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C O U N S E L L O R S A T L A W

No-Contest Will Clauses in New Jersey - Don't Bother

September 19, 2011 by Deirdre Wheatley-Liss



I'm sure we have all seen the TV dramas where a Will reading is portrayed in which ridiculously rich grandma shocks the family by leaving a child a token bequest ("my antique car" or "\$50,000") and **has a provision in the Will that if the child challenges the Will then they get *nothing***. This is known as "No-contest" or "In terrorem clause". (Don't things sound more important in Latin?)

In New Jersey, "No-contest" or "In terrorem" clauses belong in the world of fantasy. [N.J.S.A. 3B:3-47](#) provides that "a provision in a Will purporting to penalize any interested person for contesting the Will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings." Probable cause is such a low standard that the New Jersey Practice Series in describing In terrorem clauses says "The testator usually wants to prevent a person from contesting a will, whom he does not want to benefit. There is no way of doing this." **End result? No-Contest clauses are unenforceable in New Jersey.**

So what is a person to do who really, really, really does not want a family member to benefit when they die, and furthermore, knows that the person that they are cutting out is a litigious pain in the xxx who will delight in using their death to threaten and emotionally blackmail the actual beneficiaries? First, share your concerns with your estate attorney, in detail, so he or she can make sure that sufficient evidence exists in the file to defend a Will challenge. Next, try to communicate your desires to all your family members. We have seen much litigation that might have been avoided had the now decedent recognized that leaving people guessing as to why they did "x" or "y" is breeding grounds for a lawsuit. Finally, understand that the legislative presumption is to allow your Will to be questioned after your death and consider using alternative means such as lifetime gifts and non-probate assets to effectuate your intent.

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