

OP. NO. 04-003

**COUNTIES, CITIES AND TOWNS: PLANNING, LAND
SUBDIVISION AND ZONING.**

**Stepchild that has not been adopted by stepparent is not
'offspring' or 'member of immediate family' for purposes of
family subdivision exception.**

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March 23, 2004

Issue Presented

You ask whether the term "offspring," as used in the family subdivision exception in § 15.2-2244(A), includes stepchildren.

Response

It is my opinion that a stepchild, that has not been adopted by the stepparent, is not the "offspring" of a stepparent and, therefore, is not included in the legal definition of "member of the immediate family" for purposes of § 15.2-2244(A).

Applicable Law and Discussion

Section 15.2-2244(A) provides counties¹ shall provide in their local subdivision ordinances "for reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner." Section 15.2-2244(A) further states that "[f]or the purpose of this subsection, a member of the immediate family is defined as any person who is a natural or legally defined offspring ... of the owner."

Section 15.2-2244 does not define the term "offspring," nor is the term defined elsewhere in the Virginia Code. In the absence of a statutory definition, nontechnical words in statutes are to be given their ordinary meaning.² In ordinary usage, "offspring" refers to a person's children or "descendants."³ "Offspring" also means "[c]hildren; issue; progeny."⁴

"The synonyms 'descendant,' 'issue' and 'offspring' are ordinarily used to refer to those who have *issued from* an individual and

include his children, grandchildren and their children to the remotest degree."⁵ "Since the infancy of the legal system in this Commonwealth the word 'issue' has meant 'heirs of the body' and has been distinguished from seemingly similar words such as 'children.'"⁶ Under common law, "[i]ssue is ordinarily defined as descendants of a common ancestor."⁷ In other words, under the common law, one individual is the "issue" of another person only if the individual is the biological result, immediately or remotely, of that person. Similarly, one is the "offspring" of another person only if the individual is the biological result, immediately or remotely, of that person.

A stepchild is not the offspring of his or her stepparent, because the stepchild has not *issued from* the stepparent. "Step," "[w]hen used as [a] prefix in conjunction with a degree of kinship ... is indicative of a relationship by affinity."⁸ Under common law, a stepchild is not the issue/offspring of the stepparent, because the stepchild is not the biological result, immediately or remotely, of the stepparent.⁹

The definitions of the words "stepmother" and "stepfather" reflect the fact that a stepchild is not the offspring of his or her stepparent. A "stepmother" is "[t]he wife of one's father by virtue of a marriage subsequent to that of which the person spoken of *is the offspring*."¹⁰ Similarly, a "stepfather" is "[t]he husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of *is the offspring*."¹¹ These definitions clearly imply that a person continues to be the offspring or issue of his or her biological parents even if their marriage dissolves and one or both parents later remarry. Further, by stating that the person spoken of is the offspring of a prior marriage, the definitions of "stepmother" and "stepfather" clearly imply that a stepchild is not the offspring of the subsequent marriage or of the stepparent.

Finally, I am aware of no Virginia statute or case decision that provides a legal definition of a stepchild as the offspring or issue of his or her stepparent.¹²

Conclusion

Accordingly, it is my opinion that a stepchild, that has not been adopted by the stepparent, is not the "offspring" of a stepparent and, therefore, is not included in the legal definition of "member of the immediate family" for purposes of § 15.2-2244(A).

¹Section 15.2-2244(A) also applies to the city of Suffolk.

²*Bd. of Supvrs. v. Boaz*, 176 Va. 126, 10 S.E.2d 498 (1940).

³1990 Op. Va. Att'y Gen. 92, 93 (citing Webster's New World Dictionary 988 (2d c. ed. 1974)).

⁴Black's Law Dictionary 1085 (7th ed. 1999).

⁵*First Nat'l Bank v. Gaines*, 15 Ohio Misc. 109, 121, 237 N.E.2d 182, 190 (1967) (emphasis added), *cited in* 29A Words and Phrases 176 (West 1972).

⁶*Hyman v. Glover*, 232 Va. 140, 142-43, 348 S.E.2d 269, 271 (1986).

⁷*Id.* at 143, 348 S.E.2d at 271 (quoting *Munday v. Munday's Ex'rs*, 164 Va. 145, 148, 178 S.E. 917, 918 (1935)).

⁸Black's Law Dictionary 1413 (6th ed. 1990).

⁹Under common law, not even an adopted child is considered the issue or offspring of his or her adoptive parents because the child has not issued from them. *See Hyman*, 232 Va. at 143, 348 S.E.2d at 271 ("As a matter of common law then, it is plain that in Virginia the word 'issue' does not include adopted children.").

¹⁰Black's Law Dictionary, *supra* note 8, at 1414 (emphasis added).

¹¹*Id.* at 1413 (emphasis added).

¹²Sections 55-49.1 and 64.1-71.1 provide that an adopted person is included in the word "issue," even though a biological connection is lacking. "In determining the intent of a grantor" and "a testator or settlor, adopted persons are presumptively included in such terms as 'children,' 'issue,' 'kindred,' 'heirs,' 'relatives,' 'descendents' or similar words of classification" Va. Code Ann. § 55-49.1 (LexisNexis Repl. Vol. 2003) (relating to construction of deeds); *id.* § 64.1-71.1 (LexisNexis Repl. Vol. 2002) (relating to construction of wills). Sections 55-49.1 and 64.1-71.1 also both provide, however, that adopted person "are presumptively excluded by such terms as 'natural children,' 'issue of the body,' 'blood kindred,' 'heirs of the body,' 'blood relatives,' 'descendents of the body' or similar words of classification." Unlike the exception that has been made for adopted persons, neither § 55-49.1 or § 64.1-71.1, nor any other statute or case decision, provides that a stepchild is presumptively

included in such terms as "children," "issue," "kindred," "heirs," "relatives," "descendents," or other similar words.

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