



Russel J. Geist practices primarily in the areas of trust and probate litigation and administration, asset protection and business planning, and corporate transactions. Russel and other attorneys at the Firm work closely with clients' trust and estate planning professionals to maximize clients' opportunities for successful resolution of disputes. Russel may be reached at 702.385.2500 or rgeist@hutchlegal.com.

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UNDUE INFLUENCE

A will can be declared invalid if a court determines that it was procured by undue influence. This usually involves someone who occupies a position of trust manipulating a vulnerable person to leave all or some of his or her property to the manipulator. Oftentimes, these types of situations tear families and friends apart. A recent Nevada Supreme Court case involved a father, mother, two daughters and the mother's sister. During a period of illness of the mother, which ultimately led to her death, the mother's sister was the only one who participated in her care giving. She had even expressed frustration to the father about the lack of support and help from the daughters. Ultimately, the father changed his will to expressly disinherit his daughters and include the mother's sister. After his death, the daughters cried foul, claiming undue influence had been exerted on the father and tried to have the updated will declared void. The court concluded that there was no undue influence and upheld the will.

This story is not unique and this kind of dispute is common. Parties disputing a will usually are displeased with an unexpected change in the disposition of a family member's assets. There have been publicized stories of caregivers and housekeepers receiving thousands of dollars and

children receiving nothing, or what appears to be inexplicable changes disowning some family members, but retaining others. Such will contests can center on a caregiver exercising undue influence over a person relying on that caregiver, a person abusing a position of trust, or an individual coercing another to name them as a beneficiary.

Undue Influence Basics

Undue influence in the drafting of a will occurs when the person drafting or changing the will is dependent on another. Generally speaking, under Nevada law, to establish undue influence, "it must appear, either directly or by justifiable inference from the facts proved, that the influence... destroyed the free agency of the testator." If a beneficiary of the will merely is capable of or is motivated to exercise influence, that alone is insufficient to meet the threshold necessary to establish undue influence.

Under the Nevada Revised Statutes and related court cases, the burden of proof necessary for a claim of undue influence depends on whether there is a rebuttable presumption of undue influence. In 2011, the Nevada Legislature identified certain distributions in a will as presumptively caused by undue influence and thus void if the transferee/beneficiary is:

over →

...continued.

- (a) The person who drafted the will or trust;
- (b) A caregiver of the transferor;
- (c) A person who arranged or paid for the drafting of the will or trust; or
- (d) A person who is related to, affiliated with or subordinate to any person described in paragraph (a), (b), or (c).

The Nevada Supreme Court has stated, "A presumption of undue influence arises when a fiduciary relationship exists and the fiduciary benefits from the disputed transaction. In this situation, the fiduciary, or beneficiary, may rebut these accusations by clear and convincing evidence, which is to say more than mere preponderance but not to the extent of beyond reasonable doubt." Proof by clear and convincing evidence persuades the jury the truth of the argument is highly likely. In a situation not covered by the previously outlined scenarios, the beneficiary is required to rebut the allegation only by a preponderance of the evidence, meaning the evidence presented to the jury has such convincing force to support a belief that it is more probably true than not true.

The party contesting the will has the burden of proving this deception and a person found responsible for undue influence may be liable for the costs and attorney fees of the legal proceedings. ■

Situations involving family members can be trying and emotionally charged. The evidence required either proving or disproving a claim of undue influence turns on the quality of evidence and experienced legal counsel. The attorneys at Hutchison and Steffen are experienced in, and effective at, evaluating and pursuing vigorously a client's legal rights under a will and are effective in litigating and resolving issues regarding situations of undue influence. Cases run the full spectrum from million-dollar will contests to smaller family disputes.



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