

# Probate & Fiduciary Litigation Newsletter - August 2019

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The *Probate & Fiduciary Litigation Newsletter* compiles recent Trust & Estate cases. Our lawyers are at the forefront of this area of the law, shaping how it is handled in the Probate and Family Court. Goulston & Storrs is the go-to firm in the Northeast for litigation involving Probate and Fiduciary matters.

## **Daughters Did Not Forfeit Their Legacies Under “In Terrorem” Clause by Challenging Their Mother’s Acts as a Fiduciary**

Do beneficiaries of a will trigger an *in terrorem* clause by challenging post-probate acts of an executor as a breach of fiduciary duty? In *Matter of Sochurek*, 2019 WL 3436626 (2<sup>nd</sup> Dep’t July 31, 2019), New York’s Appellate Division answered that question in the negative, and reversed the lower court which held that the *in terrorem* clause had been triggered.

The decedent, Robert, owned a valuable 50% interest in a self-storage company. His will named his wife Anna Marie as executor and bequeathed to her a life estate in his interest in the company, along with powers to “dispose of such business.” The will further provided that upon Anna Marie’s death, the life estate would terminate and decedent’s interest in the business would pass to their two daughters in equal shares. After the will was probated, Anna Marie entered into a contract to sell the assets of the business for \$7.5 million, to be split between Anna Marie and the owner of the other 50% interest in the business.

The daughters were aggrieved by this and, after entering into a Standstill Agreement with Anna Marie pending a proposed determination of the value of the daughters’ interests as remainder beneficiaries of the life estate, the daughters sued Anna Marie for breach of fiduciary duty to them as executor and holder of the life estate. The lower court held that the daughters’ action in suing Anna Marie triggered the *in terrorem* clause in the will, under which beneficiaries forfeited any interest under the will if they “institute[d] ... any proceedings to set aside, interfere with, or make null any provision of this Will...”

The Appellate Division disagreed, noting that “[t]he daughters have not lodged any contest to the validity of the will, or otherwise interfered with [it].” Rather, in the court’s view, the daughters had challenged their mother’s conduct in selling the business without making provision for the daughters in view of their status as remainder beneficiaries of the life estate. The court noted that “while *in terrorem* clauses are enforceable, they are ‘not favored and [must be] strictly construed,’” citing several New York cases to that effect.

**THE TAKEAWAY:** *This case illustrates that principle, and that New York courts construing an in terrorem clause will distinguish between contesting the will and challenging post-probate conduct by a fiduciary.*

## **Health Care, Financial, and Educational Records Protection for Your College Student**

Many of you and your clients may be preparing to send children off to college or back to college. If your child is age 18 or older, you can take some simple steps to improve your access to your child's medical information and financial accounts in the event of an emergency, as well as access to your child's educational records.

[Read the Full Article >>>](#)

*If you have a probate and fiduciary litigation question or other business concern, we invite you to reach out directly to any member of our [Probate and Fiduciary Litigation](#) group.*

**Disclaimer:** This advisory should not be construed as legal advice or legal opinion on any specific facts of circumstances. The content are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your situation and any specific legal questions you may have.