

Yes, You Can Contest a Trust with a No-Contest Clause (If You're Prepared!)

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Have you been given an inheritance in a trust that you think does not represent the deceased's intent? Were you named as successor trustee, and one of the beneficiaries is disputing the validity of the gift or the entire trust itself?

If the trust contains a "no contest clause," challenging the trust might result in the challenger being disinherited entirely. A no-contest clause is a portion of a trust that is used to deter a beneficiary from challenging the trust in court. The clause states that if the beneficiary contests or seeks to impair or invalidate the trust or its provisions, the beneficiary will be disinherited and thus will not receive the gift that they were given by the instrument.

So, while the answer may be "yes" to contesting a trust with a no-contest clause, you better make certain you follow two very important points:

1. Possess solid and reasonable evidence
2. Adhere to the timeline for contesting a trust

Reasons to Enforce a No-Contest Clause

No contest clauses are generally valid under California law with the court reading the language of the clause carefully to apply the actual words of the text rather than reading meaning into the words. They make certain the clause means what it says. No contest clauses are generally valid because it is in the public's best interest to deter litigation that might upset the testator's (deceased's) expressed wishes.

A no contest clause can only be enforced in three types of contests:

- A direct contest that is brought without probable cause.
- A pleading to challenge a transfer of property on the grounds that it was not the transferor's property at the time of the transfer.
- The filing of a creditor's claim or prosecution of an action based on it.



Reasons to Contest a Trust

A “direct contest that is brought without probable cause” needs to be unpacked. A direct contest is a pleading that is filed with the court by a beneficiary that would result in a penalty under the no contest clause, if the clause is enforced. The direct contest pleading is one that claims that the trust is invalid for one or more reasons, including but not limited to that it is:

- A forgery
- Not properly signed
- Trustor lacked capacity
- Trust is the product of fraud, duress, menace, or undue influence
- Trust was revoked

Demonstrate Reasonable Evidence

A contest has “probable cause” if, at the time the contest is filed with the court, a reasonable person would believe that there is a reasonable likelihood that the relief would be granted after an opportunity for further investigation. In other words, if at the time the contest is filed, the person challenging the trust by alleging that it was a forgery, has evidence or believes that they will be able to uncover evidence that the trust is a forgery.

Probable cause is a reasonable person standard. The person seeking to contest the trust cannot file the contest and hope that they can uncover evidence that somehow the trust is a forgery or that the trustor lacked capacity—the contestant must reasonably believe there is such evidence. Litigation is expensive and no contest clauses are designed to reduce litigation by encouraging beneficiaries to critically think about the evidence that they actually have before filing a contest and potentially forfeiting their inheritance.



Meeting the Deadline to File

Bringing an action after the 120-day time period to do so can be considered an action without probable cause. So, if you receive a Notification by Trustee Pursuant to Probate Code Section 16061.7, pay close attention to the 120-day statutory deadline.

Courts have held that even if your contest would otherwise have been successful and valid, the fact that it was filed after the 120-day deadline expires means it lacks probable cause. Accordingly, the timing of when the contest is filed is just as important as the actual strength of the contest.

So what are the main take-aways from all of this?

If you *have reasonable evidence, don't let the 120-day deadline pass* if you think the trust has issues. Do not hesitate to contact us for a free consult and we will help you sort through the details.

We look forward to serving you & wish you the best



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