

Memorandum 85-5

Subject: Study L-659 - Effect of Adoption or Out of Wedlock Birth on Rights at Death

Attached is a "Discussion Draft" relating to the effect of adoption or out of wedlock birth on rights at death. The staff prepared this draft based on the material provided by Professor Wright and Professor Halbach at the last meeting. The Commission has not reviewed or approved this draft. It was prepared by the staff and sent out to approximately 400 persons and organizations so that their comments could be obtained and reviewed in time so that a recommendation could be submitted to the 1985 legislature. This is an important matter and unnecessary delay in clarifying the existing statutory provisions was thought not to be desirable. We refer to the "Discussion Draft" in the following discussion as a recommendation because it is drafted in that form.

No objections were made to the recommendation but two comments were received that suggested technical changes or clarifications. The Estate Planning, Trust and Probate Law Section of the State Bar supports this recommendation. See Exhibit 1 attached. Exhibits 3, 5, and 6 have no objections or suggestions concerning the recommendation.

Exhibit 4 (Elliot D. Pearl, Sacramento) suggests that some other terminology be used instead of the phrase "foster child." The staff would be reluctant to change this phrase because we do not have a better phrase to use and because by the time any revisions were made lawyers and judges will have become familiar with the existing language.

Exhibit 2 (Grace K. Banoff) raises a number of technical matters in connection with Section 6408.5 and the Comment to that section (pages 7-9 of the tentative recommendation).

"Section 6408.5(c) should state that it is subject to the provisions of subdivisions (a) and (b)." The staff suggests that this matter be clarified by adding a new subdivision (d) to Section 6408.5, to read:

(d) If a child is born out of wedlock and the child has been adopted, neither a parent nor a relative of a parent inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following conditions are satisfied:

- (1) The requirements of either subdivision (a) or subdivision (b) are satisfied.
- (2) The requirements of subdivision (c) are satisfied.

"Section 6408.5(c) does not make clear that only the particular individual or individuals who have acknowledged and cared for or supported a child born out of wedlock may inherit from the child." The staff believes that this is a good point. We make the necessary clarification by revising subdivision (c) as set out later in this memorandum.

"I think an exception to the requirement of acknowledgment and care or support should be made in favor of a twin or other sibling who has lived with the child." For example, suppose a woman has a child born out of wedlock who lives with the mother. Then the mother has another child born out of wedlock and it is not known whether this child has the same father as the first child. The two children are raised together by the mother. The mother dies. Later one of the children dies. The issue is whether the other child should be able to inherit from the deceased child. Under the existing language of subdivision (c) it is not clear whether the surviving child can inherit from the deceased child. The Commission dealt with the same problem in subdivision (b) by adding an exception to subdivision "(except for the issue of the child or a whole-blood brother or sister of the child or the issue of such brother or sister)." The staff believes that some revision of subdivision (c) is desirable. The suggested revision is set out later in this memorandum.

The staff suggests that subdivision (c) of Section 6408.5 (pages 7-9 of tentative recommendation) be revised to read:

(c) If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of such brother or sister) inherits from or through a the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied:

- (1) The parent or a the relative of the parent acknowledged the child.
- (2) The parent or a the relative of the parent contributed to the support or the care of the child.

Exhibit 2 (Grace K. Banoff) points out another technical deficiency in the draft statute or the Comment. She points out that Example 4 in the Comment to Section 6408.5 is not correct. This is a good point. Does the Commission approve of the result in Example 4? If so, subdivision (a) of Section 6408.5 should be revised to read:

(a) The relationship of parent and child does not exist between an adopted person and his or her natural parent unless (1) ~~the natural parent and~~ the adopted person and either of the natural

parents lived together at any time as parent and child or the natural parent died before the birth of the child and (2) the adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

If the Commission does not agree with the result in Example 4, then the revision should not be made and the result stated in Example 4 should be corrected.

