

No Contest Clauses in Wills - When a Creditor Files a Claim

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A no contest clause traditionally consists of specific language included in a California will or trust that attempts to prevent any legal dispute against the will after the testator has deceased. A no contest clause, for the most part, does help to discourage legal disputes over a will, except in cases for which the contesting party can offer significant proof of forgery, duress, or problems with validity of the instrument. For most no contest clauses, the language specifically states that any beneficiary of the will stands to be disinherited should he or she decide to pursue unjustifiable litigation in dispute over some aspect of the provisions of the will.

There are, however, certain exclusions to the enforcement of no contest clauses, including among others, when a creditor files a claim against the estate of the testator. Unless the language of the no contest clause specifically includes the circumstances of a creditor filing a claim, the act of doing so would be considered an exclusion to the clause, and therefore, a legitimate reason for a beneficiary to file a dispute without running the risk of losing his or her inheritance.

Many California wills now include standard no contest clauses that include specific language relating to when a creditor files a claim against the estate after the testator has deceased. If so, the validity of such a clause might still be brought into question, and recent California legislation has paved the way for making the entire no contest clause invalid, regardless of the language included within it.

Since the new legislation will not go into effect until 2010, and although the bill will be retroactive for California wills that are currently being drawn up, it is still a good idea to include a no contest clause within your will that includes language relating to when a creditor files a claim against your estate. In this case, a little defense is better than no defense at all, and your estate has a better chance of being legally protected (at least, for a short time) with such a clause.

If you have additional questions concerning no contest clauses, or the California legislation changes surrounding them, a qualified California estate lawyer will be able to give you the best advice concerning the inclusion of a no contest clause in your estate planning options. A highly skilled California estate attorney, with experience in litigating no contest clauses in California, can offer you educated solutions to all of your estate planning needs.

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