

Undue Influence



What is it?



- "Undue Influence" is when individuals who are stronger or more powerful get weaker people to do things they would not have done otherwise, using various techniques or manipulations over time.
- They may isolate the weaker person, promote dependency, or induce fear and distrust of others. The abuser tries to convince the vulnerable person that friends, family members, or caregivers have malevolent motives and cannot be trusted.

We all use help from time to time with making some decisions.



However, when a person lacks the ability to understand, even with decision supports, the impact of the choices they are making. It transitions from being a personal choice to one which the person doesn't understand and affects capacity.

Exercise of undue influence is characterized often by excessive insistence, superiority of physical power, mind, or will, or pressure applied due to authority, position, or relationship in relation to the strength of the person submitting to it.

Consent obtained for a contract, relationship, or transaction is voidable if it can be shown that an unfair advantage has been taken of an involved party.

How Does It Happen?

“Dependency and isolation often set the stage for undue influence.

- The breakdown of social networks resulting from population trends, as smaller family size, increased divorce rates, age related disabilities that reduce mobility leads to a greater willingness to accept relationships that may not be ideal.”

FEAR

Fear and Isolation may contribute to dependency.

- Fear of losing one's independence
- Fear of loss of relationship
- Fear of impending changes
 - The need for more care or the expenses it engenders
 - Prospect of moving to a nursing home
 - Fear of serious threat or harm due to dependent statue
 - Fear of death for not following the wishes of the perpetrator.



Undue Influence as a Psychological Process

The Psychological process, is not one time event .

- One person gradually takes over the thoughts, actions, and decision making powers of another person and benefits by doing so.
- Accomplishes this by deceit, isolation, threats, deprivation of sleep or necessities of life, manipulation of medication, withholding information, inducing guilt, creating siege mentality, dependency, fear, fake worlds, relationship poisoning.

Pressure to Perform



Example – family relationship

Gregg v. Kidd [1956] IR 183

- An ill man was staying with his sister
- In effect, she told him to make a will in her children's favour, or get out
- He transferred his only property to the children
- The transfer was later set aside for undue influence

Vulnerable State



- Older people's vulnerabilities—including isolation, loneliness, generally trusting natures, relative wealth, and in some cases declining mental capabilities—make them ideal quarry for con artists. Even those whose cognition is intact can be swayed if they're stressed or depressed, or recently have lost a loved one.

Undue influence

Is when an individual who is stronger or more powerful gets a weaker individual to do something that the weaker person would not have done otherwise.

The stronger person uses various techniques or manipulations over time to gain power and compliance.

They may isolate the weaker person to promote dependency, or induce fear and distrust of others.



Negating Authority

One way an older adult can avoid some situations of vulnerability with health, aging and financial exploitation is to create a Power of Attorney while independent and of sound mind.

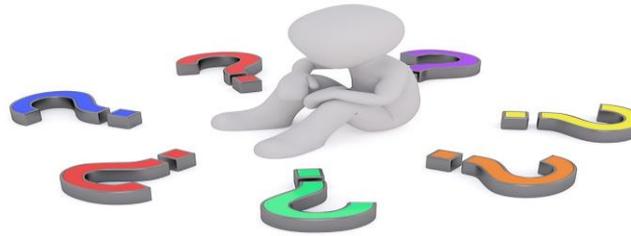
The person with designation to manage finances and legal affairs—should be well-known, trustworthy and accountable to the older adult and involve that person in the decision-making process.

The document must be notarized. If there is a question around whether the older adult fully understands the arrangement, then a Notary can request an assessment. In cases of financial abuse, this does not happen.

A family and elder law attorney can help clarify the roles and responsibilities and make sure there's no undue influence.



Consider



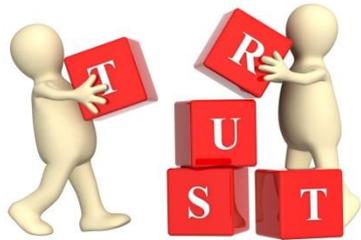
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In determining whether a result was produced by undue influence, all of the following shall be considered:

- The **vulnerability of the victim**. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.
- The **influencer's apparent authority**. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.
- **Evidence of an inequitable result**, without more, is not sufficient to prove undue influence.