The staff wishes to call one provision of the tentative recommendation to the Commission's attention. This provision is subdivision (c) of Section 6152 on page 5 of the tentative recommendation. The State Bar Section specifically approved this addition and no one objected to it. The Commission has not previously considered this provision.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**



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ANN E. STODDEN, *Los Angeles*

December 19, 1984

Mr. John DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, California 94303

Re: Memorandum 85-5, 85-9, 85-11, 85-13 and 85-7

Dear John:

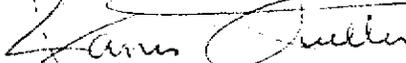
The Executive Committee of the State Planning, Trust and Probate Law Section, State Bar of California, has considered the following memoranda. Comments are set forth as follows:

1. Memorandum 85-5 - Effect of Adoption or Out of Wedlock Birth on Rights at Death. The Section supports the amendment to Section 6408 to allow the natural parents to inherit who has not consented to the adoption provided the conditions set forth are met.

The child not formally adopted but treated by the parents as if adopted, told he was adopted and uses the family name is treated by the court as a natural child under the Doctrine of Equitable Adoption. The newly enacted statute makes no reference to Equitable Adoption. The Section proposes that Section 6408 be amended to read "nothing in the section affects or limits application of the Judicial Doctrine of Equitable Adoption for the benefit of the child or his or her decendants". This proposal is desirable because Equitable Adoptions occur frequently in the less affluent communities. This proposal gives statutory recognition to the judicially created doctrine. The Section has reviewed and concludes a proposal to change the language in Section 6152 is desirable because it includes out of wedlock children and it is consistent the new thrust of the law to abolish the distinction between legitimate and illegitimate children. If the Testator desires to exclude such persons, it should be clearly stated in the Will.

Looking forward to seeing you in Sacramento on the 17 to 19th of January.

Very truly yours,



James V. Quillinan
Attorney at Law

JVQ/agc

cc: Ken Klug
Ted Cranston
Charles A. Collier, Jr.

GRACE K. BANOFF
Attorney at Law
733 Kline Street #304
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December 12, 1984

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Gentlemen:

The enclosed memoranda comment on discussion drafts
H601, L500, and L659.

I omit comment on L605, DISTRIBUTION UNDER A WILL
OR TRUST, as I am neutral on its recommendation.

Very truly yours,

Grace K. Banoff

TO: LAW REVISION COMMISSION
FROM: GRACE K. BANOFF
RE: #L-659
Discussion Draft dated 11/13/84
EFFECT OF ADOPTION OR OUT OF WEDLOCK BIRTH
ON RIGHTS AT DEATH
DATE: DECEMBER 10, 1984

I commend this recommendation but suggest:

1-Section 6408.5(c) should state that it is subject to the provisions of subdivisions (a) and (b).

2-Section 6408.5(c) does not make clear that only the particular individual or individuals who have acknowledged and cared for or supported a child born out of wedlock may inherit from the child.

3-I think an exception to the requirement of acknowledgment and care or support should be made in favor of a twin or other sibling who has lived with the child.

4-Example 4 as stated following proposed §6408.5 is not correct as to the father's family. Subdivision (a)(1) of that section requires that the natural parent and the adoptee live together or that the natural parent died before the adoptee's birth. Residence with a spouse is irrelevant.

Respectfully submitted,

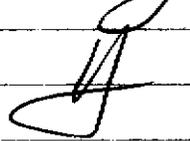
Grace K. Banoff

HENRY ANGERBAUER, CPA
2401 WILLOW GLEN CT.
CONCORD, CA 94621

11/24/84

Law Revision Commission

I agree with your proposals regarding the
classification and revisions to the new statute on
Effect of adoption or out of wedlock birth on
Rights at Death. Thank you for permitting
me to express my opinion.

Sincerely


HENRY ANGERBAUER, CPA
8401 WILLOW GLEN CT.
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11/21/81

Law Revision Commission:

Gentlemen:

In connection with your Discussion Draft relating to the Effect of adoption or out of wedlock Birth on Rights at Death, I refer you to an interesting article written by Professor Edward C. Halbach Jr. of Boalt Hall Law School the article appeared in Volume 48 No 2, Spring 1983, issue of the Missouri Law Review. It is entitled Issues about Issue.

Some Recurrent Class Gift Problems.

