



Estate Planning Pitfall

You haven't included a no-contest clause in your will

You've long suspected that a disagreeable family member with a penchant for stirring conflict might object to the terms of your will. If so, he or she could cause lengthy probate delays and subject your family to costly and time-consuming litigation. Not including a "no-contest" clause in your will can leave your estate — and loved ones — unprotected.

A no-contest clause is a will provision that penalizes a beneficiary who makes a challenge to your will. It doesn't guarantee that there will be no will contests, but it makes a beneficiary considering such litigation think twice. And, of course, laws of the state where the will is being probated will dictate rules with regard to the challenge. It's possible that a beneficiary could be penalized — for instance, by losing a part of an inheritance — even if the challenge is successful on another part.

This clause is most effective when the challenger stands to lose something of value. So when drafting a no-contest clause, it's important to bequeath something to likely challengers. Otherwise, they have nothing to lose except time and legal fees.

And, if someone is completely disinherited and is successful in contesting your will, he or she may be able to have your will nullified in whole or in part. If this occurs, your entire family is subjected to time delays and receiving diminished inheritances, which could cause substantial hardship on your loved ones.

Be aware that, because the judicial view of no-contest clauses isn't consistent in all states, they might not be the best solution in all situations. Many states have legal provisions that invalidate such a clause if the challenger of the will has a probable cause to contest. But many states still hold the view that the last wishes of the deceased should be honored, and that the no-contest clause should therefore remain effective.

Consult with your estate planning attorney about your state's law on no-contest clauses to determine the potential effectiveness of including such a clause in your will. Other strategies, such as forming a trust, may better ensure that your estate plan carries out your wishes.

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