

FOR APPROVAL

**AMENDMENTS TO THE
UNIFORM PROBATE CODE**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
BIG SKY, MONTANA
JULY 18 - 25, 2008

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Cost-of-living Adjustments. The UPC contains a number of specific dollar amounts. These amounts were last revised in 1990. Between 1990 and today, the consumer price index (CPI) has increased about 50 percent. According to the inflation calculator on the Bureau of Labor Statistics website (www.bls.gov), \$1.00 in 1990 is worth \$1.64 in June 2008. The Drafting Committee proposes increasing the UPC's specific dollar amounts by 50 percent, as follows:

Section 2-102(2) is amended to change \$200,000 to \$300,000; 2-102(3) is amended to change \$150,000 to \$225,000; and 2-102(4) is amended by changing \$100,000 to \$150,000.

Section 2-202(b) is amended by changing \$50,000 to \$75,000.

Section 2-402 is amended by changing \$15,000 to \$22,500; 2-403 is amended by changing \$10,000 to \$15,000; and 2-405 is amended by changing \$18,000 to \$27,000 and by changing \$1,500 to \$2,250.

Section 3-1201 is amended by changing \$5,000 to \$7,500.

SECTION 1-109. COST OF LIVING ADJUSTMENT OF CERTAIN DOLLAR AMOUNTS.

(a) In this section, "CPI means the Consumer Price Index (Annual Average) for All Urban Consumers (CPI-U): U.S. city average — All items, reported by the Bureau of Labor Statistics, United States Department of Labor or by a successor federal reporter, or, if that index is discontinued, an equivalent index reported by a federal authority. If no such index is issued, the term means the substitute index chosen by [insert appropriate state agency]."

(b) The dollar amounts stated in Sections 2-102, 2-201(b), 2-402, 2-403, 2-405, and 3-1201 apply to the estates of decedents who die in or after [insert year in which this act becomes effective], except that, for the estates of decedents dying after [insert year after the year in which this act becomes effective], these dollar amounts must be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than the CPI for calendar year [insert year immediately preceding the year in which this act becomes effective], which shall be known as the Reference Base Index. The amount of each increase or decrease, if any, is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the Reference Base Index. If any increase or decrease produced by the computation is not a multiple of \$100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next lower or

higher multiple of \$100, except that, for purposes of Section 2-405, the periodic installment amount may not be rounded down or up but is the lump-sum amount divided by 12. If the CPI for the year immediately prior to the effective date of this act is changed by the Bureau of Labor Statistics, the Reference Base Index shall be revised using the re-basing factor published by the Bureau of Labor Statistics, or other comparable data if a re-basing factor is not published.

[(c) Before February 1 of [insert year after the year in which this act becomes effective], and before February 1 of each succeeding year, the [insert appropriate state agency] shall issue a cumulative list, beginning with the dollar amounts effective for the estates of decedents dying in [insert year after the year in which this act becomes effective], of each dollar amount as increased or decreased under this section.]

Legislative Note: To establish and maintain uniformity among the states, an enacting state that has already enacted the sections listed in subsection (b) should bring those dollar amounts up to date. A state enacting these sections after 2008 should adjust the dollar figures for changes in the cost of living that have occurred between 2008 and the effective date of the new enactment.

SECTION. 1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent ~~Articles~~ articles that are applicable to specific ~~Articles~~ articles, parts, or sections, and unless the context otherwise requires, in this [code]:

* * *

(41) “Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

* * *

(45) “Sign means, with present intent to authenticate or adopt a record other than a will:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound,

or process.

* * *

SUBPART 1. GENERAL RULES

SECTION 2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE. Any part of the intestate estate not passing to ~~the~~ a decedent's surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals ~~designated below~~ who survive the decedent:

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:

(A) half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(B) the other half passes to the decedent's maternal ~~relatives in the same manner~~ grandparents equally if both survive, or to the surviving maternal grandparent, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking by representation;

(5) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, if there is no surviving grandparent

~~or descendant of a grandparent either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side with one or more surviving members in the same manner as the half described in paragraph (4);~~

(6) if there is no surviving spouse, descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent, but the intestate decedent has:

(A) one deceased spouse who has one or more descendants who survive the decedent, to those descendants by representation; or

(B) more than one deceased spouse who has one or more descendants who survive the decedent, the estate is divided into as many equal shares as there are deceased spouses, each share passing to those descendants by representation.