This article may throw some light on your analysis. Best regards to all of you there and thanks for sending the tentative drafts

Sincerely
Henry

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ELLIOT D. PEARL
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December 6, 1984

California Law Revision Commission
4000 Middlefield Road, Suite D-2
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Attn: John H. DeMouilly

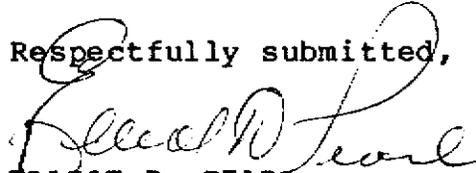
Dear Mr. DeMouilly:

I am pleased to have been nominated by Mr. Frantz to serve on the committee and to review the tentative proposals of the Law Revision Commission relating to probate law. I have reviewed the same and have the following general comments which perhaps will be of some assistance. Should specific recommendations be desired, I will be happy to meet with other committee members or with the Commission itself to discuss these.

4. The provisions pertaining to adoption are most appropriate; however, I do question, and have questioned, the inclusion of "foster children" in these statutes. "Foster child" could include a child temporarily placed with a household for perhaps only a few weeks and certainly would not be in the category of an adopted child, acknowledged child, or the type of parent-child relationship which the statute is intended to reach. I would suggest some other terminology rather than the use of the word "foster child."

Thank you for having allowed us to review these very important proposals; if further review is desirable or if the commission would like me to appear or consult directly with it, I would be happy to do so.

Respectfully submitted,


ELLIOT D. PEARL

EDP:ap

cc: Benjamin Frantz

LAW OFFICES
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November 26, 1984

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA, 94306
Thru: John DeMouilly, Executive Secretary

Re: Comments on Proposed Recommendation
#H-601, Proposed Tentative Recommenda-
tions #L-605 and #L-500, and
Discussion Draft #L-659

Dear Mr. DeMouilly:

Herewith for the California Law Revision Commission are my comments and recommendations concerning the above mentioned proposals, recently received from your office.

DISCUSSION DRAFT RE EFFECT OF ADOPTION OR OUT OF WEDLOCK BIRTH ON RIGHTS AT DEATH (11/13/84, #L-659)

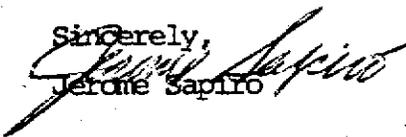
You are working in the right direction.

I am sure that unforeseen problems may be encountered in the future, but this should not deter your present effort.

Thank you for this opportunity to participate.

I hope that my suggestions will help to make better law for our people and State.

Sincerely,


Jerome Sapiro

JS:mes

cc to Kenneth M. Klug, Chair
Estate Planning, Trust & Probate Law Section

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December 17, 1984

FILE NO.

Mr. John H. DeMouilly, Executive Secretary
CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

Dear Mr. DeMouilly:

This letter contains the comments of the Probate and Estate Planning Section of the Kern County Bar Association on the five specific recommendations you sent to me. Please add the following persons to your mailing list who would like to review and comment on future recommendations:

Thomas A. Tutton, Esq.
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1122 Truxtun Avenue
Bakersfield, CA 93301

James Hulsy, Esq.
HULSY & HULSY LAW OFFICES
412 Truxtun Avenue
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Vernon Kalshan, Esq.
651 "H" Street
Bakersfield, CA 93301

Barry L. McCown, Esq.
5100 California Avenue
Bakersfield, CA 93309

The Probate and Estate Planning Section of the Kern County Bar Association is willing to review and comment on preliminary drafts of the new Probate Code and would like to receive copies of the materials the Commission distributes. We request that the materials be sent out more than one month before the comment period ends, if possible, to give us more time to study the recommendations.

Our committee which reviewed the five recommendations had no objection to the recommendations on transfer without probate of title to certain property registered by the state and effect of adoption or out of wedlock birth on rights at death. We have specific comments on the other three recommendations.

