

Protect Your Will in Advance When Disinheriting an Heir

By Bernard A. Krooks, Esq. | 01/01/05
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Recently, a married couple was in our office to discuss their estate planning. Mr. and Mrs. Smith have three children (one son and two daughters) and they were considering disinheriting their son. They understand this could cause a conflict, but they said conflict in their family was a foregone conclusion, especially when their son is involved. They mentioned that Bill has never gotten along with his sisters and has always been the black sheep of the family. Their current will, which had been done 24 years ago when the children were minors, left all their assets after they are both deceased equally to their three children. They wanted to know if they were required to leave their property equally to their children and whether they had to leave anything at all to Bill.

After listening to their concerns, I explained to them that under New York law they are not required to leave their property equally to their three children. In fact, they said my question is this: How can we make sure our wishes are followed if we decide to cut him out of our wills completely?

Cutting an heir out of your will is a difficult decision and is generally a recipe for trouble. Unfortunately, some cases warrant such actions. In circumstances such as yours, it is essential to prepare for the worst and protect your intent.

Heirs who feel slighted are likely to challenge the will in probate, usually on one of two grounds: (1) the decedent was not legally

competent to draft a will, or (2) even challenge a will on both grounds.

To protect your estate, you should employ a combination of strategies.

Here are a few ideas:

- **First, keep heirs out of the estate planning process.** Involving favored heirs just helps the case undue
- **Add a "no contest" clause.** A "no contest" clause states that any heirs who challenge the will will lose their share. Of course, this would only work if you leave the slighted party a moderate sum. They will be far less likely to challenge the will if they have something to lose.
- **Draft multiple versions of the will.** Once your will is drafted, following the first with more drafts containing minor changes. If the slighted heir is somehow able to successfully challenge the final will, preceding will can be submitted, and challenging multiple wills may be seen as too big a hassle.
- **Use a revocable trust.** This can help to protect the assets from the claims of the slighted heir. Upon the decedent's death, the trust assets could go straight to the trust beneficiary, bypassing probate.

These are just a few examples. Consult an estate planning attorney for advice specific to your situation.