



No-Contest Clauses in Wills and Trusts

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WHAT IS A NO-CONTEST CLAUSE?

A no-contest clause is a provision in a will or trust instructing the executor or trustee to disinherit a beneficiary completely if that beneficiary objects to or contests what he or she is to inherit.

Policy Behind No-Contest Clauses

The rationale for a no-contest clause is to dissuade beneficiaries from competing over your estate after you are gone. The clauses are essentially designed to motivate beneficiaries to accept whatever you have left for their benefit without argument.

Example of a No-Contest Clause

One example of a well-drafted and broad sweeping no-contest clause is as follows:

“If any person shall, in any manner, directly or indirectly, attempt to contest or oppose the validity of this agreement, (including any amendment to this agreement) or commences, continues, or prosecutes any legal proceedings to set this agreement aside, then such person shall forfeit his or her share, cease to have any right or interest in the trust property, and shall, for purposes of this agreement, be deemed to have predeceased both of us.”

No-Contest Clauses and State Law

Each state has its own set of rules regarding the application and interpretation of no-contest clauses. A well drafted no-contest clause considers your particular circumstances and goals as applied to your home state’s laws. Often no-contest clauses apply not only to legal proceedings, but also to negotiations or other similar efforts to alter a will or a trust.

Good Reasons to Have a No-Contest Clause

The following is an example of a good application of a no-contest clause:

EXAMPLE: Harold and Wanda are married with two children. They have a joint revocable trust with a no-contest provision as stated above. Harold and Wanda have left half of their assets to their children (one-quarter to each child, one-quarter to their church, and one-quarter to Wanda's sister). Harold's and Wanda's children are currently in the middle of a long-standing argument going back years, and it is always a little strained when everyone is together around the holidays. Harold and Wanda want to ensure their wishes are respected and their estate is divided equally among the four beneficiaries without argument. They are uncertain how their children and Wanda's sister will react to one another after Harold and Wanda are no longer around to keep the peace.

The no-contest clause protects Harold's and Wanda's estate against fighting among the beneficiaries, because the beneficiaries are unlikely to risk disinheritance to challenge the trust. This clause also prevents further strife between the siblings or, in a more extreme scenario, it prevents a long and expensive court battle. Even in the most congenial family, issues can arise after the death of a loved one leading to squabbling over last wishes and estate assets.

NARROWING OR OMITTING A NO-CONTEST CLAUSE

Often, it will be in your best interest to omit or narrowly draft a no-contest clause in your will or trust. The following example shows a typical problem that could arise when a no-contest clause has been included in your trust or will:

EXAMPLE: Henry and Wendy are both over 75 years old and live on a 50 acre farm. They have three adult children, Andy, Bella, and Cara. They have a joint trust with a no-contest provision as stated above. They love their children dearly and all of them seem to get along well. Andy is successful and lives out-of-state in a large city. He visits twice a year. Bella lives an hour away with her son in an apartment. She has never been very responsible. Cara lives next door to her parents with her family. For the past ten years, Cara has maintained her farm, her parents' farm, and has helped care for her parents.

In their trust, Henry and Wendy leave 50% of their assets to Cara, including the farm, 25% of their assets to Andy outright, and 25% of their assets to Bella in trust.

Henry dies and Wendy goes into a deep depression. She is not her cheerful self, but is managing to pay her bills and keep her house relatively clean. Cara checks on her daily. A few months pass and Cara leaves on a three-week vacation. Cara asks Bella to stay with Wendy while she's gone. When Cara returns, Wendy is much worse than she had been. Cara takes Wendy to the doctor. The doctor determines that Wendy lacks capacity and needs 24-hour care. A few months later

Wendy dies. Unbeknownst to Andy and Cara, an amendment to the trust surfaces with Wendy's signature dated two weeks before Wendy was deemed to lack capacity. The amendment left the farm and the 50 acres to Bella, and the remaining assets are divided equally among Andy, Bella, and Cara.

The no-contest clause makes it difficult for Cara or Andy to challenge the trust amendment without being disinherited. If Cara decides to contest the amendment and loses, she is completely disinherited. Even if Cara is justified in challenging the amendment, it may be difficult to prove undue influence and manipulation by Bella before a court. Therefore, Cara is likely to forego the contest rather than risk losing her inheritance entirely.

Narrowing the No-Contest Clause

You may consider a narrowly drafted no-contest clause as an option. In the above example, if Henry and Wendy had narrowly drafted the no-contest clause so that it did not apply to amendments, then Cara would not have had to risk her inheritance to challenge the suspicious amendment.

CONSIDERATION OF A NO-CONTEST CLAUSE IN YOUR ESTATE PLAN

You may want to include a no-contest clause in your estate plan depending on your particular circumstances. A competent attorney will help you evaluate your circumstances and determine if a broad clause, a narrow clause, or no clause at all is best for you and your family. You should carefully consider your family dynamics in reaching your decision on this issue, in conjunction with the overall goals of your estate plan.

The Achtel Law Firm is dedicated to integrated estate planning and estate dispute resolution. This specifically includes preparing estate documents, Medi-Cal planning, handling conservatorships, and resolving will or trust contests.