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

DISCUSSION DRAFT

relating to

EFFECT OF ADOPTION OR OUT OF WEDLOCK BIRTH ON RIGHTS AT DEATH

November 1984

Important Note: The Law Revision Commission has received a number of suggested clarifying and substantive revisions in the existing statutory provisions relating to the effect of adoption or out of wedlock birth on the right to succeed to or inherit property. This "Discussion Draft" sets out the substance of these clarifying and substantive revisions. The Commission has considered but has not determined whether these are desirable revisions. This "Discussion Draft" is being distributed to interested persons and organizations for review and comment. The comments received will be considered by the Commission at the time the Commission determines whether any revisions should be made in existing law.

COMMENTS ON THIS DISCUSSION DRAFT SHOULD BE SENT TO THE COMMISSION NOT LATER THAN DECEMBER 15, 1984.

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

DISCUSSION DRAFT

relating to

EFFECT OF ADOPTION OR OUT OF WEDLOCK BIRTH ON RIGHTS AT DEATH

A newly-enacted statute governs intestate succession by or from adopted persons, persons born out of wedlock, stepchildren, and foster children,¹ and provides rules for construing wills which make class gifts that may include such persons.² The Commission recommends the following revisions to the new statute to deal with problems that have been brought to the Commission's attention.

Inheritance by Natural Parent Who Declines to Consent to Adoption

The new statute provides that the relationship between a person and his or her foster parent or stepparent "has the same effect as if it were an adoptive relationship" if the relationship began during the parties' joint lifetimes and the foster parent or stepparent would have adopted the child but for a legal barrier.³ A completed adoption cuts off the right of the natural parent to inherit from the child.⁴ These provisions may have the unintended and undesirable effect of cutting off the natural parent's right to inherit where the natural parent refuses to consent to adoption of the child by a foster parent or stepparent.⁵

1. Prob. Code §§ 6408, 6408.5. These sections were enacted by 1983 Cal. Stats. ch. 842 and amended by 1984 Cal. Stats. ch. 892.
2. Prob. Code § 6152. This section was enacted by 1983 Cal. Stats. ch. 842 and amended by 1984 Cal. Stats. ch. 892.
3. Prob. Code § 6408(a)(3).
4. Prob. Code § 6408.5(b).
5. For example, assume the natural father and mother divorce, the mother remarries, her new husband (the child's stepfather) wants to adopt the child, but the natural father declines to consent to the adoption. Under the new law, the relationship between the child and the stepfather "has the same effect as if it were an adoptive relationship." Prob. Code § 6408(a)(3). If the father had consented and there were a formal adoptive relationship between the child and the stepfather, the right of the natural father to inherit from the child would be cut off by the adoption. Prob. Code § 6408.5(b). Giving the relationship between the child and the stepfather "the same effect as if it were an adoptive relationship" might be interpreted to cause the natural father to lose his inheritance rights even where the natural father refuses to consent to the adoption. This would unfairly penalize the natural father.

The Commission recommends that the statute be amended to make clear that the provision treating the foster child or stepchild as an adopted child does not have the effect of terminating the right of the natural non-consenting parent to inherit.⁶

Preserving Judicial Doctrine of Equitable Adoption

Under the judicial doctrine of equitable adoption, a child who has not been formally adopted may nonetheless be treated as having been adopted for the purpose of inheritance if the child has been told that he or she was adopted and the child uses the family name and is treated in all respects as a natural child.⁷ This doctrine permits the court to reach just results by allowing inheritance in cases that do not come within the literal terms of the intestate succession statutes.

The new statute concerning the effect of adoption on inheritance makes no reference to equitable adoption.⁸ The Commission recommends that the statute be amended to make clear that it does not affect or limit the doctrine of equitable adoption for the benefit of the child or the child's descendants.

Class Gift to "Lawful" Issue

If the will does not provide otherwise, halfbloods, adopted persons, persons born out of wedlock, stepchildren, and foster children are in most cases included in class gift terminology in accordance with the

6. In such a case, the natural parent who declined to consent to the adoption would continue to inherit from the child, but the foster parent or stepparent would not.

The new statute should also be expanded to cover the case where the natural parent dies while the child is in gestation. If the father dies while the child is in gestation and the child is later adopted by the new husband of the natural mother, the existing statutory requirement that the father and child "have lived together at any time as parent and child" (Prob. Code § 6408.5) would not be satisfied, with the result that the child would no longer inherit from relatives of the natural father. This result should be avoided by amending the statute to permit the adopted child to inherit from relatives of the natural father if the natural father died before the birth of the child.

