

Worried about challenges to your estate plan? Make it no contest

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Estate planning is all about protecting your family and ensuring that your wealth is distributed according to your wishes. So the idea that someone might challenge your estate plan can be disconcerting. One strategy for protecting your plan is to include a “no-contest” clause in your will or revocable trust (or both).

What’s a no-contest clause?

A no-contest clause essentially disinherits anyone who contests your will or trust (typically on grounds of undue influence or lack of testamentary capacity) and loses. It’s meant to serve as a deterrent against frivolous challenges that would create unnecessary expense and delay for your family.

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 or trust.

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, 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.

Are there alternative strategies?

A no-contest clause can be a powerful deterrent, but it's also important, wherever you live, to design your estate plan in a way that minimizes incentives to challenge it. To avoid claims of undue influence or lack of testamentary capacity, have a qualified physician or psychiatrist examine you — at or near the time you sign your will or trust — and attest in writing to your mental competence. Also choose witnesses whom your heirs trust and whom you expect to be able and willing to testify, if necessary, to your freedom from undue influence. Finally, record the execution of your will - recognize, however, that this might not be an appropriate course of action to take in all situations.

Of course, you should also make an effort to treat your children and other family members fairly, remembering that “equal” isn't necessarily fair, depending on the circumstances.

Protect yourself

As you develop or update your estate plan, it's important to think about ways to protect yourself against challenges by disgruntled heirs or beneficiaries. We can help you determine if a no-contest clause can be an effective tool for discouraging such challenges.

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