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# ADULT ADOPTION AND THE ELDER POPULATION

Angela Chaput Foy\*

## INTRODUCTION

Elder adults face challenges that are unique to their current stage in life. Their health, means of income, and daily routine all may have changed from earlier periods in their life. With these changes, elders also may reevaluate their relationships. Adult adoption may be an option for elder adults who wish to form a familial relationship with someone to whom they are not currently related.

The first section of this article explores adult adoption: what it is, how it works and how it differs from minor child adoption. The second section then examines how adult adoption may affect the elder population: through traditional and non-traditional inheritance, formalizing relationships, and grandparents' rights. Lastly, the article reveals the risks that elders may face because of their involvement in an adult adoption. Although this article does recognize adult adoption as a means to form non-traditional families, it does not discuss adult adoption as a substitute for marriage; therefore, it does not discuss adult adoption as it may apply to homosexual couples.

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## ADULT ADOPTION: WHAT IT IS, HOW IT WORKS, AND HOW IT DIFFERS FROM MINOR CHILD ADOPTION

Some states define adult adoption and require specific procedures, some of which are quite different from more familiar child adoption.

### *DEFINITION AND RECOGNITION: WHAT ADULT ADOPTION IS AND WHERE IT IS AVAILABLE*

Adoption is a way to create a relationship of parent and child between people who were not born into that relationship. Adult adoption creates this same relationship, but the "child" is an adult at the time of the adoption. In general, an adult may adopt another adult if the adoptee is younger than and not a spouse of the prospective adoptive parent, and a court approves the adoption agreement.<sup>1</sup> Some jurisdictions place further restrictions on who may be adopted. For example, Arizona restricts adult adoptions to extended family members<sup>2</sup> or adult foster children<sup>3</sup> of the prospective adoptive parent.

State statutes provide the right to create a parent-child relationship. Consequently, if a state statute does not provide for the adoption of adults, such a right does not exist in that jurisdiction.<sup>4</sup> Many states offer some form of adult adoption, but state statutes and courts' interpretations of the statutes place further restrictions on an adoption.<sup>5</sup>

The specific wording in an adoption statute determines whether adult adoption is permitted in that jurisdiction. Where

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1. *E.g.*, CAL. FAM. CODE § 9320(a) (West 2004).

2. ARIZ. REV. STAT. § 14-8101(A) (2005) ("[A]ny adult person may adopt another adult person who is a stepchild, niece, nephew, cousin or grandchild of the adopting person . . .").

3. *Id.* ("A foster parent may adopt an adult who was placed in his care when the adult was a juvenile if the foster parent has maintained a continuous familial relationship with that person for five or more years.").

4. *Doby v. Carroll*, 147 So. 2d 803, 805 (Ala. 1962).

5. See Angie Smolka, *That's The Ticket: A New Way of Defining Family*, 10 CORNELL J.L. & PUB. POL'Y 629, 638-39 (2000-2001).

a statute refers to adopting a "child," courts have split in deciding whether an adult can be adopted under it. Some courts concluded that the term "child" does not exclude adults.<sup>6</sup> They reasoned that the word "child" has two different meanings, one of relationship and one of minority,<sup>7</sup> and the adoption statutes use "child" to refer to the relationship, not to the person being adopted.<sup>8</sup> An adoption creates a parent-child relationship regardless of the adoptee's age. If a court comes to this conclusion, an adult may be adopted under that statute.<sup>9</sup> Other courts have allowed an adult to be adopted as a "child" because the statutes place no limitation on the age of the child to be adopted.<sup>10</sup> They reasoned that the use of the word in the statute did not connote age, but it reflected the intent to direct inheritance to a favored party.<sup>11</sup>

Numerous courts have held that adult adoption is permissible under an applicable adoption statute including California,<sup>12</sup> Colorado,<sup>13</sup> Florida,<sup>14</sup> Georgia,<sup>15</sup> Indiana,<sup>16</sup> Iowa,<sup>17</sup> Kentucky,<sup>18</sup> Louisiana,<sup>19</sup> Maryland,<sup>20</sup> Massachusetts,<sup>21</sup>

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6. *Sheffield v. Franklin*, 44 So. 373, 374 (Ala. 1907); *State ex rel. Buerk v. Calhoun*, 52 S.W.2d 742, 742 (Mo. 1932).

7. *Sheffield*, 44 So. at 374.

8. *Craft v. Blass*, 8 Tenn. App. 498, 503 (1928).

9. *See, e.g., Markover v. Krauss*, 31 N.E. 1047, 1048 (Ind. 1892).

10. *In re Moran's Estate*, 52 S.W. 377, 378 (Mo. 1899).

