

UNDUE INFLUENCE AND WILL CONTESTS

You may know a friend or relative who believes a loved one was influenced or coerced to make a gift or to do something that their loved one normally would not do. During my career, I have had numerous clients come to my office with similar beliefs. In essence, the legal principle behind such assertions is that the individual was “unduly influenced.”

The legal concept of undue influence describes the relationship between two persons who do not deal with each other on equal terms, and in which the dominant party, through persuasion, flattery, threats, or other wrongful behavior, exploits the trust and confidences placed in him by the weaker party for financial gain.

There are three elements which raise a presumption of undue influence: 1) the weakened intellect of the victim; 2) a confidential relationship between two parties, which establishes a trust and reliance on one side and a corresponding opportunity of the other to abuse that trust for personal gain; and 3) the controlling party has exploited the weaker party’s trust and confidence for substantial financial gain. While these elements provide a basic framework on which an undue influence case can be developed, in practice, they can seem very difficult to quantify when proving the merits of a particular case. As noted by the Pennsylvania Supreme Court in the case of Estate of Clark, undue influence is generally gradual and progressive. The “fruits” of the undue influence may not appear until long after the weakened intellect has been played upon.

While undue influence and the lack of capacity tend to overlap, it is important to point out that undue influence is not the same as lack of capacity. With respect to an individual who lacks capacity, this concept pertains to the minimum cognitive ability an individual possesses and which is necessary to enter into a legal transaction, such as executing a Last Will and Testament or making a gift. Further, when an individual’s capacity is assessed, the individual is the focus, and not his/her relationships with others. On the other hand, cases involving undue influence involve an exploitative relationship between two parties and it is this relationship which is studied.

Pennsylvania courts have been adjudicating claims of undue influence in both contractual and probate matters since the early 19th century. As a result, there is a large volume of case law on the subject. Unfortunately, claims of undue influence have been rising and will continue to rise due to the current economic conditions, the greater wealth of our senior population, and the large senior population.

Cases involving undue influence face unique challenges on both sides of the contest. In these types of cases, both sides may have problems proving the facts of their case, which makes the outcome of a trial hard to predict. In addition, when litigating these types of cases, family matters, which are usually private, become a matter of public attention.

However, mediation is an alternative to taking these cases to court. Mediation, unlike civil trials, is private and confidential, and they do not need to focus on the unseemly details of the Testator's/Testatrix's life; instead, the current concerns and feelings of the disputing parties can be addressed. In mediation, the parties have the opportunity to engage in a face-to-face exchange where they can tell their sides of the story, unlike a civil trial, where a party may not get the opportunity to state his/her own case. Through mediation, the parties can negotiate the terms of an agreement. Oftentimes, of greater importance is the fact that mediation protects the parties' privacy so the public does not hear allegations of an individual's weakened intellect or the details of family disputes.

In difficult and emotional cases, such as ones involving allegations of undue influence, the parties should consider the benefits of mediation before proceeding directly to court. When exploring issues involving undue influence, you should consult an attorney experienced in this type of litigation.

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