

How Undue Influence Can Disrupt an Estate Plan:

*Was it Free Will
or Foul Play?*



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Introduction

Estate planning is meant to ensure that an individual's wishes are honored after their passing, but what happens when those wishes are influenced by someone else? In some cases, a will, trust, or other estate planning instrument may be the product of undue influence—when excessive persuasion overrides a person's free will, leading to an unfair outcome.

This eBook explores how undue influence is defined under California law, the legal standards for proving it, and the evidentiary factors courts consider. We will discuss key legal presumptions, burden of proof shifts, and the role of mental capacity in estate disputes. Understanding these principles is essential for anyone concerned about the validity of an estate planning instrument, whether you are a beneficiary, trustee, estate planning attorney, or professional navigating will or trust litigation.

While this eBook provides a legal overview, every case is unique. If you suspect undue influence in an estate planning matter, consult a qualified attorney to assess your specific situation.





Undue Influence Defined

A valid will, trust or other dispositive instrument, can be void or unenforceable for many reasons, one of which is undue influence. Recognizing and proving that there was undue influence requires applying the applicable law, the burdens of proof, and any presumptions, to the available and admissible evidence.

California defines undue influence as (from [California Welfare and Institutions Code §15610.70\(a\)](#)):

Excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity.

Welfare and Institutions Code §15610.70 also specifies that in determining undue influence all of the following shall be considered (and each of the following has subparts which are also stated in §15610.70):

- 1.The vulnerability of the victim.
- 2.The influencer's apparent authority.
- 3.The actions or tactics used by the influencer.
- 4.The equity of the result.

Simply put: A person is presumed to have read and understood what they have signed. There is a rebuttable presumption that a person is mentally competent to contract, to make decisions and to be responsible for their actions and decisions. A person is also presumed to have intended the consequences of their voluntary acts.

Proving undue influence depends on the strength of the facts and evidence submitted to the court. Thus, obtaining and evaluating admissible evidence for suspected undue influence is crucial.

No two cases or situations of possible undue influence are the same. Each case or situation is unique as to its relevant law and facts, and the admissible evidence.

How Courts Evaluate Undue Influence in Estate & Trust Disputes

Proving undue influence requires sufficient proof and evidence of:

- Active participation (procurement) by the alleged wrongdoer.
- Causation (that the active participation caused the alleged victim individual to change her or his estate planning instrument—viewed differently, that the alleged victim lacked the ability to resist the undue influence).
- Undue benefit as a result (i.e., unfair or unwarranted or unjust benefit or inheritance as a result of the undue influence and resulting change).

Burden of Proof v. Fiduciary, Confidential, Special or Trusting Relationship. The general rule is that the burden of proof must be met by the person making the claim or allegation of undue influence. However, when it is proven that a person who allegedly committed undue influence has a fiduciary, confidential, special or trusting relationship with the alleged unduly influenced person, the burden of proof can be shifted to the alleged influencer—meaning the influencer must prove they did not exert undue influence.

Fraud Presumption Pursuant to [California Probate Code §21380](#). If certain conditions apply, a “donative transfer” or gift made through an estate plan is

presumed to have resulted from fraud or undue influence. This includes gifts to the person who wrote the document, someone who transcribed it while in a position of trust, a caregiver, and several other specific individuals. The presumption may be rebutted by proving, by clear and convincing evidence, that the donative transfer was not the product of fraud or undue influence. California Probate Code §21380 is also subject to the exceptions that are provided at [California Probate Code §21382](#) and to a certificate of independent review that is described at [California Probate Code §21384](#).

Although separate from undue influence, legal mental capacity can help determine estate planning instrument validity as well as other executed instruments and agreements. [California Probate Code §§810 through 813](#) provide criteria for determining whether a person is of unsound mind to execute an estate planning instrument. California Probate Code §§810 through 813 are lengthy; however, for example, Section 811 lists the following broad categories of criteria, each of which has multiple subparts:

- 1.Alertness and attention.
- 2.Information processing.
- 3.Thought processes.
- 4.Ability to modulate mood and affect.

Further, [California Probate Code §812](#) in part states that, “a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:

- The rights, duties, and responsibilities created by, or affected by the decision.

- The probable consequences for the decision-maker and, where appropriate, the persons affected by the decision.
- The significant risks, benefits, and reasonable alternatives involved in the decision.”

Possible Other Evidence Factors in Estate & Trust Litigation

Hearsay statements and possible exceptions

Broadly defined, a hearsay statement is an out of court statement that is sought to be admitted in evidence in court at trial for the truth of what is in the statement. Generally, hearsay statements are not admissible into evidence, but there are numerous exceptions that may apply. For example, in the context of an estate planning instrument, [California Evidence Code §§1260](#) and [1261](#) may apply to permit the admissibility of hearsay statements that prove a decedent’s or otherwise unavailable witness’s estate planning instrument or estate and trust claims.