11. *Id.*

12. *In re Adoption of Sewall*, 51 Cal. Rptr. 367, 377 (Ct. App. 1966).

13. *People ex rel. Dunbar v. White*, 355 P.2d 963, 964-65 (Colo. 1960).

14. *Tsilidis v. Pedakis*, 132 So. 2d 9, 13 (Fla. Dist. Ct. App. 1961).

15. *Crawford v. Wilson*, 78 S.E. 30, 32 (Ga. 1913).

16. *Markover v. Krauss*, 31 N.E. 1047, 1048 (Ind. 1892); *Nickerson v. Hoover*, 115 N.E. 588, 593 (Ind. Ct. App. 1917); *Scott v. Peters*, 158 N.E. 490, 491-92 (Ind. Ct. App. 1927); *Adams v. Slater*, 175 N.E.2d 706, 708 (Ind. Ct. App. 1961).

17. *See Brown v. Hall*, 52 N.E.2d 781, 785 (Ill. 1944) (construing the adoption law of Iowa).

18. *Howard v. United States*, 2 F.2d 170, 178 (E.D. Ky. 1924) (construing Kentucky statute); *Wilson v. Johnson*, 389 S.W.2d 634, 636 (Ky. 1965); *Bedinger v. Graybill's Ex'r. & Tr.*, 302 S.W.2d 594, 597 (Ky. 1957); *Greene v. Fitzpatrick*, 295 S.W. 896, 898 (Ky. 1927); *Atchison v. Atchison's Ex'rs.*, 12 S.W. 942, 943 (Ky. 1890).

19. *Succession of Caldwell*, 38 So. 140, 142 (La. 1905); *Succession of Thomson*, 60 So. 2d 411, 413 (La. 1952); *Succession of Pizzati*, 75 So. 498, 506 (La. 1917); *Succession of D'asaro*, 167 So. 2d 391, 395-96 (La. Ct. App. 1964); *Succession of Quartararo*, 139 So. 2d 277, 279 (La. Ct. App. 1962).

Minnesota,<sup>22</sup> Missouri,<sup>23</sup> Montana,<sup>24</sup> New Jersey,<sup>25</sup> New Mexico,<sup>26</sup> New York,<sup>27</sup> Pennsylvania,<sup>28</sup> Tennessee,<sup>29</sup> Vermont,<sup>30</sup> Virginia,<sup>31</sup> and Wyoming<sup>32</sup>.

Other courts have disagreed with the child-as-relationship interpretation and have held that "child" by definition means a minor. Courts found this meaning by looking at the word's context in the statute.<sup>33</sup> These statutes often include requirements to file the age of the child in the adoption petition and to appoint a guardian ad litem for the "said minor."<sup>34</sup> One court reasoned that if the legislature had intended to allow the adoption of adults, it would have used more explicit language.<sup>35</sup>

20. *Ex parte* Libertini, 224 A.2d 443, 444 (Md. 1966).

21. *Succession of Caldwell*, 38 So. 140, 141 (La. 1905) (construing the adoption law of Massachusetts); *Collamore v. Learned*, 50 N.E. 518, 519 (Mass. 1898); *Wyeth v. Stone*, 11 N.E. 729, 732 (Mass. 1887).

22. *In re Adoption of Berston*, 206 N.W.2d 28, 29 (Minn. 1973).

23. *See Howard v. United States*, 2 F.2d 170, 177 (E.D. Ky. 1924) (noting that the adoption of adults was permitted in Missouri); *Gamache v. Doering*, 189 S.W.2d 999, 1001 (Mo. 1945); *Thompson v. Moseley*, 125 S.W.2d 860, 862 (Mo. 1939); *Brock v. Dorman*, 98 S.W.2d 672, 676 (Mo. 1936); *St. Louis Union Trust Co. v. Hill*, 76 S.W.2d 685, 686 (Mo. 1934); *In re Moran's Estate*, 52 S.W. 377, 378 (Mo. 1899); *State ex rel. Buerk v. Calhoun*, 52 S.W.2d 742, 743 (Mo. 1899).

24. *Hendy v. Indus. Accident Bd.*, 146 P.2d 324, 324 (Mont. 1944).

25. *In re Adoption of P.* 471 A.2d 1220, 1221 (N.J. 1983); *In re Holibaugh's Will*, 113 A.2d 654, 655 (N.J. 1955).

26. *Delaney v. First Nat'l Bank*, 386 P.2d 711, 715 (N.M. 1963).