7. Estate of Wilson, 111 Cal. App.3d 242, 168 Cal. Rptr. 533 (1980).
8. See Prob. Code § 6408; see also Prob. Code § 6408.5.

rules for determining relationship and inheritance rights for purposes of intestate succession.⁹ If the class gift is to "lawful" children, issue, or descendants, the will may be construed to exclude persons born out of wedlock.¹⁰

Public policy favors treating children born out of wedlock the same as children born of a marital relationship, both for the purpose of intestate succession¹¹ and for the purpose of construing class gift terminology in wills.¹² The term "lawful" or "legal" when applied to children, issue, or descendants is not such a clear expression of intent that it should exclude persons born out of wedlock from class gift terminology.¹³

The Commission recommends enactment of a constructional provision for wills that the term "lawful" or "legal," without more, does not overcome the general rule that halfbloods, adopted persons and persons

9. See Prob. Code § 6152. Under the rules for intestate succession, halfbloods are treated equally with wholebloods (Prob. Code § 6406), adopted persons inherit from their adoptive parents (Prob. Code § 6408), persons born out of wedlock inherit from their natural parents (id.), and stepchildren and foster children inherit from their stepparents or foster parents if the relationship began during the child's minority, continued throughout the parties' joint lifetimes, and it is established by clear and convincing evidence that the stepparent or foster parent would have adopted the child but for a legal barrier (id.).
10. See Estate of White, 69 Cal. App.2d 749, 754, 160 P.2d 204 (1945) ("lawful issue" refers to "legitimate lineal descendants"). See generally 7 B. Witkin, Summary of California Law Wills and Probate §§ 197-199, at 5708-11 (8th ed. 1974). A class gift to "lawful" issue is construed to include adopted children. Estate of Heard, 49 Cal.2d 514, 522-23, 319 P.2d 637 (1957). It is unclear whether a stepchild or foster child that was not legally adopted but is treated for inheritance purposes as if he or she were adopted would be treated under the will as "lawful" issue of the stepparent or foster parent.
11. See Prob. Code § 6408(a)(1); Uniform Probate Code § 2-109; 7 B. Witkin, supra note 10, §§ 64-68, at 5587-89.
12. See Prob. Code § 6152(a); Uniform Probate Code § 2-611. But see 7 B. Witkin, supra note 10, § 197, at 5708-09.
13. For example, by using the term "lawful" the drafter may mean those who would take under the law of intestate succession. Persons born out of wedlock may take under the law of intestate succession if the parent-child relationship is established. See Prob. Code § 6408.

treated as adopted persons, and persons born out of wedlock are ordinarily included in class gift terminology.¹⁴ This constructional provision would apply only where the will does not provide to the contrary by other appropriate language.

Other technical changes are also recommended.¹⁵

Recommended Legislation

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 6152, 6408, and 6408.5 of the Probate Code, relating to probate law.

The people of the State of California do enact as follows:

08355

SECTION 1. Section 6152 of the Probate Code is amended to read:

6152. Unless otherwise provided in the will:

(a) Except as provided in subdivision (b), halfbloods, adopted persons, persons born out of wedlock, stepchildren, foster children, and the issue of all such persons when appropriate to the class, are included in terms of class gift or relationship in accordance with the rules for determining relationship and inheritance rights for purposes of intestate succession.

(b) In construing a devise by a testator who is not the natural parent, a person born to the natural parent shall not be considered the

14. See supra note 10.

15. To be included in class gift terminology in a will, a child who is not the child of the testator must have lived while a minor as a regular member of the household of the child's natural parent or of that parent's parent, brother, sister, or surviving spouse. Prob. Code § 6152(b). This is to exclude a child born out of wedlock where exclusion is consistent with the testator's likely intent. See the Comment to Prob. Code § 6152. Inclusion of the child who lived with the natural parent's surviving spouse will in many cases include a child born of a marital relationship. However, if the natural parent is living, the reference to the parent's "surviving" spouse may exclude the marital child when the testator would likely want the child included. The statutory reference to the parent's "surviving" spouse without a parallel reference to the parent's "spouse" appears to have been a drafting oversight. The Commission recommends that this be corrected by adding the parent's "spouse" to the relatives in whose household the child must have lived in order to be included in class gift terminology.

child of that parent unless the person lived while a minor as a regular member of the household of the natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse. In construing a devise by a testator who is not the adoptive parent, a person adopted by the adoptive parent shall not be considered the child of that parent unless the person lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent or of that parent's parent, brother, sister, or surviving spouse.

