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STEPPARENT ADOPTION AND INHERITANCE:
A SUGGESTED REVISION OF
UNIFORM PROBATE CODE
SECTION 2-109

CATHY J. JONES

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person,

(1) an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.¹

I. INTRODUCTION

Section 2-109 of the Uniform Probate Code provides, for purposes of intestate succession, (and, in fact, for all purposes of the Code)² that the act of adoption serves to make the person adopted the

² The Comment following section 2-109 in the official text of the Uniform Probate Code states: “The definition of ‘child’ and ‘parent’ in section 1-201 incorporates the meanings established by this section, thus extending them for all purposes of the Code.” 8 U.L.A. 67 (1983). Section 1-201(3) provides, “Child includes any individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.” UNIF. PROB. CODE § 1-201(3), 8 U.L.A. 30 (1984). Section 1-201(28) states, “’Parent’ includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.” UNIF. PROB. CODE § 1-201(28), 8 U.L.A. 32
The child of the adoptive parents and not of the natural or biological parents. The provision is consistent with most state adoption laws which place adopted children and adoptive parents in the same relationship as if the children had been born to the adoptive parents, and which sever any legal relationship between natural parent and child. Section 2-109 provides an exception to the general rule when the child is adopted by the spouse of a natural parent. In that instance, not only is the child treated as the child of the adoptive parent, but also as the child of both natural parents. The exception is extremely important in terms of inheritance rights because the majority of children adopted in the United States are adopted by their own parents or by stepparents. Furthermore, the number of stepparent adoptions is likely to continue to increase because of the nation's high divorce and remarriage rates. The exception clearly makes sense when one natu...

(1984). See infra notes 117-119 and accompanying text for a discussion of the extension of these definitions to cases involving testate estates.
3. Throughout this article, the terms biological parent and natural parent are used interchangeably.
4. See, e.g., FLA. STAT. ANN. § 63.172(1) (West Supp. 1985); IDAHO CODE §§ 16-1508, 16-1509 (1979); MINN. STAT. ANN. § 259.29 subd. 1. (West 1982); WYO. STAT. § 1-22-114 (1977).
5. See U.S. Dept. HEW, Adoptions in 1975, NCSS Rep. E-10 at 7 (April, 1977) (in 27 of 38 jurisdictions reporting relevant information, 50 percent or more of all adoptions in 1975 by child's own parent or stepparent). See also Meezan, Adoption Service in the States, U.S. Dept. HHS Pub. No. (OHOS) 80-30288 at 2, 50-51 (Oct., 1980) (over 60 percent of all adoptions in United States are "relative adoptions," most of which involve stepparents). Accord, Boddenheimer, New Trends and Requirements in Adoption Law and Proposals for Legislative Change, 49 S. CAL. L. REV. 10, 13 & n.4 (1975) (stepparent adoptions make up more than half of all adoptions in California and number is rising; in 1968, 18,360 children were adopted in California, 6,195 by stepparents; in 1972, 13,716 children were adopted in California, 7,434 by stepparents) (citing Program Review Branch, California Department of Finance, A Review of the California Adoption Program 95 (1974)); Note, Adoption—Intestate Succession—The Denial of a Stepparent Adoptee's Right to Inherit from an Intestate Natural Grandparent: In Re Estate of Holt, 13 N.M.L. REV. 221, 222 & n.5 (1983) (citing N.M. Human Services Dept., Soc. Services Div. Ann. Rep. (1980) (majority—55 percent—of adoptions in New Mexico involve stepparents or persons related to child). The percentage of stepparent adoptions in relation to total adoptions is also increasing because of the decrease in the overall number of adoptions by "strangers." That decrease is popularly attributed to the declining availability of healthy, white infants (generally the category of children most sought after for adoption) due to easier access to abortion or lessened societal stigma attached to unwed mothers who keep their children.
eral parent dies and the remaining natural parent marries a person who then adopts the child. It also makes sense, however, when both natural parents are still living but are divorced and one marries a person who then adopts the child. The exception, however, is not consistent with most state adoption laws. In fact, it is not even consistent with the Uniform Adoption Act provision setting forth the effect of a final decree of adoption on the relationship between adopted children and their natural and adoptive parents.

ments in Adoption Law and Proposals for Legislative Change, 49 S. CAL. L. REV. 10, 11 (1975); and Carroll, Abrogation of Adoption by Adoptive Parents, XIX FAM. L. Q. 155, 156 (1985), all discussing increased rates of divorce and remarriage and effect rates will have on stepparent adoptions.

7. See infra note 137 and accompanying text. See also infra note 56.

8. See infra notes 132-139 and accompanying text. See also infra p. 87.


10. Section 14 of the Uniform Adoption Act provides:

(a) A final decree of adoption and an interlocutory decree of adoption which has become final . . . have the following effect . . . :

(1) except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his relatives, including his natural parents, so that the adopted individual thereafter is a stranger to his former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship. . . .

UNIF. ADOPTION ACT § 14(a)(1), 9 U.L.A. 44-45 (1979) (emphasis added). Section 14(b) provides that if a natural parent dies before the child is adopted by the subsequent spouse of
This article focuses on UPC section 2-109 and the maintenance of a relationship between an adopted child and both biological parents when the child is adopted by the spouse of one of the biological parents. Part II of the article reviews the development of section 2-109 and its relationship to section 14 of the Uniform Adoption Act. Part III examines intestacy statutes relating to children adopted by stepparents in those states cited in the Uniform Probate Code as having adopted the Code. That examination includes a review of those states’ statutes which set forth the effect of a final decree of adoption in order to determine whether the probate and adoption sections of the states’ statutory schemes are consistent. Part III also makes limited reference to the intestacy provisions of some states which have not adopted the Uniform Probate Code. Part IV of the article presents a proposed model probate code defining the appropriate relationship for purposes of inheritance between a child adopted by a stepparent and the adoptive parent and both biological parents. Part V contains a general conclusion.

II. UNIFORM PROBATE CODE SECTION 2-109

The National Conference of Commissioners on Uniform State Laws and the American Bar Association adopted the Uniform Probate Code in 1969. Section 2-109 was amended to its present form in 1975.

the other natural parent and the natural parent-child relationship remained intact at the time of death, the relationship is not terminated as to the child and the predeceased natural parent. UNIF. ADOPTION ACT § 14(b), 9 U.L.A. 45 (1979).

11. Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Montana, Nebraska, New Mexico, North Dakota, and Utah. UNIF. PROB. CODE, Table of Jurisdictions Wherein Code Has Been Adopted, 8 U.L.A. 1 (Supp. 1985). Although the Table cites the legislatures of Kentucky and Minnesota as having adopted the UPC, neither adopted section 2-109 or any similar provision within its probate code. Furthermore, the fact that a state is cited as having adopted the UPC does not mean that the legislature adopted the Code as drafted by the National Conference of Commissioners on Uniform State Laws. As will become evident in Part III, infra, few jurisdictions have adopted section 2-109 as drafted and/or as subsequently amended.

12. This article and the proposed probate code are limited to instances of adoption of minor children, not adults, and adoption by a stepparent, not by another blood relative of the child or by a "stranger." The model could be extended, however, to include adult adoptions and/or adoptions by "strangers" should a legislature deem that appropriate.

13. UNIF. PROB. CODE, Explanation, 8 U.L.A. III (1984). The Model Probate Code, published in 1946 as a model, not a uniform, act, provided that for the purpose of inheritance to, through, and from an adopted child, the child would be treated as the natural child of the adoptive parents and, for purposes of intestate succession, would cease to be treated as the child of the natural parents. MODEL PROB. CODE, Part II, § 27 (1946). The Model Probate Code did not address the issue of children adopted by stepparents.

As originally drafted in 1963, section 308 of the UPC, dealing with adopted children and inheritance, provided that for purposes of intestate succession an adopted child would be treated as the natural child of the adopting parents and not of the natural or previously adopting parents except that

[i]f a natural or adopting parent having lawful custody of a child, marries or remarries and consents that the stepfather or stepmother may adopt the child, the adoption does not affect the rights of the child to inherit from his natural or previously adopted kindred or the rights of the consenting parent.

Under this original provision, then, a child adopted by the spouse of a biological parent had a right to take from and through the adoptive parent and both natural parents. Only the natural parent married to the adoptive parent, however, had the right to take from and through the child. The other natural parent and that parent's kin were precluded from taking from or through the child.

During the consideration of section 308 the Commissioners discussed relationship "by blood" and inheritance, focusing on the intestacy ramifications should an adopted child die survived by the kin of an adoptive parent, or should the kin die survived by the adopted child. In either case, the child and the adoptive parent's kin would inherit from each other. Commissioner Karesh viewed such a result as being undesirable and called for "further thought [to] be given to

15. National Conference of Commissioners on Uniform State Laws, Proceedings on the Uniform Prob. Code 45-46 (Tent. Draft Aug. 8, 1963) [hereinafter cited as UPC Proceedings] (emphasis added). This section, while speaking of consent to the adoption by the natural parent married to the adoptive parent, does not refer to the consent of the other natural parent. Today, if the other natural parent of the child were living and were the mother or the father and previously married to the child's mother, that parent's consent would also be necessary before the adoption could take place, or that parent's consent would have to be made unnecessary by a finding supporting involuntary relinquishment of the parent's parental rights. See infra note 129 and accompanying text for a discussion of the grounds on which parental rights may be involuntarily terminated. Protection against termination of parental rights is also afforded, under certain circumstances, to the natural father not married to a child's mother. See Caban v. Mohammed, 441 U.S. 380 (1979) (holding unconstitutional gender-based statute requiring consent of mother, but not consent of father, for adoption of child born out of wedlock); Stanley v. Illinois, 405 U.S. 645 (1972) (holding invalid statute automatically depriving unwed fathers custody of their children upon death of mother, but not depriving unwed mothers or married fathers custody of children upon death of other parent without finding of unfitness). But see Lehr v. Robertson, 463 U.S. 248 (1983) (biological link alone insufficient to give natural father right to notice when mother's husband seeks to adopt child; case distinguished from Caban v. Mohammed because biological father in Lehr v. Robertson, unlike father in Caban, had established no relationship with child).

this, because I don't think you ought to terminate blood kinship entirely, and I don't think you ought to introduce alien blood, so to speak, so as to permit collaterals to take. 17 Commissioner Karesh's remarks, however, appear to have been directed at the provision in the section terminating all ties between adopted children and their natural parents when the children are adopted by strangers. It does not appear that the Commissioners directed their remarks or their concerns to the relationship between natural parents and children adopted by stepparents. 18

Adoption and intestacy were the topics of the Commissioners' discussions again in 1967 and 1968. In the summer 1967 Draft of the UPC, the section concerning inheritance rights of adopted children became section 2-109 and began to resemble the section as it reads today, with the important exception that adoption of a child by the spouse of a natural parent did not act to sever the relationship between the child and the natural parent married to the adoptive parent, but apparently did sever the relationship between the child and the other natural parent. 19 As before, the Commissioners' discussions related primarily to the issue of children adopted by strangers, thereby terminating the relationship between the children and their natural parents, rather than to the specific topic of stepparent adoption and the relationship of child and natural parents. 20

The Second Tentative Draft of the UPC, discussed at the Commissioners' July 1968 meeting, addressed the issue of "dual inheritance," that is, the possibility that a child adopted by a relative could inherit from or through that relative both as an adopted child of the relative and by representation through a deceased natural parent who

17. Id. at 47-48.
18. The answer to one question did relate to stepparent adoption:
   Commissioner Karesh: "Suppose we have two children. One is adopted by, we will say, A and one is adopted by B, different sets of parents. Suppose one of these adopted children dies. Does his natural brother inherit from him?" Id. at 48. The response, "That possibility exists only under subsection (b) [the section referring to stepparent adoption]." Id., is the only reference during the 1963 proceedings to stepparent adoption and inheritance.
   For all purposes of intestate succession, an adopted child shall be treated as a natural child of his adopting parents; and he shall cease to be treated as a child of his natural parents except that if a natural parent marries or remarries and the child is adopted by the stepfather or stepmother, the child shall continue to be treated as the child of the natural parent who is the spouse of the adopting parent. Id. (emphasis added).
was kin to the relative. At that time section 2-112 provided that a person related to the decedent through two lines could take only one share of the intestate's estate, but could opt for the larger of the shares.21

Section 2-109 of the 1969 Draft of the UPC contained different language but the same meaning as the 1967 Draft.22 At their 1969 meeting, the Commissioners discussed informal adoption23 and a prohibition on adopted children inheriting from a natural parent. The latter discussion implicated the Uniform Adoption Act.24 Commissioner Jestrab commented:

I wonder if the Committee has given any thought to this question of the definition of an adopted child, having the requirement that there has got to be a decree of adoption, actually.25

... . . .

