

New Law Adds Potential Hurdle to Validating Wills

By Graig F. Zappia

The process of validating a last will and testament could become a little more complicated by legislation Gov. Andrew Cuomo signed into law on Aug. 3. The new law expands the list of people who can testify as to a will's

validity to include individuals with information of "substantial importance or relevance" that could support challenges to the legal document when the will contains a "no contest clause."

The law, which took effect immediately, creates what could become an extra hurdle that beneficiaries and proponents must clear before receiving or distributing assets in accordance with the provisions of the will

. At the same time, it could assist opponents of a will who were left out or are dissatisfied with its provisions. Prior to the enactment of this law, New York State statute allowed only the preparer of the will, the executors, and the proponents to testify to the document's validity after a testator's death. Now, other potential opponents of a will could testify as to the validity if the court deems their testimony important to the matter at hand.

This new law makes it all the more important for New Yorkers to consult with an estate planning

attorney when preparing a will as the Legislature has cracked open a new avenue through which challenges to their last wishes can be made. While the door has been opened a little bit further as to whom can be heard from, the law, in the least, restricts the right to testify only where "special circumstances" have been identified.

Those with wills might want to ensure that their wishes are safeguarded in lieu of this new law. You could, for example, include in your will

a "no contest" clause stating that people who object to its provisions forfeit their rights to certain distributed assets. You might also want to ensure that your will is one that is "self-proving" – where you (as the testator) have two witnesses sign a notarized affidavit that is attached to the will that states that the testator is who he says he or she is, that it is his or her will

that was signed, and acknowledges the testator is of sound mind and body to execute the will

. (New York State does not require wills to be notarized).

A self-proving will does not eliminate the opportunity for a party to provide information to a court under this new law, but it could simplify matters for witnesses and reduce the probability of a will being overturned. The self-proving affidavit makes it unnecessary for witnesses to appear in court and testify they saw a testator sign a will.

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