27. *Stevens v. Halstead*, 168 N.Y.S. 142, 143 (App. Div. 1917); *In re Frost's Will*, 182 N.Y.S. 559, 563 (App. Div. 1920), *aff'd*, 130 N.E. 901 (N.Y. 1920); *In re O'Keefe*, 300 N.Y.S. 27, 29 (App. Div. 1937); *In re Anonymous Adoption*, 31 N.Y.S.2d 595, 596-97 (App. Div. 1941); *In re Adoption of Brundage* 134 N.Y.S.2d 703, 708 (App. Div. 1954), *aff'd*, 143 N.Y.S.2d 611 (N.Y. App. Div. 1955); 333 East 53rd St. Assoc. v. Mann, 503 N.Y.S.2d 752, 753 (App. Div. 1986), *aff'd*, 512 N.E.2d 541 (N.Y. 1987).

28. *Coker v. Celebrezze*, 241 F. Supp. 783, 786-87 (E.D. Tenn. 1965) (noting that Tennessee adoption statute permitted adoption of adults); *In re Adoption of McAhren*, 331 A.2d 419, 421 (Pa. 1975); *In re Webb's Estate*, 95 A. 419, 420 (Pa. 1915); *In re Adoption of Russell*, 85 A.2d 878, 879 (Pa. 1952); *In re Freeman's Estate*, 40 Pa. Super. 31, 41 (Super. Ct. 1909).

29. *Baskette v. Streight*, 62 S.W. 142, 144 (Tenn. 1901); *Craft v. Blass*, 8 Tenn. App. 498, 508-09 (1928).

30. *Batchelder v. Walworth*, 82 A. 7, 8-9 (Vt. 1912).

31. *Merson v. Wood*, 117 S.E.2d 661, 663 (Va. 1961).

32. *Pangarova v. Nichols*, 419 P.2d 688, 693 (Wyo. 1966).

33. *First Nat'l Bank v. Mott*, 133 So. 78, 79 (Fla. 1931).

34. *Id.*

35. *In re Moore's Petition*, 14 R.I. 38, 38 (1882).

In at least eleven states, at some point, a court has held that an adult adoption was not permissible under the state's statute including Alabama,<sup>36</sup> California,<sup>37</sup> Florida,<sup>38</sup> Hawaii,<sup>39</sup> Illinois,<sup>40</sup> Iowa,<sup>41</sup> Nebraska,<sup>42</sup> Ohio,<sup>43</sup> Pennsylvania,<sup>44</sup> and Rhode Island<sup>45</sup>.

Some statutes refer to "adopting a minor child." If the statute's wording refers to a minor, courts have held that adults may not be adopted under it.<sup>46</sup> Because the statute limits itself to minors, adults are excluded.<sup>47</sup>

Because some states recognize adult adoptions and other states do not, inter-jurisdictional recognition is an issue.<sup>48</sup> States' recognition of an adult adoption that occurred in another jurisdiction also is divided. Additionally, some jurisdictions that do not permit adult adoption will recognize a foreign decree granting the adoption of an adult, but other states have refused such recognition. In *Tsilidis v. Pedakis*,<sup>49</sup> Florida rejected a Greek adoption of a twenty-five-year-old man by a single man.<sup>50</sup> When the adoptive parent died, the adopted adult tried to recover from his estate.<sup>51</sup> However, the Florida court rejected the adoption because the adoptive parent was single and never

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36. *Doby v. Carroll*, 147 So. 2d 803, 804 (Ala. 1962).

37. Current California law allows adult adoptions. See *supra* note 13. But see *In re Taggart's Estate*, 213 P. 504, 506 (Cal. 1923); *In re Morris' Estate*, 133 P.2d 452, 454 (Cal. Ct. App. 1943).

38. Current Florida law allows adult adoptions. See *supra* note 15. But see *First Nat'l Bank v. Mott*, 133 So. 78, 79 (Fla. 1931).

39. *Souza v. Sao Martinho Soc'y*, 24 Haw. 643, 645 (1919).

40. *McLaughlin v. People*, 87 N.E.2d 637, 640-41 (Ill. 1949); *Brown v. Hall*, 52 N.E.2d 781, 785 (Ill. 1944); *Bartholow v. Davies*, 114 N.E. 1017, 1019 (Ill. 1916).

41. *McCollister v. Yard*, 57 N.W. 447, 449 (Iowa 1894).

42. *Appeal of Ritchie*, 53 N.W.2d 753, 755 (Neb. 1952).

43. *Barrett v. Delmore*, 54 N.E.2d 789, 791 (Ohio 1944).

44. *Petition of A.H.G.*, 1 W.N.C. 576, 576 (1875).

45. *Williams v. Knight*, 27 A. 210, 211 (R.I. 1893); *In re Moore's Petition*, 14 R.I. 38, 38 (1882).

46. See *Appeal of Ritchie*, 53 N.W.2d 753, 755 (Neb. 1952).

47. *Id.*

48. See Malinda L. Seymore, *International Adoption & International Comity: When is Adoption "Repugnant"?*, 10 TEX. WESLEYAN L. REV. 381, 394-96 (2003-2004).

