

Proposed revised Oregon probate code
STATUS OF ADOPTED PERSONS FOR
PURPOSES OF INHERITANCE, WILLS, AND
CLASS GIFTS
Amended 3rd Draft
September 26, 1967

Prepared by
Stanton Allison

STATUS OF ADOPTED PERSONS FOR PURPOSES OF
INHERITANCE, WILLS, AND CLASS GIFTS

Section 1. Adopted child treated as natural child.

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:

(1) 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.

(2) If a natural parent of a legitimate child dies and the other natural parent remarries and the child is adopted by the stepfather or stepmother, the child shall continue to be treated as the child of the deceased natural parent for all purposes of intestate succession through such parent.

Section 2. Effect of more than one adoption. For all purposes of intestate succession, a child who has been adopted more than once shall be treated as a child of the parents who have most recently adopted him and shall cease to be treated as a child of his previous adoptive parents. He shall be treated as the child of his natural parents only to the extent provided in subsection _____ of ORS _____.

Section 3. Construction of gifts in wills, deed and trusts to accord with law of intestate succession. Unless a contrary intent is indicated by the instrument, gift by will, deed or other instrument to an individual or member of a class described generically in relation to a particular person as child, children, lawful issue, grandchildren, descendants, heirs, heirs of the body, next of kin, distributees, relatives, nieces, nephews or the like shall include any person who would be treated as so related for purposes of intestate succession, except that, for purposes of construction of an instrument, an adopted person must have been adopted as a minor or after having been a member of the household of the adopting parent while a minor.

Section 4. ORS 109.041 is amended to read:

109.041. (1) Effect of decree of adoption. The effect of a decree of adoption [heretofore or hereafter granted by a court of this state] shall be that the relationship, rights and obligations between an adopted person [and his descendants] and

(a) His adoptive parents, [their descendants and kindred,] and

(b) His natural parents, [their descendants and kindred] shall be the same to all legal intents and purposes after the entry to such decree as if the adopted person had been born in

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lawful wedlock to his adoptive parents and had not been born to his natural parents.

(2) Where a person has been [or shall be] adopted [in this state] by his stepparent, this section shall leave unchanged the relationship, rights and obligations between such adopted person [and his descendants] and his natural parent, who is the spouse of the person who adopted him [and the descendants and kindred of such natural parent].

(3) This section does not affect intestate succession upon the death of natural or adoptive parents or adopted children.

Section 5. Repeal of existing statutes. ORS 111.210 and 111.212 are repealed.

References: Proposal #3

Advisory Committee Minutes
8/13,14/65, pp. 12 to 15
9/18/65, p. 6

Frohmayer draft of 5/6/67

ORS 111.210, 111.212, 109.041 and 109.050.

(Draftsman's Note: Included in Definitions Section will be the following: The phrase "all purposes of intestate succession" as used in this code means succession by, through or from a person, both lineal and collateral.)

Proposed revised Oregon probate code
ADOPTION
1st Draft
January 11, 1967

This draft is based primarily on Proposal #3 and the action taken by the committee at the August and September meetings in 1965.

Section 1. Inheritance by, through and from an adopted child.

For the purpose of inheritance by, through and from an adopted child, whether adopted in this state or elsewhere, the child is considered the natural child of the adopting parents and not the child of his natural parents; but if the spouse of a natural parent adopts the child, the child is considered the natural child of the natural parent and adopting parent.

References: Proposal #3

Advisory Committee Minutes:

8/13,14/65, pp. 12 to 15

9/18/65, p. 6

ORS 111.210, 111.212, 109.041 and 109.050

Comment: Should the first sentence read "For the purpose of inheritance by, through and from an adopted child, whether adopted in this state or elsewhere, the child is considered the natural child of the adopting parents and not the child of his natural or previous adoptive parents; ORS 109.041, relating to the spouse of a natural parent adopting a child, applies only to an adoption within the state of Oregon. Either that statute or this section should be amended so they are consistent.

Section 2. Repeal of existing sections; ORS 111.210 and 111.212 are repealed.