The next thing I would like to inquire about is: What is the reason, if there is any reason, for not permitting an adopted child to inherit from the natural parent? Is there any reason for that?

Those two questions I think the Committee might think about a little bit, because there is a great deal of money involved in the first case [informal adoption of Native American children], and in the second I can’t see the reason for disinheriting an adopted child from his natural parents.26

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21. Id. at 94 (July 30, 1968).
22. If for purposes of intestate succession a relationship of parent and child must be established to determine succession by, through or from a person,

(a) an adopted child is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent shall have no effect on the relationship between the child and that natural parent.

23. The discussion was specifically within the context of Native American children.

24. States frequently have multiple statutory provisions dealing with the issues of adoption and inheritance. See infra notes 71-104 and accompanying text for examples of statutes dealing separately, and often inconsistently, with the questions of the effect of an adoption decree and intestacy. It was not unusual, therefore, for the Commissioners to refer in their discussion of the Uniform Probate Code to the Uniform Adoption Act. But see KY. REV. STAT. ANN. § 199.520 (Michie/Law. Co-op. 1984) and MINN. STAT. ANN. § 259.29 (West 1982), both of which deal with the issues in only one statute.
25. The 1969 draft of section 2-109(a) provided, in part, “Adoption is effected for purposes of this provision by a final decree of adoption or an interlocutory decree of adoption which has become final.” National Conference of Commissioners on Uniform State Laws, UNIF. PROB. CODE § 2-109(a) at 37 (Third Tentative (Seventh Working) Draft Aug., 1969).
Chairman Davies responded:

If the Committee Chairman may speak on this particular point, we have for consideration Monday the Uniform Adoption Act. There is provision in that for almost this precise policy. We face the problem we continually face in legislation of finding a place in the statutory arrangements of the state for a particular rule of law, and it seems to me the effect of adoption is appropriately the Adoption Act, not the Probate Code.

My suggestion to this Committee would be that this section be bracketed, with some kind of comment to say that it should be in accord with some other statutory section. If there is no other statutory section in the law of the particular state, then they can use this bracketed section.27

Commissioner Burdick, however, objected, arguing that matters relating to adopted children should be addressed in the UPC and not in the Adoption Code:

Also, have you considered the possibility of agreements to adopt where the parents have entered into an agreement — a contract — to adopt the child? That isn't covered.

I'd rather not see it in the Adoption Act. I think it ought to be here, that for this purpose the child may be regarded as an adopted child if under the law in which the child is found the relationship of an adopted child is found to exist, or if there is an agreement to adopt, or if there is a formal decree, a final decree or an interlocutory decree which has become final. I think perhaps all four of those situations could be recognized here.28

The Commissioners subsequently did take up the topic of the Uniform Adoption Act.29 The Uniform Adoption Act, as originally drafted, provided that after a final decree of adoption was entered, the relationship between adopted child and adopting parent and that parent's kin should be the same as that between a natural child and parents and kin.30 The adopted child would be entitled to inherit from

27. Id. at 95-96 (emphasis added). Commissioner Davies' suggestion that the explanation of the effect of adoption be confined to the Uniform Adoption Act apparently was not accepted.
28. Id. at 96.
30. UAA Proceedings at 205, (citing UNIF. ADOPTION ACT § 12(1) (Draft Aug. 18, 1953)). The Commissioners, in later discussion, decided to bracket the words "and the kindred of the adoptive parents" in order to give states a choice whether to extend the natural relationship of adopted child and adoptive family beyond the adoptive parents. Id. at 304 (Aug. 19, 1953).
and through the adoptive parents "in accordance with the statutes of descent and distribution," and the adoptive parents would be entitled to inherit from and through the child. No provision was made for inheritance from the child by the adoptive parent's kin. The proposed draft also provided that after a final decree of adoption was entered, the natural parents of the adopted child, unless they were also the adoptive parents or the spouse of an adoptive parent, would be relieved of all parental responsibilities in relation to the child and would retain no right to inherit from the child by way of intestacy. The proposed draft did not prevent the child from inheriting from the natural parents or the natural parents' kin. The draft did not state

31. Id. The draft of the Uniform Adoption Act invoked the provisions of intestacy law but failed to acknowledge or provide for those instances in which the adoption act and intestacy statute might conflict concerning the inheritance rights of adopted children. The language of the adoption act could be read, however, as impliedly revoking any part of the intestacy statute which did not recognize an inheritance relationship between adoptive child and adoptive parents and kin and as relying on the intestacy statute only to define a pattern of descent and distribution for intestate property.

32. Id.

33. The only mention made of "kin" by the proposed draft related to a "natural relation" existing between "adopted child and the adoptive parents . . . and the kindred of the adoptive parents." Id., § 12(1) at 205. The Commissioners' discussion concerning "kin" can best be described as ambiguous:

Mr. Cooper: My other question, whether or not the next of kin are to be limited to the next of kin of the side of the adopted parent or whether the next of kin for the purpose of inheritance involves the deceased parent?

Mr. Stubbs: We don't think we cut that off in any way.

Id. at 207.

34. UAA Proceedings at 205 (citing section 12(2) of the draft of the Uniform Adoption Act (Aug. 18, 1953)). The reference to "the spouse of an adoptive parent" was not included in the original draft but was later added by the Commissioners. Id. at 305 (Aug. 19, 1953).

35. Id. at 206 (Aug. 18, 1953). Further comments of the Commissioners in 1953 relating to access to adoption records and original birth certificates for the purposes of discovering who an adoptee's heirs may be or from whom an adoptee may take indicate that the Commissioners did not intend at that point, in that Act, to terminate the inheritance relationship between an adopted person and the natural parents:

Mr. Stubbs: Of course, in the first place one who has a proper reason for seeing them [adoption records and birth certificate] may always do so. There is not a complete block here. He has to ask the court.

. . . .

Mr. Stubbs: . . . He has to ask the court, but the court, if the reason is proper, can always open the files to anyone who applies to see them. It should be some reason, however, other than mere curiosity, or what is probably more important—what the confidential nature of the proceedings does is to stop persons who once were interested but who gave up their rights long ago and who later changed their minds—

Mr. Helm: This person is still an heir in an estate and may inherit from
whether natural parents' kin could inherit from the child.\(^{37}\)

In the original draft of the Uniform Adoption Act, the Commissioners foreshadowed their later reliance on the interdependence between the Uniform Probate Code and the Uniform Adoption Act. Commissioner Peal believed that while the law of adoption could create a relationship between adopted child and adoptive parents and the adoptive parents' kin, it could not interfere with the law of property.\(^{38}\) Commissioner Stubbs' response indicated that, in fact, in treating an adopted child like the natural child of the adoptive parents, property and inheritance rights would be affected, and that that was the "basic reason" for the provision.\(^{39}\) The Uniform Act would provide the further advantage, he believed, of creating certainty and avoiding conflict of laws problems in interpreting wills and trusts in jurisdictions where the law concerning adopted children and inheritance might be different than it was in the jurisdiction where the documents were drafted.\(^{40}\) Yet, in a later discussion at the same meeting of the Commissioners, Commissioner Helm raised a question concerning inheritance rights from a father of a child born out of wedlock,\(^{41}\) to which Commissioner Miller responded, "We have been careful not to touch that at all. There is no provision in this Section which prevents the adopted child from inheriting from its natural parent. This is a matter for the law of descent and distribution and not for this Act."\(^{42}\)

On August 6, 1969, section 14 of the Uniform Adoption Act, explaining the effect of a final decree of adoption, was raised for the Commissioners' discussion.\(^{43}\) Contrary to the indication on August 2, however, that the Commissioners would discuss the effect which a final adoption decree would have on the relationship between an adopted child and the natural and adoptive parents,\(^{44}\) no Commis-

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\(^{36}\) See supra note 33.

\(^{37}\) Although the proposed draft did not speak to the issue of natural parents' kin, the Commissioners' discussion indicated that natural kin could inherit intestate from an adopted child. \textit{Id.} at 214 (Aug. 18, 1953).

\(^{38}\) \textit{UAA Proceedings} at 214 (Aug. 18, 1953).

\(^{39}\) \textit{Id.} at 216.

\(^{40}\) \textit{Id.}

\(^{41}\) \textit{Id.} at 305-06 (Aug. 19, 1953).

\(^{42}\) \textit{Id.} at 306 (emphasis added).


\(^{44}\) See supra note 27 and accompanying text.
sioner moved to discuss section 14, and it was accepted without comment.\textsuperscript{45}

Section 2-109 of the Uniform Probate Code, providing that, for purposes of intestate succession, a child adopted by a spouse of a natural parent remains a child of the adoptive parent's spouse but, by implication, not of the other natural parent, remained unchanged from its date of adoption in 1969\textsuperscript{46} until 1975. In 1975 several "technical amendments" were made to the Code. Two of the amendments significantly affected the rights of children adopted by stepparents and the rights of the children's kin. Section 2-109 was amended to provide that when a child is adopted by the spouse of a natural parent, the child's intestate inheritance rights remain intact as to both natural parents.\textsuperscript{47} Section 2-114 was added to the Code to prohibit dual inheritance.\textsuperscript{48}

Acknowledging that the change to section 2-109, although only one word, was more substantive than technical, Professor Wellman explained the amendment:

"Now, what's involved here is the question of whether a child upon adoption ceases to be connected for any inheritance purpose with the natural parents, or through his natural parents to his natural kindred. The original position of the Conference was that adopt-  

\textsuperscript{45} UAA Proceedings at 91 (Aug. 6, 1969). The Uniform Adoption Act, as revised, was approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in 1969. It was amended in 1971. UNIF. ADOPTION ACT, Historical Note 9 U.L.A. 11 (1979). To date the legislatures of seven states—Alaska, Arkansas, Montana, New Mexico, North Dakota, Ohio, and Oklahoma—have adopted the Act. UNIF. ADOPTION ACT, Table of Jurisdictions Wherein Act Has Been Adopted, 9 U.L.A. 1 (Supp. 1985). Following publication by the Department of Health and Human Services of the Model Act for Adoption of Children with Special Needs, see infra note 127, the National Conference of Commissioners on Uniform State Laws appointed a special drafting committee to review the Model Act and assess changes or revisions necessary to bring the Uniform Adoption Act into line with recent judicial decisions and modern philosophies, problems, and conditions concerning adoption. Howe, Adoption Practice, Issues, and Laws 1958-1983, XVII FAM. L. Q. 173, 194 (1983). Although the National Conference of Commissioners opposed the model act, the Commissioners took no definitive action to amend or revise the Uniform Adoption Act. Id. In 1980, the Chair of the Family Law Section of the American Bar Association appointed a committee to develop a model state adoption law offering solutions and approaches different from the federal model. Id. That committee has recently published a "Draft ABA Model State Adoption Act." Samuels, Draft ABA Model State Adoption Act, XIX FAM. L. Q. 103 et seq. (1985).

\textsuperscript{46} See supra note 13 and accompanying text.

\textsuperscript{47} UPC Proceedings at 6-7 (Aug. 4, 1975).

\textsuperscript{48} UNIF. PROB. CODE § 2-114, 8 U.L.A. 72 (1983) (discussed in U.P.C. Proceedings at 14-15 (Aug. 4, 1975)). Section 2-114 states: "A person who is related to decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share."
tion did sever the connection with natural parents, with one exception. It did not sever the connection of the adopted children to the other parent. It had no effect on the relationship between the child and that natural parent. That was the exception.

So the old effect of it was to preserve in the case of the—take the child whose father is dead, the child's mother remarries, the new father adopts the child. The position of the Conference formerly was that the adoption severed the connection between that child and its natural parents, but not the natural parent who was the spouse of the adopting parent here.

That left the child, obviously, a kin of its mother and of the mother's kindred, but severed the connection between the child and the kindred of the deceased father.

Now, this little change from "that" to "either" has the effect, we believe, of saying that when a child is adopted by the spouse of a natural parent, there is no disconnection resulting from the adoption from any of the child's natural kindred. The child remains related in the case I just gave you to the family of the deceased father, and becomes an heir of the adopting father by the adoption, but is not disconnected.

... We think that it's desirable to have adoptions terminate relations to natural parents when the adopted person is an orphan and disconnected from all natural parents. We think that when there is in the picture as the spouse of the new adopting parent one of the child's own natural parents, everybody is aware of the child's source—the relatives are aware, and there is no need statutorily now—awkwardly now—we suggest, to try to come in and sever that old relationship.

