



Happy Spring!

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“Tip of the Month”

Pretermitted Heirs – Wills and Trusts

Sometimes in estate planning, a testator (the person making a will) or a grantor (the person making a trust) will prefer not to leave anything to a family member such as a child who has lost favor or for any other reason. When the time comes to administer the estate, that child could come forward and claim to have been left out accidentally, that is, pretermitted.

New Hampshire like many other states has a pretermitted heir statute, RSA 564-B:1-112. This law says that a child (or the children of a deceased child) not named in a will would have the same rights as if there was no will. That is, they would be entitled to an intestate share under the Descent and Distribution statute that applies to estates with no will. The child the testator meant to exclude might then be included as a beneficiary of the estate.

When a testator wants to exclude a child in a will, that needs to be specified, for example, by saying the testator is leaving that named child only love and affection and no other property of the estate. The testator’s will would then also include a no-contest provision to make clear that anyone contesting the will would be automatically disqualified from participating in the estate.

The pretermitted heir statute does not apply to trusts. If the grantor of a trust left out a child, that child (and any grandchildren from that child) would not be able to rely on the statute to make a claim against the trust estate. The legislature recently revised the NH pretermitted heir statute specifically to say it does not apply to trusts. This freedom of trusts from the pretermitted heir statute was also found by the NH Supreme Court in a recent case called *In re Teresa E. Craig Living Trusts* (2018).

Still, when making a trust that would exclude a child, the grantor would want to make clear that the grantor was “not unmindful” of that child, so there could be no mistake. And, anticipating the possibility of the child (or children of a deceased child) making a claim, would also include a no-contest provision in the trust.

If you have questions about wills or trusts or estate planning, give our office a call at (603) 668-1971 or contact us by email at mailbox@biz-patlaw.com. Our attorneys are happy to help!

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