

No Contest Clauses in Wills - What Happens if Someone Tries to Contest?

No contest clauses are a common addition to California wills, but have recently come up against substantial debate as to their usefulness and validity. In fact, new legislation has been passed that will make no contest clauses invalid and unenforceable in California courts, regardless of the wishes of the testator who created the will. This new legislation has come under some scrutiny, and opponents argue that it violates a testator's right to create a contract according to his or her own terms.

Even in light of the pros and cons of this new legislation's framework, the fact remains that there are still ways in which someone can contest a will—even if there is a no contest clause included within that will. When the new legislation goes into effect in 2010, the likelihood and frequency of such disputes over the provisions of a will could very well increase exponentially.

However, many beneficiaries of a loved one's will are concerned about the current status of no contest clauses, and about what will happen if a beneficiary attempts to contest a will despite the addition of a no contest clause. The answer to this question is tricky, and highly dependent on the reason a contestor is disputing a will, and if there is probable cause for such a dispute. While there are certain exclusions that apply to every situation (for example, it is usually safe to contest a will when forgery or duress can be proven), many circumstances are not so certain. Until the new California legislation goes into effect, contestors run a risk of violating the terms of the no contest clause, if drafted correctly, thereby running the risk of losing their stake in the inheritance.

If you have additional questions concerning including a no contest clause in your California will, or if you would like further information concerning the limits and exclusions of such a clause, an experienced California estate lawyer will be able to counsel you regarding your best course of action.

California estate law is undergoing constant change. As California estate law changes, it can affect your estate plan. So it is vital that you regularly consult with your California estate planning attorney to ensure your estate plan is secure.

A qualified estate attorney with experience in drafting and litigating California wills can offer you the most recent information regarding this topic, and any other topics in estate planning you might need to discuss.