So it's a simple change in terms of the number of words affected. It is a change that we think removes the Code from a former vulnerability to some hard cases that we hadn't fully anticipated, and strengthens it.49

Professor Wellman explained the addition of section 2-114:

The comment shows that this language was in preliminary drafts of the Code. ... It was dropped ... for the reason that nobody could think of many cases that called for it,[50] and explaining it


50. Few, if any, cases required a prohibition against dual inheritance because, prior to 1975, when a child was adopted the child's inheritance rights from or through the natural parents were terminated except in the case of a natural parent married to the adoptive parent. So, for example, if a child were adopted by her mother's sister who had married the child's father following the mother's death, section 2-109 prior to 1975 terminated the child's right to take through her natural mother. If the parent of both the natural and adoptive mothers died, and both mothers had predeceased their parent, prior to 1975 the
seemed more onerous than just ducking it.

... [As an example take the situation] where a husband is killed, leaving a minor child. The wife, his surviving spouse, remarries the decedent's husband's brother. The new husband now adopts the child. That kind of adoption by one who is married to the child's natural mother doesn't disconnect from any natural kinred. This child now emerges with two strings on inheritance from the grandparents at this point, and what this section is—you take one of these.\textsuperscript{51}

The Commissioners accepted section 2-114 without discussion.\textsuperscript{52}

The interrelationship between the Uniform Probate Code and the Uniform Adoption Act and Professor Wellman's comments on amended section 2-109 leave unanswered a critical question in terms of the inheritance rights of a child adopted by a stepparent. The explanation and illustrations relating to both section 2-109 and section 2-114 focus on the situation where a natural parent dies, the surviving natural parent remarries, and the natural parent's subsequent spouse adopts the child. In such a case, intestacy rights of the child and of the deceased parent and that parent's kin remain intact. In many instances, however, stepparent adoption occurs following the divorce of the natural parents.\textsuperscript{53} The clear language of section 2-109 indicates that in any stepparent adoption the rights of the child and of the natural parent whose parental rights have been relinquished or terminated to take from, by, and through each other remain intact. Such a result, however, is contrary to traditional adoption principles.\textsuperscript{54} It is also contrary to the Uniform Adoption Act which permits the adopted child to take from or through a natural parent only if the parent is married to the adoptive parent or has died before the adoption without the relationship of parent and child having been terminated.\textsuperscript{55} Fur-


\textsuperscript{52} Id.

\textsuperscript{53} See supra notes 5 & 6 and accompanying text.

\textsuperscript{54} See supra note 9; see infra note 134 and accompanying text. See also infra notes 73-74, 77, 80-98, 101-102, 104-109 and accompanying text.

\textsuperscript{55} UNIF. ADOPTION ACT, § 14, 9 U.L.A. 45 (1979). Cf., \textit{Model Prob. Code}, Part II, § 27, comment (1946), indicating that if a state had an adoption statute speaking to the issue of inheritance rights of adopted children, the model code's provision relating to adopted children either should be made to conform to the adoption statute or should be omitted entirely.
thherefore, section 14 of the Uniform Adoption Act speaks only of an adopted child’s right to take from and through the predeceased natural parent; it makes no provision for the natural parent’s kin to take from or through the child.56

The inconsistency between the Uniform Probate Code and the Uniform Adoption Act is not unique. Many state probate and adoption codes contain similar inconsistencies. The next section of this article examines some of those statutes.

III. SELECTED STATE STATUTES AFFECTING INTESTACY RIGHTS OF CHILDREN ADOPTED BY STEPPARENTS

Because laws relating to adoption and intestate succession are within the province of the individual states, it is not surprising that there is wide variation in the statutes pertaining to those subjects. The Uniform Probate Code cites fifteen jurisdictions as having adopted the Code.57 Of those fifteen, only thirteen actually include provisions

56. Unif. Adoption Act § 14, 9 U.L.A. 45 (1979). Professor Wellman’s comments explaining the amendment to section 2-109 raise another interesting question in terms of adoption in general. He indicated that at least one reason for not terminating the relationship between an adopted child and natural parent when the child was adopted by a stepparent was that there was no need for secrecy. UPC Proceedings at 7 (Aug. 4, 1975). All participants in the adoption are “aware of the child’s source,” so there is no need to sever the connection between adopted child and natural parent. Id. Might this reasoning also extend to situations where a child, while not adopted by a stepparent, is adopted by persons who know or know of the natural parents and where perhaps the child, too, is aware that an adoption is occurring? For example, assume that a child is orphaned and is adopted by the paternal grandparents. Ordinarily, the child’s inheritance rights through the natural parents are cut off, thereby precluding the child from inheriting through the natural mother. Furthermore, had the child been adopted by people who were not relatives, even though everyone knew of the child’s “source” and everyone, including the child, knew that the adoption was occurring, the child’s inheritance rights through both natural parents would have been terminated. Of course, in either situation, natural kin could still provide for the child by will. Reality teaches, however, that the majority of persons die without wills. See 7 Powell & Rohan, Powell on Real Property § 991 (1984). Although in a prefatory note to the Uniform Adoption Act the Commissioners indicated that permitting “the adopted child to continue as a member of the family of his blood relatives . . . is thought to be contrary to the welfare of the child[,]” Unif. Adoption Act, Commissioners’ Prefatory Note, 9 U.L.A. 15 (1979), in certain instances it might not be “contrary to the welfare of the child” to maintain ties between the adopted child and the natural kin. See infra notes 123, 135-137 and accompanying text. The language explaining section 2-109 could be used to support an extension of inheritance rights to adopted children in non-stepparent adoption situations where secrecy of the proceedings is not necessary or not maintained, thereby protecting the property interests of the child.

within their probate codes which pertain to intestate succession and adopted children.\footnote{58. The Kentucky legislature adopted only Article VII, Part 1 of the UPC, relating to trust registration. \textit{Id.} The Minnesota legislature did not include within its probate code a section relating to adoption and intestacy. In both states, the issue is dealt with entirely in the adoption statute. See \textit{KY. REV. STAT. ANN.} \S 199.520 (Michie/Law. Co-op. 1984); \textit{MINN. STAT. ANN.} \S 259.29 (West 1982).}

A limited review of those states \textit{not} purporting to adopt the Uniform Probate Code shows a wide variety of approaches to the intestate inheritance rights of children adopted by their stepparents. Like section 2-109 of the UPC, a few states provide that adoption by a spouse of a natural parent does not affect the relationship as to intestacy between the child and either natural parent.\footnote{59. \textit{See, e.g., TENN. CODE ANN.} \S 31-2-105(1) (1984); \textit{VA. CODE} \S 64.1-5.1(1) (1980). \textit{See also Andersen, The Influence of the Uniform Probate Code in Nonadopting States}, 8 U. PUGET SOUND L. REV. 599, 604-05 (1985) in which the author identifies six non-UPC jurisdictions as having adopted section 2-109. Of the six, Tennessee and Virginia, as noted \textit{supra}, have adopted section 2-109 as it now reads. The other four states, Alabama, Delaware, Missouri, and New Jersey, however, have not adopted statutes identical to section 2-109. Statutes in Delaware and Missouri limit the child adopted by a stepparent to intestate inheritance rights from, by, and through the stepparent and the natural parent married to the stepparent. \textit{DEL. CODE ANN. tit. 12, \S 508(1) (1979); MO. ANN. STAT.} \S 474.060(1) (Vernon Supp. 1985). The Alabama statute permits a child adopted by a stepparent to inherit from, by, and through either natural parent but, by implication, does not permit the natural parent not married to the stepparent to inherit from, by, or through the child. \textit{ALA. CODE} \S 43-8-48(1) (1982). The New Jersey statute recognizes inheritance rights between the child adopted by a stepparent and the natural parent who is the spouse of the stepparent. \textit{N.J. STAT. ANN.} \S 9:3-50(a) (West Supp. 1985). It further states that "[f]or good cause, the court may in the judgment provide that the rights of inheritance from or through a deceased parent will not be affected or terminated by the adoption." \textit{Id.}} 60. \textit{See, e.g., DEL. CODE ANN. tit. 12, \S 508(1) (1979); MO. ANN. STAT.} \S 474.060(1) (Vernon Supp. 1985); \textit{N.C. GEN. STAT.} \S 29-17 (1984).\footnote{61. \textit{See, e.g., ALA. CODE} \S 43-8-48(1) (1982). \textit{Accord R.I. GEN. LAWS} \S 15-7-17 (1981), \textit{TEX. PROB. CODE ANN.} \S 40 (Vernon 1980), and \textit{VT. STAT. ANN. tit. 15, \S 448} (1974) (all extending the right of the child to take from the natural parents to all cases of adoption, not merely to situations of adoption by stepparent).}
ing by adopted children, whether the adoptive parent is a stepparent or stranger to the family, depending upon whose property is being distributed. For example, the Pennsylvania statute provides:

An adopted person shall not be considered as continuing to be the child or issue of his natural parents [other than a natural parent married to the adopting parent] except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person.\(^\text{62}\)

The Illinois statute provides that the adopting parent and the adopting parent's kin shall inherit from the adopted child to the exclusion of the natural parent and the natural parent's kin as if the adopted child were a natural child, “except that the natural parent and the . . . kindred of the natural parent shall take from the child and the child's kindred the property that the child has taken from or through the natural parent or the . . . kindred of the natural parent by gift, by will or under intestate laws.”\(^\text{63}\) The Vermont statute, while establishing inheritance rights between an adoptive parent and an adopted child, prohibits the adopted person from taking property “expressly limited to the heirs of the body of the persons making such adoption” and from inheriting from the “predecessors in line of descent and collateral kin of the person or persons making the adoption.”\(^\text{64}\) Such restrictions, evidencing Vermont's obvious concern that property pass within blood lines, appear to apply in stepparent as well as stranger adoptions.

The Wyoming statute expressly provides that adopted children are the children of their adopting and natural parents for the purposes of inheritance and that adopted persons and the relatives of the adoptive parents shall inherit from each other.\(^\text{65}\) By implication, then, it appears that in Wyoming adopted children and adoptive parents may inherit from, by, and through each other and that adopted children and their natural parents may inherit from and by, but not through, each other. There is no indication in the Wyoming statute that property received from either the natural or adoptive parents, whether by


\(^{63}\) ILL. ANN. STAT. ch. 110 1/2, § 2-4(b) (Smith-Hurd 1978). Illinois courts have permitted adopted children to inherit from both their adoptive and their natural parents. In Re Estate of Tilliski, 390 Ill. 273, 61 N.E.2d 24 (1945). See also In Re Estate of Orzoff, 166 Ill. App. 3d 265, 268, 452 N.E.2d 82, 84 (1983) (adopted child may inherit from natural parents and adoptive parents, but without statutory provision to the contrary, not from previously adopting parents).

\(^{64}\) VT. STAT. ANN. tit. 15, § 448 (1974).

\(^{65}\) WYO. STAT. § 2-4-107(a)(i) & (ii) (1980).
gift, will, or intestacy, must stay "within that family" should the adoptee child die intestate.

Finally, the South Dakota statute\(^{66}\) has been interpreted to mean that adoption severs the inheritance relationship only between the adopted child and the natural \textit{parents}, \textit{not} between the adopted child and the natural parents' \textit{kin}.\(^{67}\) Similarly, the statute has been interpreted to establish an inheritance relationship only between the adopted child and the adoptive \textit{parents}, \textit{not} between the adopted child and the adoptive parents' \textit{kin}.\(^{68}\) It is unclear from the statute whether in a stepparent adoption situation the inheritance relationship remains intact between the child and only the natural parent married to the stepparent, or between the child and both natural parents.\(^{69}\)

Such wide variation in the laws relating to the inheritance rights of children adopted by stepparents makes welcome a uniform approach to the issue. Although section 2-109 of the Uniform Probate Code could provide the desirable uniformity were it to be adopted throughout the country, a review of the jurisdictions which have adopted the Code shows a striking lack of uniformity on the question of inheritance rights of children adopted by stepparents and a lack of consistency between provisions of probate laws and provisions of adoption laws.

Of those jurisdictions that are cited in the UPC as having adopted the Code,\(^{70}\) only Alaska, Maine, Montana, and North Dakota have adopted section 2-109 in a manner identical to the UPC section as it exists today.\(^{71}\) That is, only those four states provide that when a child is adopted by a stepparent, the child maintains a relationship

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\(^{68}\) \textit{Id.}
\(^{69}\) S.D. CODIFIED LAWS ANN. § 25-6-17 (1984) states:

The natural parents of an adopted child are from the time of the adoption, relieved of all parental duties towards, and of all responsibility for the child so adopted, and have no right over it, \textit{except in cases where a natural parent consents to the adoption of his or her child by the child’s stepfather or stepmother who is the present spouse of the natural parent.} (emphasis added).

