a Minor Act (CUTMA) (Probate Code §3400).

Payments to parents

Depending upon the amount of the minor's funds, the court may authorize payments to the parents under the following circumstances:

1. Appointment of a guardian of the minor's estate to whom all monies are paid (Probate Code §3413).
2. Payment to a custodianship under CUTMA (Probate Code §3413(b)).
3. Payment to the county treasurer (§3413(a)).
4. If the minor's funds do not exceed \$20,000, the court may authorize and determine an investment that is in the best interest of the minor (Probate Code §3413(b)).
5. If the minor's funds do not exceed \$5,000, the payment may be made directly to the parents who must account to the minor for the funds when he or she attains age 18 ((Probate Code §3413(d)).

Where the minor has the prospect of earning large sums, the court is most likely to require the creation of a guardianship. In fact, with all of the various legal arrangements in which the minor may become involved, the guardianship is the recommended course of action because it protects both the minor and all third parties with whom the child will be dealing.

Without a guardianship, all of the minor's dealings with third parties may be disaffirmed by the minor ((Family Code §6710). There is no authority for anyone to make agreements on the minor's behalf, except for the guardian of the estate of the minor or the minor himself or herself ((Family Code §6700). The agreements and actions of the guardian of the estate may not be disaffirmed. The minor's power to contract is limited by Family Code §6701 and his or her right to disaffirm is limited by Family Code §§6711-6713. A minor has no right or power to delegate his or her authority to anyone (Family Code §6701(a)). Only the probate court has that authority, which the court may delegate to a guardian of the minor's estate by issuing letters of guardianship to the guardian.

What other financial dealings are we talking about where all parties will want to be assured that the agreements are legally binding and not voidable by anyone? At its simplest, this includes the hiring and payment of attorneys, business managers, talent agents, sports agents, literary agents, insurance agents, etc. Many of these arrangements have been considered impractical or impossible because these contracts cannot be approved by the court in a minor's contract proceeding. However, they may be entered into with the minor's guardian of the estate.

Many minors are employed for long periods of time at a location far from home. For example, a minor from Chicago may be employed in Los Angeles on a weekly sitcom. The minor's parents may need a home and car while residing here, but while the minor is financially able, the parents' wealth and earnings are nowhere near being able to manage these things. In Los Angeles County, the court generally requires the purchase of real estate for cash. A guardian of the minor's estate may, with court authority, purchase the automobile and a home. A minor may not purchase real estate other than through a guardianship.

Often for tax planning purposes a performer will establish a personal service corporation to lend his or her services to a production company. To the extent the minor can legally do the transactions involved, he or she may still disaffirm. A guardian of the estate, however, may form the corporation and enter into agreements with attorneys, business managers, the minor and the production company, appoint directors and officers, etc. There is no issue of disaffirmance.

Binding contract

Music industry managers may enter into a binding contract with the minor's guardian. The guardian can enter into a binding contract with the music industry manager protecting both the minor and the manager.

A guardianship of the estate of a minor is commenced by filing a Petition or Appointment of Guardian of Minor with the Probate Court (Probate Code §1500) in the county in which the minor resides, or "such other county as may be in the best interests of the proposed ward" (Probate Code §2201).

A guardianship of the estate may be commenced in California for a nonresident minor in the county in which the minor is temporarily living where he or she has property, or where the court determines is in the minor's best interests (Probate Code §2202). In Los Angeles County, if the natural parents of the minor seek appointment as guardians, the matter may be heard ex parte, that is, without a noticed hearing (Los Angeles Superior Court, Rules of Court, Chapter 10, Probate Dept. Rule, §10.157(a)).

Otherwise, notice of the hearing on the guardianship must be given to the minor, if over age 12, and to all relatives within the second degree, that is grandparents, parents, brothers, sisters, children and grandchildren; and to the persons having custody of the minor, if not the parents. Notice to parents, the minor and persons having custody of the minor must be given by personal services and to all others by mailed notice of hearing, at least 15 days before the hearing date (Probate Code §1511). Generally, the guardian must be bonded to the extent of the value of tangible and intangible personal property and one year's income from all sources. If the minor's Coogan account is in a blocked account, those funds and investments will not be bonded (Probate Code §2320 et. seq.).

