

CALIFORNIA LAW REVISION COMMISSION

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NEWS RELEASE
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For Immediate Release

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Donative Transfer Restrictions

Request for Public Comment

The California Law Revision Commission seeks public comment on a tentative recommendation to reform Probate Code Sections 21350 to 21356, which establish a presumption of menace, duress, fraud, or undue influence when a gift is made to a “disqualified person.”

The proposed law would make a number of technical improvements to the statute, and would make the following substantive changes:

- (1) Limit the statutory presumption to cover only fraud and undue influence (eliminating any presumption of menace or duress).
- (2) Limit the definition of “care custodian” to a person who provides health or social services for remuneration, as a profession or occupation.
- (3) Limit the definition of “dependent adult” to a person who would be eligible for the appointment of a conservator.
- (4) Harmonize the statutory presumption with the similar presumption that arises under Probate Code Section 6112.
- (5) Eliminate special evidentiary restrictions on rebutting the statutory presumption.
- (6) Allow a drafting attorney to conduct an “independent attorney” review of a gift to a care custodian, provided that the attorney has no interest in the beneficiary.
- (7) Eliminate the special statute of limitations for actions under the statute.

The tentative recommendation is available from the California Law Revision Commission, 4000 Middlefield Road, Room D-1, Palo Alto, CA 94303-4739. The tentative recommendation is also available at the Commission’s website (www.clrc.ca.gov) in the pull-down “Reports” menu.

The Commission often substantially revises its recommendations as a result of public comment. To receive timely consideration, comments should be submitted by **August 8, 2008**. The Commission will still accept comments after that date and consider them to the extent possible. However, the Commission expects to approve a final recommendation on December 11, 2008. Comments must be received before then to have any impact on the Commission’s recommendation.
