

D R A F T

FOR DISCUSSION ONLY

AMENDMENTS TO INTESTACY PROVISIONS OF THE UNIFORM PROBATE CODE

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting, February 23-25, 2007

WITH PARTIAL COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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February 6, 2007

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UNIFORM PROBATE CODE**

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AMENDMENTS TO INTESTACY PROVISIONS OF THE UNIFORM PROBATE CODE

TABLE OF CONTENTS

SECTION 2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE	1
SECTION 2-104. REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR 120 HOURS; AFTERBORN HEIRS	3
SECTION 2-108. <u>[RESERVED.] AFTERBORN HEIRS</u>	4
SECTION 2-113. INDIVIDUALS RELATED TO DECEDENT THROUGH TWO LINES <u>NOT ENTITLED TO MORE THAN ONE SHARE</u>	5
SECTION 2-114. PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES	7
SECTION 2-115. PARENT AND CHILD RELATIONSHIP; MARITAL AND NONMARITAL CHILDREN	9
SECTION 2-116. PARENT AND CHILD RELATIONSHIP; ADOPTED INDIVIDUAL	10
SECTION 2-117. PARENT AND CHILD RELATIONSHIP; WHEN UNADOPTED STEPCHILD TREATED AS ADOPTED	12
SECTION 2-118. PARENT AND CHILD RELATIONSHIP; CHILD OF ASSISTED REPRODUCTION OTHER THAN A CHILD BORN TO A GESTATIONAL MOTHER	14
SECTION 2-119. PARENT AND CHILD RELATIONSHIP; CHILD BORN TO A GESTATIONAL MOTHER	18
SECTION 2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION	19
SECTION 3-916. DISTRIBUTION IN CASE OF POSTHUMOUS CONCEPTION	21

1 **AMENDMENTS TO INTESTACY PROVISIONS**
2 **OF THE UNIFORM PROBATE CODE**

3
4 * * *

5
6 **SECTION 2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.** Any

7 part of the intestate estate not passing to the decedent's surviving spouse under Section 2-102, or
8 the entire intestate estate if there is no surviving spouse, passes in the following order to the
9 individuals designated below who survive the decedent:

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

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

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

15 (4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent
16 is survived by one or more grandparents or descendants of grandparents, half of the estate passes
17 to the decedent's paternal grandparents equally if both survive, or to the surviving paternal
18 grandparent, or to the descendants of the decedent's paternal grandparents or either of them if
19 both are deceased, the descendants taking by representation; and the other half passes to the
20 decedent's maternal relatives in the same manner; but if there is no surviving grandparent or
21 descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to
22 the decedent's relatives on the other side in the same manner as the half;

1 (5) if there is no surviving spouse, descendant, parent, descendant of a parent,
2 grandparent, or descendant of a grandparent, the following rules apply:

3 (A) if there is one deceased spouse, deceased former spouse, or surviving former
4 spouse who has one or more surviving descendants, the entire intestate estate passes by
5 representation to the deceased or former spouse’s descendants who survive the intestate
6 decedent.

7 (B) if there is more than one deceased spouse, deceased former spouse, or
8 surviving former spouse who has one or more surviving descendants, the entire intestate is
9 divided into as many equal shares as there are such deceased and surviving former spouses, each
10 share to be divided by representation among each such spouse’s descendants who survive the
11 intestate decedent.

12 ***Legislative Note:*** *States that recognize civil unions, domestic partnerships, or similar*
13 *relationships between unmarried individuals should add appropriate language after “spouse.”*

1 **SECTION 2-104. REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR**
2 **120 HOURS; AFTERBORN HEIRS.**

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

10 (b) An individual who was in gestation at the decedent's death is treated as living at the
11 decedent's death if the individual lives 120 hours after birth.

12 (c) This section applies for purposes of homestead allowance, exempt property, and
13 intestate succession, and the decedent's heirs are determined accordingly. If it is not established
14 by clear and convincing evidence that (i) an individual who was born before the decedent's death
15 survived the decedent by 120 hours for purposes of subsection (a) or (ii) an individual who was
16 in gestation at the decedent's death lived 120 hours after birth for purposes of subsection (b), it is
17 deemed that the individual failed to survive for the required period.

