

# THE RISELING REPORT . . . . .

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## **PRETERMITTED HEIRS, REVOCABLE TRUSTS, AND ADOPTED CHILDREN, OH MY!**

In a previous Riseling Report, we discussed Oklahoma law regarding pretermitted (omitted) children and your Last Will & Testament (58 O.S. §132). Now we turn to the applicability of Oklahoma's pretermitted heir statute to revocable trusts and adopted children. In *In the Matter of the Estate of Jackson*, 2008 OK 83, 194 P.3d 1269, the Oklahoma Supreme Court was asked to decide whether or not Oklahoma's pretermitted heir statute applied to revocable trusts. If the statute did apply to revocable trusts, then the maker of a revocable trust would have to use *strong and convincing language* in the trust agreement to exclude a child from inheriting property. The Court looked to the language of the pretermitted heir statute and noted that it clearly states "omits to provide in his will." The Court concluded then that the pretermitted heir statute does *not* apply to revocable trusts, reasoning that the statute is not a limitation on a person's power to dispose of property at death as it does *not* guarantee a minimum share in a parent's estate for a child. Rather, the statute is "an assurance that a child is not unintentionally omitted from a will."

Oklahoma's pretermitted heir statute, however, does apply to adopted children. Oklahoma has done away with any distinction between natural born and adopted children—once you adopt a child, the law treats the child the same as a natural born child. If you wish to exclude an adopted child from inheriting, you must use strong and convincing language in your Last Will & Testament to disinherit the child. Adopted children, however, have a unique benefit under Oklahoma law—they can inherit from both their natural parents *and* their adoptive parents. Giving a child up for adoption does not terminate the child's right to inherit from you. If you give up a child for adoption and wish to disinherit the child, you still must use strong and convincing language to disinherit the child in your Will. This rule also applies even if the child is adopted multiple times! For example, if a child is adopted twice, the natural parents and first adoptive parents must properly disinherit the child, or the child will be considered a pretermitted heir of *both* the natural parents and the first adoptive parents. Again, we recommend that you consult with a licensed estate planning attorney to make sure your wishes are carried out.

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