The **actions or tactics** used by the influencer.

- *(A) Controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep.*
- *(B) Use of affection, intimidation, or coercion.*
- *(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.*
- *(4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.*



Power of Attorney—



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The document must be notarized. If there is a question around whether the older adult fully understands the arrangement, then a Notary can request an assessment.

To avoid financial abuse a family and elder law attorney can help clarify the roles and responsibilities and make sure there's no undue influence.

How Legal proceedings: deal with results of undue influence

- Transfer of property
- Changes in beneficiaries of a will,
- Change in ownership of bank accounts.
- Consent? Capacity?

Federal laws ◦ Elder Justice Act and Older Americans Act – Do not define undue influence or include the term in their definitions of financial exploitation or abuse.

State laws vary ◦ May mention the term undue influence but not define it ◦ May include undue influence as part of another definition: e.g., APS, Civil, Probate or Criminal
State courts laws commonly include undue influence in wills, trusts, gifts, and contracts.

Legal Assistance: Decision-Making Supports

- Some things can be placed on automatic.
- Work with the person to develop a support network
- Take time to explain issues and options in a way that the person can understand
- Make recommendations
- Ask the person for a choice or preference
- Offer to help, as desired or needed
- Seek Resources
- Using Supported Decision-Making to Avoid Guardianship

Why are seniors not likely to report abuse?

- No Family To Report Abuse To.
- Fear Of Retaliation.
- Shame In Regards To Abuse.
- Fear Of Loss Of Independence
- Lack Of Understanding Of How To Report.



Four Kinds of Situations

- Those who are Caregivers
- Those who will become caregivers
- Those who were caregivers
- Those who will need caregiving themselves



Undue influence occurs when one party uses his/her position to influence the other party to gain some advantage • Pressure is typically exerted through persuasion rather than coercion

No Excuse For Elder Abuse

The Elder Law & Advocacy Center (ELAC) has been operating in Wayne County for over 25 years. It was organized to provide unique educational opportunities and legal services for older adults and their caregivers. Since its founding ELAC has assisted thousands of clients and caregivers each year.

- Through grant funding, ELAC provides civil legal services to individuals 60 years of age and older who reside in Wayne County. Staff also partner with community centers, senior housing programs, long-term care facilities, and others to provide legal education and elder abuse prevention training to older adults, caregivers, and professionals.
- Our longest running program is probably “First Tuesdays,” held on the first Tuesday of each month. Our staff can serve anywhere from 50 to 100 clients or caregivers through this one program.
- If you are an older adult or someone who provides care to an older adult loved one, please contact the Elder Law & Advocacy Center at **(313) 937-8291**.
- ELAC is funded by the Michigan Aging & Adult Services Agency; The Senior Alliance; Detroit Area Agency on Aging; Area Agency on Aging 1B; Canton Township CDBG; and the Michigan Health Endowment Fund.

Who can you consult with?

Questions?



Neighborhood Legal Services offers non-criminal legal advocacy, law-related education and supportive services for individuals and families facing abuse or homelessness, life-changing illnesses, or who are seniors.

- Your case is one that they may be able to help with, but you need to go through their screening process first. To do this, call (313) 964-1975.

WHO IS AT RISK?

Elder abuse can occur anywhere – in the home, in nursing homes, or other institutions. It affects seniors across all socio-economic groups, cultures, and races. Based on available information, women and “older” elders are more likely to be victimized. Dementia is a significant risk factor. Mental health and substance abuse issues – of both abusers and victims – are risk factors. Isolation can also contribute to risk.

WHAT SHOULD I DO IF I SUSPECT ABUSE?

Report your concerns. Most cases of elder abuse go undetected. Don't assume that someone has already reported a suspicious situation. The agency receiving the report will ask what you observed, who was involved, and who they can contact to learn more. You do not need to prove that abuse is occurring; it is up to the professionals to investigate the suspicions.

