

## What to Expect When the Will is Unexpected

ARTICLE SERIES | Part 5

### Will Contest or *Won't* Contest?

### Don't Be Terrified by an In Terrorem Clause

If you have been following this series, then you already know about will contests, when and why they might be filed, and how to approach them legally. But do you know how to determine, and what to do, if your loved one has specifically prohibited a will contest?

In the 1860s, a man named John Bradford passed away in Ohio, leaving William Bradford \$600 in his Will. William

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didn't like that, so he contested the Will, but he made one key mistake in doing so: That Will contained a no-contest clause. In the ensuing case, the Ohio Supreme Court had to go all the way back to English law to make the decision that holds to this day. Instead of \$600, William got nothing, and no-contest clauses took their place in Ohio law.

So, what is a no-contest clause? It is a clause in a Will that threatens a beneficiary with forfeiting any inheritance from that Will if they decide to challenge it, or at least limiting what they can then inherit. Hence, if you find yourself questioning the Will of a loved one, you will definitely want to find out whether it contains a no-contest clause before you take your concerns to court. These clauses are also referred to by the Latin term in terrorem—“so as to produce terror”—because they are intended to literally terrify heirs out of challenging the Will.

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## What to Expect When the Will is Unexpected

Will Contest or Won't Contest?

**“Now, if any of my heirs is dissatisfied and goes to law to break this will, then my will is and I direct that they shall have no part of my estate and I debar them from any part of my estate whatsoever.”** *Bradford at 546.*

However, there are some situations where a no-contest clause might not apply. If a court decides that the Will was fraudulent, for example, the challenging heir might still inherit. Also, filing a suit to “construe” (decide the meaning/interpretation of) the Will or other documents related to the estate may not result in forfeiture. A suit can also be filed to decide whether one’s challenge would violate the no-contest clause.

Why would someone decide to add a no-contest clause to their Will? Two big reasons are that it can discourage excessive litigation and that it can potentially help preserve the relationships between surviving family members. Imagine the case of *Bradford v. Bradford*; do you think the rest of John and William’s relatives felt as close to William after he dragged them into court to question John’s Will?

Not every state treats no-contest clauses quite the same as Ohio. Some states consider whether the beneficiary who filed the contest was truly in good faith before they decide whether to apply the clause. And in Florida and Indiana, no-contest clauses cannot be enforced at all.

Hopefully this article has helped clear up the no-contest concept, but if you are considering contesting the Will of a loved one, you might now have more questions than ever. That’s fair! This is a complicated legal issue that’s been litigated for hundreds of years, so no one is expecting you to reach a complete understanding in a day. We encourage you to reach out to an experienced probate litigation attorney to help you through this complex decision.



## Attorney Spotlight

**Are you concerned about a no-contest clause?**

*Aanchal Sharma and Veronica Garofoli are here to help.*



**Aanchal Sharma**

[asharma@sssb-law.com](mailto:asharma@sssb-law.com)

[Read Bio](#)

**Veronica T. Garofoli**

[vgarofoli@sssb-law.com](mailto:vgarofoli@sssb-law.com)

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