\(^{70}\) \textit{See supra note 11.}

\(^{71}\) ALASKA STAT. § 13.11.045(1) (Supp. 1984); ME. REV. STAT. ANN. tit. 18-A, § 2-109(1) (1964) (The Maine statute also provides that even in non-stepparent adoptions the adopted child may inherit from the natural parents and their kin if the adoption decree so provides. The comment following Maine section 2-109 explains that this provision is intended for those adoptions "where such inheritance would seem appropriate and where the preservation of confidentiality would not be important," such as where teenage children are adopted by friends or relatives of their deceased parents.); MONT. CODE ANN. § 72-2-213(1) (1983); N.D. CENT. CODE § 30.1-04-09(1) (Supp. 1983).
with *both* natural parents for the purposes of taking from, by, and through each other. Of these four jurisdictions, only the adoption law of Maine is consistent with the provision of the probate code.\(^{72}\) The Montana\(^ {73}\) and North Dakota\(^ {74}\) adoption laws terminate all relationships between the adopted child and a natural parent not married to the adoptive parent. The North Dakota statute does, however, permit the relationship between the child adopted by a stepparent and both natural parents to remain intact if a natural parent dies without the relationship of parent and child having been terminated prior to the stepparent adoption.\(^ {75}\) The Alaska statute permits an exception similar to North Dakota's\(^ {76}\) and also permits continuation of inheritance rights between an adopted child and the natural parents and the natural parents' families if the adoption decree specifically provides for such continuation.\(^ {77}\)

Seven states among those identified as having adopted the Uniform Probate Code\(^ {78}\) have the effective equivalent of section 2-109 as it existed prior to the 1975 amendment.\(^ {79}\) That is, in those jurisdictions a child adopted by a stepparent and the natural parent married to the stepparent inherit by, from, and through each other, but the child and the other natural parent do not. Of those seven, the adoption statutes of only three, Arizona,\(^ {80}\) Florida,\(^ {81}\) and Hawaii,\(^ {82}\) are fully consistent with the states' probate codes. The New Mexico adoption statute\(^ {83}\) is

\(^{72}\) ME. REV. STAT. ANN. tit. 19, § 535 (1964) (incorporating title 18-A, section 2-109 of the probate code by reference into the adoption statute).

\(^{73}\) MONT. CODE ANN. § 40-8-125(2) (1983).


\(^{75}\) Id. § 14-15-14(2).

\(^{76}\) ALASKA STAT. § 25.23.130(b) (1983).

\(^{77}\) Id. § 25.23.130(a)(1) (applicable to all adoptions, not only stepparent adoptions).

\(^{78}\) See supra note 11.

\(^{79}\) ARIZ. REV. STAT. ANN. § 14-2109(1) (1956); FLA. STAT. ANN. § 732.108(1)(a) (West Supp. 1985) (also providing that if a child is adopted by the spouse of a natural parent after the death of the other natural parent, the child's relationship with the family of the deceased natural parent remains intact, *Id*. § 732.108(b)); HAWAII REV. STAT. § 560:2-109 (1978), amended by HAWAII REV. STAT. § 560:2-109 (Supp. 1984) (as originally enacted, provided that a child adopted by a stepparent maintained the right to inherit by, from, and both of the child's natural parents; amended in 1978 to sever the relationship between the child and the natural parent not married to the stepparent); IDAHO CODE § 15-2-109(a) (1979) (also preserving the inheritance relationship between the adopted child and "a deceased, undivorced natural parent" *Id.*); NEB. REV. STAT. § 30-2309(1) (1979); N.M. STAT. ANN. § 45-2-109(A) (1978); UTAH CODE ANN. § 75-2-109(1)(a) (1978).

\(^{80}\) ARIZ. REV. STAT. ANN. § 8-117 (1974).

\(^{81}\) FLA. STAT. ANN. § 63.172 (West Supp. 1985).

\(^{82}\) HAWAII REV. STAT. § 578-16 (1976).

\(^{83}\) N.M. STAT. ANN. § 40-7-15(A) & (B) (1983).
consistent with the New Mexico probate code, but adds an additional provision which states, “if an individual dies before the parent-child relationship between the deceased and any other individual is terminated, no subsequent adoption proceedings affect the right of inheritance, if any, through or from the deceased individual.”84 By implication, then, if a child is adopted by a stepparent subsequent to the death of a natural parent but prior to the death of that natural parents’ kin, the child cannot inherit from that kin.85

Both the Idaho86 and Utah87 adoption statutes provide that adoption severs all relationships between the natural parents and the adopted child, making no exception for a natural parent who is married to an adoptive parent. Because, however, the natural parent married to the adopting stepparent does not give up or have terminated the parent’s rights and responsibilities in relation to the child, the adoption statutes should not affect the inheritance rights between a

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85. Section 40-7-15(B)(2) differs from those statutes which provide that a child’s right to inherit from and through a deceased natural parent is not affected where a natural parent dies without the parent-child relationship having been terminated and the natural parent’s spouse marries a person who subsequently adopts the child. See, e.g., ALASKA STAT. § 25.23.130(2)(b) (1983); FLA. STAT. ANN. § 732.108(1)(b) (West Supp. 1985); IDAHO CODE § 15-2-109(a) (1979); MINN. STAT. ANN. § 259.29 subd. 1a. (West 1982); N.D. CENT. CODE § 14-15-14(2) (1981). The New Mexico Statute applies not only to those cases in which the natural parent dies before the remarriage and adoption, but also to the case of any individual who was related to the child through the deceased natural parent who dies before the adoption. See In re Estate of Holt, 95 N.M. 412, 622 P.2d 1032 (1981), where the issue was whether a child adopted by her stepfather could inherit from her paternal grandmother’s estate when the child’s natural father had predeceased the grandmother and the child had been adopted by her stepfather subsequent to the natural father’s death but prior to the paternal grandmother’s death. Statutes such as those cited supra, discussing the rights of the child to take from and through a natural parent who died while the parent-child relationship was still intact and prior to the adoption, would have permitted the claimant in Holt to take from her grandmother’s estate. Interpreting the New Mexico statute, the Supreme Court of New Mexico did not allow her to take. “The question,” the court said, “is not when the adoption took place with respect to the natural father’s death but when it took place with respect to the death of the person whose heirship we are determining.” Id. at 414, 622 P.2d at 1034. “Individual,” as used in the statute, refers to the person dying. Id. The legislative intent in enacting the statute, as the court read it, was, on the one hand, to prevent instances of dual inheritance by children adopted by natural relatives, and, on the other hand, to prevent property from leaving bloodlines when children adopted by strangers died and their estates passed to their adoptive kin. Id. See also Note, Adoption—Intestate Succession—The Denial of a Stepparent Adoptee’s Right to Inherit from an Intestate Natural Grandparent: In re Estate of Holt, 13 N. MEX. L. REV. 221, 228 (1983). The New Mexico statute also differs from those cited supra because it appears to apply to all adoptions, not only to stepparent adoptions.
86. IDAHO CODE §§ 16-1508, 16-1509 (1979).
87. UTAH CODE ANN. § 78-30-11 (1953).
child adopted by a stepparent and the natural parent married to the stepparent.

Section 43-111 of the Nebraska adoption statute states that "[e]xcept as provided in section 43-106.01," after a decree of adoption has been entered, the natural parents of the child "shall be relieved of all parental duties toward and all responsibilities for such child and have no rights over such adopted child or to his or her property by descent and distribution." 88 Section 43-111 makes no express exception for a natural parent married to an adoptive parent. Section 43-106.01, however, would appear to exclude such a natural parent from the adoption statute's coverage because the parent married to the adoptive parent does not relinquish any interest in the child. 89 Section 43-106.01 of the adoption statute, to which section 43-111 refers as providing an exception to its rule, also makes clear that nothing impairs the right of the adopted child to inherit from a natural parent who has relinquished a child for adoption. 90 A recent decision of the Supreme Court of Nebraska, however, has placed the meaning of this section in doubt. 91

In 1969, the Supreme Court of Nebraska held that a child, even though adopted by strangers prior to a natural parent's death, remained an heir to a deceased natural parent's estate.92 In 1980, in In re Estate of Luckey,93 the same court held that the enactment of Nebraska Probate Code Section 30-230994 legislatively overruled the court's earlier decision.95 While it is true that section 30-2309 clearly conflicts with sections 43-111 and 43-106.01 of the adoption statutes,96 and that a legislative comment relating to section 30-2309 did indicate

89. NEB. REV. STAT. § 43-106.01 (1984). See Note, Inheritance by an Adopted Child as Affected by Nebraska Adoption Law, 32 NEB. L. REV. 68, 69 (1952) (section 43-111 precluding natural parents from taking from adopted child will not preclude natural parent married to stepparent from taking "since the natural relationship was never lost. . . ."
Id.).
90. NEB. REV. STAT. § 43-106.01 (1984).
93. 206 Neb. 53, 291 N.W.2d 235 (1980). In re Estate of Luckey involved the inheritance relationship of an adopted child to a prior adoptive parent, but its language and its holding are equally applicable to the case of an adopted child and a natural parent.
94. NEB. REV. STAT. § 30-2309 (1979). That section provides that adoption of a child by the spouse of a natural parent "has no effect on the relationship between the child and that natural parent."
96. NEB. REV. STAT. § 43-111 (1984) states:
Except as provided in section 43-106.01, after a decree of adoption has been entered, the natural parents of the adopted child shall be relieved of all parental
the legislature's intent to overrule the earlier decision, the court did not discuss either section 43-111 or section 43-106.01 in Luckey, and the legislature has not repealed section 43-106.01. These statutes and cases provide a good illustration of the need for consistency between a state's probate and adoption statutes.

The Colorado probate law at one time provided that a child adopted by a stepparent maintained a relationship for intestate succession purposes with the natural parent married to the stepparent. The statute was amended, however, to provide:

An adopted person is the child of an adopting parent and of the adopted person's natural parents insofar as the rights of all persons to inherit from or through the adopted person and the right of the adopted person to inherit from or through any person are concerned, except to the extent that inheritance rights have been divested by a final order of relinquishment, a final decree of adoption, or an order terminating the parent-child relationship under the laws of this state or of any other jurisdiction.

Although the probate statute is somewhat ambiguous about whether the divestment of inheritance rights must be expressly ordered in a decree of relinquishment, termination, or adoption, provisions of Colorado's adoption statutes indicate that a final decree of adoption although not simply a final order of relinquishment terminates the child's status as heir at law of the natural parents. The adoption statute further provides, however, that "[n]othing in [the adoption

duties toward and all responsibilities for such child and have no rights over such adopted child or to his or her property by descent and distribution.

(emphasis added).


97. The "Nebraska Comment" following section 30-2309 states, "This section legislatively overrules Wulf v. Ibsen . . . . allowing an adoptive child to inherit from his natural parents as well as his adoptive parents." Neb. Rev. Stat. § 30-2309 (Nebraska Comment 1979).

98. The court focused its discussion on section 30-2309 of the probate code and on Neb. Rev. Stat. § 43-110 (1978), the latter establishing a relationship between the child and the adoptive parent as if they were natural kin, but making no mention of the relationship between an adopted child and the natural parents. In re Luckey, 206 Neb. at 56, 291 N.W.2d at 237-38 (1980). The court stated that "The purpose of § 43-110 is to terminate any relationship which existed between the natural parent and the child and to create a new relationship between the adoptive parent and the child," Id. at 56, 291 N.W.2d at 237-38.

The court failed, however, to mention either statutory section—§ 43-111 or § 43-106.01—which specifically deals with the natural parent-child relationship.


statute] shall be construed to divest any natural parent or child of any legal right or obligation where the adopting parent is a stepparent and is married to said natural parent." Despite the use of the word "any" to modify "natural parent," the subsequent modifier "said" indicates that it is only the relationship between the child adopted by a stepparent and the stepparent's spouse that remains intact and not that between the child and the other natural parent.

Michigan probate law provides that once a child is adopted, the child is the kin of the adoptive parents and not of the natural parents for all purposes of intestate succession. No exception exists in the statute concerning children adopted by stepparents and their natural parents. Michigan adoption law is consistent with the provisions of the probate code, again making no mention of children adopted by stepparents.

