

October 24, 2008

*REPORT OF THE CALIFORNIA LAW REVISION COMMISSION  
ON CHAPTER 174 OF THE STATUTES OF 2008*

Chapter 174 of the Statutes of 2008 was introduced as Senate Bill 1264, authored by Senator Tom Harman. The measure implements the California Law Revision Commission recommendation on *Revision of No Contest Clause Statute*, 37 Cal. L. Revision Comm'n Reports 359 (2007). The revised Comments set out below correct typographical errors. They supersede the comparable Comments in the recommendation.

**§ 21310. Definitions**

**Comment.** Section 21310 is new. Subdivision (a) continues part of the substance of former Section 21300(b).

Subdivision (b)(1)-(5) continues the substance of former Section 21300(b), except that mistake and misrepresentation are no longer included as separate grounds for a direct contest.

Subdivision (b)(6) is consistent with former Sections 21306(a)(3) and 21307(c).

Subdivision (c) continues the substance of former Section 21300(d).

Subdivision (d) restates the substance of former Section 21305(f).

Subdivision (e) is new. Subdivision (e)(1) provides that a protected instrument includes an instrument that contains a no contest clause. That may include an instrument that expressly incorporates or republishes a no contest clause in another instrument. Subdivision (e)(2) is similar to former Section 21305(a)(3).

**§ 21311. Enforcement of no contest clause**

**Comment.** Section 21311 is new.

Subdivision (a)(1) generalizes the probable cause exception provided in former Sections 21306 and 21307, so that it applies to all direct contests.

For a direct contest based on Section 6112 or 21350, the probable cause exception requires only that the contestant show probable cause that a beneficiary is a witness described in Section 6112(c) or a "disqualified person" under Section 21350.5.

Subdivision (a)(2) restates the substance of former Section 21305(a)(2). It provides for enforcement of a no contest clause in response to a pleading that contests a transfer of property on the ground that the property was not subject to the transferor's dispositional control at the time of the transfer. Probable cause is not a defense to the enforcement of a no contest clause under this provision.

Subdivision (a)(3) continues former Section 21305(a)(1) without substantive change. Probable cause is not a defense to the enforcement of a no contest clause under this provision.

Subdivision (b) restates the reasonable cause exception provided in former Sections 21306, with two exceptions:

(1) The former standard referred only to the contestant's factual contentions. By contrast, subdivision (b) refers to the granting of relief, which requires not only the proof of factual contentions but also a legally sufficient ground for the requested relief.

(2) The former standard required only that success be "likely." One court interpreted that standard as requiring only that a contest be "legally tenable." In re Estate of Gonzalez, 102 Cal. App. 4th 1296, 1304, 126 Cal. Rptr. 2d 332 (2002). Subdivision (a) imposes a higher standard. There must be a "reasonable likelihood" that the requested relief will be granted. The term "reasonable likelihood" has been interpreted to mean more than merely possible, but less than "more probable than not." See

Alvarez v. Superior Ct., 154 Cal. App. 4th 642, 653 n.4, 64 Cal. Rptr. 3d 854 (2007) (construing Penal Code § 938.1); People v. Proctor, 4 Cal. 4th 499, 523, 15 Cal. Rptr. 2d 340 (1992) (construing Penal Code § 1033). See Section 21310(b) (“direct contest” defined).

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