

What Is Your Relationship with Your Parents?

Your relationship with your parents and with your own children is important for several reasons, including developing an effective estate plan. Simply maintaining a loving relationship with a parent does not necessarily guarantee inheritance rights. A legal right to inherit depends largely on the legal relationship between a child and that child's parent, the existence of a valid estate plan, or if no estate plan exists, the applicable laws of intestacy in a given jurisdiction. Generally, children can inherit from their parents whether their parents are biological or adoptive, but in most jurisdictions, there is no legal right for a child to inherit unless they are a minor or it can be shown that they were accidentally left out of a parent's estate plan. In some jurisdictions, if there is no estate plan, a child may be entitled to a percentage of the parent's estate.¹

Any discussion about estate planning concerns should include a review of the legal relationship between parents and children. In what manner are you a "child" of your parents? Are your children your biological children? Or are they legally adopted? Are they stepchildren? Or is your relationship something else altogether?

When it comes to a child's legal ability to inherit from parents, there is no difference between adopted children and biological children—they are considered equal in the eyes of the law. However, situations involving stepchildren or presumed parents can be more complicated.

Stepparents. A stepparent is typically someone who is married to or in a civil partnership with one of the biological parents of a child. With few exceptions, stepparents have no legal obligation to provide any legacy to a stepchild or stepchildren. And unless they were legally adopted, stepchildren have no legal right to expect an inheritance from their stepparent.² The ability of stepchildren to inherit from stepparents can depend on the laws of the jurisdiction where the parents are located and that jurisdiction's laws of intestacy. Stepparents can choose to provide for stepchildren in their estate plan, and in that case, the stepchildren would benefit in the same manner as any other beneficiary. If a stepchild is included in a stepparent's estate plan under their will or trust, that stepchild can inherit money or property in the same manner as biological or adopted children under the same instrument. However, if there is no provision made for stepchildren under an estate plan, they would likely not be entitled to any share of the estate.

Presumed parents. In some cases, a person may be considered a presumed parent, which means that they are legally recognized as the parent of a child, even if they are not the biological or adoptive parent. Legal recognition for presumed parents is based on public policy that certain individuals should be treated as parents because of their relationship with a child and the role they assume in that child's life.

The criteria for being a presumed parent can vary by jurisdiction, but they often include the following³:

¹ However, under certain circumstances, children may be entitled to claim a share of a deceased parent's property. *Inheritance Rights*, Nolo, <https://www.nolo.com/legal-encyclopedia/inheritance-rights-29607.html> (last visited July 4, 2023).

² *Step-Children and Your Will*, Lawyers.com, <https://www.lawyers.com/legal-info/trusts-estates/wills-probate/step-children-and-your-will.html> (last visited July 4, 2023).

³ See, e.g., Cal. Fam. Code § 7611 (West 2022).

- (1) *Biological connection.* In some jurisdictions, a person who is the biological parent of a child is automatically considered a presumed parent, regardless of their marital or relationship status.
- (2) *Birth or adoptive parent.* A person who has legally adopted the child or given birth to the child (with their consent) is considered a presumed parent.
- (3) *Marriage or domestic partnership.* If a person is married to or in a legally recognized domestic partnership with the child's biological or adoptive parent at the time of the child's birth or conception, they may be presumed to be a parent.
- (4) *Intent to parent.* If an individual openly and actively takes on the role of a parent and demonstrates their intent to parent the child, they may be considered a presumed parent. This can include factors such as receiving the child into their home, providing financial support, making important decisions regarding the child's upbringing, and establishing a parent-child relationship.
- (5) *Length of time and stability.* The length of time the person has been involved in the child's life and the stability of their relationship with the child may be considered when determining presumed parenthood.

The relationship between a parent and child can take many forms. It is therefore important that you discuss with your estate planning and financial advisors the need to have an estate plan that clearly identifies your intended beneficiaries and the legal relationship of those beneficiaries to you. Your discussion should also examine relationships with any individuals who may not be immediate or obvious family members. With a well thought-out, comprehensive estate plan, you can rest assured that your wishes regarding inheritance will be clear and properly documented so they can be legally enforced.