

First Supplement to Memorandum 92-69

Subject: Study L-659.01 - Parent-Child Relationship for Intestate Succession (Alternate Draft)

Attached to the basic Memorandum is a staff draft of a recommendation on *Inheritance Involving Adopted Child*, revising Probate Code Section 6408 to deal with confusion under subdivision (c) on the effect of adoption. The State Bar Probate Section has previously suggested Section 6408 be split up into several shorter sections. The staff was concerned that decimal numbering would be required, but would not be acceptable to Legislative Counsel.

Professor Edward Halbach has reviewed the staff draft attached to the basic memo. He also suggests Section 6408 be split up into several shorter sections. This can be done without decimal numbering if Section 6408 is repealed and reenacted in a new chapter following Section 6414. A draft to do this is attached as Exhibit 1.

In addition to clarifying subdivision (c) of Section 6408 (Section 6451 in the attached draft), the attached draft also revises the last part of subdivision (f) of Section 6408 (Section 6453(b) in the attached draft) as follows:

A natural parent and child relationship may be established pursuant to . . . the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family 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~~ treated the child as his own.

This revision was suggested by Professor Halbach, and was previously recommended by staff (Memo 92-52). The purpose of this provision is to carry out the likely intent of the father by disinheriting a child of whose existence the father is probably unaware. The evidentiary requirement need not be so stringent to accomplish this purpose, and the proposed relaxation is consistent with establishing the father's likely intent.

If the attached alternate draft is to be recommended in place of the draft attached to the basic memo, the title of the recommendation should be revised to read *Parent and Child Relationship for Intestate Succession*.

Respectfully submitted,

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RECOMMENDED LEGISLATION [ALTERNATE DRAFT]

Chapter heading immediately preceding Section 6400 (added)

CHAPTER 1. INTESTATE SUCCESSION GENERALLY

Prob. Code § 6408 (repealed). Parent and child relationship

~~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 subdivisions (b), (c), and (d), the relationship of parent and child exists between a person and his or her 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.~~

~~(b) The relationship of parent and child does not exist between an adopted person and the person's natural parent unless both of the following requirements are satisfied:~~

~~(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to, or was cohabitating with, the other natural parent at the time the child was conceived and died before the birth of the child.~~

~~(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.~~

~~(c) 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 that 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.~~

~~(d) 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 that brother or sister) 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 requirements are satisfied:~~

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

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

~~(e) 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 that person and his or her foster parent or stepparent if (1) the relationship began during the person's minority and continued throughout the parties' joint lifetimes and (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.~~

~~(f) For the purpose of determining whether a person is a "natural parent" as that term is used in this section:~~

~~(1) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family 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 (e) of Section 7630 of the Family 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.~~

~~(g) 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. Former Section 6408 is superseded by Sections 6450-6455.

Prob. Code §§ 6450-6455 (added). Parent and child relationship

CHAPTER 2. PARENT AND CHILD RELATIONSHIP

§ 6450. Parent and child relationship

6450. Subject to the provisions of this chapter, a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(a) The relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents.

(b) The relationship of parent and child exists between an adopted person and the person's adopting parent or parents.

Comment. Section 6450 continues subdivision (a) of former Section 6408 without substantive change. The language "[s]ubject to the provisions of this chapter" is placed in the introductory clause because Sections 6451, 6452, and 6454 modify the relationship of parent and child between an adopted person and the person's adopting parent or parents, as well as the relationship of parent and child between a person and the person's natural parents. See also Section 6453 (defining "natural parent"). In former Section 6408, application of the "except" clause was limited to the relationship of parent and child between a person and the person's natural parents.

The definitions of "child" (Section 26), "issue" (Section 50), and "parent" (Section 54) adopt the rules set out in this chapter. See also Section 6152 (construction of wills).

§ 6451. Effect of adoption

6451. (a) The relationship of parent and child does not exist between an adopted person and a natural parent of the adopted person unless both of the following requirements are satisfied:

(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to or cohabiting with the other natural parent at the time the person was conceived and died before the person's birth.

(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(b) If the adoption is by a person other than the spouse or surviving spouse of a natural parent, neither a natural parent nor a relative of a natural parent (except for a wholeblood brother or sister of the adopted person or the issue of that brother or sister) inherits from or through the adopted person on the basis of a parent and child relationship between the adopted person and the natural parent under paragraphs (1) and (2) of subdivision (a).