Although the Uniform Probate Code lists Kentucky and Minnesota as having adopted the UPC, neither has adopted the equivalent of section 2-109. Both, however, have provisions in their adoption laws which deal with the issue of stepparent adoption. The Kentucky adoption law provides, "Except where a natural parent is the spouse of an adoptive parent an adopted child from the time of adoption shall have no legal relationship to its birth parents in respect to either personal or property rights." Although the statute is ambiguous about whether a child adopted by a stepparent maintains a relationship with both natural parents or only the natural parent married to the stepparent, Kentucky case law has held that the child maintains inheritance rights only in terms of the natural parent married to the stepparent.

Minnesota adoption law provides that although an adopted child becomes the child of the adoptive parents and not of the natural parents for purposes of inheritance, "the adoption of a child by a stepparent shall not in any way change the status of the relationship be-

107. Arciero v. Hager, 397 S.W.2d 50, 53 (Ky. Ct. App. 1965). See also Jouett v. Rhorer, 339 S.W.2d 865, 868 (Ky. Ct. App. 1960) where, in dicta in a stepparent adoption case, the court made clear that upon adoption all legal relationships between the child and the natural parent not married to the adoptive parent or that natural parent's family will be terminated.
between the child and the child’s natural parent who is the spouse of the petitioning step-parent.” The Minnesota adoption statute also provides that if a parent dies and a child is subsequently adopted by a stepparent, “any rights of inheritance of the child or the child’s issue from or through the deceased parent of the child which exist at the time of the death of that parent shall not be affected by the adoption.” The latter provision, while protecting the rights of a child adopted by a stepparent to take from or through a deceased natural parent, does not protect the rights of that parent’s kin to take from the child.

Statutes speaking to the same subject within any jurisdiction should be read in pari materia and should, where possible, be given consistent interpretations. Sometimes, however, statutes may be so inconsistent or so in conflict that they simply cannot be read together, necessitating the use of other canons of statutory construction in an attempt to resolve the inconsistencies. For example, the statute most directly related to the issue at hand, the probate code in the case of the inheritance rights of a child adopted by a stepparent, should be given preference over a more general statute, the adoption law, related to the same subject. Or, the statute enacted later in time should be given preference on the theory that it impliedly repealed the earlier, inconsistent statute.

Another problem likely to arise when dealing with the inheritance rights of children adopted by stepparents is the issue of which forum’s law applies. If the natural parent not married to the adoptive parent

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109. *Id.* § 259.29 subd. 1a. (West 1982).

110. *Id.*


114. See, e.g., Askew v. Schuster, 331 So. 2d 297, 300 (Fla. 1976); Cable-Vision, Inc. v. Freeman, 324 So. 2d 149, 152 (Fla. Dist. Ct. App. 1976); In re Clark’s Estate, 105 Mont. 401, 409, 74 P.2d 401, 405 (1937).
dies intestate, the law of the situs of the property will generally govern the rights of inheritance of the adopted child in the case of real property, and the law of the natural parent's domicile at the time of death will govern in the case of personal property. The laws of the state where the adoption occurred will be irrelevant in determining the child's right in the natural parent's estate, unless that state is the situs of the decedent's real property or was the decedent's domicile at the time of death.

Inconsistencies in statutes can sometimes be resolved through principles of statutory construction and determination of an adopted child's interest in property in a multiple jurisdiction case can be resolved through conflict of laws principles. Both problems could be resolved more easily, however, if the laws of the nation's jurisdictions were uniform on the issue of the inheritance rights of a child adopted by a stepparent and if the jurisdictions' probate and adoption laws were consistent.

The next section sets forth a proposed model act defining the inheritance rights of a child adopted by a stepparent and the rights of both natural parents, the adoptive parent, and their respective kin. Commentary accompanying the model act is intended to clarify the policies behind the act and to aid in its interpretation.

IV. INHERITANCE AND THE CHILD ADOPTED BY A STEPPARENT: A MODEL ACT

A. The Statute

Section 1 Inheritance and Adopted Children

(a) If, for purposes of inheritance, a relationship of parent and child must be established to determine succession by, from, through, or in place of a person, except as provided in subsections (b), (c), and (d), an adopted person is the child of an adoptive parent and not of the natural parents unless a court of competent jurisdiction acting within its discretion provides otherwise in a final decree of adoption.

(b) Except as provided in subsection (d), adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent or the lineal and collateral kin of either natural parent.

(c)(1) Except as provided in subsection (d), upon the death intestate, the law of the situs of the property will generally govern the rights of inheritance of the adopted child in the case of real property, and the law of the natural parent's domicile at the time of death will govern in the case of personal property. The laws of the state where the adoption occurred will be irrelevant in determining the child's right in the natural parent's estate, unless that state is the situs of the decedent's real property or was the decedent's domicile at the time of death.

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(b) Except as provided in subsection (d), adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent or the lineal and collateral kin of either natural parent.

(c)(1) Except as provided in subsection (d), upon the death intestate, the law of the situs of the property will generally govern the rights of inheritance of the adopted child in the case of real property, and the law of the natural parent's domicile at the time of death will govern in the case of personal property. The laws of the state where the adoption occurred will be irrelevant in determining the child's right in the natural parent's estate, unless that state is the situs of the decedent's real property or was the decedent's domicile at the time of death.

Inconsistencies in statutes can sometimes be resolved through principles of statutory construction and determination of an adopted child's interest in property in a multiple jurisdiction case can be resolved through conflict of laws principles. Both problems could be resolved more easily, however, if the laws of the nation's jurisdictions were uniform on the issue of the inheritance rights of a child adopted by a stepparent and if the jurisdictions' probate and adoption laws were consistent.

The next section sets forth a proposed model act defining the inheritance rights of a child adopted by a stepparent and the rights of both natural parents, the adoptive parent, and their respective kin. Commentary accompanying the model act is intended to clarify the policies behind the act and to aid in its interpretation.

IV. INHERITANCE AND THE CHILD ADOPTED BY A STEPPARENT: A MODEL ACT

A. The Statute

Section 1 Inheritance and Adopted Children

(a) If, for purposes of inheritance, a relationship of parent and child must be established to determine succession by, from, through, or in place of a person, except as provided in subsections (b), (c), and (d), an adopted person is the child of an adoptive parent and not of the natural parents unless a court of competent jurisdiction acting within its discretion provides otherwise in a final decree of adoption.

(b) Except as provided in subsection (d), adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent or the lineal and collateral kin of either natural parent.

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STEPPARENT ADOPTION

tate of a person previously adopted by the spouse of a natural parent, that person's property shall be distributed according to the terms of this state's statutes of descent and distribution.

(2) When necessary to prove the source of the adopted person's property for purposes of subsections (d)(1), (2), (3), or (4), the burden of proving such source, by a preponderance of the evidence, lies with the party opposing distribution of the estate according to the terms of this state's statutes of descent and distribution.

(d) Upon the death intestate of a person previously adopted by the spouse of a natural parent,

(1) the natural parent not married to the adoptive parent who voluntarily consented to the termination of parental rights and the lineal and collateral kin of that parent or the lineal and collateral kin of a natural parent who predeceased a child subsequently adopted by a stepparent shall be entitled to succeed to any property of the person except that acquired by gift, will, or intestacy from the natural parent

(2) a natural parent not married to the adoptive parent whose parental rights were terminated involuntarily for cause as defined by state law shall not be entitled to succeed to any part of the adopted person's property. The lineal and collateral kin of that natural parent shall be entitled to succeed to the adopted person's property except that acquired by gift, will, or intestacy from the natural parent married to the adoptive parent, the adoptive parent, or the lineal or collateral kin of either.

(3) the adoptive parent and the lineal and collateral kin of that parent shall be entitled to succeed to any of the adopted person's property except that acquired by gift, will, or intestacy from the natural parent not married to the adoptive parent or that natural parent's lineal or collateral kin.

(4) the natural parent married to the adoptive parent and the lineal and collateral kin of that parent shall be entitled to succeed to any of the adopted person's property except that acquired by gift, will, or intestacy from the natural parent not married to the adoptive parent or from that natural parent's lineal or collateral kin.

(e) The term "natural parent" shall include previous adoptive parents as well as biological parents of the child.

Section 2  Dual Inheritance

A person related to the decedent or testator through two or more lines of relationship is entitled to only one share of the decedent's or
testator's estate based on the relationship which would entitle the person to the larger share.

Section 3 Effective Date

The provisions of this statute shall become effective on its date of enactment. The inheritance rights of persons adopted prior to this date shall be governed by the law in effect at the time of their adoption. This act shall not affect any right or interest which has become vested prior to the enactment of this statute.

B. Commentary

(1) For Purposes of Inheritance

Section (1)(a) of the proposed statute provides that the definition of parent and child set forth in the statute is to apply for all purposes of inheritance rather than only in cases of intestacy. In the case of wills, the definition applies in determining who is a member of a class, for example, of "children," "issue," or "lineal descendants." The definition also applies in determining who inherits a predeceased ancestor's share by virtue of an anti-lapse statute, or who is protected by a pretermitted heir statute.

117. See, e.g., In re Estate of Daigle, 642 P.2d 527 ( Colo. Ct. App. 1982) ("children" as residuary takers of estate); People v. Estate of Murphy, 29 Colo. App. 195, 481 P.2d 420 (1971) (meaning of "lineal descendants of decedent" for purposes of state inheritance tax). A number of state adoption statutes specifically deal with the issue of inheritance rights of adopted children other than by way of intestacy. See, e.g., FLA. STAT. ANN. § 63.172(b) (West Supp. 1985); and N.D. CENT. CODE § 14-15-14(1)(a) & (b) (1981), all of which provide that an adopted person is the child of the adoptive parents or the adoptive parent and the spouse of the adoptive parent who is a natural parent of the child, and not of the natural parents—or other natural parent in the case of stepparent adoption—for all purposes of inheritance, including the interpretation or construction of documents, statutes, or instruments, executed before or after the adoption is final, which do not expressly include the adopted person by name or by some other designation not dependent upon a parent and child or blood relationship. See infra notes 162-164 and accompanying text for a discussion of the effective date provision of the proposed code.

118. See, e.g., the Uniform Probate Code's anti-lapse provision which states:

If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee. . . . One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will. UNIF. PROB. CODE § 2-605, 8 U.L.A. 144 (1984) (emphasis added).

119. See, e.g., ARK. STAT. ANN. § 60-507(b) (1971) (protection for child living or child or issue of deceased child living at time of execution of will); MINN. STAT. ANN. § 525.201 (1975) (protection for children or issue of deceased child); NEV. REV. STAT.
Ideally, to be effective and to avoid problems of statutory interpretation, the definition of parent and child in section 1 of the proposed statute would also be incorporated into other applicable state statutes. For example, the adoption statute, however it defines the relationship of parent and child in terms of support, custody, and obedience, should be consistent with the probate statute in defining the relationship between the child and the various parents for purposes of inheritance. Similarly, the taxation statutes should incorporate the probate code's definition of parent and child. Otherwise, a situation could arise where a child might inherit, for example, from a natural grandparent under the label "lineal descendant," yet be charged a higher tax rate than that applied to other lineal descendants because the tax code independently determines that adoption severs all relationships between a child adopted by a stepparent and the natural parent not married to the stepparent and that natural parent's kin. Statutes relating to survivorship benefits should also contain a definition of parent and child consistent with that set forth in the state's probate law.

(2) Discretion of the Court

Section 1(a) of the proposed statute provides that with limited exceptions, to be discussed infra, for purposes of inheritance an adopted person is the child of the adoptive parents and not of the natural parents unless a court of competent jurisdiction provides otherwise. The provision permitting the court to "provide otherwise" is intended to apply in situations where, for example, a child is adopted by relatives or friends of the natural parents, where secrecy of the adoption or the proceedings is not mandated to protect the child and the adopting family, where the child to be adopted is older, or where a combination of these factors exists. This section is analogous to principles of open adoption by which natural parents or the kin of natural parents retain contact with children even though they have been adopted. Where the child is adopted by "strangers," whether


121. See, e.g., Dolata v. Railroad Retirement Board, 753 F.2d 4 (2d Cir. 1985) (Railroad Retirement Board required to look to state law where decedent domiciled at time of death in order to determine whether decedent's natural daughter adopted by stepfather entitled to take death benefit pursuant to Railroad Retirement Act).