(c) Subdivisions (a) and (b) apply, and a different construction is not "otherwise provided" for the purposes of this section, even though the class designation is modified by the word "lawful" or "legal."

~~(e)~~ (d) Subdivisions (a) and (b) also apply in determining:

(1) Persons who would be kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator under Section 6147.

(2) Persons to be included as issue of a deceased devisee under Section 6147.

(3) Persons who would be the testator's or other designated person's heirs under Section 6151.

Comment. Section 6152 is amended to add "spouse" to the first sentence of subdivision (b), to add a new subdivision (c), and to redesignate former subdivision (c) as subdivision (d). The addition of the word "spouse" in subdivision (b) is consistent with the existing reference to the parent's "surviving spouse." Thus a child will be included in class gift terminology in the testator's will if the child lived while a minor as a regular member of the household of the parent's spouse or surviving spouse. This will usually result in the inclusion of a child born of a marital relationship, consistent with the testator's likely intent.

Under new subdivision (c), a reference in the will to "lawful" or "legal" issue does not by itself exclude from the designated class an adopted child, a person treated as an adopted child (see Section 6408(a)(3)), or a child born out of wedlock. With respect to adopted children, subdivision (c) is consistent with prior law. See Estate of Heard, 49 Cal.2d 514, 522-23, 319 P.2d 637 (1957); 7 B. Witkin, Summary of California Law Wills and Probate § 199, at 5711 (8th ed. 1974). With respect to a child born out of wedlock, subdivision (c) may be a departure from prior law. See Estate of White, 69 Cal. App.2d 749, 754, 160 P.2d 204 (1945) ("lawful issue" refers to "legitimate lineal descendants"). Under subdivision (c) as under prior law, other provisions of the will may indicate an intent to include or exclude from the designated class adopted children or children born out of wedlock. See, e.g., Estate of Clancy, 159 Cal. App.2d 216, 222-24, 323 P.2d 763 (1958) (evidence of intent to include adoptee).

SEC. 2. Section 6408 of the Probate Code is amended to read:

6408. (a) A relationship of parent and child is established for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(1) Except as provided in Section 6408.5, the relationship of parent and child exists between a person and his or her ~~other~~ natural parents, regardless of the marital status of the natural parents.

(2) The relationship of parent and child exists between an adopted person and his or her adopting parent or parents.

~~(3)~~ The (b) For the purpose of determining intestate succession by a person or his or her descendants from or through a foster parent or stepparent, the relationship of parent and child exists between a that person and his or her foster parent or stepparent ~~has the same effect as if it were an adoptive relationship if~~ ~~(A)~~ (1) the relationship began during the person's minority and continued throughout the parties' joint lifetimes and ~~(B)~~ (2) it is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

~~(b)~~ (c) For the purpose of determining whether a person is a "natural parent" as that term is used in Section 6408 and 6408.5:

(1) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

(2) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7006 of the Civil Code unless either (A) a court order was entered during the father's lifetime declaring paternity or (B) paternity is established by clear and convincing evidence that the father has openly and notoriously held out the child as his own.

(d) Nothing in this section affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or his or her descendants.

Comment. The amendment to Section 6408 makes the following changes:

(1) The word "other" is deleted in paragraph (1) of subdivision (a). This word was added by error when Section 6408 was amended in 1984.