18 (d) This section is not to be applied if its application would result in a taking of intestate
19 estate by the state under Section 2-105.

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

4 **Note to Drafting Committee:**

5 **Section 2-108 is not deleted, but has been moved to section 2-104(b).**

1 **SECTION 2-113. INDIVIDUALS ~~RELATED TO DECEDENT THROUGH TWO~~**
2 **~~LINES~~ NOT ENTITLED TO MORE THAN ONE SHARE.** An individual who is related to
3 the decedent ~~through two lines of relationship~~ in such a manner as would entitle the individual to
4 more than one share is entitled to only a ~~single~~ one share based on the relationship that would
5 entitle the individual to the larger or largest share.

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

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

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

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

1 **SECTION 2-114. PARENT BARRED FROM INHERITING IN CERTAIN**

2 **CIRCUMSTANCES.** An individual whose parental rights have been terminated, or who has
3 abandoned or failed to support his [or her] child, is barred from inheriting from or through the
4 child. For purposes of intestate succession by, from, or through the deceased child, an individual
5 who is barred from inheriting under this section is treated as if he [or she] predeceased the child.

6 **Note from Reporter:**

7
8 **At the first drafting committee meeting, I was instructed to take a look at the**
9 **following New York statute and proposed amendments thereto, and bring them to the**
10 **attention of the committee. At the February 2007 drafting committee meeting, we will want**
11 **to consider the extent to which we want to incorporate any of the NY statute into UPC 2-**
12 **114.**

13
14 New York Estates, Powers and Trusts Law § 4-1.4 Disqualification of parent to take
15 intestate share

16
17 (a) No distributive share in the estate of a deceased child shall be allowed to a
18 parent who has failed or refused to provide for, or has abandoned such child while such
19 child is under the age of twenty-one years, whether or not such child dies before having
20 attained the age of twenty-one years, unless the parental relationship and duties are
21 subsequently resumed and continue until the death of the child. Subject to the provisions
22 of subdivision eight of section two hundred thirteen of the civil practice law and rules,
23 this paragraph shall not apply to a biological parent who places such child for adoption
24 with a person or agency based upon: (1) a fraudulent promise, not kept, to arrange for and
25 complete adoption of such child, or (2) other fraud or deceit by the person or agency
26 where, before the death of the child, the person or agency fails to arrange for the adoptive
27 placement or petition for the adoption of the child, and fails to comply timely with
28 conditions imposed by the court for the adoption to proceed.

29
30 (b) In the event that a parent or spouse is disqualified from taking a distributive
31 share in the estate of a decedent, under this section or 5-1.2, the estate of such decedent
32 shall be distributed in accordance with 4-1.1 as though such spouse or parent had
33 predeceased the decedent.

34
35 **Proposed Amendments to NY EPTL 4-1.4:**

36
37 <<+§ 4-1.4 Disqualification of parent to take intestate share+>> <<+(a) No distributive
38 share in the estate of a deceased child shall be+>> <<+allowed to a parent if the parent,

1 while such child is under the age of+>> <<+twenty-one years:+>>

2
3 <<+(1) has failed or refused to provide for the child or has abandoned+>> <<+such child,
4 whether or not such child dies before having attained the+>> <<+age of twenty-one years,
5 unless the parental relationship and duties are+>> <<+subsequently resumed and continue
6 until the death of the child; or+>>

7
8 <<+(2) has been the subject of a proceeding pursuant to section three+>> <<+hundred
9 eighty-four-b of the social services law which:+>>

10
11 <<+(A) resulted in an order terminating parental rights, or+>>

12
13 <<+(B) resulted in an order suspending judgment, in which event the+>> <<+surrogate's
14 court shall make a determination disqualifying the parent on+>> <<+the grounds
15 adjudicated by the family court, if the surrogate's court+>> <<+finds, by a preponderance
16 of the evidence, that the parent, during the+>> <<+period of suspension, failed to comply
17 with the family court order to+>> <<+restore the parent-child relationship.+>>

