

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Inheritance by Foster Child or Stepchild

February 1997

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN July 1, 1997.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

Existing law treats a foster child or stepchild as a natural child for purposes of inheritance if the relationship with the foster parent or stepparent began during the child's minority and continued throughout their joint lifetimes, and it is established by clear and convincing evidence that the foster parent or stepparent would have adopted the child "but for a legal barrier." This recommendation would codify case law holding that the legal barrier to adoption need only exist at the time the adoption was contemplated or attempted, and rejects cases holding that the legal barrier must exist throughout their joint lifetimes.

## 1 INHERITANCE BY FOSTER CHILD OR STEPCHILD

2 For the purpose of intestate succession, a foster child or stepchild is treated as  
3 having a natural parent-child relationship with the foster parent or stepparent if the  
4 relationship began during the child's minority, continued for their joint lifetimes,  
5 and it is established by clear and convincing evidence that the foster parent or  
6 stepparent would have adopted the child "but for a legal barrier."<sup>1</sup> The cases  
7 conflict on whether the legal barrier must exist during the joint lifetimes of the  
8 foster parent or stepparent and the child, or merely at the time the adoption was  
9 contemplated or attempted.<sup>2</sup>

10 The legal barrier to adoption is usually the natural parent's failure to consent.<sup>3</sup> If  
11 it is clear the foster parent or stepparent would have adopted the child but for the  
12 natural parent's refusal to consent, to treat the relationship between the foster  
13 parent or stepparent and the foster child or stepchild the same as a natural  
14 relationship for the purpose of intestate succession carries out the likely intent of  
15 the decedent and avoids denying inheritance on technical or legalistic grounds. But  
16 parental consent is not required to adopt an adult.<sup>4</sup> Thus a requirement that the  
17 legal barrier must continue for life would preclude inheritance by virtually all  
18 adults from or through their foster parent or stepparent.<sup>5</sup> Such a construction  
19 would frustrate the underlying purpose of the statute to carry out the likely intent  
20 of the intestate decedent.<sup>6</sup>

21 The Commission recommends codifying case law limiting the existence of the  
22 required legal barrier to adoption to the time when adoption was contemplated or  
23 attempted.<sup>7</sup> This relaxation of the standards for inheritance should not lead to an

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1. Prob. Code § 6454.

2. Compare *Estate of Cleveland*, 17 Cal. App. 4th 1700, 22 Cal. Rptr. 2d 590 (1993) (legal barrier must exist during joint lifetimes of foster parent or stepparent and foster child or stepchild), and *Estate of Joseph*, 53 Cal. App. 4th 684, 61 Cal. Rptr. 2d 803 (1997) (same), with *In re Estate of Smith*, 48 Cal. App. 4th 1757, 42 Cal. Rptr. 2d 42 (1995) (legal barrier need only exist when adoption was contemplated or attempted), and *In re Estate of Stevenson*, 11 Cal. App. 4th 852, 14 Cal. Rptr. 2d 250 (1992) (same).

3. *In re Estate of Stevenson*, 11 Cal. App. 4th 852, 14 Cal. Rptr. 2d 250, 257 (1992). See also Prob. Code § 6454 Comment.

4. Fam. Code § 9302(b).

5. *In re Estate of Smith*, 48 Cal. App. 4th 1757, 42 Cal. Rptr. 42, 45, 48 (1995).

6. See *In re Estate of Smith*, 48 Cal. App. 4th 1757, 42 Cal. Rptr. 42, 43 (1995); *Estate of Cleveland*, 17 Cal. App. 4th 1700, 22 Cal. Rptr. 2d 590, 594 (1993).

7. This view is supported by the commentators. See 17 CEB Estate Planning & California Probate Reporter 22 (Aug. 1995) (decision and reasoning of *Estate of Smith* "seem sound"); San Francisco Daily Journal, July 18, 1995, at 5 (decision in *Estate of Smith* "makes more sense" than in *Estate of Cleveland*). One article calls for repeal of Section 6454, finding the section "vague" and that it injects "uncertainty into an area where predictability is essential." Meadow & Loeb, *An Anomalous Rule of Intestate Succession Triggers a Standoff in the Courts of Appeal*, 17 L.A. Law., No. 4, June 1994, at 34. But much of this article was devoted to showing how the conflict in the case law is the cause of much of the uncertainty. The recommended legislation will resolve that conflict and eliminate the uncertainty from that cause. Another

1 increase of manufactured claims because of the requirements that the parent-child  
2 relationship must continue throughout their joint lifetimes, and that evidence of  
3 intent to adopt must be clear and convincing.<sup>8</sup>  
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article focuses on the stepchild, and recommends removing all requirements from Section 6454 except a requirement of a “legitimate family relationship” between the decedent and stepchild, a flexible concept that would require the court to examine the details of the family relationship. See Note, *Intestate Succession for Stepchildren: California Leads the Way, but Has It Gone Far Enough?*, 47 *Hastings L.J.* 257, 279-85 (1995). The recommended legislation does not go this far.

<sup>8</sup>. See Prob. Code § 6454.

1 PROPOSED LEGISLATION

2 **Prob. Code § 6454 (amended). Inheritance from or through foster parent or stepparent**

3 SECTION 1. Section 6454 of the Probate Code is amended to read:

4 6454. For the purpose of determining intestate succession by a person or the  
5 person's issue from or through a foster parent or stepparent, the relationship of  
6 parent and child exists between that person and the person's foster parent or  
7 stepparent if both of the following requirements are satisfied:

8 (a) The relationship began during the person's minority and continued  
9 throughout the joint lifetimes of the person and the person's foster parent or  
10 stepparent.

11 (b) It is established by clear and convincing evidence that the foster parent or  
12 stepparent would have adopted the person but for a legal barrier existing at the  
13 time the adoption was contemplated or attempted.

14 **Comment.** Subdivision (b) of Section 6454 is amended to require that the legal barrier to  
15 adoption must have existed at the time the adoption was contemplated or attempted. This codifies  
16 *In re* Estate of Smith, 48 Cal. App. 4th 1757, 42 Cal. Rptr. 2d 42 (1995), and *In re* Estate of  
17 Stevenson, 11 Cal. App. 4th 852, 14 Cal. Rptr. 2d 250 (1992), and rejects Estate of Cleveland, 17  
18 Cal. App. 4th 1700, 22 Cal. Rptr. 2d 590 (1993), and Estate of Joseph, 53 Cal. App. 4th 684, 61  
19 Cal. Rptr. 2d 803 (1997).