

When the Glass Slipper Doesn't Fit: Why Your Estate Plan Needs an Overhaul

By: Kevin Johns and Tanner Duncan



Kevin Johns



Tanner Duncan

With the holiday season behind us, many of us are left reflecting on the time spent with our families. Perhaps your daughter brought home a new boyfriend who leaves you scratching your head, or maybe there were unexpected tensions between siblings. These moments together remind us of just how quickly things can change and the importance of an estate plan.

If you pass away without a Will, you are deemed to die "intestate" and your possessions will be distributed according to the laws of "intestacy." This means your assets will pass based on the legislature's concept of a "traditional family." The concern is that everyone's family is unique and evolving. As a result, dying intestate is more akin to fitting a circle into a square-sized hole than Cinderella and her perfectly fitting glass slipper.

There are many problems in dying intestate, but let's focus on three.

1. Spousal Rights.

In Kentucky, if you die intestate, your possessions pass in order based on the class of people who survive you. Contrary to popular belief, your spouse does not automatically inherit everything under Kentucky's intestacy laws. Some of your property could go to your descendants, parents, siblings, and sibling's descendants. However, a surviving spouse may exercise dower or courtesy rights, essentially a right in the deceased spouse's property. These rights give the surviving spouse the right to receive one-half of the real and personal property you owned at your death and a life estate in one-third of the real property you owned during marriage but not at death (unless the surviving spouse waived this right). In any event, this places your spouse in an awkward and potentially adversarial position with having to share your estate with other family members.

For example, if a husband and wife have a minor child and the husband dies intestate, the wife would receive half of the estate, and the minor child would receive the other half. In some instances, this means that half of the family home, bank accounts, and other valuable assets belong to the minor child.

Now, what if the husband and wife each have children from previous marriages? If the husband died intestate, the wife would receive half of the husband's estate, and the husband's children would receive the other half. This will undoubtedly lead to conflicts. In addition, the wife may choose not to leave any assets to the husband's children when she dies. As a result, the husband's children only receive half of the property the husband owned and wanted to leave to his children.

2. Minor Beneficiaries.

In Kentucky, if a minor inherits from an estate, the inheritance will be “managed” by the beneficiary’s court appointed guardian or conservator until such minor beneficiary reaches the age of 18. The minor child’s inheritance must be placed in a restricted guardianship account for the child and funds from that account can be spent by the guardian for the minor child but only with the permission of the court. Asking the court for permission to spend funds requires the filing of motion and a hearing and costs time and money. Generally, when the beneficiary reaches 18, they are entitled to the assets outright. That means your beneficiary could be thrust into a position of financial responsibility that your beneficiary is not experienced nor mature enough to handle.

3. Special Needs Beneficiaries.

If a beneficiary has special needs and receives assets from your estate, it could significantly impact their eligibility for government benefits such as Medicaid or Supplemental Security Income (SSI). These programs often have strict asset limits, so suddenly having a large amount of money or property could disqualify the beneficiary.

As demonstrated above, the lack of an estate plan can create numerous issues for blended families, families with minor beneficiaries, and special needs beneficiaries.

So, what can be done to prevent these problems?

It is very important to have a Will. A Will can ensure that your assets are distributed according to your wishes, and not by state law. Nevertheless, while a Will can help mitigate some of these issues, it doesn’t solve everything. A basic Will provides no protection of assets for minor children and future generations or special needs beneficiaries. On the other hand, a Trust, which is basically a document that governs the relationship in which one person holds property subject to an obligation to use such property for the benefit of another, can ensure that a surviving spouse can benefit from an inheritance for life while ultimately leaving the balance of the estate to other beneficiaries at an age where such beneficiaries are capable of managing those assets. Further, placing assets in trust offers some creditor protection and privacy that a Will cannot.

For a special needs beneficiary, a properly drafted Special Needs Trust provides the ability to allocate assets for the benefit of the beneficiary without jeopardizing such beneficiary’s eligibility for crucial governmental benefits.

Regardless of your situation, proper estate planning offers the flexibility to meet the needs of all your loved ones. So, let’s all start this new year off right by taking the time to implement an estate plan to ensure your loved ones are properly provided for.