REPORTING is confidential and you may remain anonymous. Making a report in instances of neglect or abuse is the right thing to do...and its easy don't be afraid. Elders have a right to be safe! To report suspected abuse in the community Adult Protective Services (APS) is here to help.

IN CASES OF IMMEDIATE DANGER, CALL 911

VULNERABLE

A condition in which an adult is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or advanced age

EMOTIONAL/PSYCHOLOGICAL ABUSE

- Unexplained or uncharacteristic changes in behavior, such as withdrawal from normal activities, unexplained changes in alertness, etc.
- Isolate elder (doesn't let anyone into the home or speak to the elder)
- Verbally aggressive or demeaning, controlling, overly concerned about spending money, or uncaring

FINANCIAL ABUSE/EXPLOITATION

- Lack of amenities victim could afford
- Vulnerable elder/adult “voluntarily” giving uncharacteristically excessive financial reimbursement/gifts for needed care and companionship
- Has control of elder's money but is failing to provide for elder's needs
- Vulnerable elder/adult has signed property transfers (Power of Attorney, new will, etc.) but is unable to comprehend the transaction or what it means

NO EXCUSE
FOR Elder Abuse

1-855-444-3911

NLSM-Elder Law & Advocacy Center

NEGLECT / SELF NEGLECT

- Lack of basic hygiene, adequate food, or clean and appropriate clothing
- Lack of medical aids (glasses, walker, teeth, hearing aid, and medications)
- Person with dementia left unsupervised
- Person confined to bed is left without care
- Home cluttered, filthy, in disrepair, or having fire and safety hazards
- Home without adequate facilities (stove, refrigerator, heat, cooling, working plumbing, and electricity)
- Untreated pressure “bed” sores (pressure ulcers)

PHYSICAL/SEXUAL ABUSE

- Inadequately explained fractures, bruises, welts, cuts, sores or burns
- Unexplained sexually transmitted diseases

ABANDONMENT

- Lack of social connectedness
- Desertion by family, community or agency
- Left unattended in a public facility or waiting room

DAAA REGION 1A
THE DETROIT SENIOR SOLUTION
1333 Brewery Park Blvd. Ste. 200
Detroit, MI 48207
313.446.4444



If you or others experience abuse or neglect in a long term care facility (e.g. nursing home, assisted living facility), The Michigan Long-Term Care Ombudsman Program is here to help.

Call 1-866-485-9393 Toll Free

SENSE IT

ELDER ABUSE
→ Hiding in Plain Sight

REPORT IT

1-855- 444-3911

STOP IT



DOES SOMEONE YOU KNOW
- a senior or adult with a disability -
display any warning signs of mistreatment?

ELDER ABUSE

→ Hiding in Plain Sight

Adult Protective Services
1-855-444-3911

For State reporting numbers visit the Michigan Department of Health & Human Services Agency MDHHS website.

The National Center on Elder Abuse (NCEA) directed by the U.S. Administration on Aging, helps communities, agencies and organizations ensure that elders and adults with disabilities can live with dignity, and without abuse, neglect, and exploitation. NCEA is the place to turn for education, research, and promising practices in stopping abuse.

WHAT IS ELDER ABUSE?

In general, elder abuse refers to intentional or neglectful acts by a care giver or "trusted" individual that lead to, or may lead to, harm of a vulnerable elder. In many states, younger adults with disabilities may qualify for the same services and protections. Emotional or psychological abuse; financial abuse and exploitation; neglect; physical abuse; sexual abuse; and abandonment are all considered forms of elder abuse.

In many states, self-neglect is also considered mistreatment.

References

- <https://www.elderjusticecal.org>
- <http://www.napsa-now.org/wp-content/uploads/2019/08/407-Undue-Influence-A-Framework-for-Recognizing-Investigating-Responding.pdf>
- <https://rmolawyers.com/undue-influence-guide/>