Attorney client communications and possible exceptions

See [California Evidence Code §§959, 960](#) and [961](#) (and perhaps [§§958](#) and [962](#)) for possible exceptions to attorney client communications that might apply in the context of estate planning instruments.

Additionally, certain specific circumstances when a new successor trustee replaces a prior trustee the attorney client privilege that applied between the prior trustee and her or his attorney might not apply to the new successor trustee—that is, in those circumstances the new successor trustee might have access to the communications between the prior trustee and the prior trustee’s attorney.





Discovery (written, subpoena, and deposition)

Obtaining relevant and admissible evidence is required depending on the circumstances of each case including through interrogatories, document requests and document deposition subpoenas, subpoenas of percipient expert provider witnesses, depositions of the parties and lay percipient witnesses, request for admissions, possible medical and mental examinations, and via other methods.

Use of outside third-party experts

The possible disclosure and deposition of and court testimony by outside third-party experts is an aspect of case development, discovery, and trial. It is not uncommon to have undue influence and mental competence psychologists, psychiatrists or other medical professionals testify in cases that include undue influence allegations. It is also not uncommon to have the estate planning attorney testify. However, a series of California cases have emphasized that the Court also serves as a gatekeeper for whether outside or percipient expert testimony is admissible or not in a case including for example, whether that testimony is needed at all, whether that testimony is sufficiently trustworthy, relevant and competent, and whether that testimony is sufficiently based on other trustworthy, foundational, and relevant evidence that is admissible. Although parties have disclosed experts and taken their depositions, the Court has the ultimate discretion to allow that testimony or not.

Additional Claims, Issues and Evidence That Might Be Present

- Claims for elder abuse (financial, physical, emotional, mental, duress, etc.).
- Claims for misrepresentation, concealment, fraud or mistake.
- Claims for defamation.
- The entire range of evidence relating to destructive and divisive personalities and relationships as they pertain to vulnerability and the actions committed.
- Possible estate planning attorney duty or standard of care and competency relating to the subject matter or the estate planning instrument in question.
- Possible California mandated reporter of elder abuse duty or standard of care relating to the subject matter or the estate planning instrument in question.
- Possible fiduciary duty or standard of care such as an attorney in fact under a power of attorney, including possible impact on burden of proof or presumptions.
- Possible investment advisor, financial advisor, banker, tax return preparer, or CPA duty or standard of care relating to the subject matter or the estate planning instrument in question.

Conclusion

Undue influence in estate planning can have serious consequences, potentially altering a person's final wishes and leading to unfair outcomes. California law provides important legal safeguards to detect and address undue influence and courts evaluate multiple factors—such as the vulnerability of the individual, the authority of the influencer, and the fairness of the result—to determine whether an estate planning instrument is valid.

If undue influence is suspected, gathering strong, admissible evidence is crucial. Legal professionals, expert witnesses, and discovery tools play a key role in uncovering the truth. Additionally, related legal considerations such as mental capacity, fiduciary duties, and financial elder abuse protections further shape estate and trust litigation cases.

Because each case is unique, anyone concerned about undue influence should seek legal guidance to navigate the complexities of estate and trust disputes. By understanding the legal framework and evidentiary requirements, estate planning attorneys, individuals, and other professionals can better ensure that estate plans reflect genuine, uninfluenced decisions.



Disclaimer

No two cases or situations of possible undue influence are the same—each case or situation is unique as to its relevant law and facts, and the admissible evidence. Thus, this eBook does not provide legal advice, does not apply to any specific person, case or situation, and is only a summary discussion. Consult with an attorney about your unique circumstances. An attorney-client relationship is only formed by a signed engagement and fee agreement.

Sources

1. [California Welfare and Institutions Code §15610.70](#)
2. [California Probate Code §21380](#)
3. [California Probate Code §21382](#)
4. [California Probate Code §21384](#)
5. [California Probate Code §§810 through 813](#)
6. [California Probate Code §812](#)
7. [California Evidence Code §1260](#)
8. [California Evidence Code §1261](#)
9. [California Evidence Code §959](#)
10. [California Evidence Code §960](#)
11. [California Evidence Code §961](#)
12. [California Evidence Code §958](#)
13. [California Evidence Code §962](#)

About David W. Tate, Esq.

Mr. Tate is a California attorney whose practice is focused on litigation and trials, governance, legal risk management, duties and rights, compliance, due diligence, and mediator services. He primarily handles litigation cases and issues involving businesses including their owners, officers, directors and committees; trusts, estates, probate, fiduciary responsibilities, and elder abuse; and real property.



Mr. Tate handles significant cases throughout the state of California and brings additional insight as an inactive California CPA. Mr. Tate earned his law degree from the University of San Francisco School of Law, and he externed for the Honorable Judge Marilyn Hall Patel in the Federal District Court.

In addition to his legal practice, Mr. Tate actively shares his expertise through speaking engagements, blog posts, and articles that address current legal issues in the public and community spheres. He has served on multiple boards—and as an audit committee chair—has taught as a professor of business law at the university level—and has published a range of legal works, including articles, book chapters, and a full-length book.

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