

UNDUE INFLUENCE

REALITIES AND INTERVENTIONS

Defining Undue Influence

- Difficult to define
- Occurs in many situations
- Happens behind closed doors
- No witnesses

Defining Undue Influence (cont.)

- All adults have the right to make financial decisions unless a conservator has been appointed.
- Undue influence is frequently wrongly linked with capacity issues.
- Has emerged as an issue with community practitioners as a result of mandatory reporting of elder abuse

California Responses to Lack of Undue Influence Definition

San Francisco Probate Department Research Study
(2010)*

- Reviewed Probate laws in other states for definition
- Focus groups: Public Guardian staff, APS staff, private attorneys
- Reviewed 25 newly established conservatorships

*(www.courts.ca.gov/documents/UndueInfluence.pdf)

California Responses to Lack of Definition of Undue Influence (cont.)

- Reviewed California law on undue influence
- Reviewed social service and psychological literature on undue influence (chart handout)

Legal Approaches in California prior to January 1, 2014

- Probate Code
- Civil Code 1575 (1872)
- Case law
 - Estate of Olson (1912)
 - Odorizzi v. Bloomfield School District (1966)

New California Law

January 1, 2014

- Probate Code 86 and Welfare and Institutions Code 15610.70
- Undue Influence means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In determining whether result was produced by undue influence, four elements must be considered:

Four Elements of Undue Influence in California Law as of January 1, 2014

- Vulnerability of the victim
- The influencer's apparent authority
- The actions or tactics used by the influencer
- The equity of the result

Who is susceptible?

- You
- Me
- Everyone

Some Warning Signs

- Actions inconsistent with past longstanding values
- Dismissal of previous professionals
- Care provider or “special friend” does all the talking
- Sudden changes in financial affairs

Some Warning Signs (cont.)

- Person is being isolated from family/friends
- Increasingly helpless/frightened/despondent
- Relationship characterized by power imbalance
- Checks written for cash/in round numbers or large amounts/ gifts given to care provider

Case Example

Mrs. K.

- 88 year old woman, recently widowed.
- Born in Japan.
- Came from royal samurai heritage.
- Immediately after her husband's death, Mrs. K became involved in sweepstakes and telephone scams.

Mrs. K. (cont.)

- She spent \$700,000 of her liquid assets.
- Also gave away \$800,000 from a Reverse Annuity Mortgage.
- A neighbor called APS
- A petition for the appointment of a conservatorship of estate was filed and the court appointed a conservator.

Review of 4 Elements of Undue Influence Applied to Mrs. K.

- Victim Characteristics contributing to vulnerability
- Influencer's characteristics and source of power
- Actions, tactics
- Outcomes and bad acts

Victim Characteristics

- Depressed following death of her husband
- Inexperienced regarding finances
- Liked to help others
- Difficulty saying no
- Believed the role of women to be subservient
- Cognitive decline not an issue. Appeared to have capacity for self care but lacked judgment and insight into financial matters

Influencer's Characteristics

- Persuasive
- Persistent
- Have resources to persevere
- Unclear how many people are involved
- Obtain trust of victim
- Learn quickly which buttons to push

“HOOKS”

- Loved dolls
- Loved being famous
- Generous, like to do good for others
- Love music and wrote songs
- Wants to do good for people and the world

TACTICS

- Sent solicitations regarding finding family heritage
- Offered to write a book of family history
- Offered to publish her music
- Invited her to enter a doll contest
- Multiple mailings and phone calls
- Visited her home
- Sent messenger/ western union to pick up money
- Sent check to open new bank account – took back all money and then her money

What can be done?

For those who lack capacity:

- Conservatorship or use existing POA
- Intercept mail – get Post Office box
- Change phone number to unlisted phone

What can be done?

- Keep widowed women's phone listing in husband's name.
- Turn the ringer off phone.
- Set answering machine to pick up on first ring
- Suggest pre-paid credit card or set low limits

What can be done?

- Get call identification
- Set up “Do Not Call” notifications for land line and cell phones
- Send an email to multiple charity requests asking to be taken off mailing and calling lists.
- Plan events that person would enjoy to increase socialization
- Involve APS