122. See ME. REV. STAT. ANN. tit. 18-A, § 2-109(1) and Maine Comment (1964).

123. See, e.g., Weinschel v. Strople, 56 Md. App. 252, 466 A.2d 1301 (1983) (step-
to allow inheritance rights to remain intact between an adopted child and the natural parents and the parents' kin is a decision left to the discretion of the trial court rather than being made automatic. The trial court is in the best position to determine if the continuation of such inheritance rights would foster the best interests of the child, or would permit unnecessary interference into the adoptive home which could be disruptive or harmful to the child.\textsuperscript{124}

(3) \textit{Stepparent Adoption: Inheritance Relationship With Both Natural Parents}

Consistent with Uniform Probate Code section 2-109, the proposed probate law provides that if a child is adopted by a stepparent, the child has a relationship for purposes of inheritance not only with the adoptive parent but also with \textit{both} natural parents. As the proceedings leading up to the amendment of section 2-109 indicate,\textsuperscript{125} such a provision makes sense when a natural parent dies, the other natural parent remarries, and the new spouse adopts the child. The

\textsuperscript{124} Even in those instances where inheritance rights between an adopted child and the natural parents are terminated, such termination should not occur until a final decree of adoption has occurred. Before that date, if the inheritance rights were terminated, the child could inherit from neither natural nor adoptive parents.

\textsuperscript{125} \textit{See supra} note 49 and accompanying text.
provision also makes sense, however, when the natural parents divorce, one parent remarries, and the stepparent adopts the child.\textsuperscript{126}

When both natural parents are living, a child generally may be adopted by another only if a natural parent agrees voluntarily to relinquish his or her parental rights and consents to the child's adoption,\textsuperscript{127} or the parent's rights are involuntarily terminated by a court of appropriate jurisdiction, thereby removing the need for the parent's consent to a subsequent adoption.\textsuperscript{128} Grounds for involuntary termination of parental rights generally include abandonment, neglect, or parental incompetence.\textsuperscript{129} Stepparent adoption is generally no different. That is,
before the spouse of a natural parent may adopt the child, the other living natural parent's parental rights must be terminated either voluntarily with the natural parent's consent or involuntarily based upon a statutory ground for termination. In either case, with one exception inheritance rights between the child and the natural parent can and should be maintained.

Adoption of a child by a stepparent, even if both of the child's natural parents are living, may be within the best interests of the child. For example, if the child's mother has custody of the child, remarries and takes her new husband's surname as her surname, unless the child is adopted by the stepfather—or unless the child's surname is changed through other means—the child will have a last name different from

(willful abandonment; or unwillingness or inability to undertake parental responsibility); MASS. GEN. LAWS ANN. ch. 210, § 3(c) (West Supp. 1985) (involuntary termination if in best interests of child; best interest determined by considering parents' "ability, capacity, fitness and readiness . . . to assume parental responsibility. . . ." or if child has been in custody of the Department of Social Services or a licensed child care agency for a year or longer); NEB. REV. STAT. § 43-104(3) (1984) (abandonment; dependency; or neglect); 23 PA. CONS. STAT. ANN. §§ 2511, 2714 (Purdon Supp. 1985) (incapacity; abuse; neglect; failure to parent; or parents' whereabouts unknown). Accord UNIF. ADOPTION ACT § 19,9 V.L.A. 51-52 (1979) (abandonment; misconduct or neglect leading to lack of parental care, control, subsistence, or education necessary for physical, mental, or emotional health or morals; physical or mental incapacity to care for minor; such behavior, neglect, or incapacity cannot or will not be remedied by parent, and child suffers or probably will suffer serious physical, mental, moral, or emotional harm); MODEL STATE ADOPTION ACT § 205, 46 Fed. Reg. 50,029-50,030 (1981) (termination in best interest of child and one or more of the following: grounds for involuntary termination as provided by state law; identification or location of parents unknown for at least 60 days; relating to the father, child conceived as result of forcible rape; relating to the father or mother, child conceived as result of incest; child adjudicated abused or neglected; abandonment). Draft ABA Model State Adoption Act, § 8 and comment in Samuels, Draft ABA Model State Adoption Act, XIX FAM. L. Q. 103, 110 (1985) (incorporating into statute grounds for involuntary termination as defined by state law).


131. When a natural parent's rights are terminated involuntarily, the right of the parent to the child's intestate estate should be terminated as well. See infra notes 141-142 and accompanying text. In all other instances the inheritance relationship should remain intact between the child and the natural parent whose rights are terminated voluntarily and the kin of that parent, regardless of the nature of the termination.

132. Courts generally apply a "best interest" standard in determining whether a child's surname should be changed upon divorce of the parents (sometimes followed by remarriage of the custodial parent but without adoption of child by the stepparent). There is no certainty that courts will grant petitions for name changes in such instances. See, e.g., In re Marriage of Schildman, 28 Cal. 3d 640, 169 Cal. Rptr. 918, 620 P.2d 579 (1980) (upon dissolution of marriage trial court changed child's surname from mother's family surname to father's surname; appellate court reversed, holding sole criterion when parents contest surname to be child's best interest); In re Marriage of Omelson, 112 Ill. App. 3d 725, 445 N.E.2d 951 (1983) (trial court granted mother's petition to change child's surname from
the mother and the stepfather and perhaps different from other children in the family thus making the child appear "different" to friends and schoolmates. Adoption may also create in fact, as well as in image, a more intact and stable family:

The reasons for [stepparent] adoption are legal and financial, to endow the parent-child relationship with a legal status and attendant rights and duties, entitling the child to such rights as guardianship, inheritance, support, and the name and status in the family that he would have had if he had been born to both parents, and entitling the stepparent to rights of custody, control, services and earnings. In this sense, the effect of a stepparent adoption is to legalize an already existing family relationship, not to establish a new one.133

Because, however, termination of parental rights, voluntarily or involuntarily, traditionally has meant that the relationship between the child and the parents whose rights have been terminated has ceased for all purposes, natural parents who care about their children and who wish to maintain a relationship with their children despite the dissolution of the marriage with the other natural parent may be unwilling to consent to the termination and subsequent adoption by the stepparent.134 If, however, a relationship for the purposes of inheritance could be maintained between the child and the natural parent and the natural parent's kin—as well as perhaps visitation

that of mother's ex-husband—child's father—to that of mother's new husband, finding it to be in child's best interest; appellate court, upon finding that child's father maintained active interest in her, loved her, supported her, committed no wrong against her, reversed, holding that name change would serve only as temporary, superficial expedient; child's name to remain unchanged until child matured and decided whether she wanted to change it); Bennett v. Northcutt, 544 S.W.2d 703 (Tex. Civ. App. 1976) (trial court refused adoptive mother's petition to change surname of child from that of adoptive father to that of mother's present husband; best interest standard applied). See also ILL. ANN. STAT. ch. 96, § 1 (Smith-Hurd Supp. 1985); TEX. FAM. CODE ANN. § 32.04 (Vernon 1975).


134. "[I]t is a rare case indeed where a mother will attempt to obtain, or, more especially, that a father will willingly give, a relinquishment for adoption when he has faithfully and continually met his regular support obligtions." In re Adoption of C.L.R., 218 Neb. 319, 322, 352 N.W.2d 916, 919 (1984). Because adoption generally completely terminates the relationship between child and natural parent, courts will be reluctant to order such termination, and all doubts will be resolved against such termination. In re Adoption by J.J.P., 175 N.J. Super. 420, 426-28, 419 A.2d 1135, 1139-40 (1980). See also Amadio & Duetsch, Open Adoption: Allowing Adopted Children to "Stay in Touch" with Blood Relatives, 22 J. FAM. L. 59, 60 (1983-84); Note, Stepparent Custody: An Alternative to Stepparent Adoption, 12 U.C.D. L. REV. 604, 606, 612 (1979).
privileges^{135}—the parent may be more likely to consent to the termination of parental rights and to the stepparent adoption.^{136} Maintenance of a relationship with the natural parent—and/or with the natural parent's kin—may also provide the child with "a sense of continuity, acceptance, and a realistic understanding of adoption."^{137}

A major reason offered for terminating entirely the relationship

\^{135} See supra note 123 and accompanying text.

\^{136} Cf. Weinschel v. Strople, 56 Md. App. 252, 261-62, 466 A.2d 1301, 1305-06 (1983) (agreement among natural mother, natural father, and natural father's second wife who adopted child to permit visitation between child and natural mother, while unusual, is not illegal or contrary to public policy and may even foster adoptions where natural and adoptive parents are known to each other and natural parents are reluctant to give up all contact with child). For an alternative means of maintaining a relationship between child and natural parent while at the same time providing stepparents with rights and responsibilities concerning the child, see Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879 (1984) (challenges law's traditional view of parenthood as belonging exclusively to the nuclear family and argues for flexibility in recognizing and developing "nonexclusive parenting alternatives" to meet the needs of those children in "nontraditional families" or those "attached" to adults other than biological parents—stepparents, foster parents, or other caretakers); Note, *Stepfamily Law: Review and Proposal for Change*, XVIII SUFFOLK U.L. REV. 701, 717-18 (1984) (would not automatically preclude stepchild from sharing in stepparent's intestate estate but would focus on whether stepparent acted *in loco parentis* to child and on child's financial needs and standard of living child would have enjoyed had stepparent not died); Note, *Stepparent Custody: An Alternative to Stepparent Adoption*, 12 U.C.D. L. REV. 604, 606 (1979) (advocating stepparent legal custody as intermediate position between (1) no legal relationship between stepparent and stepchild and (2) stepparent adoption terminating relationship between child and natural parent not married to stepparent; author's alternative, however, would not permit stepchild to inherit intestate from stepparent because such a provision would be "too generous;" also allowing child to inherit from both natural parents and stepparents would be unfair to stepparent's natural children and would conflict with rights of noncustodial natural parent to succeed to child's estate. Id. at 624).

\^{137} MODEL STATE ADOPTION ACT § 104, Introductory Comments, 45 Fed. Reg. 10,622, 10,625 (Preliminary Draft Feb. 15, 1980). Although the preliminary draft of the act was quite different from the Model Act as finally published, and although section 104 did not relate specifically to stepparent adoption, the concern for continuity and understanding in terms of the adopted child is valid whether or not the child be of special needs and whether the child be adopted by a stranger, a relative, or a stepparent. See also *In re Adoption of Anthony*, 113 Misc. 2d 26, 29-32, 448 N.Y.S.2d 377, 379-81 (1982) (adoption by strangers; decree ordered continued contact between adopted child and birth siblings) where the court noted:

Research by psychiatrists and psychologists has also revealed the importance of a child's links to known ancestral, religious, ethnic and cultural backgrounds. Recent studies indicate that shrouding a child's background in an air of mystery, even for a child adopted at birth, can cause psychological harm, retarding emotional development and self-identity.

Where adoption cannot be a total replacement of the birth family, but rather a legal means of assuring the adoptive parents and the child that their relationship is permanent, an open adoption may guarantee this permanency
between the adopted child and the natural parents is the fear that continued contact with the natural parent or parents will disrupt the adoptive family. While this fear may generally be legitimate, it need not be so in the case of stepparent adoption and/or inheritance rights. Stepparent adoption does not present a case where a total stranger (in the person of the natural parent) is intervening in the child’s life. Rather, when the child is adopted by a stepparent, the child is often aware of the fact that there exists a natural parent other than the one married to the stepparent. The child is frequently older and has had contact with that natural parent and may wish to continue that contact. Furthermore, the relationship between natural parent and child could be limited to inheritance only and not extended to visitation or other forms of contact. A natural parent who is deprived of visitation rights with the child but whose inheritance relationship with the child remains intact may, however, argue unfairness. That is, if the parent has no right to have contact with the child, why should the child be permitted to inherit from the natural parent or the parent’s kin? The easy response to that concern, from the perspective of the parent or kin, is that the parent or kin may execute a will omitting the child from the estate. If done in compliance with the jurisdiction’s pretermitted heir law, the adopted child may be omitted from the nat-

without unnecessarily severing important relationships with known members of the child’s birth family existing prior to the adoption.

Id. at 29-30, 448 N.Y.S.2d at 379, 380 (footnotes omitted); see Visher & Visher, Legal Action Is No Substitute for Genuine Relationships, 4 FAM. ADVOC. 35, 35-36 (Fall 1981) (stepparent adoption may cause distress to the adopted child if it terminates all relationship with out-of-custody natural parent; stepchild should never feel adoption hinges on surrendering relationship with natural parent).


Another problem under existing adoption laws concerns the effect of a petition for adoption and of the adoption decree on the parent-child relationship. . . . Many states permit the adopted child to continue as a member of the family of his blood relatives which is thought to be contrary to the welfare of the child. . . .

and UNIFORM ADOPTION ACT § 14, Commissioner's Note, 9 U.L.A. 45-46 (1979), stating that a termination of the relationship between natural parent and child is desirable and eases the transition from old family to new by providing a “clean final ‘cutoff’ ” of the legal relationship with the old family.