49. 132 So. 2d 9 (Fla. Dist. Ct. App. 1961).

50. *Id.* at 13.

51. *Id.* at 10.

married; Florida allowed only married couples or survivors to adopt.<sup>52</sup>

### **PROCEDURE AND REQUIREMENTS: HOW ADULT ADOPTION WORKS**

The procedure to adopt an adult involves many of the same steps and requirements as the procedure to adopt a minor child. California provides an example. Two major legal steps are a petition and a hearing. The adoption agreement takes the form of a petition executed by both the prospective adoptive parent and the prospective adult adoptee.<sup>53</sup> The petition contains background information about the two parties, including the length and nature of the relationship between the parties, the reason they are asking for the adoption, and whether either party has adopted any other adult, and if so, the information about that adoption.<sup>54</sup> The petition also must explain why the adoption would be in the best interest of the prospective adoptive parent, the prospective adult adoptee, and the public in general.<sup>55</sup> Most jurisdictions also require that the two parties state in the petition that they will assume the legal relationship of parent and child.<sup>56</sup>

After the petition is filed, the clerk assigns a hearing date.<sup>57</sup> Notice of the time and place of the hearing must then be served to any interested person so that they have the opportunity to appear and object to the proposed adoption.<sup>58</sup> If the prospective adult adoptee is developmentally disabled and the prospective adoptive parent is a care provider, then notice may need to be

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52. *Id.* at 13.

53. *E.g.*, CAL. FAM. CODE § 9320(b) (West 2004).

54. *E.g.*, CAL. FAM. CODE §§ 9321(a)(1)-(6) (West 2004).

55. *E.g.*, CAL. FAM. CODE § 9321(a)(4).

56. *E.g.*, CAL. FAM. CODE § 9320 (b) ("The adoption agreement shall be in writing, executed by the prospective adoptive parent and the proposed adoptee, and shall state that the parties agree to assume toward each other the legal relationship of parent and child and to have all of the rights and be subject to all of the duties and responsibilities of that relationship.").

57. *E.g.*, CAL. FAM. CODE § 9322 (West 2004).

58. *E.g.*, CAL. FAM. CODE § 9323 (West 2004).

provided to the director of the regional center for the developmentally disabled, any living birth parents, and any adult children of the prospective adult adoptee.<sup>59</sup> The prospective adoptive parent and the prospective adult adoptee must appear at the hearing unless their appearance is impossible; then they may be represented by counsel empowered in writing to make the appearance.<sup>60</sup>

At the hearing, the judge examines the parties.<sup>61</sup> In general, the judge can consider oral or written evidence regardless of whether the evidence conforms to the state rules in the Evidence Code.<sup>62</sup> If the judge finds that the adoption is in the best interest of the two parties and the public, and no other reason to deny the petition exists, the adoption will be granted.<sup>63</sup>

Most statutes that permit adult adoption require additional conditions for the adoption to be valid.<sup>64</sup> Typical conditions include residence requirements, consent statements in writing, and specific age differences between prospective adoptive parent and adult. In regards to the residency requirements, usually either the prospective adoptive parent or the prospective adult adoptee must reside in the county.<sup>65</sup> In *Brown v. Hall*, the court found that neither the adoptive mother nor the adopted adult was a bona fide domiciliary of the state of Iowa at the time that they filed the adoption petition.<sup>66</sup> The court concluded that they were there temporarily to evade Illinois's adoption statute; therefore, it held that the adoption was void for lack of jurisdiction.<sup>67</sup>

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59. *E.g.*, CAL. FAM. CODE § 9326 (West 2004).

60. *E.g.*, CAL. FAM. CODE § 9324 (West 2004).

61. *E.g.*, CAL. FAM. CODE § 9328(a) (West 2004).

62. *E.g.*, CAL. FAM. CODE § 9328(c).

63. *E.g.*, CAL. FAM. CODE § 9328(b).

64. *E.g.*, ARIZ. REV. STAT. § 14-8101(D) (2005).

65. *See* *Brown v. Hall*, 52 N.E.2d 781, 785 (Ill. 1944); *see also* CAL. FAM. CODE § 9321(a) (West 2004) ("The prospective adoptive parent and the proposed adoptee may file in the county in which either person resides . . . ."); N.M. STAT. ANN. § 40-14-15 (Supp. 1999).

66. *Brown*, 52 N.E.2d at 785.

