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January 2016

No-Contest Clauses in Trusts and Wills

By Erin McNamara, Fall Intern, William and Mary School of Law Class of 2016

A “no-contest clause,” also called a forfeiture clause, can discourage beneficiaries from challenging the validity of a will or trust. While such clauses can effectively deter contests, they are also limited in their power; this newsletter discusses the benefits and limits of a no-contest clause.

What Can a No-Contest Clause Do?

A no-contest clause discourages named beneficiaries from contesting an estate planning document by threatening to disinherit any heir who challenges the instrument. Under such a provision, any beneficiary who files a challenge against the validity of the will or trust will automatically lose his or her share in the estate for filing such a claim. No-contest clauses are fairly effective in deterring would-be challengers from contesting an estate. Not only does including a no-contest clause help preserve your carefully thought-out estate distribution plan, but its inclusion will also save your beneficiaries from prolonged disputes and legal expenses down the road.

What Are the Limitations of a No-Contest Clause?

An heir has the right to challenge a will or trust in a Court of Law. A no-contest clause works by disincentivising a beneficiary from bringing such a challenge. Any legal document can be challenged and may be invalidated by a court. If a court finds a document was signed under fraud, duress, or without proper capacity, it may invalidate the entire document—including the no-contest clause.

A no-contest clause only limits beneficiaries from challenging an estate. Such a clause cannot protect your documents from challenges by heirs-at-law who were not beneficiaries, and may not be effective against heirs who were given a share too small to deter them from a challenge.

Additionally, only about half of the states enforce no-contest clauses. Under Virginia law, no-contest clauses in wills and trusts have generally been held to be valid and enforceable. Ultimately, courts enforcing these provisions aim to carry out your wishes to the greatest extent possible. For this reason, it is important to consult with an experienced lawyer.

Finally, no-contest clauses only apply to challenges against the legality and effectiveness of the documents. A no-contest clause will not prevent a beneficiary from raising challenges about how a trustee or executor is distributing the estate. Heirs are not prevented from taking action against the trustee or executor for failing to fulfill their fiduciary obligations such as safeguarding property and providing accountings.

Summary

No-contest clauses are often included in estate planning documents to deter challenges from disgruntled beneficiaries. In combination with other tactics advised by an estate planning attorney, no-contest clauses can be used effectively to reduce the likelihood of a challenge.

About the Author:

Erin McNamara is a member of the
College of William & Mary Law School
Class of 2016.



Johnson, Gasink & Baxter, LLP

1100 Professional Drive
Williamsburg, VA 23185
(757) 220-9800
(804) 824-9690

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