ESTATE LITIGATION LAW ALERT

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NYSBA Proposes Expanded Protections for Trust Beneficiaries Subject to No-Contest Clauses

The New York State Bar Association (NYSBA) has adopted a proposal urging the Legislature to amend Estates, Powers and Trusts Law (EPTL) § 3-3.5 to extend existing safe-harbor protections for will beneficiaries to beneficiaries of intervivos (living) trusts that contain no-contest (in terrorem) clauses. Under current law, beneficiaries of wills may engage in certain limited investigative actions, including discovery, without risking forfeiture of their inheritance. However, the statute does not expressly provide the same protections for trust beneficiaries, despite the widespread use of revocable and irrevocable trusts as will substitutes in modern estate planning. The proposal would relocate EPTL § 3-3.5 to Article 2 and explicitly apply its protections to trusts, allowing beneficiaries to seek construction of a trust, compel fiduciary accountings, and pursue other specified relief without triggering forfeiture provisions.

The proposed legislation is intended to address uncertainty created by existing case law, including the Third Department's decision in *Matter of Neva M. Strom Irrevocable Trust III*, 203 A.D.3d 1255, 164 N.Y.S.3d 293, 2022 N.Y. Slip Op. 01356 (2022), where a trust beneficiary was found to have forfeited her inheritance after engaging in discovery and litigation activities deemed to violate a trust's no-contest clause. NYSBA also recommends amending SCPA § 1404 to permit examination of the attorney-drafter of an intervivos trust when a will pours assets into that trust, providing potential objectants with access to information necessary to evaluate challenges to estate plans. If enacted, these changes would align the treatment of testamentary and trust beneficiaries, reduce reliance on judicial interpretation, and provide greater certainty for beneficiaries and practitioners navigating no-contest provisions in trust-centered estate plans.

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