

Disproportionate Inheritance and Objections to Probate



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Did your father give you a nominal bequest but gave his favorite daughter the bulk of the estate? Were you bequeathed the family dog and \$10,000, but your mother's boyfriend of six months was to receive the Lamborghini and most of the estate? Perhaps you want to challenge the validity of the testamentary documents governing such bequests.

In order to object to a last will and testament ("Will") being admitted to probate, an objecting party ("objectant") must have the right to do so by being an interested party whose interest would be adversely affected by the admission of the Will to probate, whether by a change from an earlier Will or by receiving less than the laws of intestacy (if there was no Will) would have otherwise earmarked (SCPA § 1410). Probate is the legal proceedings which result in the Court giving legal effect to the Will. Oftentimes, when there is a disproportionate distribution of assets among interested parties (e.g., giving a smaller or a nominal bequest to one child compared to other children), the Will contains a clause that automatically disinherits an objectant who is named in the Will as a beneficiary if they unsuccessfully object to the Will's validity (an "in terrorem" or "no-contest" clause). Accordingly, if an individual is an interested party who is also named in the Will as a beneficiary, strong consideration should be given to objecting to the probate of the Will and its potential negative consequences, such as disinheritance.

However, the Surrogate Court Procedure Act provides a workaround which allows the objectant to first gather

information and determine if there is any basis for filing objections to the probate of the Will. Specifically, SCPA § 1404 allows the objectant to conduct limited discovery before entering any formal objection to the probate of the Will, which would not forego their bequest under a no-contest clause (see EPTL § 3-3.5[b][3][D]). This section permits the objectant to examine or depose the following individuals: the attesting witness (the individual(s) who witnessed the decedent sign the Will), the attorney draftsperson, the proponent of the Will (usually the nominated executor), and/or the nominated executor(s) (if different than the proponent), as well as demand certain documents and information, such as medical records, during a relevant period of time (three years before the execution of the purported Will, and two years thereafter). The purpose of these examinations and discovery are to allow the objectant to make inquiries of those individuals who are most likely to have knowledge of (1) due execution of the Will, (2) decedent's testamentary capacity, and (3) whether any party was exercising undue influence upon the decedent when the Will was prepared and/or executed. All of the above could provide a valid basis for objection to the probate of the Will.

Conducting these examinations and participating in such information-gathering procedures can prevent costly and unnecessary litigation in estate proceedings. As such, a potential objectant should confer with counsel prior to formally objecting to avoid unintentionally foregoing their bequest under a Will containing a no-contest clause.

If you or someone you know has questions concerning filing objections to the probate of a Will, please reach out to one of our [Trust and Estates Practice Team](#) members for more information.

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