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## **Undue Influence**

Undue influence can present itself in various forms. When someone holds a position of trust or if a person has the power to enhance or diminish the quality of your daily experience of life, do they have the ability to influence your thinking or reasoning? Can the influence be so subtle that your advisors or trusted friends are not immediately aware of the problem? Can it be so understated that you, yourself, don't realize that you are being influenced? Most experts in the field of undue influence would say yes, absolutely.

Using a position of trust or power to steal is an age-old and, regrettably, common occurrence. Laws have been written to protect the unwary and those who can not protect themselves but still cases of undue influence keep litigation lawyers busy. Current law states that a "presumption of fraud or undue influence" exists if a transfer is made to a person who drafted the transfer document – such as a will, trust or grant deed. If an attorney drafts a will and is also the beneficiary in that document, it is presumed to be fraudulent or at least obtained through the use of influence. A care custodian of a dependent adult is presumed to have exerted undue influence if they are given a gift by the adult or are provided a bequest under their will. Oddly enough, children and spouses are not included among the "presumed frauds" even though most estate lawyers will agree that the majority of undue influence is perpetrated by a child or a spouse.

Convicted financier, Bernie Madoff, used his position of trust within the Jewish community to bilk fellow synagogue members (and many others) out of vast fortunes. It is understandable that we like to work with or invest alongside those who share common beliefs and values. Or at least with those who give the impression of shared beliefs and values.

A spiritual advisor becomes close to an elderly couple, promises to take care of them for their lifetimes in exchange for the deed to their property. He fulfills his promise and provides them with help for their lifetimes. Should this be considered undue influence or fraud? Would it matter if the elderly couple had no one else that would be willing to help to them live out their lives comfortably and at home?



To further color the landscape of undue influence events can adversely affect rational thinking which in turn may result in a bad decision. I have written before that after the death of a loved one it is important to observe a “decision free period” because grief or shock can cause us to make poor choices.

Offering a solution to the problem of influence is far beyond the scope of this column other than to say be cautious and always consider what someone may have to gain by influencing you in a certain direction. Unfortunately the problem of undue influence will be with us as long as there are unscrupulous individuals who seek to gain through the misfortune of others.

*Liza Horvath has over 25 years experience in the estate planning and trust fields and is a Trust Officer with a local bank. The above should not be considered legal or medical advice.*

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