

Litigating an Undue Influence Case

Surrogates Association Fall Meeting

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Carefully Examine the Circumstances Surrounding the Challenged Transaction

- To establish that a challenged transaction is invalid due to undue influence, an objectant must demonstrate that the influence exercised rose to a level of "moral coercion." *In re Will of Walther*, 6 N.Y.2d 49 (1959). This coercion must have "restrained independent action and destroyed free agency, or which, by importunity which could not be resisted, constrained the testator to do that which was against his free will and desire, but which he was unable to refuse or too weak to resist." *Id*.

- Accordingly, the prosecution or defense of an undue influence claim requires a careful analysis of the circumstances surrounding the individual's health and mind, finances, relationships, dependency upon and subjection to the control of the person supposed to have wielded the influences, the opportunity and disposition of the person to wield it, and the acts and declarations of such person. *See, e.g.*, *Matter of Rozof*, 219 A.D.3d 1428 (2d Dep't 2023); *Matter of Baird (Cardelli)*, 247 A.D.3d 1013 (2d Dep't 2026).

Carefully Examine the Circumstances Surrounding the Challenged Transaction

- Undue influence is not limited to will contests. It is also applicable across a broad range of non-testamentary transactions, including inter vivos gifts, trusts, deeds, contracts, and beneficiary designations. *See, e.g.*, *Barker v. Gervera*, 236 A.D.3d 1318, 1323-24 (4th Dep't 2025) (a vendor of a 300-acre farm could pursue a claim for undue influence to reform and rescind a real property contract and deeds).
- The Fourth Department emphasized that there is a "need to protect vulnerable incapacitated individuals and their rightful heirs from overreaching and undue influence," as well as "to protect the integrity of the courts themselves." *Id.* at 1323.

THE "BADGES" OF UNDUE INFLUENCE



The "badges" of undue influence include:

1) the nature and type of relationship that existed between the deceased or incapacitated person, the objectants, and the party accused of exerting undue influence;
2) the opportunities that existed to isolate the deceased or incapacitated person or to defame family members or others that the testator might be inclined to provide for;
3) the circumstances surrounding the drafting and execution of the challenged document;
4) the existence of a fraudulent motive;
5) whether the deceased or incapacitated person was habitually subject to the control or influence of another;

THE "BADGES" OF UNDUE INFLUENCE



6) The state of mind of the deceased or incapacitated person at the time of drafting and execution of the challenged document;
7) the physical and mental condition of the deceased or incapacitated person at the time of the challenged transaction, including any vulnerabilities resulting from age, illness, disability, or other circumstances;
8) words and acts of the deceased or incapacitated person; and
9) whether the challenged disposition is unnatural in light of the individual's prior estate plan, family relationships, or previously expressed intentions.

FACTORS FOR A SUCCESSFUL CLAIM

- Although there is no single set of circumstances that will support a claim of undue influence, certain factors tend to be strongly associated with a successful claim.



ILL HEALTH

- Whether the testator's medical problems are mainly physical or mental in nature, they must be of such type and severity that enabled the testator's mind to be overpowered.
- Dementia, usually in combination with other infirmities, continues to be one of the most common factors in successful undue influence cases.
- Other health issues that cause the individual to be dependent on the undue influencer for care, transportation, obtaining and administering medications, decision-making, and management of personal, financial, and legal affairs.



ISOLATION

- Undue influence often is accomplished through the isolation of a weak and vulnerable individual from some or all of his or her natural heirs.
- Perhaps the most common method of isolation is simply preventing the competing heir from talking to the testator in person or by phone.
  - *See, e.g.*, *In re Panek*, 237 A.D.2d 82, 85 (4th Dep't 1997) (beneficiary child isolated the decedent by preventing disinherited siblings and other family members from visiting or speaking with him).



ISOLATION

- Isolation may be accomplished through the defamation of competing heirs, usually in combination with limiting their access to the vulnerable individual.
- Isolation also may occur through the death of the testator's spouse or other close relative on whom the testator was dependent for material and emotional support, and then the undue influencer takes advantage of the situation to insinuate himself or herself into the testator's life.
    - *See Matter of Williams*, 172 A.D.3d 514 (1st Dep't 2019) (soon after accidental death of testator's 55-year-old son, which left her "unconsolable and distressed, and which further compromised her mental and physical health," beneficiary child moved in with her and starting managing her medical and financial affairs).



ALLEGED INFLUENCER'S CONTROL

- The alleged influencer must exert some level of control over the challenged transaction.
- In many instances, the influencer has a confidential or fiduciary relationship with the deceased or incapacitated person.
  - *See Matter of Neenan*, 35 A.D.3d 475, 476 (2d Dep't 2006) ("An inference of undue influence, requiring the beneficiary to explain the circumstances of the bequest, arises when a beneficiary under a will was in a confidential or fiduciary relationship with the testator and was involved in the drafting of the will . . . Although the inference does not shift the burden of proof on the issue of undue influence, it places the burden on the beneficiary to explain the circumstances of the bequest.")

ALLEGED INFLUENCER'S CONTROL

- In many undue influence cases, the will or trust is drafted by counsel who is loyal to the influencer rather than to the testator.
  - *See, e.g.*, *Matter of Petretti*, 2024 N.Y. Misc. LEXIS 2466 (Sur. Ct. Queens Cnty. 2024) (denying summary judgment seeking dismissal of the undue influence objection where the petitioners were involved in the drafting process by communicating repeatedly with the attorney-draftsman, who was their friend, providing drafting instructions, arranging and participating in the attorney's meeting with the testator, and receiving the original instrument directly from the drafter after its execution).

SIGNIFICANT CHANGE IN ESTATE PLAN

- The purpose of undue influence is to cause the creation of a will or trust favorable to the influencer. Therefore, in cases where undue influence is established, the new will or trust creates an estate plan that is significantly different from the preexisting one.



"UNNATURAL" DISPOSITION

- In virtually every case where undue influence is found, you will see one of two fact patterns: (1) a will or trust that favors one child over his or her sibling(s) that previously had been treated as equals; or (2) a will or trust that favors an unrelated person over family members.

REBUTTING A CLAIM OF UNDUE INFLUENCE

- Even if there are multiple badges of undue influence, it does not necessarily mean that such influence occurred. Indeed, if the evidence is both consistent with undue influence and its absence, the objectant will lose.
  - *In re Will of Walther*, 6 N.Y.2d 49, 54 (1959) ("An inference of undue influence cannot be reasonably drawn from circumstances when they are not inconsistent with a contrary inference.")
- Two means of rebuttal are particularly effective—the use of truly independent drafting counsel, and a reasonable explanation for the changes giving rise to the claim of undue influence.
  - The quality of the testator's relationship with his or her children and siblings may logically explain the choice of beneficiary.

CIRCUMSTANTIAL EVIDENCE



- Undue influence normally is proven through circumstantial evidence. There are typically several key sources of that evidence – fact witnesses, medical experts, and certain types of documents.

Conclusion and Q&A

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