18
19 <<+(b) Subject to the provisions of subdivision eight of section two+>> <<+hundred
20 thirteen of the civil practice law and rules, the provisions of+>> <<+subparagraph one of
21 paragraph (a) of this section shall not apply to a+>> <<+biological parent who places the
22 child for adoption based upon:+>>

23
24 <<+(1) a fraudulent promise, not kept, to arrange for and complete the+>> <<+adoption
25 of such child, or+>>

26
27 <<+(2) other fraud or deceit by the person or agency where, before the+>> <<+death of
28 the child, the person or agency fails to arrange for the adop+>> <<+tive placement or
29 petition for the adoption of the child, and fails to+>> <<+comply timely with conditions
30 imposed by the court for the adoption to+>> <<+proceed.+>>

31
32 <<+(c) In the event that a parent or spouse is disqualified from taking a+>>
33 <<+distributive share in the estate of a decedent under this section or+>> <<+5-1.2, the
34 estate of such decedent shall be distributed in accordance+>> <<+with 4- 1.1 as though
35 such spouse or parent had predeceased the decedent.+>>

36
37 § 2. This act shall take effect on the first of January next succeeding the date on which it
38 shall have become a law.

1 **SECTION 2-115. PARENT AND CHILD RELATIONSHIP; MARITAL AND**
2 **NONMARITAL CHILDREN.**

3 (a) This section applies for purposes of determining the status of a marital or a nonmarital
4 child under [this Part] [the laws of intestate succession].

5 (b) Except as provided in Sections 2-118 and 2-119 (relating to children of assisted
6 reproduction), an individual is the child of his [or her] genetic parents, regardless of their marital
7 status. The genetic parent and child relationship may be established under [Articles 1 through 6
8 of the Uniform Parentage Act] [applicable state law] [insert appropriate statutory reference].

9 **Legislative Note:** *States that have enacted the Uniform Parentage Act should use the first*
10 *bracketed language in the second sentence of subsection (b).*

1 **SECTION 2-116. PARENT AND CHILD RELATIONSHIP; ADOPTED**

2 **INDIVIDUAL.**

3 (a) This section applies for purposes of determining the status of an adopted individual
4 under [this Part] [the laws of intestate succession].

5 (b) An adopted individual is the child of his [or her] adopting parent or parents.

6 (c) Except as provided in subsections (d) and (e), an adopted individual is not the child of
7 his [or her] genetic parents.

8 (d) An individual who is adopted by the spouse of either genetic parent continues to be
9 the child of:

10 (1) that genetic parent; and

11 (2) the other genetic parent, but only for purposes of intestate succession from or
12 through that genetic parent.

13 (e) If the adoption occurs after the death or incapacity of either genetic parent:

14 (1) the child remains a child of both genetic parents if the adoption is by a relative
15 of either genetic parent or the spouse or surviving spouse of such a relative;

16 (2) the child remains a child of both genetic parents if the adoption is by someone
17 nominated by a genetic parent to be the child's guardian, but only for purposes of intestate
18 succession from or through either genetic parent; and

19 (3) the child remains a child of a genetic parent if the child does not subsequently
20 become estranged from the genetic family of that genetic parent, but only for purposes of
21 intestate succession from or through that genetic parent.

22 (f) If a child was adopted more than once, the term "genetic parent" in subsections (d) and

1 (e) includes a “previous adoptive parent.”

2 **Legislative Note:** States that recognize civil unions, domestic partnerships, or similar

3 relationships between unmarried individuals should add appropriate language after “spouse.”

1 **SECTION 2-117. PARENT AND CHILD RELATIONSHIP; WHEN**
2 **UNADOPTED STEPCHILD TREATED AS ADOPTED.**

3 (a) This section applies for purposes of determining the status of an unadopted stepchild
4 under [this Part] [the laws of intestate succession].

5 (b) A stepchild is treated as a child who has been adopted by his [or her] stepparent if:

6 (1) the relationship began during the child's minority and continued throughout
7 the lifetime of the stepparent; and

8 (2) it is established by clear and convincing evidence that the stepparent would,
9 during the child's minority, have adopted the child but for the refusal of the genetic parent to
10 consent to the adoption or other legal barrier.