139. The child’s wish to maintain contact with the natural parent and the parent’s wish to maintain contact with the child do not, of course, ensure that the continued contact will not cause disruption within the adoptive family. Such disruption, however, could be addressed in ways such as revised visitation schedules or court oversight to ensure that the natural parent does not harass the child’s adoptive family, rather than by termination of the relationship in its entirety.
ural parent's estate just as if the child had never been adopted. A more difficult question arises from the child's perspective because minors are generally legally incapable of executing valid wills.140 This problem should not be great, however, because few minors have substantial estates to be inherited.

The proposed code does purposely limit the inheritance relationship between adopted child and natural parent when the termination of the natural parent's rights is involuntary.141 If the termination is involuntary, by definition, the parent has abandoned, neglected, failed to support, or committed some other culpable conduct toward the child, and, therefore, should not be permitted to inherit from the child. Even though the child is fortunate in the sense that the parent's rights may be terminated and the child may be adopted by a stepparent who presumably will provide the child with better care, the child should not be deprived of inheritance from or through the natural parent.142 Again, of course, the natural parent could omit the child from the


141. Proposed Code § 1(d)(2).

142. Traditionally, adoption has been viewed as being for the benefit of the child. Some courts believed that that benefit included maintenance of inheritance rights from the natural parents. See, e.g., Holmes v. Curl, 189 Iowa 246, 251-54, 178 N.W. 406, 408-09 (1920); In re Benner's Estate, 109 Utah 172, 175-76, 166 P.2d 257, 259 (1946). (Both Holmes v. Curl and In re Benner's Estate have been effectively overruled by legislation. See Iowa Code Ann. § 633.223 (West Supp. 1985) and Utah Code Ann. § 75-2-109 (1978)). In attempting to protect the rights of adopted children, courts have also looked to the fact that natural and adoptive parents could consent to the procedure by which the child's rights could be altered, but that the child did not have the authority to grant or withhold such consent. Sorenson v. Churchill, 51 S.D. 113, 116, 212 N.W. 488, 489 (1927). But see Ariz. Rev. Stat. Ann. § 8-106 B (1956) (where child 12 years of age or older, adoption shall not be granted without child's consent); Conn. Gen. Stat. Ann. § 45-61i (West 1958) (child age 14 or older has right to consent to adoption); Fla. Stat. Ann. § 63.062(5)(c) (West Supp. 1985) (consent to adoption by minor required if minor is more than 12 years old unless court in best interest of minor dispenses with minor's consent); Iowa Code Ann. § 600.7 (West 1981) (consent required of person to be adopted if person
Resolution of issues concerning adoption and an adopted child's inheritance rights should be based upon the best interests of the child. Traditionally, the issue of the child's best interests has involved a choice between terminating parental rights—voluntarily or involuntarily—and allowing the child to be adopted, even though such action ends the inheritance relationship between the parent and child, or refusing to terminate the parental rights, precluding adoption, but maintaining the inheritance relationship between natural parent and child. The proposed probate statute removes the necessity for making such a choice. Pursuant to the statute, the court and the parents may focus on the question of what is in the best interests of the child—physically, mentally, and emotionally—without regard for the child's property interests in the parents' estate. Such an approach should ensure that the termination and adoption decisions are made on appropriate grounds and, at the same time, should protect the property interests of all parties involved.

(4) Inheritance From, By, and Through

Section 1(a) of the proposed code, by stating that an adopted child shall inherit through the adoptive parents, establishes an inheritance relationship between the adopted child and the adoptive parent's kin. Section 1(b) provides that adoption of a child by a stepparent does not end the relationship between the child and the kin of either natural parent.

The inheritance relationship between the child and the kin of the natural parent not married to the adopting parent remains intact whether the parental rights of the natural parent have been terminated voluntarily or involuntarily. This provision protects the inheritance relationship between two persons—child and kin—who generally have no authority to consent or object to the adoption and who may maintain contact and a relationship based on love and affection despite the

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143. In many instances these provisions will not be applicable at all because the parent or child may have no significant estate to pass either by will or by intestacy. Even given that fact, however, the statute should contain a section which will control the estates of parents, or even of children, with significant assets. Furthermore, although a parent at the time of termination of parental rights or a child while a minor may have no significant assets, either or both may acquire such assets by the time of death.

144. The term "kin" refers to both lineal and collateral kin.

145. PROPOSED CODE §§ 1(d)(1) and 1(d)(2).
adoption. Again, should the kin not wish the child to share in their estate, they may execute wills precluding the child from any share. The reverse could also be argued. That is, if this provision were not in the statute, the child and the kin of the natural parent would not automatically share in each other's estate; they could, of course, execute wills providing for each other despite the adoption. The statute provides for an automatic inheritance right rather than relying on an inheritance right by will in recognition of the fact that most persons die without wills, thus providing more protection to the property interests of the parties. The statutory provision also recognizes that minors cannot, by law, execute valid wills. Without the statutory provision, if an adopted child were to die as a minor, the kin of the natural parent not married to the adoptive parent could not inherit from the minor's estate even though the source of part or all of that estate might be a product of that natural parent or of that natural parent's kin.

The natural parent not married to the adoptive parent and that natural parent's kin are prevented, unless the adopted person provides otherwise, from succeeding to that property acquired by the adopted person by gift, will, or intestacy from the natural parent married to the adoptive parent, from the adoptive parent, or from the kin of either. The natural parent married to the adoptive parent, the adoptive parent, and their respective kin are prevented, unless the adopted person provides otherwise, from succeeding to that property acquired by the adopted person by gift, will, or intestacy from the natural parent not married to the adoptive parent and from that natural parent's kin.

These limitations are intended to serve two purposes. First, the

146. See In re Zook's Estate, 62 Cal. 2d 492, 495, 42 Cal. Rptr. 597, 600, 399 P.2d 53, 56 (1965) (concerning tax classification of children "adopted out" of testator's biological family), holding nullified by CAL. REV. & TAX CODE § 13310 (West Supp. 1985) as noted in In re Estate of Dennery, 52 Cal. App. 3d 393, 395-98, 124 Cal. Rptr. 910, 911-13 (1975). But see ARIZ. REV. STAT. ANN. § 8-106 B (1956 & Supp. 1985) (where child 12 years of age or older, adoption shall not be granted without child's consent); CONN. GEN. STAT. ANN. § 45-61i (West 1958) (child age 14 or older has right to consent to adoption); FLA. STAT. ANN. § 63.062(1)(c) (West Supp. 1985) (consent to adoption by minor required if minor is more than 12 years old unless court in best interest of minor dispenses with minor's consent); IOWA CODE ANN. § 600.7 (West 1981) (consent required of person to be adopted if person is 14 years of age or older); MASS. GEN. LAWS ANN. ch. 210, § 2 (West Supp. 1985) (decree of adoption shall not be made without written consent of child older than 12).

147. See 7 POWELL & ROHAN, supra note 56, at ¶ 991.

148. See supra note 140.

149. PROPOSED CODE §§ 1(d)(1) and 1(d)(2).

150. PROPOSED CODE §§ 1(d)(3) and 1(d)(4).
section prevents property from passing from one line of either the "original" or the "reconstituted" family to the other, for example from the adoptive parents' kin, through the adopted person by way of intestacy, to the kin of the natural parent not married to the adoptive parent. In this way, the provision recognizes the law's traditional concern with keeping property within bloodlines.\textsuperscript{151}

Second, the limitations are intended to help promote—or at least not deter—relinquishment of parental rights and adoption. Under traditional circumstances, if a natural parent's parental rights are terminated, voluntarily or involuntarily, all relationships between parent and child cease.\textsuperscript{152} That, of course, includes the inheritance relationship between parent and child and, by extension, prevents the natural parent whose parental rights have not been terminated and that natural parent's kin from acquiring by way of the child's intestacy any share in the estate of the natural parent whose rights were terminated or of that natural parent's kin. If the statute were not to preclude taking through the child of the relinquishing natural parent's estate or that natural parent's kin's estate, the natural parent would have further reason to refuse termination of parental rights. If, however, such natural parents are assured that their estates could pass to their children but not through their children by way of intestacy to the other natural parent, the adoptive parent, or the kin of either, natural parents might be less reluctant to consent to termination of parental rights and adoption for their children.\textsuperscript{153}

\textsuperscript{151} See, e.g., \textit{In re Estate of Holt}, 95 N.M. 412, 414, 622 P.2d 1032, 1034 (1981).
\textsuperscript{152} Cf. ILL. ANN. STAT. ch. 750, § 2-4(b) (Smith-Hurd 1978):

An adopting parent and the lineal and collateral kindred of the adopting parent shall inherit property from an adopted child to the exclusion of the natural parent and the lineal and collateral kindred of the natural parent in the same manner as though the adopted child were a natural child of the adopting parent, except that the natural parent and the lineal or collateral kindred of the natural parent shall take from the child and the child's kin the property that the child has taken from or through the natural parent or the lineal or collateral kindred of the natural parent by gift, by will or under intestate laws.

\textsuperscript{153} See supra notes 9 & 134 and accompanying text. See also supra notes 73-74, 77, 80-98, 101-102, 104-109 and accompanying text.

\textsuperscript{153} In those jurisdictions that maintain the inheritance relationship between a child adopted by a stepparent subsequent to a natural parent's death where the natural parent-child relationship remained intact at the time of the parent's death, the surviving natural parent, the adoptive parent, and their kin could inherit an interest in the estates of the deceased natural parent and/or that of his or her kin through an adopted child dying intestate. The kin of the deceased natural parent could not, however, inherit an interest in the estates of the other natural parent, the adoptive parent, or their kin through the child. See, e.g., FLA. STAT. ANN. § 63.172(2) (West Supp. 1985) ("If a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's rights of inheritance from or through the
The proposed statute recognizes, however, that once the adopted person acquires property, whether it be through the person's own efforts or by way of gift, intestacy, or will, he or she owns it absolutely and may dispose of it by gift, will, or will substitute as he or she desires, even if that means an estate with its source in the natural parent not married to the adoptive parent passes to the kin of the adoptive parent or vice versa.

When an adopted person dies intestate, his or her property should be divided among those who would take under the intestacy laws as if all were natural relatives of the deceased. For example, if a person adopted by a stepparent dies survived only by a brother of her natural mother, a brother of her natural father, and a brother of the adoptive mother (a second wife of the natural father), the three uncles would each take one-third of the decedent's estate, assuming, of course, that none could prove that he was entitled to more because it was acquired from his branch of the child's family.

The proposed statute establishes a presumption that all property of an adopted person who dies intestate shall be distributed according to the state's intestacy laws. In many situations, no problems will arise because ancestors or collateral kin, be they natural or adoptive, will have no claim to the decedent's property, whatever its source, so long as the decedent is survived by spouse and issue, or sometimes by

deceased parent is unaffected by the adoption." (emphasis added); MINN. STAT. ANN. § 259.29 subd. 1a. (West 1982) ("If a parent dies and a child is subsequently adopted by a stepparent who is the spouse of a surviving parent, any rights of inheritance of the child or the child's issue from or through the deceased parent of the child which exist at the time of the death of that parent shall not be affected by the adoption." (emphasis added)); N.D. CENT. CODE § 14-15-14(2) (1981) ("If a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption." (emphasis added)). The proposed statute does not distinguish between termination of parental rights and subsequent adoption brought about by death or divorce in order to avoid even greater complexity in the statute and in order to promote uniformity of treatment. Whether the adoption is brought about by death or divorce, it is unlikely that the kin of the natural parent not married to the adoptive parent and the kin of the other natural parent and of the adoptive parent want their respective properties passing to each other through the adopted child. The statute makes clear that, whatever the circumstances leading up to the adoption, the estates of the natural parent not married to the adoptive parent and of that parent's kin, on the one hand, and those of the natural parent married to the adoptive parent, the adoptive parent, and their kin, on the other hand, may pass to the adopted child, but not through the adopted child by way of intestacy.

154. Examples of property acquired through the person's own efforts include wages, prize money, and insurance proceeds purchased with the adopted person's own funds.

155. The exception is that the natural parent not married to the adoptive parent would be denied inheritance rights if that parent's rights were terminated involuntarily.

