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Wills, Trusts, and Estates for Legal Assistants

Sixth Edition

Chapter 3

**TREATMENT OF CERTAIN
CATEGORIES OF POTENTIAL HEIRS**

Chapter Objectives

- Define posthumous heirs
- Explain the effect of adoption on inheritance rights
- Analyze the rights of stepchildren, non-marital children, and children from alternate reproductive technologies
- Describe the circumstances in which various categories of "unworthy heirs" are precluded from inheritance
- Understand the developing law of non-marital partners as heirs

Posthumous or Afterborn Heir

- An heir conceived before but born after an intestate's death.

Adult Adoption

- Most states make no distinction based on the age of the child at the time of the adoption. However, some states restrict inheritance rights if the adopted individual was an adult and had not lived with the adoptive parents while still a minor.
- The rules may also be different based on whether the adopted person is mentally challenged; that is, the adoption of a mentally challenged adult may create inheritance rights while the adoption of other adults would not.

Adoption by Estoppel

- Conduct resulting in adoption in the absence of required formalities.

Ascertaining the Identity of Heirs

- Need to consider the following:
 - Posthumous or Afterborn Heirs
 - Adopted Individuals
 - Non-marital Children
 - Children from Alternative Reproduction Technologies
 - Stepchildren
 - Half-blooded Collateral Heirs
 - Non-United States Citizens
 - Unworthy Heirs
 - Non-Marital Partners

Unworthy Heirs

- Forfeiture
- Civil Death
- Corruption of the Blood
- Heir Killing Intestate
- Suicide
- Parent's Failure to Support Child
- Adultery
- Abuse

Unmarried Partners

- If the partners are of opposite sexes, most states provide no inheritance rights to the surviving partner.
- Some states, however, recognize the concept of a ‘ ‘common law marriage’ ’ so that the surviving partner will be treated as a surviving spouse and be entitled to inherit even though the partners were not formally married.

Common Law Marriage

- The requirements of a common law marriage typically include the partners
 - 1) agreeing to be married,
 - 2) living together as husband and wife, and
 - 3) representing to others that they are married.
- In addition, some states, such as California, allow opposite-sex unmarried couples to register as domestic partners if at least one partner is over age sixty-two, which will then entitle the surviving partner to inherit the same share as a surviving spouse.

Same-Sex Partners

- A few states permit same-sex partners who are not legally married to obtain inheritance rights via other means such as by entering into a *civil union* or registering as a *domestic partner* or *reciprocal beneficiary*.