

UNDUE INFLUENCE

Probate litigation seeking to set aside a will or gift based on **undue influence** has become more prevalent over the last few years as more baby boomers reach the fragility of old age. Opportunities for children or others to take control of a senior's finances often lead to temptations that are too often acted upon to the detriment of the intended heirs and beneficiaries. Generally, courts have found that undue influence exists when circumstances show a destruction of the free will and judgment of the person over whom influence is exerted and consequently, the weakened testator yields to the will of another merely for the sake of peace or is mentally or morally coerced into doing something contrary to his or her own wishes. The titling of assets trumps the terms of a will. Often times, undue influence occurs not with the preparation of a new will, but rather with whom the accounts are titled, or how the beneficiary designation forms alter the intent of the testator or testatrix. As the population ages, we are also experiencing an increased frequency of cases where it is alleged that the testator lacked sufficient mental capacity to make a will or gift. Generally, the standard for mental capacity is very low and will be met if the testator can comprehend the extent of his assets, who his or her heirs are, that the will or gift is meant to dispose of his or her assets at death, and also understands the actual distribution under the will or gift.