

Worried That a Sizeable Estate or Trust Gift Was Procured by Undue Influence?

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Do you have a loved one who recently passed away and you are concerned that their will or trust was procured by undue influence? Although the law on undue influence has not evolved much since the seminal Florida Supreme Court case of *In re Estate of Carpenter* in 1971, the greying of the population in Florida has resulted in an increase in undue influence claims in the courts. In order to prove undue influence in Florida, you must demonstrate that a substantial beneficiary acquired an asset via undue influence. This person must have had a confidential relationship and must have actively procured the gift in one of the following ways: (1) presence of the beneficiary at execution of the document; (2) presence of the beneficiary when the person expressed the desire to make a will or form a trust; (3) the beneficiary recommends the attorney who prepared the will or trust; (4) the beneficiary knows the contents of the will or trust prior to execution; (5) the beneficiary gives direction to the attorney preparing the document; (6) the beneficiary secures witnesses for execution; or (7) the beneficiary maintains the will or trust for safekeeping.

How do you know if the actions taken rise to the level of undue influence? While each situation is factually distinct, courts have recently described undue influence as over

persuasion, duress, or coercion which is so strong that it destroys the free will of the person who is crafting their estate plan. Expiration of the statute of limitations is often a defense to undue influence claims. However, the delayed discovery doctrine applies to undue influence claims and will toll the statute of limitations on these claims until the facts giving rise to the cause of action are discovered or should have been discovered by a reasonable person. Therefore, it is important not to delay in seeking advice about a potential undue influence claim.

If you have questions about undue influence or any other issues related to challenging or contesting a gift in a will or trust, please contact Melody Lynch at 407-418-6447 or melody.lynch@lowndes-law.com.