

What is a “no contest” clause?

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A “no-contest” (also called *in terrorem* clause) provision is a clause that you can put in your Last Will & Testament to discourage a disappointed heir from challenging your estate plan. If an heir files a lawsuit against your estate, then such a clause effectively cancels that heir from inheriting under the Will. Thus, skipping over him or her and distributing assets to the other named heirs.

A no-contest clause may be a good idea where you have a beneficiary in your Will who you suspect may be upset by the property (or lack of property) distributed to him or her.

It is important to note that a no-contest provision in a Will does not make a Will bulletproof. The following are some steps that may make a Will contest less likely to succeed.

Make sure your Will is properly executed. The best way to do this is to have an experienced, qualified attorney assist you in drafting and executing the Will. There are certain procedures that need to be followed for the Will to be valid in Massachusetts.

Explain your decision. Generally, it is a good idea to talk to family members at the time you draft the Will and explain why someone is getting left out of the Will or getting a reduced share. If you do not discuss it in person, state the reason in the Will. You may also want to include a letter with the Will, which explains your intent behind your decision.

Prove competency. One common way of challenging a Will is to argue that the deceased family member was not mentally competent at the time they signed the Will. You can try to

avoid this by making sure the attorney drafting the Will tests you for competency. This could involve seeing a doctor and answering a series of questions.

Remove the appearance of undue influence. Another common method of challenging a Will is to argue that someone exerted undue influence over the deceased family member. For example, if you are planning on leaving everything to your daughter who is also your primary caregiver, your other children may argue that your daughter took advantage of her position to influence you. To avoid the appearance of undue influence, do not involve any family members who are inheriting under your Will in drafting your Will. Family members should not be present when you discuss the Will with your attorney or when you sign it. To be totally safe, family members should not even drive you to meet with the attorney.

If possible, we all want to avoid unnecessary litigation over our estates. Litigation is burdensome, expensive, and can tear a family apart, but worse is having your estate go somewhere you never intended.

Want to learn more about how to properly execute a Will? Consider scheduling a consultation with a qualified estate planning attorney who can help.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.

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