SECTION 2-104. REQUIREMENT ~~THAT HEIR SURVIVE DECEDENT FOR OF~~ SURVIVAL BY 120 HOURS; INDIVIDUAL IN GESTATION.

(a) [Requirement of Survival by 120 Hours; Individual in Gestation.] For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection (b):

(1) ~~An~~ an individual who was born before a decedent's death but who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent ~~for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly.~~ If it is not established by clear and convincing evidence that an individual who was born before the decedent's death ~~would otherwise be an heir~~ survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under Section 2-105.

(2) an individual who was in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives 120 hours after birth. If it is not established by clear and convincing evidence that an individual who was in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed to survive for the required period.

(b) [Section Inapplicable if Escheat Would Result.] This section does not apply if it would result in a taking of the intestate estate by the state under Section 2-105.

SECTION 2-108. ~~[RESERVED.] AFTERBORN HEIRS.~~ An individual in gestation at a particular time is treated as living at that time death if the individual lives 120 hours or more after birth.

Legislative Note: Section 2-108 is reserved for possible future use. The 2008 amendments moved the content of this section to Section 2-104(a)(2).

~~SECTION 2-114. PARENT AND CHILD RELATIONSHIP.~~

~~(a) Except as provided in subsections (b) and (c), for purposes of intestate succession by, through, or from a person, an individual is the child of his [or her] natural parents, regardless of their marital status. The parent and child relationship may be established under [the Uniform Parentage Act] [applicable state law] [insert appropriate statutory reference].~~

~~(b) An adopted individual is the child of his [or her] adopting parent or parents and not of his [or her] natural parents, but adoption of a child by the spouse of either natural parent has no effect on (i) the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent.~~

~~(c) Inheritance from or through a child by either natural parent or his [or her] kindred is precluded unless that natural parent has openly treated the child as his [or hers], and has not refused to support the child.~~

SECTION 2-114. PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES.

(a) A parent is barred from inheriting from or through a child of the parent if:

(1) the parent's parental rights were terminated and the parent-child relationship

was not judicially reestablished; or

(2) the child died before reaching [18] and there is clear and convincing evidence that immediately before the child's death the parental rights of the child's parent could have been terminated under other law of this state on the basis of non-support, abandonment, abuse or neglect, or other actions or inactions of the parent toward the child.

(b) For purposes of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

SUBPART 2. PARENT-CHILD RELATIONSHIPS

SECTION 2-115. DEFINITIONS. In this [subpart]:

(1) "Adoptee means an individual who is adopted.

(2) "Assisted reproduction means a method of causing pregnancy other than sexual intercourse.

(3) "Divorce means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage.

(4) "Functioned as a parent of the child means behaving toward the child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, such as fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as regular members of that household.

(5) "Genetic father means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under [applicable state law], the term means only the man for whom that relationship is established.

(6) "Genetic mother means the woman whose egg was fertilized by the sperm of the child's genetic father.

(7) "Genetic parent means a child's genetic father or genetic mother.

(8) "Incapacity means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.

(9) "Relative means a grandparent or a descendant of a grandparent.

Legislative Note: States that have enacted the Uniform Parentage Act (2000, as amended) should replace "applicable state law" in paragraph (6) with "Section 201(b)(1), (2), or (3) of the

Uniform Parentage Act (2000), as amended". Two of the principal features of Articles 1 through 6 of the Uniform Parentage Act (2000, as amended) are (i) the presumption of paternity and the procedure under which that presumption can be disproved by adjudication and (ii) the acknowledgment of paternity and the procedure under which that acknowledgment can be rescinded or challenged. States that have not enacted similar provisions should consider whether such provisions should be added as part of Section 2-115(6). States that have not enacted the Uniform Parentage Act (2000, as amended) should also make sure that applicable state law authorizes parentage to be established after the death of the alleged parent, as provided in the Uniform Parentage Act § 509 (2000, as amended), which provides: "For good cause shown, the court may order genetic testing of a deceased individual."

