

Probate Code

21310

As used in this part:

- (a) "Contest" means a pleading filed with the court by a beneficiary that would result in a penalty under a no contest clause, if the no contest clause is enforced.
- (b) "Direct contest" means a contest that alleges the invalidity of a protected instrument or one or more of its terms, based on one or more of the following grounds:
 - (1) Forgery.
 - (2) Lack of due execution.
 - (3) Lack of capacity.
 - (4) Menace, duress, fraud, or undue influence.
 - (5) Revocation of a will pursuant to Section 6120, revocation of a trust pursuant to Section 15401, or revocation of an instrument other than a will or trust pursuant to the procedure for revocation that is provided by statute or by the instrument.
 - (6) Disqualification of a beneficiary under Section 6112, 21350, or 21380.
- (c) "No contest clause" means a provision in an otherwise valid instrument that, if enforced, would penalize a beneficiary for filing a pleading in any court.
- (d) "Pleading" means a petition, complaint, cross-complaint, objection, answer, response, or claim.
- (e) "Protected instrument" means all of the following instruments:
 - (1) The instrument that contains the no contest clause.
 - (2) An instrument that is in existence on the date that the instrument containing the no contest clause is executed and is expressly identified in the no contest clause, either individually or as part of an identifiable class of instruments, as being governed by the no contest clause.

(Amended by Stats. 2010, Ch. 620, Sec. 5. Effective January 1, 2011.)

21311.

- (a) A no contest clause shall only be enforced against the following types of contests:
 - (1) A direct contest that is brought without probable cause.
 - (2) A pleading to challenge a transfer of property on the grounds that it was not the transferor's property at the time of the transfer. A no contest clause shall only be enforced under this paragraph if the no contest clause expressly provides for that application.
 - (3) The filing of a creditor's claim or prosecution of an action based on it. A no contest clause shall only be enforced under this paragraph if the no contest clause expressly provides for that application.
- (b) For the purposes of this section, probable cause exists if, at the time of filing a contest, the facts known to the contestant would cause a reasonable person to believe that there is a reasonable likelihood that the requested relief will be granted after an opportunity for further investigation or discovery.

(Added by Stats. 2008, Ch. 174, Sec. 2. Effective January 1, 2009. Operative January 1, 2010, by Sec. 3 of Ch. 174.)

21312.

In determining the intent of the transferor, a no contest clause shall be strictly construed.

(Added by Stats. 2008, Ch. 174, Sec. 2. Effective January 1, 2009. Operative January 1, 2010, by Sec. 3 of Ch. 174.)

21313.

This part is not intended as a complete codification of the law governing enforcement of a no contest clause. The common law governs enforcement of a no contest clause to the extent this part does not apply.

(Added by Stats. 2008, Ch. 174, Sec. 2. Effective January 1, 2009. Operative January 1, 2010, by Sec. 3 of Ch. 174.)

21314.

This part applies notwithstanding a contrary provision in the instrument.

(Added by Stats. 2008, Ch. 174, Sec. 2. Effective January 1, 2009. Operative January 1, 2010, by Sec. 3 of Ch. 174.)

21315.

(a) This part applies to any instrument, whenever executed, that became irrevocable on or after January 1, 2001.

(b) This part does not apply to an instrument that became irrevocable before January 1, 2001.

(Added by Stats. 2008, Ch. 174, Sec. 2. Effective January 1, 2009. Operative January 1, 2010, by Sec. 3 of Ch. 174.)