

To Contest or Not to Contest?

That Is the Question When It Comes to Wills and Trusts

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None of us want to think that, after we pass away, our loved ones may someday fight over an inheritance. But as we all know, family relationships are complex, and can be particularly so when finances are involved. Add in the grief of losing a loved one, and suddenly, relatives who

upheld the enforceability of 'no-contest' (or 'in terrorem') clauses.

In 2012, Massachusetts adopted the Uniform Probate Code (UPC), a model code adopted by 18 states in order to standardize probate laws. However, in adopting the UPC, Massachusetts did not incorporate the model's no-contest provision,

larger portion, or if someone is left out of an estate altogether. These challenges are not often successful, so long as the creator of the will or trust complied with all statutory requirements, was not subject to undue influence or duress, and had the appropriate mental capacity to execute the document.

Occasionally, though, when an interested person is able to present evidence of duress or incapacity, a successful challenge to a will could result in the entire document being invalidated, which would naturally include the no-contest provision. If the no-contest provision is eliminated as a result of the challenge, the contesting party may then be eligible to receive a share of the estate or trust, depending upon the other circumstances at hand.

When administering any will or trust, whether a no-contest provision is included or not, the fiduciary in charge (that is, the trustee of a trust, or the personal representative under a will) must still comply with all the other terms of the document, and the fiduciary is still responsible to beneficiaries. They are required to account to the beneficiaries for the assets under their control, as this is a matter of public policy that the courts have determined cannot be avoided with a no-contest provision.

Typically, we might see no-contest provisions enforced within the discretion of the fiduciary, for frivolous matters involving the administration of the will or trust. Occasionally, a beneficiary may ask the court for an interpretation of the provisions of a will or trust, to make sure the fiduciary is complying with its terms. Provided they are not trying to challenge or change the provisions in the document, the court is unlikely to invoke the no-contest provision when a request for interpretation is made by an interested person.

If you are a beneficiary of a last will and testament or a trust, it is extremely important to review the document to see if it contains a no-contest provision. If it does, and if a challenger comes forward,



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One of the most important components of a person's estate plan is the document that ultimately directs the final disposition of their property, both real and personal, upon their passing. In most circumstances, that document is either a last will and testament or a trust. A question that often arises during the drafting process is: “what can I do to make sure that no one fights over my estate?”

While an attorney can never guarantee that heirs or beneficiaries will not fight, there are provisions that can be made to deter an interested person from contesting the terms of a will or trust. For wills, Massachusetts law recognizes a provision purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate. For trusts, the courts in Massachusetts have

which essentially allowed for challenges or contests where probable cause exists. Rather, Massachusetts determined that the Commonwealth would maintain its historic baseline regarding no-contest provisions, and, in doing so, the Legislature provided that such clauses are enforceable as a matter of law, subject to some limitations as determined by the court.

Generally speaking, a no-contest provision is a clause within a will or trust with specific language stating that any person who challenges the estate must then forfeit their share. One of the primary purposes of including such a provision is to deter an interested person from bringing a challenge against the estate.

Typically, if an interested person believes they are not receiving what they may consider to be their fair share of the estate, that perception can provoke a desire to fight the terms of the will or trust. Emotions tend to run particularly high if a sibling or family member may receive a

the court is likely to uphold the no-contest clause, which could result in the forfeiture of an inheritance. One must carefully weigh the options and potential outcomes before asserting a challenge.

On the other hand, if you are preparing your own estate plan and are concerned

that disagreements may erupt among beneficiaries, you may wish to consider including a no-contest provision in your documents. Keeping the family peace in the future is certainly worth spending some time and effort today. ♦

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