

CALIFORNIA LAW REVISION COMMISSION

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NEWS RELEASE
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For Immediate Release

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Revision of No Contest Clause Statute

Request for Public Comment

The California Law Revision Commission seeks public comment on a proposal to revise the statute governing enforcement of a no contest clause in a will, trust, or other estate planning instrument.

The Commission finds that there are good policy reasons to enforce a no contest clause. However, the existing statute has become overly complex and is contributing to uncertainty as to whether a particular no contest clause would apply to a contemplated action. That uncertainty has led to widespread use of the declaratory relief procedure, adding a new layer of litigation to contest cases. A no contest clause can also operate to deter legitimate inquiry into cases of elder financial abuse and fraud.

The Commission tentatively recommends that enforcement of a no contest clause be preserved, but that the statute be significantly simplified. Complex provisions exempting most "indirect contests" from the enforcement of a no contest clause would be replaced with a rule limiting the enforcement of a no contest clause to a specified list of traditional "direct contests." That simplification would significantly reduce uncertainty about the operation of a no contest clause. The declaratory relief provisions could then be deleted as unnecessary.

In addition, an existing exception to enforcement for certain types of contests that are brought with probable cause would be generalized to apply to all direct contests. That would provide a greater opportunity for heirs to bring a contest based on suspected elder abuse, without the fear of forfeiting their own inheritances.

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 **July 15, 2007**.
