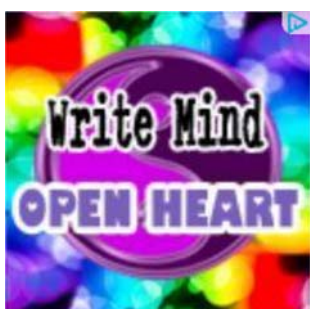
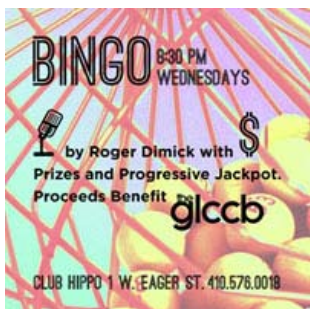


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Yale M. Ginsburg

ADOPT AN ADULT?

By YALE M. GINSBURG, ESQ. Friday, 16 September 2011 17:15

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Have you ever considered adopting an adult for inheritance purposes? This is a question both for lawyers and non-lawyers. Most people are not aware that you can adopt an adult in Maryland.

It can be a valuable tool for estate planning and inheritance purposes. Although the overwhelming numbers of adoption proceedings involve minors, Maryland law provides that an individual of any age may be adopted.

There are good reasons to adopt an adult as part of a thoughtful and effective estate plan. First, persons who are adopted, even as adults, are generally treated the same as natural-born children of those who adopt them. An adult who inherits from an unrelated person must pay a 10 percent Maryland inheritance tax on the assets inherited. However, adult adoptees, just like natural-born children, are not subject to the state inheritance tax when inheriting from their adoptive parents. Second, if someone dies intestate (without a will) and without a spouse, his/her assets will be distributed equally among his children, whether adopted or natural born. Third, an adult adoption virtually ensures that the adoptee will inherit from the adoptee's adoptive parents, because the likelihood of a successful court challenge to the adoptee's status is significantly diminished following adoption.

During this past legislative session, the Maryland General Assembly considered legislation to legalize same-sex marriage. If that legislation had been enacted, then (presumably) the same-sex couples would receive the same tax benefits as heterosexual married couples do in Maryland. Upon the death of one partner in a same-sex marriage, if his/her estate was left to a spouse, there would have been no Maryland inheritance tax assessed, as the unlimited marital exemption would apply.

Because the legislation did not pass, the 10 percent Maryland inheritance tax referenced above is still in effect. Therefore, if a partner in a same-sex relationship dies leaving the estate to a partner, the entire estate will be subject to a 10 percent Maryland inheritance tax.

While an adult adoption may make sense in the context of domestic partners who want to ensure that their partner inherits, there are other sound reasons for an adult adoption, as in the case of those who are childless but want to take advantage of provisions of a trust made by their parents or grandparents.

One of the goals of Maryland adoption laws, which became effective in 1947, was to give adopted children the same status as natural children. This also applies to adult adoptees. Maryland law now provides that unless a will clearly indicates otherwise, the use of the word "child," "descendant," "heir" or "issue" or any equivalent term includes an adopted individual, whether the will was signed before or after the decree of adoption was entered.

Maryland law also provides that the legal effect of an adoption of an individual who is an adult is the same as that of the adoption of a minor. Among other things, that also means that an adult adoptee (as with all adoptees) loses the statutory right, in the absence of a will, to inherit from his/her birth parents. However, the birth parents still can leave their estate through their wills to their natural-born child, even when adopted by another.

Until the Maryland legislature approves same sex-marriage, adult adoption is one method to avoid the onerous 10 percent inheritance tax.

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