(c) For the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship.

Comment. Section 6451 continues the substance of subdivisions (b) and (c) of former Section 6408.

In case of an adoption coming within subdivision (a), the adopted child may inherit from or through the adoptive parent, and also from or through the natural parent who gave up the child for adoption or through the natural parent who died preceding the adoption. 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.

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

Example 2. Child's mother and father were married or lived together as a family. Child lives with mother and father. Father dies. Mother relinquishes child for adoption. For the purpose of inheritance, the adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. The requirement of subdivision (a) is satisfied because the adoption was "after the death of either of the natural parents."

Example 3. Child's mother and father were married or lived together as a family until father died. Child lives with mother but not father because father died prior to child's birth. Mother relinquishes child for adoption. For the purpose of inheritance, the adopted child remains a member of both 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 father's family but not with mother or father because mother died shortly after child's birth and father relinquished child for adoption. For the purpose of inheritance, child is not a member of either the deceased mother's family or 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 (see Section 6452), since the relationship fails to meet the requirement of subdivision (a)(1) that the natural parent (the father) and the adopted person have "lived together." The child does not remain a member of the deceased mother's family because the mother and child never lived together as a parent and child, the mother having died shortly after the birth of the child.

In case of an adoption described in subdivision (b), the natural relatives cannot inherit from the adopted child, even though under Section 6450(a) the child could inherit from the natural relatives.

In subdivision (b), the reference to inheritance on the basis of a parent and child relationship "under paragraphs (1) and (2) of subdivision (a)" is added to make clear that, for a wholeblood brother or sister to inherit from or through the adoptee, the requirements of these two paragraphs must be satisfied. Under these two paragraphs, the relationship of parent and child does not exist between an adopted person and the person's natural parent unless the living-together or other requirements of paragraph (1) of subdivision (a) are satisfied, and the adoption was after the death of either natural parent. If the adoption was by the spouse of either natural parent, by its terms subdivision (b) does not apply. This is a nonsubstantive, clarifying revision, since that was the prior intent of subdivisions (b) and (c) of Section 6408.

Subdivision (b) omits the reference to the adoptee's "issue" that was in the parenthetical "except" clause in subdivision (c) of former Section 6408. The former reference to "issue" was unnecessary. Issue of the adoptee do not inherit from or through the adoptee on the basis of a parent-child relationship between the adoptee and the adoptee's parents. Rather they inherit from or through the adoptee on the basis of the parent-child relationship between themselves and the adoptee.

Subdivision (c) is new, and makes clear that, for the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship. Thus, for example, if a person is adopted by one set of parents, and later is adopted by a second set of parents, the second adoption severs the parent-child relationship between the adoptee and the first set of adoptive parents unless paragraphs (1) and (2) of subdivision (a) are satisfied, substituting "adoptive" for "natural" in those paragraphs. This is a clarification, and may be a change in prior law.

"Wholeblood" relatives were defined in *In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923), to mean persons having both natural parents in common. One effect of subdivision (c) is to broaden "wholeblood" in subdivision (b) to include adoptive siblings in an appropriate case. For example, assume a person, *P*, is born to two parents, a brother, *B*, is born to the same two parents, and a half-sister, *S*, is born to the mother and later adopted by the father. *B* is a wholeblood sibling of *P* because they have both natural parents in common. For the purpose of inheritance, *S* is treated as a wholeblood sibling of *P*, because under subdivision (c) the effect of the adoption is to treat *S* as the natural child of the adopting father. If *P* is later adopted by two adopting parents, under subdivision (b) the adoption cuts off inheritance by most of *P*'s natural relatives, except that both *B* and *S* may inherit from or through *P* if the requirements of paragraphs (1) and (2) of subdivision (a) are satisfied.

§ 6452. Effect of birth out of wedlock

6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent (except for a brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

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

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

Comment. Section 6452 continues the substance of subdivision (d) of former Section 6408.

The parenthetical "except" clause in Section 6452 omits the reference to the adoptee's "issue" that was in subdivision (d) of former Section 6408. The former reference to "issue" was unnecessary.