11 (c) This section does not affect or limit application of the judicial doctrine of equitable
12 adoption.

13 **Legislative Note:** *States that recognize civil unions, domestic partnerships, or similar*
14 *relationships between unmarried individuals should add appropriate language after "stepchild"*
15 *and "stepparent."*

16
17 **Harry Tindall's Draft:**
18

19 **Section ____.** **Equitable Adoption**

20 (a) When an individual is legally competent to adopt a child enters into a contract to
21 adopt a child and there is consideration supporting the contract in the form of past performance
22 falling short of undertaking or completing a statutory adoption, the contract may be enforced to
23 the extent of allowing the child to occupy the status of a child formally adopted for purposes
24 described in this section.

25 (b) Equitable adoption is for the benefit of the child and not the adult.

26 (c) Equitable adoption must be established by clear and convincing evidence.

27 (d) Equitable adoption does not create a parent-child relationship and is exclusively an
28 equitable remedy for the following matters:

29 (1) intestate succession or inclusion in a class gift or devise; and

30 (2) social security and other public assistance benefits.
31

Harry's Comment

According to the ALR annotation, "Modern Status of Law as to Equitable Adoption or Adoption by Estoppel, 122 ALR 5th 205 (2004), 29 states recognize equitable adoption and 15 do not recognize equitable adoption.

There are several issues in equitable adoption discussed in the above article not addressed in this draft. Wrongful death claims, child support, taxation, etc. To address all issues would make the statutory language too long and complicated.

1 **SECTION 2-118. PARENT AND CHILD RELATIONSHIP; CHILD OF**
2 **ASSISTED REPRODUCTION OTHER THAN A CHILD BORN TO A GESTATIONAL**
3 **MOTHER.**

4 (a) This section applies for purposes of intestate succession by, through, or from a child
5 conceived by means of assisted reproduction by a woman other than a gestational mother.

6 (b) In this section:

7 (1) “assisted reproduction” means a method of causing pregnancy other than
8 sexual intercourse. The term includes:

9 (A) intrauterine insemination;

10 (B) donation of eggs;

11 (C) donation of embryos;

12 (D) in-vitro fertilization and transfer of embryos; and

13 (E) intracytoplasmic sperm injection.

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

16 (A) a husband who provides sperm, or a wife who provides eggs, to be
17 used for assisted reproduction by the wife;

18 (B) a woman who gives birth to a child by means of assisted reproduction
19 other than a gestational mother; or

20 (C) a parent under subsection (d).

21 (3) “functioned as the child’s parent” means performing functions that are
22 customarily performed by a parent.

1 (c) A child who is conceived by means of assisted reproduction is not the child of a third-
2 party donor.

3 (d) Except as provided in subsections (e) and (f), a child who is conceived by means of
4 assisted reproduction is a child of an individual who consented to be the child's parent. Consent
5 can be shown by:

6 (1) signing a record, before or after the child's birth, expressing consent to be the
7 child's parent; or

8 (2) residing with the child in the same household and holding out the child as his
9 [or her] own during the first two years of the child's life; or

10 (3) behaving in a manner consistent with being the parent of the child or, if death
11 or incapacity occurs before the birth of the child, planning to be the parent of the child.

12 If the child is born to a married woman and she and her husband are not separated and no
13 divorce or annulment proceedings are pending, it is presumed that both spouses consented to be
14 the child's parent.

15 **Note from Reporter:**

16 **We need to address posthumous conception.**

17 (e) If a marriage is dissolved before placement of eggs, sperm, or embryos, the resulting
18 child is not a child of the former spouse unless the former spouse consented in a record that if
19 assisted reproduction were to occur after a dissolution of the marriage, the child would be the
20 child of the former spouse.

21 (f) If, in a record, a man or a woman withdraws consent to assisted reproduction before
22 placement of eggs, sperm, or embryos, the resulting child is not a child of that individual, unless

1 the individual subsequently satisfies the consent requirements of subsection (d).

