

## **Can Your Will Be Contested?**

### ***A no-contest clause can cause beneficiaries to think twice***

Your will is meant to ensure that your final wishes are honored. However, it can sometimes be contested, potentially leading to lengthy legal battles and financial disputes among your heirs. Understanding when and why a will might be contested — and how to safeguard your intentions — can help prevent unnecessary complications for your loved ones.

### **Grounds for contesting a will**

Not just anyone can challenge a will. Typically, only individuals with a direct financial interest in the estate, such as heirs, beneficiaries or those who were included in a previous version of the will but later removed, have legal standing to contest it. Common reasons for contesting a will include lack of testamentary capacity, undue influence, fraud or the failure to meet legal requirements.

When a will is successfully contested, a judge may declare it invalid in whole or in part. This can result in the estate being distributed according to an earlier will or, in the absence of a valid prior document, under the state's intestacy laws. This process can be both time-consuming and emotionally taxing for all parties involved.

### **Add a no-contest clause**

One way to deter challenges to your will is by including a no-contest clause, also known as an in terrorem clause. In a nutshell, it penalizes beneficiaries who attempt to contest your will by disinheriting them if they challenge it and lose. This can be particularly effective in discouraging frivolous claims that could otherwise drain your estate's resources.

Most, but not all, states permit and enforce no-contest clauses. And even if they're allowed, the laws differ — often in subtle ways — from state to state, so it's important to consult state law before including a no-contest clause in your will.

Some jurisdictions have different rules regarding which types of proceedings constitute a "contest." For example, in some states your heirs may be able to challenge the appointment of an executor or trustee without violating a no-contest clause. And in some states in which a no-contest clause is generally enforceable, courts will refuse to enforce the clause if a challenger has "probable cause" or some other defensible reason for bringing the challenge. This is true even if the challenge itself is unsuccessful.

If you live in a state in which no-contest clauses are strictly unenforceable, you might still choose to have one in case you: 1) move to another state that does enforce no-contest clauses, 2) own property — such as real estate — in another state where it's enforceable, or 3) decide to establish a trust that's governed by the laws of another state.

### **Alternatives to a no-contest clause**

While a no-contest clause can be useful, it's not the only tool available to safeguard your estate. A revocable living trust can help avoid probate, making it harder to contest. Keeping detailed records of estate planning decisions, including medical evaluations when necessary, can counter

claims of undue influence or lack of capacity. Open communication with heirs can prevent surprises and reduce disputes after your passing. Finally, updating your estate plan regularly ensures that it reflects major life changes such as a divorce, a second marriage or the birth of child.

Another effective strategy is involving neutral third parties, such as a professional fiduciary or corporate trustee, to oversee the distribution of assets. This can help remove potential conflicts of interest and ensure impartiality. Additionally, including a letter of intent to explain your decisions can provide clarity and reduce misunderstandings among beneficiaries.

### **Protect your estate planning wishes**

Estate planning is complex, and the laws governing wills and no-contest clauses vary by state. Working with an experienced estate planning attorney or CPA can help ensure that your estate plan is legally sound and designed to minimize the risk of disputes. By taking proactive steps now, you can help protect your legacy and provide peace of mind for your loved ones.