Issue of a child born out of wedlock do not inherit from or through that child (their parent) on the basis of a parent-child relationship between the out-of-wedlock child and the child's parents. Rather they inherit from or through the out-of-wedlock child on the basis of the parent-child relationship between themselves and that child.

Also omitted in the parenthetical "except" clause is the former reference to a "natural" brother or sister of the out-of-wedlock child. This recognizes that an adoptive brother or sister of the out-of-wedlock child may inherit from or through that child. See Section 6450(b).

Section 6452 requires both acknowledgment and contribution to the support or care of a child born out of wedlock before a parent or a relative of a parent may inherit from or through the child, except that the issue of the child or a brother or sister of the child or the issue of such brother or sister may inherit from or through the child even though these requirements are not satisfied. For the purpose of Section 6452, it is sufficient if a relative of the parent acknowledges the child and contributes to the support or care of the child. If the child born out of wedlock is adopted, inheritance from or through the child may be precluded under Section 6451, even where the requirements of Section 6452 are satisfied.

§ 6453. Establishing natural parentage

6453. For the purpose of determining whether a person is a "natural parent" as that term is used in this chapter:

(a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code.

(b) 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 7630 of the Family 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 treated the child as his own.

Comment. Section 6453 continues the substance of subdivision (f) of former Section 6408, except that former Section 6408(f)(2) required the father to have "openly and notoriously held out the child as his own." Subdivision (b) of Section 6453 omits "and notoriously", and merely requires the father to have "openly treated" the child as his own.

Note. To explain the reason for the revision mentioned in the Comment to Section 6453, the staff would add the following to the preliminary part: "The purpose of the evidentiary requirement in Section 6408(f)(2) is to carry out the likely intent of the father by disinheriting a child of whose existence the father was probably unaware. A slight relaxation of the evidentiary requirement is consistent with establishing the father's likely intent."

§ 6454. Inheritance involving foster child or stepchild

6454. For the purpose of determining intestate succession by a person or the person's descendants from or through a foster parent or stepparent, the relationship of parent and child exists between that person and the person's foster parent or stepparent if both of the following requirements are satisfied:

(a) The relationship began during the person's minority and continued throughout the parties' joint lifetimes.

(b) It is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

Comment. Section 6454 continues the substance of subdivision (e) of former Section 6408. Section 6454 applies, for example, where a foster child or stepchild is not adopted because a parent of the child refuses to consent to the adoption. See also Estate of Lind, 209 Cal. App. 3d 1424, 257 Cal. Rptr. 853 (1989); Estate of Claffey, 209 Cal. App. 3d 254, 257 Cal. Rptr. 197 (1989). Even though the requirements of Section 6454 are satisfied, the natural parent may continue to inherit from the child under Section 6450(a). The foster parent or stepparent may not inherit from the child: Subdivision (b) of Section 6450 does not apply because the adoption was not completed, and Section 6454 does not apply because the section 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 Section 6450(a), and from the foster parent or stepparent under Section 6454.

§ 6455. Equitable adoption

6455. Nothing in this chapter affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or the child's descendants.

Comment. Section 6455 continues the substance of subdivision (g) of former Section 6408. Concerning equitable adoption, see Estate of Wilson, 111 Cal. App. 3d 242, 168 Cal. Rptr. 533 (1980).

CONFORMING REVISIONS

Prob. Code § 1207 (technical amendment). Exceptions to notice requirement involving parent-child relationship

1207. (a) Subject to subdivision (b), where notice is required to be given to a decedent's beneficiaries, devisees, or heirs, notice need not be given to a person who, because of a possible parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent, may be (1) an heir of the decedent or (2) a member of a class to which a devise is made.

(b) Subdivision (a) does not apply where the person required to give the notice has actual knowledge of facts that a person would reasonably believe give rise under Section 6408 ~~6454~~ to the parent-child relationship between the stepchild and the stepparent or between the foster child and the foster parent.

Comment. Section 1207 is amended to revise a cross-reference.

Prob. Code § 6406 (technical amendment). Relatives of halfblood

6406. Relatives Except as provided in Section 6451, relatives of the halfblood inherit the same share they would inherit if they were of the whole blood.

Comment. Section 6406 is amended to recognize the exception in Section 6451. This amendment is clarifying.