Prepared by
Mr. Frohnmayer

Proposed revised Oregon probate code
ADOPTION
1st Draft
May 6, 1967

Final Revised Draft of Proposal #3

Comment: This is the proposed revised draft of proposal #3.

INHERITANCE BY, THROUGH AND FROM AN ADOPTED CHILD

Section 1. For the purpose of inheritance by, through and from an adopted child, whether adopted in this state or elsewhere, the child is considered the natural child of the adopting parents and not the child of his natural or previous adoptive parents; but if the spouse of a natural parent adopts the child, the child is considered the natural child of the natural parent and adopting parent.

Section 2. Repeal of existing sections. ORS

111.210 and 111.212 are repealed.

References: Advisory Committee Minutes
8/13, 14/65, pp. 12 to 15
9/18/65, p. 6

ORS 111.210, 111.212, 109.041 and 109.050

Comments: Unchanged from proposal #3 except for addition of "or previous adoptive parents". The legislative counsel suggest that the present ORS 109.041, relates to the spouse of a natural parent adopting a child, applies only to an adoption within the state of Oregon. Hence he argues that either that statute or this present section should be amended to be consistent with one another. The committee should also note that this present section deals with only one small part of the problem of rights

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of succession of adopted children. The section refers specifically to inheritance, but does not deal with the status of adopted children for purposes of wills and class gifts. Both the Wisconsin code section 851.51 and the new tentative draft of the uniform probate code, section 209 attempt to deal with the status of adopted children regarding all forms of property succession, not just inheritance. It would seem advisable to complete this section by further subsections which treat the status of adopted children in a comprehensive manner.

Proposed revised Oregon probate code
ADOPTION
2nd Draft
August 16, 1967

Prepared by
Stanton Allison

INTESTATE SUCCESSION BY ADOPTED CHILD

Section 1. Adopted child treated as natural child. 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.

Section 2. Effect of more than one adoption. For all purposes of intestate succession, a child who has been adopted more than once shall be treated as a child of the parents who have most recently adopted him and shall cease to be treated as a child of his previous parents.

Section 3. ORS 109.041 is amended to read:

109.041. (1) Effect of decree of adoption. The effect of a decree of adoption [heretofore or hereafter granted by a court of this state] shall be that the relationship, rights and obligations between an adopted person and his descendants and

(a) His adoptive parents, their descendants and kindred,
and

(b) His natural parents, their descendants and kindred
shall be the same to all legal intents and purposes after the

entry of such decree as if the adopted person had been born in lawful wedlock to his adoptive parents and had not been born to his natural parents.

(2) Where a person has been [or shall be] adopted [in this state] by his stepparent, this section shall leave unchanged the relationship, rights and obligations between such adopted person and his descendants and his natural parent, who is the spouse of the person who adopted him, and the descendants and kindred of such natural parent.

Section 4. Repeal of existing statutes. ORS 111.210 and 111.212 are repealed.

References: Proposal #3

Advisory Committee Minutes'
8/13,14/65, pp. 12 to 15
9/18/65, p. 6

Frohnmayr draft of 5/6/67

ORS 111.210, 111.212, 109.041 and 109.050.

[Draftsman's Note: Included in Definitions Section will be the following: The phrase "all purposes of intestate succession" as used in this chapter means succession by, through or from a person, both lineal and collateral.]

COMMENTS

The foregoing section is copied from the 1967 Uniform Probate Code (section 2-109). It would replace ORS 111.210 and 111.212. It would amend ORS 109.041 to make that section apply to adoptions both in this state and elsewhere as would the proposed section above.

I have been unable to find any legislative reason why ORS 111.212 would apply the laws of descent and distribution to adoptions irrespective of whether the adoption was consummated in Oregon, but the very general provisions of ORS 109.041 are limited to decrees of adoption granted by Oregon courts alone. ORS 109.050, the general statute on the relation of adopted child to adopting parents is not limited to adoption decrees granted by an Oregon court. Rather than perpetuate the seemingly artificial distinction of the present statute between laws of descent and distribution affecting adopted children and all other relationships between the adopted child, his descendants, etc., as spelled out in ORS 109.041, it would seem advisable to eliminate the distinction and make ORS 109.041 effective irrespective of where the adoption was consummated.