67. *Id.*

The requirement of consent often coincides with the requirement that notice be provided to interested parties. From whom consent is required varies by state. Generally, adult adoption requires the consent of the prospective adult adoptee.<sup>68</sup> Sometimes that is the only consent required.<sup>69</sup> Other states require the consent of the prospective adult adoptee's natural parents,<sup>70</sup> the prospective adult adoptee's spouse,<sup>71</sup> or the prospective adoptive parent's spouse.<sup>72</sup> Some states require a specific age difference, usually ten years, between the adult adoptee and the adoptive parent.<sup>73</sup> Another common requirement is that the parties agree in writing to assume the legal relationship of parent and child.<sup>74</sup> Some states regulate the name change of the adopted adult,<sup>75</sup> and most states assess a

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68. See UNIF. ADOPTION ACT § 5-103, 9 U.L.A. 114 (1994).

69. 14A MICH. PL. & PR. § 114:34 (2005) (“[N]o consent other than that of the person to be adopted is required.”).

70. *McComeskey's Adoption*, 14 Pa. Dist. 420, 420 (1905). Some states, however, do not require the consent of natural parents for the adoption of an adult. ARIZ. REV. STAT. § 14-8101(C) (2005); *Scott v. Peters*, 158 N.E. 490, 491-92 (Ind. Ct. App. 1927); *State ex rel. Buerk v. Calhoun*, 52 S.W.2d 742, 742-43 (Mo. 1932).

71. ARIZ. REV. STAT. § 14-8101(C) (“A married person who is not legally separated from his or her spouse cannot be adopted without the consent of the spouse of the person to be adopted if the spouse is capable of giving consent.”); *Greene v. Fitzpatrick*, 295 S.W. 896, 898 (Ky. 1927); *McComeskey's Adoption*, 14 Pa. D. 420, 420 (1905) (holding consent of adopted adult's spouse not required because no statutory requirement that spouse be notified of adoption proceedings).

72. ARIZ. REV. STAT. § 14-8101(C) (“A married person who is not legally separated from his or her spouse cannot adopt an adult person without the consent of the spouse of the adopting person if the spouse is capable of giving consent.”); Okla. Stat. tit. 10, § 7507-1.1 (1998) (“An adult person may be adopted by any other adult person . . . with the consent of the spouse, if any, [and with the consent] of an adoptive parent, filed in writing with the court.”); *In re Adoption of Sewall*, 51 Cal. Rptr. 367, 376 (Ct. App. 1966); UNIF. ADOPTION ACT § 5-103, 9 U.L.A. 114 (1994) (the spouse of the prospective adoptive parent must consent in writing, and it must state that the spouse “understands the consequences the adoption may have for any right of inheritance, property, or support the spouse has”); *In re O'Keefe*, 300 N.Y.S. 27, 30 (Sur. Ct. 1937) (vacating the adoption decree because statements made in the application were not true, such as the prospective adoptive father did not have a spouse even though he did have a spouse whose consent was required under statute).

73. See, e.g., *Hendy v. Indus. Accident Bd.*, 146 P.2d 324, 326 (Mont. 1944) (denying adoption petition of stepfather concluding that at the time stepfather married, stepson was not a minor, and age difference was less than ten years).

74. ARIZ. REV. STAT. § 14-8101(B).

75. N.M. STAT. ANN. § 40-14-13 (Supp. 1999) (“[A]n adoptee shall take a name agreed upon by the petitioner and the adoptee and approved by the court.”).

fee.<sup>76</sup>

Although many conditions must be met for the adult adoption to be valid, some jurisdictions have taken specific measures to ensure that other aspects of the parties' lives do not affect the adoption. For example, some statutes provide that the previous relationship between the prospective adult adoptee and the adoptive parent should have no effect on the validity of the adoption.<sup>77</sup> Even if the adoptive parent's motive for adopting the adult is specifically so that the adult may inherit property, it does not affect the validity of the adoption.<sup>78</sup>

### *HOW ADULT ADOPTION DIFFERS FROM MINOR CHILD ADOPTION*

Several significant differences distinguish adult adoption from the adoption of minor children. The first difference is consent. If a child is under fourteen years old, her consent to the adoption is not required.<sup>79</sup> However, in adult adoption, the consent of the prospective adult adoptee is always required.<sup>80</sup> Also, most states do not require consent of the prospective adult adoptee's natural parents. In child adoption, parental consent is required and often the subject of litigation when consent is later revoked.<sup>81</sup>

Parallel to parental consent, termination of parental rights (TPR) proceedings usually precede the adoption of a minor child. A TPR proceeding severs the biological parents' rights to the child. These proceeding are not required in the adoption of stepchildren, some relatives, and adult adoptions.<sup>82</sup>

Another step typically required in child adoptions is an

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76. OHIO REV. CODE ANN. app. B (LexisNexis 2005) (fee of \$123.00).