SECTION 2-116. PARENT-CHILD RELATIONSHIP: EFFECT. Except as otherwise provided in Section 2-119(b) through (d), if a parent-child relationship exists or is established under this [subpart], the parent is a parent of the child and the child is a child of the parent for purposes of intestate succession.

SECTION 2-117. PARENT-CHILD RELATIONSHIP: NO DISTINCTION BASED ON MARITAL STATUS. Except as otherwise provided in Sections 2-114, 2-119, 2-120, or 2-121, a parent-child relationship exists between a child and the child's genetic parents, regardless of their marital status.

SECTION 2-118. PARENT-CHILD RELATIONSHIP: ADOPTEE AND ADOPTEE'S ADOPTIVE PARENT OR PARENTS.

(a) [Parent-Child Relationship Between Adoptee and Adoptive Parent or Parents.]

A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.

(b) [Individual in Process of Being Adopted by Married Couple; Stepchild in Process of Being Adopted by Stepparent.] For purposes of subsection (a):

(1) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse.

(2) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by 120 hours.

(c) [Child of Assisted Reproduction or Gestational Child In Process of Being Adopted.] If, after a parent-child relationship is established between a child of assisted

reproduction and a parent under Section 2-120 or between a gestational child and a parent under Section 2-121, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for purposes of subsection (b)(2).

SECTION 2-119. PARENT-CHILD RELATIONSHIP: ADOPTEE AND ADOPTEE'S GENETIC PARENTS.

(a) [Parent-Child Relationship Between Adoptee and Genetic Parents.] Except as otherwise provided in subsections (b) through (d), a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.

(b) [Stepchild Adopted by Stepparent.] A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:

(1) the genetic parent whose spouse adopted the individual; and

(2) the other genetic parent, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.

(c) [Individual Adopted by Relative of a Genetic Parent.] A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

(d) [Individual Adopted After Death of Both Genetic Parents.] A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.

(e) [Child of Assisted Reproduction or Gestational Child Who Is Subsequently Adopted.] If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under Section 2-120 or between a gestational child and a parent or parents under Section 2-121, the child is adopted by another or others, the child's parent or parents under Section 2-120 or 2-121 are deemed the child's genetic parent or parents for purposes of this section.

SECTION 2-120. PARENT-CHILD RELATIONSHIP: CHILD CONCEIVED BY ASSISTED REPRODUCTION OTHER THAN A CHILD BORN TO A GESTATIONAL CARRIER.

(a) [Definitions.] In this section:

(1) “Birth mother means a woman, other than a gestational carrier under Section 2-121, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child’s genetic mother.

(2) “Child of assisted reproduction means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under Section 2-121.

(3) “Third-party donor means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(A) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;

(B) the birth mother of a child of assisted reproduction; or

(C) an individual who is determined under subsection (e) or (f) to have a parent-child relationship with a child of assisted reproduction.

(b) [Third-Party Donor.] A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.

(c) [Parent-Child Relationship with Birth Mother.] A parent-child relationship exists between a child of assisted reproduction and the child’s birth mother.

(d) [Parent-Child Relationship with Husband Whose Sperm Were Used During His Lifetime by His Wife for Assisted Reproduction.] Except as otherwise provided in subsections (i) and (j), a parent-child relationship exists between a child of assisted reproduction and the husband of the child’s birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction, and the husband is the genetic father of the child.

(e) [Birth Certificate: Presumptive Effect.] A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.

(f) [Parent-Child Relationship with Another.] Except as otherwise provided in subsections (g), (i), and (j), and unless a parent-child relationship is established under subsection (d) or (e), a parent-child relationship exists between a child of assisted reproduction and an

individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:

(1) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or

(2) in the absence of a signed record under paragraph (1):

(A) functioned as a parent of the child no later than two years after the child's birth;

(B) intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or

(C) intended to be treated as a parent of a posthumously conceived child if that intent is established by clear and convincing evidence.