It seems quite clear, however, that so far as the rights of inheritance are concerned, the proposed section has not in any way changed the present Oregon statute law. It has, however, the very definite advantage of embodying the language of the Uniform Probate Code which in many ways clarifies the inheritance rights, covers the question of the rights of a child under a prior adoption, and makes clear by the adoption of the definition that by "all purposes of intestate succession" is meant succession by, through, or from a person both lineal and collateral.

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3rd Draft
September 26, 1967

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Stanton Allison

COMMENTS

Section 1. Adopted child treated as natural child.

This section would replace ORS 111.210 and 111.212. The proposed language is taken from the 1967 Uniform Probate Code, Section 2-109.

The section broadens the coverage of rights of inheritance although following the basic rule of the present Oregon statute that inheritance rights are derived from the adoptive parents rather than the natural parents. It should be noted that the proposed section uses the wording "for all purposes of intestate succession." This phrase will be defined in the definitions section as follows: "The phrase 'all purposes of intestate succession' as used in this code mean succession by, through or from a person, both lineal and collateral." This language thus gives the adopted person a status for purposes of inheritance from his adoptive relatives and his adoptive relatives for purposes of inheritance from the adopted person, and broadens the language to cover inheritance rights of those claiming through the adopted child.

There are as noted two exceptions to the general rule outlined.

The statute preserves the relationship to the natural parent in the limited situation where a natural parent marries

or remarries and the child is adopted by the stepparent. This latter exception is consistent with the result reached by the Oregon Supreme Court in the case of Hood vs. Hatfield, 235 Or 38, 383 P2d. 1021 (1963), commented upon in 43 Oregon Law Review 88. The second exception, in subsection (2), meets the situation which arose in the case of In re Estate of Topel, 32 Wis. 2d 223, 145 NW 2d 162 (1966). In that case the decedent had died intestate, survived by three children of his deceased son. Their mother had remarried and her husband had adopted the children. It was held that the former Wisconsin statute precluded inheritance by the children. The language of this subsection is adopted from subsection (2b) of Section 851.51 of the Wisconsin Probate Code introduced on March 1, 1967 in the Wisconsin assembly.

Section 2. The effect of more than one adoption. The language of this section is taken from Section 2-109 (b) of the 1967 Uniform Probate Code. This situation is not specifically covered by the present ORS sections and clarifies the rights of the adopted child under the latest adoption.

Section 3. Construction of gifts in wills, deeds and trusts to accord with law of intestate succession. The present Oregon Revised Statute does not have an equivalent section to that proposed here. However, a reading of the proposed section reveals the obvious utility of spelling out the rights of adopted children in class gifts. The language

has been taken from Section 851.51 (3) of the 1967 Wisconsin Probate Code referred to.

The comment in the proposed Wisconsin Code on the exception contained in the last sentence of Section 3 states that the exception "prevents a deliberate adoption of an adult to qualify the latter as a member of a class. In some states it has been possible to adopt one's own wife in order to make the latter a child within a class gift; the statute avoids such an absurd result."

Section 4. Effect of decree of adoption. Would amend ORS 109.041 to eliminate the limitation of this section to adoptions granted by the courts of Oregon. We have been unable to find any legislative reason why the very general provisions of ORS 109.041 are limited to decrees of adoption granted by Oregon courts alone while ORS 111.212 applies the laws of descent and distribution to adoptions irrespective of whether the adoption was consummated in Oregon. ORS 109.050, the general statute on the relation of adopted child to adopting parents, is not limited to adoption decrees granted by an Oregon court. Rather than perpetuate this seemingly artificial distinction between laws of descent and distribution affecting adopted children and all other relationships between the adopted child and his descendants,

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as limited in ORS 109.041, it would seem advisable to eliminate the distinction and make ORS 109.041 effective irrespective of where the adoption was consummated.

It will be noted that the section has been further amended to restrict the operation of this statute to relationships other than the rights of intestate succession, since legislation covering rights of intestate succession belong properly in the probate code as embodied in Sections 1, 2 and 3 preceding.