

## **No Contest Clauses in Wills - Exceptions to Enforceability**

**By: Kevin Von Tungeln**

**Thompson Von Tungeln, P.C.**

<http://www.EstatePlanningSpecialists.com>

The practice of California estate planning often includes the creation of wills for distribution of property after the testator has deceased. Within many California wills, estate planning attorneys are asked to include a clause entitled a no contest clause, in which the testator attempts to discourage litigation to contest the will after he or she is deceased. In such no contest clauses, any beneficiary of the will faces possible disinheritance if that beneficiary attempts to pursue litigation in dispute of the provisions of the will. Often, this occurs when a family member feels as if he or she did not get a fair share.

There are, however, exceptions to the enforceability to no contest clauses in California courts, particularly for instances in which the contestant has reason to believe that the document or instrument was forged. If forgery is indeed suspected, the contestant must have reasonable grounds on which to file the dispute. If the dispute is filed, and enough proof is present within the claim, the contestant does not face any danger of being disinherited according to provisions of the no contest clause that is a part of the will.

Additionally, if the contestant believes that the person who drafted the will, the person who gave instructions to the drafter of the will, or the person who witnessed the will is entitled to receive any benefit from the provisions of the will, the contestant can dispute such gifts without danger of disinheritance triggered by the no contest clause. Such situations are deemed by California courts to be exclusions to the standard no contest clause that is written. If in doubt, a contestant can file a petition for declaratory relief under California Probate Code 21320 to determine if the reason for contest violates, or is excluded from, any part of the no contest clause.

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, and no contest clauses are currently being questioned by California legislations as to their validity and usefulness. 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.