

Tackling 'In Terrorem' Clauses in Trusts and Wills

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This article discusses recent developments in using and enforcing "*in terrorem*" clauses in wills and trusts in New York. *In terrorem* clauses protect the intentions of testators and grantors against attacks by beneficiaries. Because enforcing *in terrorem* clauses depends upon the governing jurisdiction, testators and grantors need to be mindful that many states "will not enforce such clauses if the beneficiary had 'probable cause' or acted in good faith in initiating proceedings," chair and partner of Private Wealth Josh Rubenstein and Private Wealth partner Bonnie Lynn Chmil write. New York enforces *in terrorem* clauses regardless of probable cause, but with the exception of certain statutorily-mandated conditions outlined under the New York Estates Powers and Trusts Law (EPTL).

This article also describes several court decisions that outline under what circumstances *in terrorem* clauses are and are not enforced, including complexity of language, attacking a fiduciary's appointment or certain challenges to a fiduciary's conduct. The article concludes that such decisions should lead planners to recognize that *in terrorem* clauses must be drafted broadly to be of maximum utility.

Read, "[Tackling 'In Terrorem' Clauses in Trusts and Wills](#)," in its entirety.

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