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Can I Protect my Will or Trust from being Contested?

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Over the years I have had many clients ask if there is a way to protect their Will or Trust from being contested by a child or other relative. In most cases, estate planners include “no contest” clauses in their Wills and Trusts that call for a challenging party to lose the right to inherit if they bring a challenge and are unsuccessful. Recent cases have shown that while these clauses are enforceable, there is a relatively low standard a challenging party must meet in order to render them ineffective.

First things first - who can contest a Will or a Trust? In Michigan, there are three individuals who can contest a Will or Trust: an actual named beneficiary of a Trust, a beneficiary of a Will, or someone who would have inherited if the deceased person died intestate (or without a will or a trust). In Michigan, spouses, children, grandchildren, parents and in certain instances, siblings, are considered “interested persons” for purposes of determining who can actually bring a challenge. Under Michigan law, a no-contest clause is only given effect if the Court decides there was no good reason for challenging the Will or the Trust. The Courts have said that probable cause exists when, at the time of instituting the proceeding, there was evidence that would lead a reasonable person, properly informed and advised, to conclude that there was a substantial likelihood that the challenge would be successful. This obviously leaves a lot of interpretation up to the Court on a case by case basis. The most common challenges are:

- The person lacked mental capacity at the time the Will or Trust was drafted;
- The person was unduly influenced when drafting the Will or Trust;
- The Will or Trust is defective;
- The Will or Trust is a forgery.

In all these instances, the person bringing the challenge must have strong evidence to support such a claim. Courts have consistently upheld no-contest clauses if, at the end of a trial, the contesting party fails to show that he/she had a reasonable basis for believing the challenge would be successful.

If a person preparing his/her estate plan is concerned that a family member may challenge their Will or Trust, there are several steps that can be taken to reduce or even eliminate the possibility of a successful challenge. On the flip side, if you are considering a challenge of your own, you must seek competent advice regarding the reasonableness of the challenge and the likelihood of success in order to avoid losing your inheritance altogether. If we can help you or anyone you know in this process, please let us know.