

# Undue Influence

## —the theft of free choice

Each year nearly three million US seniors are the victims of abuse. The problem is even more serious than reported cases suggest since it is speculated that seventy-five to eighty percent of abuse cases go unreported.

As with many forms of abuse, the perpetrator is often a trusted insider.

According to the 2002 report of the US Senate Special Committee on Aging, a large proportion of financial abuse perpetrators are family members, especially adult children and grandchildren. The rate of abuse increases as seniors begin to lose competence and depend more on others.

Undue influence is a form of financial abuse in which the perpetrator gains the confidence of the victim and then coerces the victim to either gift assets during life or leave his or her assets to the perpetrator at death.

No group is more susceptible to undue influence than elders. When asked why he robbed banks, notorious bank robber Willie Sutton purportedly responded “because that’s where the money is.” People exploit the elderly because they have the money; Americans older than fifty control at least seventy percent of the nation’s household net worth.

We are all subject to the influence of

others. Consciously or unconsciously, our thoughts and beliefs are impacted by those around us including teachers, advertisers, media commentators, friends, and family.

In a free society, we evaluate information presented to us and make our own decisions. Choice, however, can only be truly free if the information we

cern the hidden motives of the medium or messenger. We know that a salesman is trying to sell us something, so we carefully scrutinize his message. A clear thinking consumer may ultimately buy the salesman’s product, but only after verifying his claims and doing some comparison shopping.

Undue influence is the theft of free choice. It is the deliberate usurping of one’s free will by another. The influencer attempts to replace the target’s thoughts in furtherance of influencer’s own agenda.

Effective undue influence requires the influencer to gain the trust of the target and to isolate the target from others. The ideal target has diminished capacity and is physically or psychologically dependent on the perpetrator. Once isolated and dependent, the vulnerable target is putty in the perpetrator’s hands.

A classic undue influence relationship resembles that of hostage-captor. Victims of undue influence begin to identify with their abusers, much like the Swedish bank hostages in 1973 that fought police

sent to rescue them in what has come to be known as the Stockholm syndrome, and famed newspaper heiress Patti Hearst, who in 1974 joined the militant cause of her captors.

From a timing perspective, undue influence occurs when motivation meets opportunity. A child may wish to change their family dynamic or their parent’s inheritance scheme, but is unable to do so while the parent is competent.

That can all change once the parent begins to lose capacity and becomes dependent on the child. By isolating the parent and fostering dependence, the perpetrator can begin to exert their influence to achieve their goal.

The law protects vulnerable individuals from the predatory acts of people in a position of trust. The trusted individual is said to have a “fiduciary” relationship toward the protected individual and must act in the protected individual’s best interest. The relationship may exist as a matter of law between client-attor-

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receive has not been deliberately manipulated and we are of sufficiently sound mind to sort out fact from fiction.

Under normal conditions we use common sense and healthy skepticism to ferret out bad information and to dis-



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ney, guardian-ward, or under a power of attorney, or it may be inferred from all facts and circumstances.

A legal action for undue influence is difficult to prosecute for the reason that it depends entirely on circumstantial evidence. The victim may have already passed away, or if alive, has been brainwashed into believing that their caretaker is the only one who truly cares for them.

Nonetheless, undue influence is by far the most commonly asserted ground for invalidating a Will, a trust document or a deed. An action for undue influence is especially valuable where there are insufficient medical records to challenge the testator’s testamentary capacity.

Where undue influence can be proven, which is no simple task, the unfairly procured gift or bequest is more properly treated for what it is: theft.

The key is to be proactive to prevent elder abuse before it occurs. Be regularly involved with elders and not allow them to be isolated by a family member or caretaker. Be alarmed if you can never see your loved one outside the presence of the caretaker or if he or she is never well enough for visitors or able to come to the phone.

It is also important to regularly test the cognitive capability of elders to detect decline early. Other signs of trouble include a sudden switch of long time advisors such as the elder’s doctor, lawyer, accountant, or financial advisor. Immediate action in the form of a court-ordered guardianship or conservatorship may be necessary where the abused is still living.

**Contact attorney Mark Accettura at (248) 848-9409 or visit his Web site at [www.elderlawmi.com](http://www.elderlawmi.com).**

Sudoku Solution

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4	1	5	8	3	9	2	7	6
6	9	2	4	5	7	1	8	3
8	7	3	1	2	6	4	5	9
5	6	7	2	8	3	9	1	4
2	3	9	7	4	1	8	6	5
1	4	8	9	6	5	3	2	7
9	2	4	6	7	8	5	3	1
7	5	1	3	9	2	6	4	8
3	8	6	5	1	4	7	9	2

Difficulty Level ★★

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