(g) [Record Signed More than Two Years after the Birth of the Child: Effect]. For purposes of subsection (f)(1), neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached the age of majority.

(h) [Presumption: Birth Mother is Married or Surviving Spouse.] For purposes of subsection (f)(2):

(1) If the birth mother is married and no divorce proceedings are pending, then, in the absence of clear and convincing evidence to the contrary, her spouse is deemed to have satisfied subsection (f)(2)(A) or (B).

(2) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceedings were then pending, then, in the absence of clear and convincing evidence to the contrary, her deceased spouse is deemed to have satisfied subsection (f)(2)(B) or (C).

(i) [Divorce Before Placement of Eggs, Sperm, or Embryos.] If a married couple are divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be

treated as the former spouse's child.

(j) [Withdrawal of Consent Before Placement of Eggs, Sperm, or Embryos.] If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies the requirements of subsection (f).

(k) [When Posthumously Conceived Child Treated as in Gestation.] If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:

(1) in utero not later than 36 months after the individual's death; or

(2) born not later than 45 months after the individual's death.

Legislative Note: States are encouraged to enact a provision requiring genetic depositories to provide a consent form that would satisfy subsection (f)(1). The following provision is adapted from Cal. Health & Safety Code § 1644.7 and .8.

SECTION XXX. DUTY OF GENETIC DEPOSITORIES TO PROVIDE CONSENT FORM TO DEPOSITORS.

(a) Any entity that receives genetic material of a human being that may be used for conception shall provide to the person depositing genetic material a form for use by the depositor that, if signed by the depositor, would satisfy the conditions set forth in [Section 2-120(f)(1)] regarding the depositor's consent to assisted reproduction by the birth mother with intent to be treated as a parent of the child. The use of the form is not mandatory, and the form is not the exclusive means of expressing a depositor's intent. The form shall include advisements in substantially the following form:

"The use of this form for designating whether you consent to be treated as the parent of a child conceived during your life or after your death is not mandatory. However, if you wish to allow a child conceived during your life or after your death to be treated as your child (or beneficiary of other benefits such as life insurance or retirement) you should specify that in writing and sign that written expression of consent.

This specification can be revoked or amended only in writing signed by you (and not by spoken words).

You should consider how being treated as a parent of a child conceived during your life or after your death affects your estate planning (including your will, trust, and other beneficiary designations for retirement benefits, life insurance, financial accounts, etc.) These issues can be complex, and you should discuss them with your attorney."

(b) Any entity that receives genetic material of a human being that may be used for conception shall make available to the person depositing his or her genetic material a form that, if signed by the depositor, would revoke any previous expression of consent satisfying the

conditions set forth in Section 2-120(j). The use of the form is not mandatory, and the form is not the exclusive means of expressing a depositor's intent with respect to revocation or amendment of a prior expression of consent. The form shall include advisements in substantially the following form:

"The use of this form to revoke or amend a previous form for designating whether you consent to be treated as a parent of a child conceived during your life or after your death is not mandatory. This specification can be revoked or amended only in a writing signed by you (and not by spoken words). These issues can be complex, and you should discuss them with your attorney."

SECTION 2-121. PARENT-CHILD RELATIONSHIP: CHILD BORN TO A GESTATIONAL CARRIER.

(a) [Definitions.] In this section:

(1) "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection (e).

(2) "Gestational child" means a child born to a gestational carrier under a gestational agreement.

(3) "Gestational carrier" means a woman who is not an intended parent and who gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child's genetic mother.

(4) "Intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.

(b) [Court Order Adjudicating Parentage: Effect.] A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.

(c) [Gestational Carrier.] A parent-child relationship between a gestational child and the child's gestational carrier does not exist unless the gestational carrier is:

(1) designated as a parent of the child in a court order described in subsection (b);

or

(2) the child's genetic mother and a parent-child relationship does not exist with an individual other than the gestational carrier under this section.

(d) [Parent-Child Relationship With Intended Parent or Parents.] In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an intended parent who:

(1) functioned as a parent of the child no later than two years after the child's birth; or

(2) died while the gestational carrier was pregnant if:

(A) there were two intended parents and the other intended parent survived the birth of the child and functioned as a parent of the child no later than two years after the child's birth;

(B) there were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or

(C) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.