(2) Former paragraph (3) of subdivision (a) is redesignated as subdivision (b) and the former language that the relationship between a person and his or her foster parent or stepparent "has the same effect as if it were an adoptive relationship" is deleted. This deleted language is replaced by new language that "[f]or the purpose of determining intestate succession by a person or his or her descendants from a foster parent or stepparent," the relationship "of parent and child exists" between them. The former language which treated the relationship "as if it were an adoptive relationship" had the possible undesirable effect of cutting off the right of inheritance of a natural parent who refused to consent to adoption of the child by a foster parent or stepparent. See Section 6408.5(b) (natural parent generally does not inherit from adopted child). Under the new language, even though the requirements of subdivision (b) are satisfied, the natural parent may continue to inherit from the child under paragraph (1) of subdivision (a). The foster parent or stepparent may not inherit from the child: Paragraph (2) of subdivision (a) does not apply because the adoption was not completed, and subdivision (b) does not apply because that subdivision applies only to inheritance by the foster child or stepchild or the child's issue "from" or "through" a foster parent or stepparent, not to inheritance "by" a foster parent or stepparent. The child, however, may inherit both from the natural parent under paragraph (1) of subdivision (a), and from the foster parent or stepparent under subdivision (b).

Subdivision (d) is added to make clear that Section 6408 has no effect on the judicial doctrine of equitable adoption. See, e.g., Estate of Wilson, 111 Cal. App.3d 242, 168 Cal. Rptr. 533 (1980).

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SEC. 3. Section 6408.5 of the Probate Code is amended to read:

6408.5. Notwithstanding Section 6408:

(a) The relationship of parent and child does not exist between an adopted person and his or her natural parent unless (1) the natural parent and the adopted person lived together at any time as parent and child or the natural parent died before the birth of the child and (2) the adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(b) Neither a parent nor a relative of a parent (except for the issue of the child or a wholeblood brother or sister of the child or the issue of such brother or sister) inherits from or through a child on the basis of the relationship of parent and child if the child has been adopted by someone other than the spouse or surviving spouse of that parent.

(c) If a child is born out of wedlock, neither a parent nor a relative of a parent inherits from or through a child on the basis of the relationship of parent and child between that parent and child unless the parent both of the following requirements are satisfied:

(1) The parent or a relative of the parent acknowledged the child and.

(2) The parent or a relative of the parent contributed to the support or the care of the child.

Comment. Subdivision (a) of Section 6408.5 is amended to add the language in paragraph (1) relating to the death of the natural parent before the birth of the child. Subdivision (a) determines when an adopted child remains a member of the natural parent's family. The effect of the amendment is to expand the situations where inheritance is allowed. The following examples indicate in various situations whether an adopted child or the issue of an adopted child may inherit from or through the child's natural parent. (In these examples, a reference to a parent is a reference to a natural parent. The marital status of the natural parents is irrelevant.)

Example 1. Child never lived with either mother or father; both parents relinquish child for adoption. The adopted child's relationship with both his natural parents' families is severed. The requirements of Section 6408.5(a) are not satisfied.

Example 2. Child lives with mother and father; father dies; mother relinquishes child for adoption. The adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. The requirement of Section 6408(a)(2) is satisfied because the adoption was "after the death of either of the natural parents."

Example 3. Child lives with mother but not father because father dies prior to child's birth; mother relinquishes child for adoption. The adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. Child remains a member of the deceased father's family because the father died before the birth of the child (satisfying the subdivision (a)(1) requirement) and the adoption was after the death of the father (satisfying the subdivision (a)(2) requirement).

Example 4. Child lives with mother but not father; mother dies; father relinquishes child for adoption. The adopted child remains a member of both the deceased mother's family and of the relinquishing father's family. Child remains a member of the relinquishing father's family because the spouse of the father and the adopted person lived together (satisfying the subdivision (a)(1) requirement) and the adoption was after the death of the mother (satisfying the subdivision (a)(2) requirement).

Example 5. Child lives with father's family but not mother or father because mother died shortly after child's birth; father relinquishes child for adoption. Child is not a member of either the deceased mother's family nor the relinquishing father's family. This is the result even if the father is the legitimate or acknowledged father of the child and has supported the child, since the relationship fails to meet the requirement of subdivision (a)(1) that the natural parent and the adopted person "lived together."

Subdivision (c) is amended to permit a relative of the parent of a child born out of wedlock to acknowledge the child and contribute to the support or care of the child, thereby allowing the parent or relative to inherit from the child.