The guardian must file an Inventory and Appraisal of all of the minor's assets on the date letters of guardianship are issued (Probate Code §2610(a)) and must file an accounting of the minor's income and disbursements and report to the court all material transactions during the first year of the guardianship and biennially thereafter (Probate Code §2620(a)). This protects the minor from misuse of funds by the guardian and protects the guardian by getting court ratification of all disclosed activities.

Certain transactions of the guardian must receive court approval prior to taking those actions. The most common of these actions include the following:

1. The purchase of a residence (Probate Code §2571) or any other property (Probate Code §2570).
2. The sale of real or personal property (Probate Code §2540 et seq.)
3. Refinancing of real property, for example, to reduce the interest rate and payments or to cash out some equity (Probate Code §2550 et seq.)
4. Payment of compensation to the guardian and attorneys for the guardian (Probate Code §2640 et seq.)

In all matters of a guardianship of a minor's estate, the probate courts' overriding point of view is that if the minor's parents are living, it is their obligation to support, maintain and educate their children and therefore the minor's estate must be preserved for the minor until he or she attains majority.

Thus, the wisest path is to have the court approve in advance all transactions which are unusual for the "ordinary" family situation, particularly when they involve substantial expenditures of the minor's estate. It would not be prudent to take undue risks with the minor's estate given all the fiduciary relationship among the minor, his or her parents and their legal and financial counselors.

The most significant change in the law to protect minors in the entertainment, literary and sports businesses was the transfer of ownership of their earnings from their parents to themselves. With that single change, the set aside provisions of Family Code §6750 et seq. became insignificant in the overall protection of the minor's earnings.

That change shifted the protection of 100 percent of the minor's earnings to the guardianship provisions of the Probate Code. These procedures provide mandatory protection not only to the minor but to all those with whom the minor deals.

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Test

1 Hour MCLE Credit

1. A child's earnings under a court approved contract to perform in a feature film approved prior to Jan. 1, 2000, belong to the minor's parents.
2. A child's modeling contract with K-Mart is subject to the Coogan Law.
3. All of the earnings of a minor under a contract described in Family Code §6750 are subject to the guardianship law as set forth in the California Probate Code.
4. A minor's contract under §6750 may be disaffirmed by the minor if it is not approved by the court.
5. Monies set aside in a Coogan account under the minor's contract are not subject to Probate Court jurisdiction in the minor's guardianship.
6. The parents of a minor who has performed in a few successful commercials, has earned a total of \$4,000 (after taxes) and is about to sign a new contract under which she will receive \$2,000 need not file a petition with the Probate Court to determine how to hold those funds.
7. The most business flexibility and legal certainty when dealing with highly paid minors in a rock band is provided by a probate guardianship.
8. A minor rock star cannot enter into a mutually binding (non-disaffirmable) contract with a music industry manager without a guardian being appointed to represent his estate.
9. If the parents of a successful minor playwright have been appointed guardians of her estate, they can pay themselves fees as her literary agent if the Probate Court has approved their agency agreement.
10. With prior Probate Court approval, a minor's guardian may purchase a residence for the minor and his or her family with the minor's estate, even if the purchase requires encumbering the property with a purchase money first trust deed.
11. A minor who is living temporarily in Los Angeles County may have a guardianship established there for his or her estate.
12. A guardian of a minor's estate must be bonded for an amount of the guardian's own choosing.
13. A guardian may pay legal fees due to his child's entertainment attorney without prior court approval.
14. A guardian must file an annual accounting to the Probate Court of all of his or her receipts and disbursements, reporting all purchases, sales and other transactions and requesting compensation for themselves and their attorneys.
15. The most significant change in the Coogan Law in January 2000, was that all of a minor's earnings under a contract described in Family Code §6750 now belong to the minor and not to his or her parents.
16. A guardian who discloses all transactions in a regularly filed accounting may not be held liable for fully disclosed transactions with no fraud involved, even after the minor attains majority.
17. Without a guardianship, a minor may form a valid personal service corporation and enter into a non-disaffirmable contract with the loan out company and the loan out with the production company, if the contracts are court approved.
18. The natural parents of a minor may be appointed guardians of his or her estate without a noticed hearing in Los Angeles County.
19. The Probate Court may authorize all of the minor's funds to be held and invested under a custodianship under the California Uniform Transfers to Minors Act.
20. Now that the minor owns his or her earnings under a contract described in Family Code §6750, the Coogan Law protects the production companies more than minors.

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