

**Trust & Estate Litigation Law:
What Happens When a Parent's Desire to Give Property to One Kid is
Not in the Will or Trust?**

By Denise Chambliss

Dear Denise: My mother always told us (her children) that she wanted the vacation home to go to us after she passed. But I have learned that my stepfather is going to inherit the vacation house, because they owned that property as "joint tenants." I am told that her intended gift to her children was not in her estate planning documents. What can we do to enforce our mother's wish that we get the vacation home? -- Confused and Frustrated.

Dear "Confused": Your question is a common dilemma for probate attorneys. The legal system is designed to enforce what is written in the will or trust, and if there is no will or trust, the California Probate Code has a comprehensive plan to distribute an estate. To make certain property to be left to specific folks is done, **the importance of pre-planning and a proper estate plan is essential**. Often people will say that they want to leave something specific to one person, but they **fail to do the things necessary** to see that their wishes are enforceable after their passing.

For California trust and estate litigation attorneys, our courts have recently recognized a new type of claim that could be useful in recovering damages when a person interferes to prevent an expected inheritance. This new form of recovery is called the "Intentional Interference with Expected Inheritance." By this addition, California joins the majority of other states in recognizing this claim as a valid cause of action.

Brent Beckwith and Marc MacGinnis were in a long-term committed relationship for almost ten years. MacGinnis was scheduled for a life-threatening surgery. A year prior to the surgery, he had written a will on his computer, but never printed or signed the will. The will stated that upon MacGinnis' death, his estate was to be divided equally between Beckwith and Susan Dahl. MacGinnis' only living family was Dahl, his sister. Under the California Probate Code, if MacGinnis died without a will, his entire estate would be to his sister.

While MacGinnis was in the hospital awaiting the surgery, he asked Beckwith to print the will so he could sign it. But before Beckwith had MacGinnis sign the will, his sister Dahl told Beckwith to hold off and that she would have estate planning documents prepared for her brother.

Dahl did not honor her promise and MacGinnis died without a will or trust. By her delay, she inherited the entire estate as her brother's only surviving family member, and Beckwith had no grounds under **the Probate Code** to collect one-half of MacGinnis' estate. But with the recognition of the new tort of **Intentional Interference with Expected Inheritance**, Beckwith had an opportunity to seek enforcement of MacGinnis' wishes against Dahl. He sued Dahl and accused her of lying to him about her intention to prepare a living trust, so as to delay the estate planning until after the surgery in order for her to inherit the entire estate and cut out Beckwith.

In our practice, we do not anticipate that the Intentional Interference with Expected Inheritance claim adopted in the *Beckwith* case will be frequently used in our cases. This is because most of our matters involving failed promises and losses of expected inheritance are often the result of simple oversight and procrastination, in that the person wanting to make the gift does not take the time to document the gift so that it is legally enforceable after their passing. In other cases, the person wanting to make the gift has a serious misunderstanding of how their property will be distributed after they pass, often involving jointly-held real property.

To make certain that the legal system be in a position to enforce your inheritance wishes and desires, your estate planning documents need to be in order, complete, and up to date. In this world of increasing “do-it-yourself”, estate planning is not an area yet suitable to self-help.



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The Fine Print.

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