156. PROPOSED CODE § 1(c)(1).
spouse or issue alone. If ancestors or collaterals are entitled to share in the decedent’s estate, the presumption still exists that the estate shall be divided according to the laws of intestacy. The presumption may be rebutted by an opponent’s proving, by a preponderance of the evidence, that certain of the intestate’s property was acquired by gift, will, or intestacy from the opponent’s “family” and, therefore, should not be distributed to those who are not biological members of that “family.” 157 The burden of proof is placed on the opponent for two reasons. First, if any evidence of the source of the intestate’s property exists, it is more likely to be with a member of the family of the alleged source than with any other claimant to the estate. Second, the rebuttable presumption should make settlement of estates easier and more efficient than if each claimant to the estate had to attempt to prove the source of the property claimed.

The section of the statute concerning “sources” of property obviously raises some difficulties in terms of tracing assets. The choice, however, lies among (1) allowing a natural or adoptive relative to attempt to prove that he or she is entitled to part of an adopted person’s estate, (2) totally abolishing the concerns of bloodline and property and letting all claimants take the statutory intestate share regardless of the source of the property, or (3) totally precluding certain individuals, for example, the kin of the natural parent not married to the adoptive parent, from sharing in the adopted person’s estate. Recognizing both the traditional concern for maintaining bloodlines and the desire to facilitate stepparent adoption where desirable, the proposed statute falls on the side of allowing one to try to prove a claim to property. Furthermore, the law is not unfamiliar with the concept of tracing assets. For example issues relating to the tracing of assets may be raised in cases involving ademption by extinction, 158 or in determining and satisfying the spouse’s elective share. 159

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157. PROPOSED CODE §§ 1(c)(2) and 1(d).

158. See, e.g., Estate of Creed, 255 Cal. App. 2d 80, 63 Cal. Rptr. 80 (1967) (no ademption but merely change in form where testator transferred to corporation title to property specifically devised in trust to grandchildren, issued stock, gave some stock to grandchildren inter vivos, and controlled and operated corporation until his death); Seifert v. Kepner, 227 Md. 517, 177 A.2d 859 (1962) (distribution of liquidating dividends did not work ademption of stock specifically bequeathed in will; legatees entitled to liquidation proceeds); Frost Estate, 354 Pa. 223, 47 A.2d 219 (1946) (bequest of proceeds of executor’s sale of specific corporate stock not adeemed by testator’s sale of stock inter vivos where major portion of proceeds traced to and identified in testator’s savings account).

(5) "Previously Adopting" Parents

Section 1(e) of the proposed probate statute defines natural parent to include previous adopting as well as biological parents. For purposes of illustration, assume that two persons, W and H, have a child, C. W and H divorce, and W marries A. A, with the consent of H, adopts C. A dies and W marries A'. A' adopts C. For the purposes of inheritance according to the proposed code, C would be considered the child of W and H, the biological parents; A, the first adoptive parent; and A', the second adoptive parent. The result would be the same had the marriage of W and A ended in divorce rather than by death, A's parental rights or had been terminated voluntarily or involuntarily.

Although this provision could complicate the inheritance rights by, from, and through the adopted child, adoption law seeks to place the child in the same position with an adoptive parent as the child held with the natural parent. Pursuant to the proposed code, a natural parent does not cease to be a natural parent for purposes of inheritance because of stepparent adoption; neither should a previous adoptive parent cease to be a "parent" pursuant to the code. Furthermore, while one stepparent adoption subsequent to an initial stepparent adoption may not be uncommon, it is unlikely that repeated adoptions will occur during a child's minority in more than a few cases.

(6) Dual Inheritance

Section 2 of the proposed probate code parallels section 2-114 of the Uniform Probate Code160 and provides that if a person is related to a decedent or testator through two or more lines of relationship, he or she is entitled to only one share of the decedent's or testator's estate based upon whichever relationship would entitle the person to the larger share. This section covers those stepparent adoptions in which the stepparent is related to the natural parent. For example, H and W marry and have a child C. H and W divorce and H marries W's sister, S. With W's consent, S adopts C. C is the child of both W and S. C is also the niece of both S and W. Furthermore, C is both the natural and adopted grandchild of the parents of W and S. Pursuant to the provisions of the proposed code, C may inherit as a child from both W, the natural mother, and S, the adoptive mother. But for the provision of the proposed code, C could also inherit as a niece from S and W.161 And, without section 2 of the code, C could inherit as both the

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161. If S were to die intestate, C as a child of S would take to the exclusion of C as a
natural and adopted grandchild of the parents of W and S. If both W and S predecease Parents, it is immaterial whether C takes as a grandchild through W or S, because in either case she would take the entire estate. If, however, only W had predeceased Parents, C would probably opt to take as a natural grandchild, the child of W, thereby acquiring one-half of Parents’ estate. Were she to claim Parents’ estate as a grandchild through S, she would acquire none of the estate because she could not replace S, her living ancestor.

Resolving the question of dual inheritance frequently raises a choice between treating an adopted child identically to a natural child of the adoptive parents or of protecting the property rights of the child to the maximum extent possible. For example, assume that after H marries S and S adopts C, H and S have two other children, X and Y. Assume also that S’s father, F, dies, leaving the residue of his estate “one-half to my daughter, W, or if she predeceases me, to her issue, and one-half to my daughter, S, or if she predeceases me, to her issue.” Assume that W and S both predecease F. C is entitled to share in the residue of F’s estate either as the natural child of W or as the adopted child of S. Presumably she would opt for taking as the child of W because that would entitle her to one-half of the estate. X and Y are entitled to share in F’s estate only as the natural children of S. The most that they can take from F’s estate is one-quarter each (standing in the place of S) assuming that C opts to take as the child of W. If C

niece of S because children stand in closer relationship to parents than nieces to aunts. If, however, S had a will which, for example, left the residue of her estate “to all of my kin in equal shares,” absent section 2 of the proposed code, C could claim two shares in S’s estate, one as child, one as niece, whereas any other kin S might have could claim only one share.
were to opt to take from F's estate as the adopted child of S, C, X, and Y would each take one-third of the residue.

Obviously, either resolution of this problem could lead to animosity between adopted and natural children. The principle of treating the adopted and natural children of the adoptive stepparent equally requires the statute to provide that the adopted child be treated the same as a natural child, whether or not that treatment would give the adopted child a larger or smaller share of the decedent's or testator's estate than had the child not been adopted. On the other hand, the proposed code has been based throughout on the idea that the inheritance provisions are intended to protect, as much as possible, the property rights of those individuals which could be disrupted by an adoption over which they had no authority to grant or withhold consent. The two principles cannot be reconciled. Consistency with the remainder of the statute requires that the adopted child be given the benefit of the doubt and be permitted to take the larger share, even though that may mean unequal treatment of adopted and natural children.

(7) Effective Date

Section 3 of the proposed probate code makes the act applicable only to adoptions made final following the effective date of the act. The inheritance relationships between children adopted by stepparents
and their natural or adoptive parents when the adoption occurred before the effective date of the act shall be governed by the law relating to inheritance in effect at the time of the adoption. This provision of the statute is contrary to the traditional legal rule that the law in effect at the time of the decedent's death, not the law in effect at the time of the adoption, is the controlling law. Support for this rule comes from the principle that inheritance is merely an expectancy until the one from whom a claimant is to inherit dies.

The proposed rule changes the traditional approach to maintain the status quo of all parties to the adoption and their kin at the time of the adoption. Even though inheritance is only an expectancy interest, the parties should be able to rely on the law relating to that expectancy as it existed when the adoption occurred. If, for example, at the time of the adoption a statute provided that the inheritance relationship between a child adopted by a stepparent and the natural parent not married to the stepparent was terminated, it seems inequitable to

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164. Green v. Quincy State Bank, 368 So. 2d 451, 453 (Fla. Dist. Ct. App. 1979) (while persons presumed to know law, it is not logical to conclude that they know legislature will change law dealing with sentence or clause contained in irrevocable trust agreement). But see In re Will of Martell, 457 So. 2d 1064, 1067 (Fla. Dist. Ct. App. 1984) (testator presumed to know law concerning inheritance by adopted children subject to change); Lewis v. Green, 389 So. 2d 235, 241 (Fla. Dist. Ct. App. 1980) (testator must have known laws of descent and inheritance would change over duration of long trust); Major v. Kammer, 258 S.W.2d 506, 508 (Ky. Ct. App. 1953) (testator making devise to class, membership in which is ascertainable at indefinite future time, is regarded as having contemplated possibility of change in laws prior to that time and is presumed, absent contrary evidence in will, to have intended statutes in effect at time gift becomes operative to be applied in determining class membership).
the natural parent or that parent's kin to reinstate the inheritance relationship with the enactment of the proposed code. While not to do so will prevent adopted children (and the natural parent not married to the stepparent and that natural parent's kin) from acquiring additional property rights with the enactment of the probate code, they will be losing nothing that they had prior to the enactment of the code. Although it is true that persons affected by the proposed code could protect themselves by will, the majority of persons, again, do not execute wills.165

The effective date provision of the proposed statute, then, offers additional rights to—or places additional burdens upon—parties to stepparent adoptions or their kin when the adoptions occur after the enactment of the probate code. It maintains the status quo of those parties and their kin when the adoption is made final before the enactment of the proposed code. And it is consistent with the prevailing practice of dying intestate. No right vested prior to the enactment of the code should be affected by its enactment.

V. CONCLUSION

Section 2-109 of the Uniform Probate Code provides that if a child is adopted by the spouse of a natural parent, the relationship between the child and both natural parents, for purposes of intestate succession, remains unchanged. Section 2-114 of the Code does limit the person adopted by a relative to one share of a decedent's estate if the person could inherit from the decedent through two lines.

Section 2-109's provision, which keeps intact the relationship between the child and both natural parents even after the child is adopted by a stepparent, makes sense when one natural parent dies and also when the natural parents are divorced with remarriage by one parent and adoption following. The provision is inconsistent, however, with most state adoption laws and with section 14 of the Uniform Adoption Act providing that stepparent adoption serves to terminate the relationship, for all purposes, between the child and the natural parent not married to the stepparent. State intestacy laws relating to adopted children are frequently inconsistent with the same state's adoption laws concerning the relationship between child and natural parents. There is also wide variation among state laws relating to questions of adopted children and intestacy. A uniform approach to the inheritance rights of adopted children and the effect of an adop-

165. See 7 Powell & Rahan supra note 56, at ¶ 991.
tion decree on the relationship between child and natural parents would alleviate problems of inconsistency both within and among jurisdictions.

This article has proposed a model statute, with commentary, to address the issues of inheritance rights and stepparent adoptions. The proposal leaves intact section 2-109's provision that a stepparent adoption does not affect the relationship between the adopted child and either natural parent. One goal of the provision is to encourage the natural parent not married to the stepparent to give consent for the termination of formal parental rights and subsequent adoption. In this way, the child may be adopted and gain the benefits inherent in that adoption, yet neither parent nor child will suffer from a total termination of the relationship between them.

The proposed statute extends the inheritance relationship between adopted child and natural parent to all matters of inheritance. The proposal does prohibit a natural parent whose parental rights were terminated involuntarily from taking from the child, reflecting the fact that the natural parent committed some type of culpable conduct justifying the termination of parental rights. The proposal does not exclude, however, the lineal or collateral kin of a natural parent whose parental rights were involuntarily terminated. It permits taking from and through an adopted child by a natural parent whose rights were terminated with the parent's consent and by that natural parent's lineal and collateral kin. The statute does provide that property acquired by the adopted child by gift, will, or intestacy from the family of the natural parent not married to the adoptive parent or from the families of the natural parent married to the adoptive parent or the adoptive parent shall not pass to each other by way of intestacy through the child. This section honors the law's traditional concern for keeping property within bloodlines and encourages—at least or does not discourage—the consent necessary from the natural parent for adoption. The statute creates a presumption that all property of an adopted person dying intestate shall be distributed according to state intestacy laws unless a claimant can prove that he or she is entitled to certain property because his or her "family line" was the source of the property. The child may, of course, distribute property, whatever its source, by inter vivos transfer, will, or will substitute to anyone he or she wants. The adopted child may inherit from and through both natural parents, the adoptive parent, and the kin of each without restriction.

The proposed statute keeps intact section 2-114's prohibition against dual inheritance, limiting a person related to the decedent or
testator through two or more lines of relationship to the one largest share of the estate to which he or she is entitled. Finally, the proposal provides that its terms apply only to adoptions occurring after the effective date of the act. This provision conflicts with traditional rules providing that the law in effect at the time of decedent’s death controls distribution of the estate or interpretation of documents relating to the estate. The proposal, however, protects parties to adoptions and their kin when the adoption becomes final before the effective date of the act. It changes the traditional benefits and burdens of parties to the adoption and of their kin only when the adoption occurs subsequent to the effective date of the act.