
New Massachusetts Statute Affecting Rights of Adopted Persons

2009-05-14

On January 15, 2009, Governor Patrick signed into law chapter 524 of the Acts of 2008. The new law amends chapter 210, section 8 of the Massachusetts General Laws governing the rights of adopted descendants as beneficiaries of wills and trusts. The new law became effective on April 15, 2009.

The adoption laws relating to wills and trusts were modernized in 1958. The 1958 law provided on a prospective basis that adopted descendants were presumed to be beneficiaries of a will or trust unless the terms of the instrument expressly indicated the grantor's or testator's intent to exclude adopted persons. However, instruments that were irrevocable prior to 1958 did not include adopted persons as beneficiaries, unless they had been adopted by the grantor or testator or were specifically included in the instrument.

The new law represents a dramatic change and provides that adopted descendants will be beneficiaries of wills and trusts, regardless of when the will or trust was executed, unless a contrary intent is expressed in the governing instrument. The new law does not apply to distributions made before May 1, 2009 under testamentary instruments executed before

September 1, 1969.

Clients should review with their advisors existing will and trust instruments to ascertain whether additional persons may now have beneficial interests under instruments that became irrevocable prior to August 26, 1958. If so, clients may wish to reconsider any alternative provisions that they may have made in their own estate plans to compensate such adopted persons for not having been included as beneficiaries in pre-1958 instruments.