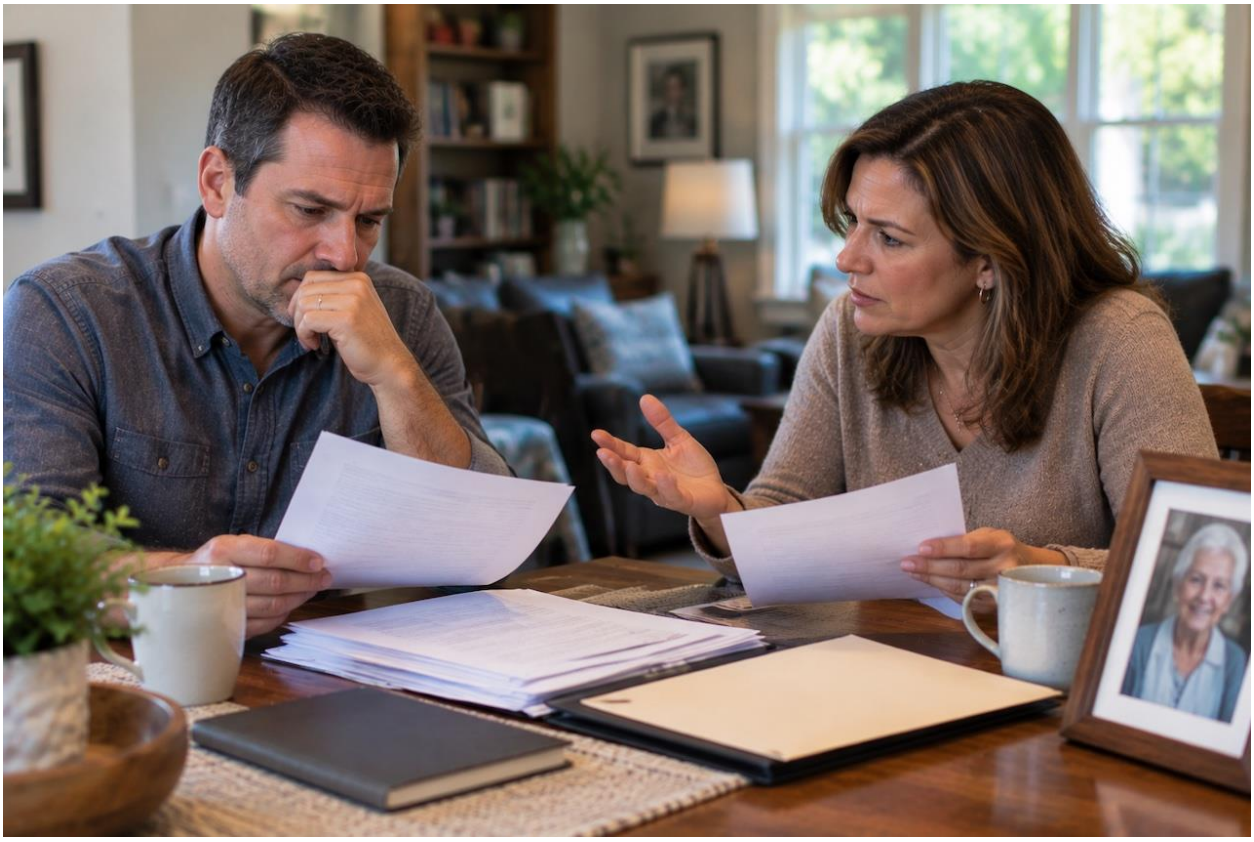
No-Contest Clauses in New Jersey Wills: Do They Actually Work?



New Jersey Estate Planning Attorneys Explain No-Contest Clauses

Family conflict after a death often centers on the will itself. Some parents worry that one child will challenge the document out of anger rather than any real legal problem. A no-contest clause is one tool people use to try to discourage that kind of fight before it ever starts. Understanding how these clauses actually work matters more than simply adding one to a will and hoping for the best.

New Jersey addresses no-contest clauses directly under N.J.S.A. 3B:3-47. This statute allows a no-contest clause to be enforced in some situations, but not others. Whether the clause can be enforced often depends on whether the person challenging the will or bringing another proceeding relating to the estate had probable cause to do so. The exact wording written in the will matters less than many people might assume.

Our New Jersey estate planning attorneys at Williams Law Group, LLC help clients decide whether a no-contest clause fits their overall estate plan. As a result, we understand when this kind of provision holds up in court. We also help clients understand New Jersey's probable cause exception and how it can affect whether a no-contest clause is enforceable in a particular dispute.

What Is a No-Contest Clause in a New Jersey Will?

A no-contest clause is a provision designed to penalize an interested person for challenging a will or taking certain other legal action relating to the estate. Depending on how the clause is written, a beneficiary may risk losing some or all of the inheritance provided under the will. A beneficiary is a person named in the will to receive money or property. Older legal writing often calls this an in terrorem clause, a Latin term meaning "in fear." Both terms describe the same basic idea.

The purpose of the clause is to discourage beneficiaries from bringing challenges that could result in forfeiture of their inheritance. A beneficiary who might otherwise consider a lawsuit has to weigh the risk of losing everything they were promised.

Many wills include this kind of clause when the person creating the will expects some disagreement among family members. The clause does not prevent someone from filing a challenge in the first place. It instead creates the possibility of a financial consequence when a beneficiary brings a proceeding covered by the clause without probable cause.

Why Do People Include a No-Contest Clause in Their Will?