(e) [Gestational Agreement After Death or Incapacity.] In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent can be shown by:

(1) a record, signed by the individual that, considering all the facts and circumstances, evidences the individual's intent; or

(2) other facts and circumstances establishing the individual's intent by clear and convincing evidence.

(f) [Presumption: Gestational Agreement After Spouse's Death or Incapacity.] Except as otherwise provided in subsection (g), and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if:

(1) the individual, before death or incapacity, deposited the sperm or eggs that

were used to conceive the child;

(2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceedings were pending; and

(3) the individual's spouse or surviving spouse functioned as a parent of the child not later than two years after the child's birth.

(g) [Subsection (f) Presumption Inapplicable.] The presumption under subsection (f) does not apply if there is:

(1) a court order under subsection (b); or

(2) a signed record that satisfies subsection (e)(1).

(h) [When Posthumously Conceived Gestational Child Treated as in Gestation.] If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:

(1) in utero not later than 36 months after the individual's death; or

(2) born not later than 45 months after the individual's death.

(i) [No Effect on Other Law.] This section does not affect other law of this state regarding the enforceability or validity of a gestational agreement.

SECTION 2-122. EQUITABLE ADOPTION. This [subpart] does not preclude, limit, or affect application of the doctrine of equitable adoption.

SECTION 2-502. EXECUTION; WITNESSED OR NOTARIZED WILLS; HOLOGRAPHIC WILLS.

(a) [Witnessed or Notarized Wills.] Except as otherwise provided in subsection (b) and in Sections 2-503, 2-506, and 2-513, a will must be:

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(3) one of the following:

(A) signed by at least two individuals, each of whom signed within a reasonable time after ~~he [or she]~~ the individual witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will; or

(B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.

(b) [Holographic Wills.] A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(c) [Extrinsic Evidence.] Intent that ~~the~~ a document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

SECTION 2-504. SELF-PROVED WILL.

(a) A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this ____ day of _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am ~~eighteen~~ [18] years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as ~~[his][her]~~ (his)(her) will and that ~~[he][she]~~ (he)(she) signs it willingly (or willingly directs another to sign for ~~[him][her]~~ (him)(her)), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is ~~eighteen~~ [18] years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

~~The~~ State of _____

[County of _____]

Subscribed, sworn to and acknowledged before me by _____, the testator, and
subscribed and sworn to before me by _____, and _____, witness, this ___ day of
_____.

(Seal)

(Signed) _____

(Official capacity of officer)

(b) ~~An attested~~ A will that is executed with attesting witnesses may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

~~The~~ State of _____

[County of _____]

We, _____, _____, and _____, the testator and the witnesses, respectively,
name name name
whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that ~~he~~she (he) (she) had signed willingly (or willingly directed another to sign for ~~him~~her (him) (her)), and that ~~he~~she (he) (she) executed it as ~~his~~her (his) (her) free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of ~~his~~her (his) (her) knowledge the testator was at that time ~~eighteen~~ [18] years of age or older, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the
testator, and subscribed and sworn to before me by _____, and _____, witnesses,
this ___ day of _____.

(Seal)

(Signed) _____

(Official capacity of officer)

(c) A signature affixed to a self-proving affidavit attached to a will is considered a
signature affixed to the will, if necessary to prove the will's due execution.

**SECTION 2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH
INTESTATE SUCCESSION; EXCEPTIONS.**

(a) [Definitions.] In this section:

(1) “Adoptee” has the meaning set forth in Section 2-115.

(2) “Child of assisted reproduction” has the meaning set forth in Section 2-120.

(3) “Distribution date” means the time when an immediate or a postponed class
gift is to take effect in possession or enjoyment.

(4) “Functioned as a parent of the adoptee” has the meaning set forth in Section 2-
115, substituting “adoptee” for “child” in that definition.

(5) “Functioned as a parent of the child” has the meaning set forth in Section 2-
115.

(6) “Gestational child” has the meaning set forth in Section 2-121.

(7) “Genetic parent” has the meaning set forth in Section 2-115.

