

Title 64.2. Wills, Trusts, and Fiduciaries

Adopted children

§ 64.2-102. Meaning of child and related terms.

If, for purposes of this title or for determining rights in and to property pursuant to any deed, will, trust or other instrument, a relationship of parent and child must be established to determine succession or a taking by, through, or from a person:

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

Nonmarital children

§ 64.2-102. Meaning of child and related terms.

If, for purposes of this title or for determining rights in and to property pursuant to any deed, will, trust or other instrument, a relationship of parent and child must be established to determine succession or a taking by, through, or from a person:

3. Except as otherwise provided by *subdivision 1 (adoption) or 2 (The parentage of a child resulting from assisted conception)*, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

a. The biological parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage was prohibited by law, deemed null or void, or dissolved by a court; or

b. Paternity is established by clear and convincing evidence, including scientifically reliable genetic testing, as set forth in § 64.2-103; however, paternity established pursuant to this subdivision is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.

4. No claim of succession based upon the relationship between a child born out of wedlock and a deceased parent of such child shall be recognized unless, within one year of the date of the death of such parent (i) an affidavit by such child or by someone acting for such child alleging such parenthood has been filed in the clerk's office of the circuit court of the jurisdiction wherein the property affected by such claim is located and (ii) an action seeking adjudication of parenthood is filed in an appropriate circuit court. The one-year limitation period runs notwithstanding the minority of such child; however, it does not apply in those cases where the relationship between the child born out of wedlock and the parent in question

is established by (a) a birth record prepared upon information given by or at the request of such parent; (b) admission by such parent of parenthood before any court or in writing under oath; or (c) a previously entered judgment establishing such parent's paternity by a court having jurisdiction to determine his paternity.

5. Unless otherwise specifically provided therein, an order terminating residual parental rights under § 16.1-283 terminates the rights of the parent to take from or through the child in question but the order does not otherwise affect the rights of the child, the child's kindred, or the parent's kindred to take from or through the parent or the rights of the parent's kindred to take from or through the child.

§ 64.2-103. Evidence of paternity.

A. For the purposes of this title, paternity of a child born out of wedlock shall be established by clear and convincing evidence, and such evidence may include the following:

1. That he cohabited openly with the mother during all of the 10 months immediately prior to the time the child was born;
2. That he gave consent to a physician or other person, not including the mother, charged with the responsibility of securing information for the preparation of a birth record that his name be used as the father of the child upon the birth record of the child;
3. That he allowed by a general course of conduct the common use of his surname by the child;
4. That he claimed the child as his child on any statement, tax return, or other document filed and signed by him with any local, state, or federal government or any agency thereof;
5. That he admitted before any court having jurisdiction to determine his paternity that he is the father of the child;
6. That he voluntarily admitted paternity in writing under oath;
7. The results of scientifically reliable genetic tests, including DNA tests, weighted with all the evidence; or
8. Other medical, scientific, or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts.

B. A judgment establishing a father's paternity made by a court having jurisdiction to determine his paternity is sufficient evidence of paternity for the purposes of this section.

Afterborn heirs

§ 64.2-204. Afterborn heirs.

Relatives of the decedent conceived before his death but born thereafter, and children resulting from assisted conception born after the decedent's death who are determined to be relatives of the decedent as provided in Chapter 9 (§ 20-156 et seq.) of Title 20, shall inherit as if they had been born during the lifetime of the decedent.

§ 20-156. Definitions.

As used in this chapter unless the context requires a different meaning:

"Assisted conception" means a pregnancy resulting from any intervening medical technology, whether in vivo or in vitro, which completely or partially replaces sexual intercourse as the means of conception. Such intervening medical technology includes, but is not limited to, conventional medical and surgical treatment as well as noncoital reproductive technology such as artificial insemination by donor, cryopreservation of gametes and embryos, in vitro fertilization, uterine embryo lavage, embryo transfer, gamete intrafallopian tube transfer, and low tubal ovum transfer.

"Compensation" means payment of any valuable consideration for services in excess of reasonable medical and ancillary costs.

"Cryopreservation" means freezing and storing of gametes and embryos for possible future use in assisted conception.

"Donor" means an individual, other than a surrogate, who contributes the sperm or egg used in assisted conception.

"Gamete" means either a sperm or an ovum.

"Genetic parent" means an individual who contributes a gamete resulting in a conception.

"Gestational mother" means the woman who gives birth to a child, regardless of her genetic relationship to the child.

"Embryo" means the organism resulting from the union of a sperm and an ovum from first cell division until approximately the end of the second month of gestation.

"Embryo transfer" means the placing of a viable embryo into the uterus of a gestational mother.

"Infertile" means the inability to conceive after one year of unprotected sexual intercourse.

"Intended parent" means a married couple or unmarried individual who enters into an agreement with a surrogate under the terms of which such parent will be the parent of any child born to the surrogate through assisted conception regardless of the genetic relationships between the intended parent, the surrogate, and the child.

"In vitro" means any process that can be observed in an artificial environment such as a test tube or tissue culture plate.

"In vitro fertilization" means the fertilization of ova by sperm in an artificial environment.

"In vivo" means any process occurring within the living body.

"Legal or contractual custody" means having authority granted by law, contract, or court order to make decisions concerning the use of an embryo.

"Ovum" means the female gamete or reproductive cell prior to fertilization.

"Reasonable medical and ancillary costs" means the costs of the performance of assisted conception, the costs of prenatal maternal health care, the costs of maternal and child health care for a reasonable postpartum period, the reasonable costs for medications and maternity clothes, and any additional and reasonable costs for housing and other living expenses attributable to the pregnancy.

"Sperm" means the male gametes or reproductive cells which impregnate the ova.

"Surrogacy contract" means an agreement between the intended parent, a surrogate, and her spouse, if any, in which the surrogate agrees to be impregnated through the use of assisted conception, to carry any resulting fetus, and to relinquish to the intended parent the custody of and parental rights to any resulting child.

"Surrogate" means any adult woman who agrees to bear a child carried for the intended parent.

Non-citizens

§ 64.2-203. Inheritance rights of certain individuals.

A. Except as otherwise provided by law, no person is barred from inheriting because such person or a person through whom he claims his inheritance is or has been an alien.

B. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him to the larger share.