

CALIFORNIA INHERITANCE RIGHTS: OBTAINING WHAT YOUR FAMILY MEMBER OR FRIEND  
WOULD HAVE INTENDED FOR YOU TO RECEIVE

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Following the death of a family member or friend, the assets don't always necessarily go to the most likely people, or to the people who the family member or friend would have intended. Why is that? There are many reasons. Sometimes the family member or friend was unduly influenced or coerced. Sometimes the family member or friend was mistaken about his or her assets, or where those assets would actually go upon his or her death. Sometimes the family member or friend was mistaken about his or her relationship with a person, or erroneously thought positive or negative about a person. Sometimes estate planning documents (Wills, trusts, bank accounts, insurance policy designations, investment accounts, property deeds, IRA retirement accounts, etc.) contain terms or designations that are incorrect, or that are not as the person would have intended under the true circumstances that existed at the time of his or her death. The opportunities for incorrect inheritance are too numerous and diverse to list.

The good news is that in California the law specifies that assets are supposed to go to the people who the family member or friend would have intended, as indicated by all of the evidence, and not limited by the wording of the estate planning documents. Thus, for example, a trust specifying that certain assets are to be distributed to Uncle Joe can be contested if there is evidence that the distribution to Uncle Joe is not what the family member or friend would have intended if there had not been some kind of a problem, mistake or improper conduct. The Court will look at the totality of the circumstances and the totality of the evidence to determine what the family member or friend would have intended under the proper circumstances. The family member or friend's true intent, and the proper distributions can be determined and corrected in the Probate Court.

Thus, for example, California law provides that an estate planning document can be contested on the following grounds, and also for additional reasons:

- Fraud;
- Lack of mental capacity;
- Mistake;
- Misrepresentation;
- Undue influence;
- Improper execution;
- Forgery; and
- Duress.

Additionally, in some circumstances, distributions to certain people, such as a person providing care giver services, or acting as a fiduciary, or an attorney for the family member or friend also might be denied receipt of assets.

It is not uncommon for an elderly person to change his or her estate distribution provisions late in life or near death based upon a mistaken belief, and to unduly reward people who are last on the scene and who are able to exercise influence or coercion. Likewise, in some circumstances people who should be receiving the assets receive less than they are entitled because of inappropriate prior gifts, or outright theft and mismanagement.

Using the legal tools available, many of these situations can be corrected through the Courts. Over the past twenty years or so in California, statutes have been enacted and case law has developed to assist in the process of ensuring that the assets of family members and friends actual go to the people who were intended.

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