If you're giving serious consideration to the provisions to be included in a new will, that's good news. You're already way ahead of most people in Texas. There's an unfortunate tendency to either put off estate planning or to assume that the documents involved are all standard forms that you don't need to think about. And the result is often an expensive, chaotic, and frustrating mess later on.

The right preparation can make the future much easier for your loved ones, and that includes having the appropriate terms in your will, even if you have a trust or other estate plans in place. As an estate planning firm that helps individuals and families at all stages of life, we often receive questions about various options people have heard about. One of those options is a "no-contest" clause for a will.

Before deciding whether to include this type of provision in your will, you need to understand how it operates in Texas, because the interpretation in our state differs from that in many other states. We'd be happy to talk to you about the potential advantages and disadvantages in your particular situation if you schedule a free consultation with us. But for now, let's get started with some background information to consider about no-contest clauses in Texas wills.

What is a No-Contest Clause?

The provision we're referring to here as a "no-contest clause" is also known as a forfeiture clause or, by its Latin name, an *in terrorem* clause. It is a term in a will that prohibits a person who is supposed to receive something through the will (a beneficiary) from disputing provisions of the will. Generally, these clauses will impose a very serious penalty for challenging the will. If a beneficiary challenges the validity of the will, the no-contest clause may specify that the beneficiary will not receive anything, and the bequests intended for them will be distributed to someone else.

These provisions are designed to prevent lengthy and expensive legal disputes. They also aim to ensure that the wishes of the person creating the will are given appropriate respect. After all, if you're creating a will disposing of your own property, you should have the final say in what happens to it.

While these are valid goals, problems are associated with no-contest clauses, and due to these issues, courts do not always enforce these clauses. If you include a provision in your will that is not enforceable, you end up creating more confusion and potential for future conflict.

The Problems with No-Contest Clauses

People challenge the provisions in wills for many reasons. Sometimes the challenges are frivolous and raised just because a disappointed family member wants to make life difficult for those who were favored in the will. At other times, however, a beneficiary may have very good reasons for wanting to challenge a provision in the will.

For instance, the beneficiary might know that the executor named in the will has defrauded family members in the past and can't be trusted to manage the testator's property during probate. Or they might know that a caretaker exerted undue influence to induce the testator to create this version of the will. Contesting the will in these situations serves the interests of justice, and it seems unjust to penalize a beneficiary for contesting the will when the defects need to be brought to the court's attention.

It is also important to note that a no-contest clause cannot prevent all possible legal challenges to a will, as these clauses only impact beneficiaries named in the will. Texas law allows any "interested" party to contest a will, including family members who are not named in the will. It also includes people who have a property claim against the deceased person's estate, such as creditors. Therefore, these other interested parties can contest the validity of a will, even if it contains a no-contest clause.

How Texas Courts View No-Contest Clauses

As a starting premise, courts in Texas generally find no-contest clauses to be enforceable. That means that if you include a provision in your will that penalizes beneficiaries for challenging features of your will, the court will be inclined to honor

your wishes and take away the legacy of anyone who files a lawsuit contesting any provisions that you forbid them from contesting.

These clauses are typically enforced strictly in accordance with their terms. If you included a clause forbidding a challenge to the distribution of property in your will, for instance, the court might still allow challenges to other provisions in your will, such as the choice of executor.

Moreover, there are situations where the court may refuse to enforce the clause altogether as a matter of public policy.

The Probable Cause Exception

The courts in Texas generally recognize a probable cause exception to the enforcement of no-contest clauses. This means that if a beneficiary has a valid legal reason for challenging a provision in a will, they can make that challenge without risking their inheritance under the will. Even if the challenge later fails, if the beneficiary had a reasonable basis for believing there was a legal problem with the will, then the court usually won’t penalize the beneficiary by enforcing the no-contest clause against them.

Legal Reasons for Contesting a Will in Texas

So, when does a beneficiary have probable cause to contest a will against the testator’s wishes? The beneficiary must be making a challenge based on valid legal grounds and must have sufficient evidence to support their assertions.

Texas law only allows a will to be contested on certain legal grounds, such as:

- The person creating the will lacked the legal capacity to understand it at the time it was signed (lack of testamentary capacity)
- The person creating the will was threatened or forced into agreeing to provisions that they would not have otherwise agreed to (duress)
- The person creating the will was tricked into signing it, thinking it was something else (fraud)

- The necessary legal steps were not followed when the will was created or signed (improper execution)
- The will presented is not the most recent (a new will supersedes older versions)
- The will is a forgery (fraud)
- The person creating the will was wrongfully coerced or manipulated to include provisions they would not have otherwise (undue influence)

When a beneficiary can present evidence indicating that one of these issues might interfere with the legal validity of the will, then the court might allow them to contest the will without subjecting them to the penalty specified in the no-contest clause.

Deciding Whether to Include a No-Contest Clause in Your Will

On the surface, a no-contest clause appears to be a straightforward way to prevent conflict in a potentially contentious situation. However, there are several factors to consider. First, remember that someone who is left out of the will can still challenge it. The prohibition only applies to named beneficiaries.

In addition, those beneficiaries must be set up to receive a substantial amount in the will; otherwise, the no-contest clause is a threat without teeth. If you plan to leave the bulk of your property to one member of the family and only a very small amount to others, the no-contest clause might not provide enough of an incentive to keep them from challenging the will.

Another issue to be concerned with is that sometimes a legal challenge to a no-contest provision simply adds further complexity to a lawsuit that was bound to occur anyway, thereby defeating what is usually the primary purpose of the clause.

If you are considering including a no-contest clause in your will, it is a good idea to discuss your desires and your family dynamics with your estate planning attorney. Then your legal advisor can review possible scenarios and help you determine the

provisions best calculated to achieve your goals. In many cases, preparing letters of explanation along with estate planning documents can help families accept your decisions more readily. The letters can also be used to provide additional evidence of your testamentary intent.

If You Need to Create, Update, or Probate a Will, The Nordhaus Firm is Ready to Provide Personal Assistance

Most people do not enjoy preparing estate planning documents because these documents anticipate potential problems in the future that we'd rather not dwell on. For instance, parents of young children need a will to name a guardian in case something should happen to them. It's not an occasion to anticipate with joy, but it is important to be prepared.

By the same token, a no-contest clause anticipates a future where your loved ones question your choices and disagree about what should happen with your property. This is also not a pleasant prospect. But anticipating future problems can prevent a minor disagreement from turning into a painful, costly battle that destroys family ties. At The Nordhaus Firm, we can help you take the necessary precautions so that you can rest assured that problems that do arise in the future will be kept to a minimum. To schedule a free consultation to learn about the assistance and preparations we can provide, call us at 214-726-1450 or contact us online today.