2 (g) If the intestate decedent is the child's deceased parent, the decedent's child conceived
3 posthumously by assisted reproduction is treated as in gestation at the decedent's death for
4 purposes of Section 2-104(b), if the child was born within forty-five months after the decedent's
5 death. If the intestate decedent is someone other than the child's parent, a child conceived
6 posthumously by assisted reproduction is treated as in gestation on the date that the child is in
7 utero for purposes of Section 2-104(b).

8 (h) A child of assisted reproduction is a marital child if the child is produced for a
9 married couple, before or after the decedent-spouse's death.

10 **Legislative Note:** States that recognize civil unions, domestic partnerships, or similar
11 relationships between two unmarried individuals should add appropriate language after
12 "spouse" or "married individual."

13
14 States are encouraged to enact a provision requiring genetic depositories to provide a
15 consent form that would satisfy subsection (d)(1). The following provision is copied from Cal.
16 Health & Safety Code § 1644.7 and .8, except that the word "heir" is changed to "child."

17
18 **[SECTION XXX. DUTY OF GENETIC DEPOSITORIES TO PROVIDE**
19 **CONSENT FORM TO DEPOSITORS.**
20

21 (a) Any entity that receives genetic material of a human being that may be used for
22 conception shall provide to the person depositing his [or her] genetic material a form for use by
23 the depositor that, if signed by the depositor, would satisfy the conditions set forth in Section 2-
24 118(d) regarding the decedent's intent for the use of that material. The use of the form is not
25 mandatory, and the form is not the exclusive means of expressing a depositor's intent. The form
26 shall include advisements in substantially the following form:

27
28 "The use of this form for designating whether a child conceived during your life or after
29 your death will be your child is not mandatory. However, if you wish to allow a child conceived
30 during your life or after your death to be considered as your child (or beneficiary of other benefits
31 such as life insurance or retirement) you must specify that in writing and you must sign that
32 written expression of intent.

33
34 This specification can be revoked or amended only in writing signed by you (and not by

1 spoken words).

2
3 You should consider how having a child conceived during your life or after your death
4 affects your estate planning (including your will, trust, and other beneficiary designations for
5 retirement benefits, life insurance, financial accounts, etc.) These issues can be complex, and you
6 should discuss them with your attorney.”

7
8 (b) Any entity that receives genetic material of a human being that may be used for
9 conception shall make available to the person depositing his or her genetic material a form that, if
10 signed by the depositor, would revoke any previous expression of intent regarding the use of his
11 or her genetic material necessary to satisfy the conditions set forth in Section 2-118(f). The use of
12 the form is not mandatory, and the form is not the exclusive means of expressing a depositor’s
13 intent with respect to revocation or amendment of a prior expression of intent. The form shall
14 include advisements in substantially the following form:

15
16 “The use of this form to revoke or amend a previous form for designating whether a child
17 conceived during your life or after your death will be your child is not mandatory. This
18 specification can be revoked or amended only in a writing signed by you (and not by spoken
19 words).

20
21 These issues can be complex, and you should discuss them with your attorney.”]

1 **SECTION 2-119. PARENT AND CHILD RELATIONSHIP; CHILD BORN TO A**
2 **GESTATIONAL MOTHER.**

3 (a) This section applies for purposes of intestate succession by, through, or from a child
4 who is conceived by means of assisted reproduction by a gestational mother.

5 (b) In this section:

6 (1) “gestational agreement” means an agreement in which a woman agrees to
7 carry a child to birth for an intended parent or intended parents, whether or not the woman is the
8 genetic mother.

9 (2) “gestational mother” means a woman who gives birth to a child under a
10 gestational agreement.

11 (3) “intended parent” is an individual who entered into an agreement providing
12 that he [or she] will be the parent of a child born to a gestational mother by means of assisted
13 reproduction, whether or not he [or she] has a genetic relationship with the child.

14 (c) A child who is born by means of assisted reproduction to a gestational mother is the
15 child of an intended parent and not of the gestational mother.

