

MEMORANDUM

To: ULC Commissioners
From: Thomas P. Gallanis, Executive Director, JEB-UTEA
Date: May 10, 2019
Re: Amendments to the Uniform Probate Code

The Uniform Probate Code (UPC) was promulgated exactly fifty years ago. In the ensuing half-century, the UPC's intestacy provisions underwent significant revisions in 1990 and in 2008.

The 1990 revisions took note of the multiple-marriage society and the rise in blended families. A significant fraction of the population married more than once, with stepchildren and children by previous marriages. The 1990 revisions responded to these developments by adjusting the intestate share of the surviving spouse when one or more of the decedent's descendants were not descendants of the surviving spouse, or vice versa.

The 1990 revisions also introduced a new system of representation for calculating the intestate shares of certain heirs other than the surviving spouse: the system known as *per capita* at each generation. Unlike the traditional system of *per stirpes* representation, which produces vertical equality among the stirps, *per capita* at each generation produces horizontal equality: the decedent's surviving children inherit the same share as each other, the decedent's surviving grandchildren who take in place of the decedent's predeceased children inherit the same share as each other, and so on. The 1990 revisions applied this system of representation to the decedent's descendants, the decedent's parents, and the descendants of the decedent's parents.

The UPC was further revised in 2008 in order to respond to the rise of assisted reproduction as a means of creating parent-child relationships. New provisions were added to the UPC to clarify the inheritance rights of children of assisted reproduction.

Beyond intestate succession, the 1990 and 2008 UPC revisions also amended Section 2-705, which supplies default rules of construction for the interpretation of class gifts in governing instruments—for example, a class gift in a will or trust instrument to “descendants” or “issue.” These default rules of construction rely heavily, though not exclusively, on the rules for intestate succession.

The promulgation of the Uniform Parentage Act (2017) [UPA (2017)] necessitates a new round of revisions to the UPC's intestacy and class-gift provisions. In part, the UPA (2017) enables the simplification of the UPC. This is because the UPA (2017) contains detailed provisions on the creation of parent-child relationships including by assisted reproduction; many of these provisions can be incorporated by reference into the UPC, thereby greatly simplifying the UPC, especially Sections 2-120 and 2-121. The UPA (2017) also embraces a functional approach to parentage—the doctrine of *de facto* parentage—which needs to be incorporated into the UPC's intestacy and class-gift provisions. The UPA (2017) also opens the door to the possibility that a child may have more than two parents, hence more than two sets of grandparents.

The 2019 revisions to the UPC achieve five principal objectives:

- (1) Blended families are taken into account not only in Section 2-102 (Share of Spouse), as in the 1990 revisions, but also in Section 2-103 (Share of Heirs Other Than Surviving Spouse).
- (2) The per-capita-at-each-generation system of representation is incorporated throughout Section 2-103. Heirs in a generation closer to the decedent are favored compared to heirs in a more remote generation; heirs in a given generation are treated equally.
- (3) Outdated terms are removed. Examples include the references to a decedent's "maternal" and "paternal" grandparents in the former version of Section 2-103, references to relatives of the "half blood" or "whole blood" in the former version of Section 2-107, and references to "genetic" parents in the former versions of Sections 2-117 through 2-119.
- (4) The rules in the UPA (2017) governing parent-child relationships created by assisted reproduction are incorporated by reference.
- (5) The intestacy and class-gift provisions are restructured to incorporate the innovations in the UPA (2017), such as the codification of the doctrine of de facto parentage and the recognition that a child may have more than two parents and, therefore, more than two sets of grandparents.