77. See *In re Adoption of Berston*, 206 N.W.2d 28 (Minn. 1973).

78. *Sheffield v. Franklin*, 44 So. 373, 374 (Ala. 1907).

79. E.g., 14A MICH. PL. & PR. § 114:34 (2005).

80. E.g., VA. CODE ANN. § 63.2-1243(b) (West 2006).

81. E.g., *id.*

82. E.g., FLA. STAT. § 63.087(3) (West 2005) ("Adoptions of relatives, adult adoptions, or adoptions of stepchildren shall not be required to file a separate termination of parental rights proceeding pending adoption. In such cases, all required consents, affidavits, notices, and acknowledgments shall be attached to the petition for adoption or filed separately in the adoption proceeding.").

investigation and report. A public officer or agency is required to investigate the child's relationship with the prospective adoptive parents, natural parents, and foster parents if applicable, and report the circumstances of the adoption to the court.<sup>83</sup> This investigation and report typically is not required when an adult is adopted, although some states give the judge discretion to order this investigation.<sup>84</sup>

Other differences also exist. For example, the statute of limitations applied in a proceeding to vacate an adult adoption because of fraud is not the same as the one applicable to vacate an adoption of a minor child.<sup>85</sup> Also, when a parent adopts a child, special leave of thirty working days is often granted so that the parent and child may have time to develop the new relationship.<sup>86</sup> This leave is not granted in the adoption of a stepchild or in the adoption of an adult.<sup>87</sup> Generally, the doctrine of equitable adoption has not been successful when applied to adult adoptions. Courts cannot create an equitable adoption of an adult.<sup>88</sup>

#### HOW ADULT ADOPTION MAY AFFECT THE ELDER POPULATION

There are countless reasons why an older adult might wish to adopt another adult. The most recognized reason is to impart inheritance rights on the adopted adult. However, a wide variety of other reasons exist. Courts have stated several: "a childless individual might wish to perpetuate a family name; two individuals might develop a strong filial affection for one another; a stepparent might wish to adopt the spouse's adult children; or an adoption may have been forgone" at an earlier time.<sup>89</sup> Through adoption, the adopted adult can obtain the

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83. *E.g.*, CAL. FAM. CODE § 9325 (West 2004).

84. *E.g.*, VA. CODE ANN. § 63.2-1244 (West 2006).

85. K.M. Potraker, Annotation, *Adoption of Adult*, 21 A.L.R.3D 1012 § 21 (1968).

86. *E.g.*, TENN. CODE ANN. § 8-50-806 (2002).

87. *Id.*

88. *Appeal of Ritchie*, 53 N.W.2d 753, 755 (Neb. 1952).

89. *In re Adoption of Robert Paul P.*, 471 N.E.2d 424, 427 (N.Y. 1984).

family rights needed to make decisions in cases of emergency or incapacity and visitation rights upon hospitalization or imprisonment.<sup>90</sup> Adoption also allows the adopted adult to qualify for beneficiary privileges under some insurance policies, Social Security, retirement funds, and employee benefit packages, and possible recovery in tort actions and survivor benefits.<sup>91</sup>

Elders may be faced with decisions about who will handle their affairs when they cannot. Most often, these financial and medical decisions are left to the elder's spouse or children. If the elder is not married, has no children, or would prefer someone outside of his family to make these decisions, adult adoption give elders the ability to choose who is given the appropriate legal standing.

#### *ADULT ADOPTION'S TRADITIONAL PURPOSE: AFFECTING INHERITANCE RIGHTS*

Traditionally, an adult was adopted in order for that adult to be eligible to inherit property or to share in the distribution of a trust. Generally, an adult who is adopted subsequently is considered an heir or issue of the adopting parent; the adopted adult has the same inheritance rights as an adopted minor child. Therefore, the adopted adult's children can also inherit from the adopting parent. However, even when adult adoption is recognized in the jurisdiction, some courts have not allowed an adopted adult or his adoptive parent to inherit through one another if "the purpose of the adoption was primarily to manipulate inheritance rights."<sup>92</sup> Courts are much more likely to recognize reciprocal inheritance rights if a parent-child relationship is established.<sup>93</sup>

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90. Smolka, *supra* note 5, at 639.

91. *Id.*; Wendy S. Goffe, *Estate Planning for the Unmarried Couple/Non-Traditional Family*, SK093 ALI-ABA 1285, 1310 (2005).

92. Ralph C. Brashier, *Children and Inheritance in the Nontraditional Family*, 1996 UTAH L. REV. 93, 163-64.

93. *Id.* at 164-65.