16 **Comment**

17
18 **[Incomplete]**

19
20 The definition of gestational agreement is based on the Comment to Article 8 of the
21 Uniform Parentage Act, which states that the term “gestational mother” “applies to both a woman
22 who, through assisted reproduction, performs the gestational function without being genetically
23 related to a child, and a woman is both the gestational and genetic mother. The key is that an
24 agreement has been made that the child is to be raised by the intended parents.” The Comment
25 also points out that “The [practice in which the woman is both the gestational and genetic
26 mother] has elicited disfavor in the ART community, which has concluded that the gestational
27 mother’s genetic link to the child too often creates additional emotional and psychological
28 problems in enforcing a gestational agreement.”

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

3 (a) Adopted individuals, ~~and~~ individuals born out of wedlock, stepchildren, children of
4 assisted reproduction, and children born to a gestational mother, and their respective descendants
5 if appropriate to the class, are included in class gifts and other terms of relationship in accordance
6 with the rules for intestate succession. Terms of relationship that do not differentiate
7 relationships by blood from those by affinity, such as “uncles,” “aunts,” “nieces,” or “nephews,”
8 are construed to exclude relatives by affinity. Terms of relationship that do not differentiate
9 relationships by the half blood from those by the whole blood, such as “brothers,” “sisters,”
10 “nieces,” or “nephews,” are construed to include both types of relationships.

11 (b) In addition to the requirements of subsection (a), in construing a dispositive provision
12 of a transferor who is not the ~~natural~~ genetic parent, an individual born out of wedlock to the
13 ~~natural~~ genetic parent is not considered the child of that parent unless the individual lived while a
14 minor as a regular member of the household of that ~~natural~~ genetic parent or of that parent’s
15 parent, brother, sister, spouse, or surviving spouse.

16 (c) In addition to the requirements of subsection (a), in construing a dispositive provision
17 of a transferor who is not the adopting parent, an adopted individual is not considered the child of
18 the adopting parent unless (i) the adoption took place before the child reached the age of
19 majority; (ii) the adopting parent was the child’s stepparent or foster parent; or (ii) the adopted
20 individual lived while a minor, either before or after the adoption, as a regular member of the
21 household of the adopting parent.

22 **[Alternative (c) for consideration by Drafting Committee]**

(c) In addition to the requirements of subsection (a), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless (i) the adopting parent was the child's stepparent or foster parent; or (ii) the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent. If the adoption took place before the child reached the age of majority, it is presumed that the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

(d) For purposes of the class closing rules, an individual in utero at a particular time is treated as living at that time if the individual lives 120 hours after birth. If the distribution date is the deceased parent's death, a child produced posthumously by assisted reproduction is treated as living at the decedent's death, if the child was born within 45 months after the deceased parent's death and if the child lives 120 hours after birth. If the distribution date arises after the deceased parent's death, a child produced posthumously by assisted reproduction is living when the child is in utero.

(e) For purposes of the class closing rules, an individual who is in the process of being adopted when the class closes is treated as an adopted child when the class closes if the adoption is subsequently granted.

Legislative Note: States that recognize civil unions, domestic partnerships, or similar relationships between unmarried individuals should add appropriate language after "spouse."

Comment

Under Section 3-1006, an heir is allowed to recover property improperly distributed or its value from any distributee during the later of 3 years after the decedent's death or 1 year after distribution. The 45 month period in subsection (d) is based on the 3-year period, with an additional 9 months tacked on to allow for a normal period of pregnancy.

1 **SECTION 3-916. DISTRIBUTION IN CASE OF POSTHUMOUS CONCEPTION.**

2 The personal representative may delay distribution of the decedent's estate if:

3 (a) the personal representative has received notice or has knowledge that the decedent's
4 surviving spouse intends to use genetic material to produce a child after the decedent's death; and

5 (b) the posthumous birth of a child of assisted reproduction will have an effect on the
6 distribution of the decedent's estate.

7 ***Legislative Note:*** States that recognize civil unions, domestic partnerships, or similar
8 relationships between unmarried individuals should add appropriate language after "spouse."

9
10 **Comment**

11
12 This section is based on Cal. Prob. Code § 249.6.