People often add this clause after an unequal distribution among children or other beneficiaries. A parent may worry that leaving more to one child will lead to a lawsuit. That lawsuit might be driven by resentment rather than any real legal defect in the will itself.

The clause may also discourage a beneficiary from bringing a weak or unsupported claim primarily to gain leverage in an estate dispute. Because New Jersey protects proceedings supported by probable cause, however, the clause cannot simply penalize every beneficiary who brings an unsuccessful claim.

Blended families, prior marriages, and complicated business interests all raise the odds of a future dispute. Including a no-contest clause will not guarantee peace among family members after someone dies. It can, however, make a baseless lawsuit considerably less appealing for a disappointed relative to actually file.

Does New Jersey Law Enforce No-Contest Clauses?

Yes, but only under specific conditions. Under N.J.S.A. 3B:3-47, a no-contest clause becomes unenforceable if the challenger had probable cause to bring the case. This single exception controls how these clauses actually function in real disputes across New Jersey courts, no matter how the will itself is worded.

The New Jersey Supreme Court addressed this principle in *Haynes v. First National State Bank of New Jersey*, a 1981 decision involving a challenge based on undue influence. The Court concluded that the challengers had proceeded in good faith and with probable cause and declined to enforce the no-contest provisions against them.

This means a no-contest clause cannot punish every losing challenger automatically. New Jersey law protects a beneficiary who brings a legitimate claim, even an unsuccessful one. The claim only needs to have had probable cause behind it from the very beginning, before any lawsuit was ever filed.

What Does "Probable Cause" Mean in This Context?

Probable cause generally requires a reasonable basis for bringing the proceeding based on the circumstances known when it was initiated. It does not necessarily mean the challenger must ultimately prevail.

This standard protects family members who raise real concerns. An example would be suspicious circumstances surrounding how the will was signed or who was present at the time. A challenger does not need to win the case to keep their inheritance under the clause. They only need to show their challenge had a reasonable foundation when they filed it.

Courts look at what the challenger knew and reasonably believed before filing suit. The final result of the case does not automatically decide this question either way. A claim can lose at trial and still have had probable cause behind it the entire time it was pending.

What Types of Will Challenges May Be Supported by Probable Cause?

Probable cause depends on the facts supporting a particular claim, not simply the legal theory a challenger alleges. Common grounds for challenging a will can include the following:

- **Lack Of Testamentary Capacity** – A claim that the person making the will did not understand what they were signing or the effect of their decisions.
- **Undue Influence** – A claim that someone else pressured or manipulated the person into signing a will that did not reflect their true wishes.
- **Improper Execution** – A claim that the will did not satisfy New Jersey's legal requirements for execution.
- **Fraud** – A claim that the person was deceived about the actual contents or nature of the document they signed at the time.
- **Forgery** – A claim that the signature on the will was not actually made by the person who supposedly created it.

Each of these claims can raise a legitimate question about the validity of a will when supported by appropriate facts. The type of claim alone does not establish probable cause. Courts instead consider the factual basis for bringing the particular challenge.

Does a No-Contest Clause Apply Only to a Direct Will Contest?

Not necessarily. N.J.S.A. 3B:3-47 refers not only to contesting a will, but also to "instituting other proceedings relating to the estate." Whether a particular lawsuit or other proceeding falls within a no-contest clause can therefore depend on the language of the clause and the nature of the legal action.

The probable cause protection still matters. If probable cause existed for instituting the proceeding, the statute provides that a provision seeking to penalize the interested person for bringing it is unenforceable. For that reason, beneficiaries should not assume either that every estate-related proceeding triggers a no-contest clause or that only a direct challenge to the validity of the will can do so.

What Should You Consider Before Including a No-Contest Clause?

A no-contest clause can be a useful planning tool. It works best, though, when drafted carefully rather than added to a will as an afterthought late in the process. Before including one in your own will, consider the following practical points about how these clauses actually function:

- **Consider the Size of the Bequest** – Because a no-contest clause works by putting an inheritance at risk, its deterrent effect may be limited when a beneficiary has little to lose.
- **Identify the Likely Source of Conflict** – If a particular relationship or family dynamic seems likely to produce a dispute, address it directly with your attorney ahead of time.
- **Keep Your Estate Plan Well-Documented** – Clear records of your intentions and the circumstances surrounding execution of the will may help address questions raised in a future challenge.
- **Avoid Using the Clause to Hide a Real Problem** – A no-contest clause will not protect a will that was actually the product of undue influence or fraud.
- **Review the Clause Periodically** – Family circumstances change over time, and a clause that made sense years ago may need updating to reflect your current wishes.

None of these steps guarantee a no-contest clause will work exactly as intended in every single situation that might eventually arise after death. Thoughtful planning, though, gives the clause a much better chance of accomplishing what you actually want it to do for your family.

How Can a New Jersey Estate Planning Lawyer Help With a No-Contest Clause?

Deciding whether to include a no-contest clause in a will often requires carefully reviewing your specific family situation. It also involves understanding how New Jersey courts actually apply the probable cause exception in real cases. Careful drafting matters, but even a broadly written clause remains subject to New Jersey's statutory protection for proceedings supported by probable cause.

Our New Jersey estate planning attorneys at Williams Law Group, LLC help clients deal with no-contest provisions, whether they are creating a new will or dealing with an existing one. We also represent families involved in a legal challenge to a will that includes such provisions. As a result, we thoroughly understand how the legal system works in New Jersey when it comes to no-contest clauses.

If you are drafting a will and want to include a no-contest clause or a family member has challenged a will that contains such a clause, do not wait to find out what happens next. Contact us to learn more about your legal options and the best way to protect your family's