The adoption may end the adopted adult's relationship with his natural family and thus sever any inheritance rights.<sup>94</sup> This severance may affect the prospective adult adoptee's willingness to be adopted. In fact, in some cases where the jurisdiction allows, it has resulted in the younger adult adopting the older adult. For example, *In re Adult Anonymous II*,<sup>95</sup> Mr. S, a thirty-two-year-old man, petitioned to adopt Mr. H, age forty-three.<sup>96</sup> Mr. H, whose parents had died years earlier, needed someone to care for him.<sup>97</sup> The two men had lived together for three years and considered themselves a family.<sup>98</sup> Mr. S did not want to affect his inheritance rights from his parents' estate still in probate, so he chose to adopt Mr. H instead of having Mr. H adopt him.<sup>99</sup> This arrangement worked in New York because there was no required age difference.<sup>100</sup>

Substantial litigation has focused on an adopted adult's inclusion in a class gift. An adult may be adopted to ensure that the adoptee is included in a class gift created by a third party.<sup>101</sup> Whether a will or other instrument includes an adopted adult in a class depends on the exact wording of the instrument and the testator's or grantor's intent.<sup>102</sup> Unless intent for the adopted adult to be included can be found or inferred, an adopted adult usually is excluded in class gifts.<sup>103</sup> The intent to include the adopted adult may be inferred if the adopted adult was treated as a member of the family when he was a child.<sup>104</sup>

Adult adoption may insure that inheritance occurs even when the inheritance may seem unusual or is challenged by

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94. Smolka, *supra* note 5, at 639.

95. 452 N.Y.S.2d 198 (App. Div. 1982).

96. *Id.* at 199.

97. *Id.* at 200.

98. *Id.* at 199.

99. *Id.* at 200.

100. *Id.*

101. Brashier, *supra* note 92, at 163-64.

102. *First Nat'l Bank of Dubuque v. Mackey*, 338 N.W.2d 361, 364-65 (Iowa 1983).

103. *Id.* at 363; *see also In re Trust Created by Belgard*, 829 P.2d 457, 460 (Colo. Ct. App. 1991).

104. *In re Trust Created by Belgard*, 829 P.2d at 460.

others. The adoption may be a means to nullify the status of the adoptive parent's relatives so that they are without standing to contest an assignment of property.<sup>105</sup> In *Collamore v. Learned*,<sup>106</sup> a seventy-year-old man adopted three other men, ages forty-three, thirty-nine, and twenty-five.<sup>107</sup> The elder man, now the adoptive parent, adopted the men to make them his heirs-at-law.<sup>108</sup> He wanted to preempt any attempt by his relatives to oppose his will.<sup>109</sup>

#### ADULT ADOPTION CAN CREATE NON-TRADITIONAL INHERITANCE

Elders, in their unique situations, may wish to provide for a loved one in a non-traditional way. Elders often depend on family and social networks, and elder friends may mutually rely on each other.<sup>110</sup> Adult adoption may provide a means to give a gift that otherwise could not be inherited. In one case, an eighty-three-year-old woman adopted a sixty-seven-year-old woman.<sup>111</sup> The adoption allowed the adoptive parent to bring the adoptee under the protection of rent control laws. The adoptee could then live in the rent-controlled apartment as a member of the family upon the adoptive parent's death.

Elders often are economically vulnerable. Just as providing housing at a controlled rate is a unique, much appreciated gift, other benefits also may be achieved through adult adoption; it also may allow an elder to provide for a family member in a unique way. A United States District Court allowed a twenty-three-year-old mentally handicapped adult to be adopted by his grandfather in order to claim social security benefits.<sup>112</sup> An elder adult may wish to give countless other non-traditional

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105. Goffe, *supra* note 91, at 1310.

106. 50 N.E. 518 (Mass. 1898).

107. *Id.* at 518.

108. *Id.* at 519.

109. *Id.*

110. See LAWRENCE FROLIK & ALISON MCCHRISTAL BARNES, ELDER LAW CASES AND MATERIALS 19-20 (3d ed. 2003).

111. 333 East 53rd St. Assoc. v. Mann, 503 N.Y.S.2d 752, 753 (App. Div. 1986).

112. Coker v. Celebrezze, 241 F. Supp. 783, 787 (E.D. Tenn. 1965).

inheritance gifts, but in order to bestow them, the receiver must be a family member. Adult adoption creates the necessary relationship for these gifts.

**ADULT ADOPTION ALLOWS AN ELDER TO FORMALIZE AN ASSUMED PARENTAL ROLE**

Adult adoption allows adoptive parents to assume a parental role for someone for whom they care. Elders do not always have traditional families, yet they love, care, and provide for others just as they would for their own children. Adult adoption allows them to formalize that role so that it can be recognized in other contexts.

