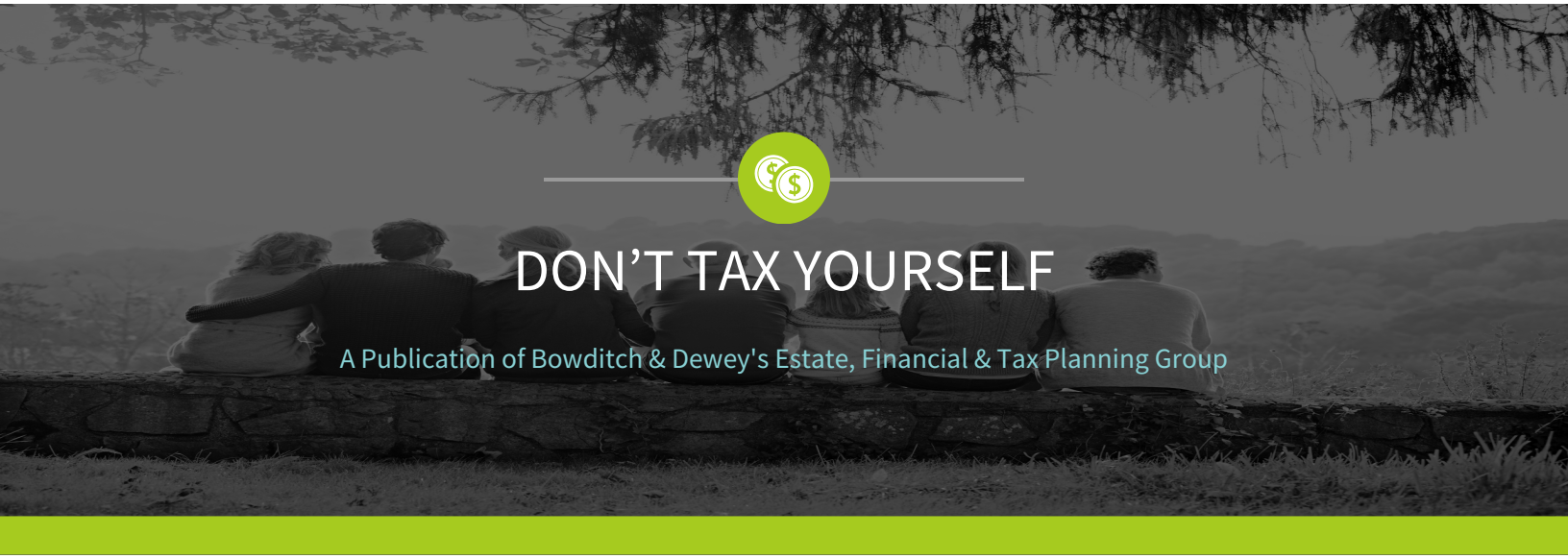


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When to Include a No-Contest Clause in a Will or Trust

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One of the many reasons for executing a Will and Trust is to make your wishes clear and prevent animosity among family members or other beneficiaries after your death. However, there are circumstances in which it is clear to the Testator that a conflict after his or her death is likely, despite the existence of a Will and/or Trust.

A no-contest clause, also known as an "in terrorem" clause, is designed to prevent persons, such as your descendants and other named beneficiaries, from challenging your Will or Trust after you die. A no-contest clause generally states that a person who attacks the Will or Trust, whether directly or indirectly, will lose anything they would have inherited by the terms of the document. The inclusion of a no-contest clause leaves the potential challenger with a choice to either accept the terms of the Will/Trust and accept their inheritance or challenge the documents and potentially lose whatever they would have otherwise inherited should their challenge fail.

For a no-contest clause to serve as a disincentive to challenging the Will or Trust, there must be something at stake for the potential challenger to lose. For example, if you disinherit a child completely, the inclusion of a no-contest clause will not act as a deterrent to challenging the validity of the Will or Trust, as the child has nothing to lose by challenging the documents and everything to gain. In such a situation, it is important to consider including the child as a beneficiary, if even for a lesser share than his or her siblings or other beneficiaries, for the sake of discouraging a challenge to the estate plan.

While a no-contest clause can be an effective deterrent to challenges, clients are often also concerned with their children and other beneficiaries maintaining close relationships despite unequal treatment in the estate plan. A separate letter explaining your reasons for including the no-contest clause or disinheriting an heir can be extremely helpful in the event a person contests the Will or Trust. Such a letter could serve as evidence of the Testator's intent when creating his or her estate plan and can also provide an explanation to the person disinherited or inheriting less than he or she expected.

If you are considering treating your children unequally in your estate plan, bear in mind that documents become easier

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to challenge as the person who executed the document ages. For example, if an estate plan has consistently disinherited a child for many years over several versions, it becomes more difficult for a child to claim that there was fraud, undue influence or mistake involved when the documents were executed.

As the law regarding no-contest clauses varies from state to state, it is important to consult with an estate planning attorney licensed in your state as to whether you should include a no-contest clause in your planning documents.

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