(8) “Relative” has the meaning set forth in Section 2-115.

~~(a)~~ **(b) [Terms of Relationship.]** A child of assisted reproduction, a gestational child,
and, except as otherwise provided in subsections (e) and (f), an adopted individual, adoptee and
a child born to parents who are not married to each other, individuals born out of wedlock, and
their respective descendants if appropriate to the class, are included in class gifts and other terms
of relationship in accordance with the rules for intestate succession.

(c) [Relatives by Marriage.] Terms of relationship in a governing instrument that do not
differentiate relationships by blood from those by affinity marriage, such as “uncles”, “aunts”,

~~“nieces” or “nephews”~~ uncles, aunts, nieces, or nephews, are construed to exclude relatives by affinity marriage, unless:

(1) when the governing instrument was executed, the class was then and foreseeably would be empty; or

(2) the language or circumstances otherwise establish that relatives by marriage were intended to be included.

(d) [Half-Blood Relatives.] Terms of relationship in a governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as ~~“brothers”~~, ~~“sisters”~~, ~~“nieces”~~, or ~~“nephews”~~ brothers, sisters, nieces, or nephews, are construed to include both types of relationships.

~~(b)~~ **(e) [Transferor Not Genetic Parent.]** In addition to the requirements of subsection (a), in construing a dispositive provision of a transferor who is not the natural genetic parent, an individual a child born to the natural of a genetic parent is not considered the child of that parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of a relative of the genetic parent functioned as a parent of the child before the child reached [18] individual lived while a minor as a regular member of the household of that natural parent or of that parent’s parent, brother, sister, spouse, or surviving spouse.

~~(c)~~ **(f) [Transferor Not Adoptive Parent.]** In addition to the requirements of subsection (a), in construing a dispositive provision of a transferor who is not the adopting adoptive parent, an adopted individual adoptee is not considered the child of the adopting adoptive parent unless:

(1) the adoption took place before the adoptee reached [18];

(2) the adoptive parent was the adoptee’s stepparent or foster parent; or

(3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached [18] adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

(g) [Class-Closing Rules.] The following rules apply for purposes of the class-closing rules:

(1) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

(2) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent’s death, the child is treated as

living on the distribution date if the child lives 120 hours after birth and was in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death.

(3) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

SECTION 2-805. REFORMATION TO CORRECT MISTAKES. The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

SECTION 2-806. MODIFICATION TO ACHIEVE TRANSFEROR'S TAX OBJECTIVES. To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

SECTION 3-406. FORMAL TESTACY PROCEEDINGS; CONTESTED CASES; TESTIMONY OF ATTESTING WITNESSES.

~~(a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state, competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.~~

~~(b) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.~~

In a contested case in which the proper execution of a will is at issue, the following rules apply:

(1) If the will is self-proved pursuant to Section 2-504, the will complies with the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

(2) If the will is notarized pursuant to Section 2-502(a)(3)(B), but not self-proved, there is

a rebuttable presumption that the will complies with the requirements for execution upon filing the will.

(3) If the will is witnessed pursuant to Section 2-502(a)(3)(A), but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

SECTION 8-101. TIME OF TAKING EFFECT; PROVISIONS FOR TRANSITION.

(a) This Code takes effect January 1, ~~19~~ 20.

(b) Except as provided elsewhere in this Code, on the effective date of this Code or of any amendment to this Code:

(1) the Code or the amendment applies to governing instruments executed by decedents dying thereafter;

(2) the Code or the amendment applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code or the amendment;

(3) every personal representative or other fiduciary holding an appointment under this Code on that date, continues to hold the appointment but has only the powers conferred by this Code or the amendment and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) an act done before the effective date in any proceeding and any accrued right is not impaired by this Code or the amendment. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and

(5) any rule of construction or presumption provided in this Code or the amendment applies to governing instruments executed before the effective date unless there is a

clear indication of a contrary intent.

(6) a person holding office as judge of the Court on the effective date of this Act may continue the office of judge of this Court and may be selected for additional terms after the effective date of this Act even though he does not meet the qualifications of a judge as provided in Article I.