



Intestate Inheritance Rights for Adopted Persons

Leaving a will is the best way to ensure that heirs or descendants may inherit from your estate. Issues of property distribution may arise when a birth parent or adoptive parent dies without making a valid will or without naming an heir to particular property (referred to as intestacy). In these cases, State law determines who may inherit from whom. Laws in all 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands specify an adopted person's right to inherit from the estate of either adoptive or birth parents.

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Birth Parents and Adopted Children

Generally, the court decree that finalizes the adoption ends the legal relationship between the birth parent (also referred to as the biological or natural parent in the statutes) and the adopted child. There are, however, exceptions to this policy in some States. For example:

- Alaska, Idaho, Illinois, and Maine provide for a continuation of inheritance rights if so stated in the adoption decree.
- In Kansas, Louisiana, Rhode Island, Texas, and Wyoming, an adoption decree terminates the right of the birth parent to inherit from the adopted child, but the adopted child may still inherit from the birth parent.
- Illinois allows the birth parents to acquire from the adopted child's estate any property gained from them as a gift, through a will, or under intestate laws.
- In Pennsylvania, an adopted person may inherit from the estate of a birth relative, other than a birth parent, who has maintained a familial relationship with the adopted person.
- In approximately 14 States, if a child is adopted by a stepmother or stepfather after his or her birth parent dies (as long as the deceased parent's parental rights had not been terminated prior to his or her death), the adopted child's right of inheritance from or through the deceased birth parent or any biological relative is unaffected by the adoption.¹

Adoption by the spouse of a birth parent generally has no effect on the right of the adopted child to inherit from or through that birth parent. In 10 States, when a child has been adopted by a stepparent, the child may inherit from either birth parent, depending on the circumstances.²

Adoptive Parents and Adopted Children

The adopted child is treated by law as if he or she had been born to the adopting parents upon the entry of the final adoption decree. The adopted child, therefore, gains the right

¹The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current through February 2009. The States that provide for inheritance from a deceased birth parent are Alaska, Connecticut, Florida, Georgia, Idaho, Iowa, Massachusetts, Minnesota, New Jersey, North Dakota, Ohio, Oregon, Tennessee, and Wisconsin.

²Alabama, Arizona, California, Colorado, Maine, Michigan, Montana, South Dakota, Utah, and Vermont.

Adopted Children Who Are Not Included in a Will

to inherit from the adoptive parents and adoptive parents' relatives. Adoptive parents and other adoptive relatives also gain the right to inherit from the adopted child.

Intestate law often applies to adopted children who are not specifically named in the will of the adopted parent. Usually this occurs when they are adopted after the will was made and it was never amended.

The laws in approximately 42 States address this situation.³ Generally, adopted individuals are included in class gifts and other terms of relationship in accordance with the rules for intestate succession.⁴ For example, if a will stipulates that all children of the deceased parent are entitled to an equal share, the adopted person is included whether or not he or she is specifically named. Also, when a parent fails to provide for any of his or her children, whether by accident or if the person was adopted after the will was made, that person shall have a share of the parent's estate as if the parent had died intestate. This last rule applies unless there is evidence that the omission was intentional or that the parent provided for the adopted person outside the will.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway in cooperation with the National Center for Adoption Law and Policy. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

³ The States that provide for intestate inheritance for adopted children who are omitted from a will include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

⁴ The term *class* refers to all those persons in the same category or level of rights, such as heirs of a deceased person who are related by the same degree.