For example, *In re Adoption of Elizabeth P.S* formalized an existing mother-daughter relationship.<sup>113</sup> In that case, Eileen petitioned to adopt Elizabeth.<sup>114</sup> Eileen, a nun, worked at a home for troubled women owned and operated by her order, Sisters of the Good Shepherd.<sup>115</sup> While working at the home, Eileen met Elizabeth, a young troubled adult who had been abused and neglected as a child and had lived in various foster homes, psychiatric facilities, and youth homes.<sup>116</sup> From the beginning of their relationship, Eileen took care of Elizabeth, trying to help her heal, teaching her to read, and caring for her as a mother would.<sup>117</sup> At the time of the petition, Eileen was on leave from her order; she and Elizabeth were living together, and she was helping her live a relatively normal life.<sup>118</sup> The court noted that it was originally hesitant upon reading the petition because Eileen was only ten months older than Elizabeth, but after investigations and meeting the parties, it was clear that Elizabeth looked to Eileen as her mother.<sup>119</sup>

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113. *In re Adoption of Elizabeth P.S.*, 509 N.Y.S.2d 746 (Fam. Ct. 1986).

114. *Id.*

115. *Id.* at 747.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

That case illustrates a specific situation in which two adults formalized their relationship as parent and child. This same relationship may occur in many contexts, and adult adoption gives adults the means to formalize it.

**ADULT ADOPTION MAY AFFECT ELDER'S RELATIONSHIPS,  
SPECIFICALLY AS GRANDPARENTS**

Adult adoption may indirectly affect elders because the adoption affects the status of relatives.<sup>120</sup> In *Walls v. Walls*,<sup>121</sup> the Georgia Supreme Court held that an adult adoption did not affect the status of relatives seeking custody.<sup>122</sup> In that case, the father was adopted as a child by the Walls.<sup>123</sup> During the father's divorce, the child was placed in his paternal grandparents' custody.<sup>124</sup> After the father was adopted as an adult by his biological mother, he argued that the Walls were no longer the child's grandparents.<sup>125</sup> The court held that, because the Walls had petitioned for custody prior to the adult adoption, they retained their legal standing.<sup>126</sup>

Although in that case the grandparents' rights were not affected, the outcome may vary among courts or if there are slightly different facts. Adult adoption affects the entire family, not just the adoptive parent and adult adoptee. Grandparents may lose standing to challenge decisions, or they may lose a relationship with their grandchildren.

**ELDERS FACE RISKS WHEN INVOLVED IN ADULT ADOPTION**

Although adult adoption may provide many benefits to elders, risks to the elder population do exist. One of the main

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120. See Barry B. McCough & Gergory R. Miller, *Domestic Relations*, 57 MERCER L. REV. 173, 176 (2005).

121. 599 S.E.2d 173 (Ga. 2004)

122. *Id.* at 175.

123. *Id.* at 174.

124. *Id.*

125. *Id.*

126. *Id.* at 175.

differences between child and adult adoption is that many of the protections of the child welfare and court systems are waived in adult adoptions because the adult can consent to the adoption where a child cannot. Because these protections are waived, elders may be at risk. For example, a court investigated the adoption of a sixty-two-year-old man by his ninety-two-year-old female neighbor.<sup>127</sup> The investigation revealed that the man's motivation in the adoption was to inherit her house, even though she had three other children.<sup>128</sup>

Adult adoption may expose the elder population to a different form of abuse because investigations often are not required. Consent is required of the prospective adoptive adult and prospective adopting parent. If either of these roles are filled by an individual whose capacity may be diminished, true consent can be difficult to ascertain. The court must make sure that a party is not taking advantage of the elder. It requires special sensitivity and investigation to ensure that the motives of both parties are proper.<sup>129</sup>

## CONCLUSION

As individuals age, their relationships change, and the typical familial relationships one thinks of in life change. Assuming an elder formed a traditional family, many of those relationships may have changed. A person advanced in age has most likely outlived his or her parents. Her spouse also may have passed away, and sometimes, she has even outlived her children. When these relationships are lost, new ones may be formed, but they are different. Additionally, many elders do not form traditional families. They choose to live without marrying or without ever having biological children. They still have close relationships, but the law may not recognize them for decision-making or

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127. Mary Twomey et al., *From Behind Closed Doors: Shedding Light on Elder Abuse and Domestic Violence in Late Life*, 6 J. CENTER FOR FAMILIES, CHILD. & CTS. 73, 77 (2005) (discussing ways in which elder abuse may come to the court's attention).

128. *Id.*

129. *Id.*

inheritance purposes. For individuals that depend on each other, care for each other, and may even live together, adult adoption provides a means for them to formalize their relationships. Adult adoption may allow two adults to provide for each other, care for each other, and help each other, just as a family member would.

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