UNDUE INFLUENCE

Avoiding Undue Influence by Caregivers of Older Adults

Undue influence occurs when a person, typically someone who is vulnerable or marginalized in some way, is convinced to act against their best interest due to the other party's power over them. With families taking care of older adults, undue influence issues can often arise when a sibling or other relative feels that a caretaker is being given preferential treatment by the older adult or the caretaker is too active in the older adult's legal affairs.

These are the ways that you can determine if someone is exercising undue influence. Older adults can be susceptible to influence from loved ones, making it especially important to be vigilant to the warning signs of undue influence from family members or close friends. If you are a caregiver or an older adult receiving care from a loved one, be aware of the following tips adapted from Clear Counsel Law Group.

This is not legal advice. Please consult an attorney about your particular situation.

1. COMMUNICATE OPENLY ABOUT POTENTIALLY DIFFICULT TOPICS

Undue influence becomes more complicated when crucial facts remain unknown. If there is confusion or misinformation circulating regarding a parent's health care or financial situation, their children can become suspicious and disagreements will form if it seems like some individuals know more than others or are purposely withholding important information. As the older adult in this situation, share your health and financial situation with your family so that they can assist you. And as a caregiver in this situation, be sure to share financial statements and medical information with your siblings.

Choosing not to disclose this information can lead to a legal issue down the line, as the person not disclosing this information can be perceived by their loved ones as more powerful or receiving preferential treatment from the older adult in question.

2. HAVE A WRITTEN AGREEMENT

Take the time to create a written agreement with both the older adult and any relevant family or caregivers in their lives. For example, if a family member is going to receive $1,000 per month for their caregiver services for their parent, that fact must be recorded in the agreement. Otherwise a family member might think money from their parent's savings is going to benefit a sibling instead of for the parent's care. A written agreement can eliminate this doubt and suspicion by ensuring that everyone has access to the same information and is following a financial guide.

3. KEEP A PAPER TRAIL

Keep a receipt for every dollar of the older adult's money that is spent. If the family member prefers to pay with cash, be sure to get a receipt for every cash purchase. If checks are being written, make sure to keep written documentation of the purpose of each check and why it is going to that person in particular.

4. DO NOT USE CASH

Though some care receivers prefer using cash, caregivers should encourage them to use debit cards or write checks. In the event that a family member believes that their relative receiving care is being exploited and money is being stolen from them, having unexplained cash withdrawals without receipts does not look good. Debit cards allow for the payments to be visible on bank statements. If the care receiver insists on using cash, remember to keep receipts for every dollar spent.

5. DOCUMENT GIFTS OR AVOID GIFTS ALTOGETHER

It's important that caregivers avoid receiving gifts from care receivers altogether. If a care receiver, such as a parent, gives something that either has a lot of monetary value or even sentimental value within the family, the caregiver in question needs to protect themselves against potential legal action from a sibling. Create written documentation of the gift and have the gift giver sign it. Document what the item is, when it was given, and a statement of why the gift was given.

Have an independent third party (someone from outside the family, like an attorney – not a friend) sign a statement about the gift. It's better if the witness can talk to the gift giver about why they made this gift. The greater documentation, the better it will be later on in the event that undue influence is brought up.

6. NO JOINT BANK ACCOUNTS

If a care receiver is interested in adding their caregiver's name to their bank account, it's important to urge them not to. When a bank account is held in joint ownership and one of the joint owners dies, the law presumes that the surviving joint owner is the 100% legal owner of the bank account and has no legal obligation to share the account with anyone else.

Also, any creditor garnishing the caregiver's assets could take the older adult's assets as well. Instead of joint bank accounts, the care receiver should consider adding their caregiver's name to the account as an authorized signer or consider creating a power of attorney.

7. ESTATE PLANNING

The steps listed above such as granting signing authority or signing power of attorney documents are both part of the estate planning process. The caregiver should take special precaution not to involve themselves too heavily in this process, as this could help build a case for undue influence in the future.

If the caregiver must help with transportation, be sure that the care receiver and attorney meet alone without the caregiver present. If the care receiver chooses to disinherit any family members, the caregiver present could be sued for undue influence even if they did not have any influence over the estate planning process or the care receiver's decision to disinherit.

8. DON'T USE JUST ANY ESTATE PLANNING FORMS

Though tempting, refrain from using the "fill-in-the-blank" forms that can be bought at office supply stores. These documents are typically incorrectly completed or have been signed, notarized, or witnessed incorrectly which can render these documents invalid. If the caregiver helps the care receiver fill these documents out, these documents could be used in an undue influence case where a family member can insist that the care receiver was forced to sign these documents.

9. DO NOT ISOLATE THE CARE RECEIVER

It is crucial for caregivers to allow the care receiver to see their relatives, including phone access, email access, and in-person access. Despite any personal ongoing issues between caregivers and other family members, it's important not to block any other relationships. It's best to keep a log of the care receiver's visits with their family members and keep track of the phone records that show incoming and outgoing calls with relatives to avoid questions later on.

10. REPAIR RELATIONSHIPS

This is a great opportunity for family members involved as caregivers in the older adult's life to repair relationships. A dysfunctional relationship between siblings or a long feud between cousins can become even more damaging when it comes an older adult family member's time of need and care. Much like a divorce proceeding involving minor children, older adult parents can easily become involved in power struggles between family members.

All parties should try to be a source of support for family members during a potentially stressful time and choose to forgive and forget any past personal issues. This is not only a great way to avoid undue influence issues, but will also ensure less stress for the care receiver and everyone else involved as a result.

OTHER RESOURCES

- **Office of Adult Protective Services:** https://dhs.maryland.gov/office-of-adult-services/adult-protective-services/
- **DHS Flyer - Older Adult Abuse:** https://buff.ly/mhImqEr
- **Consumer Financial Protection Bureau - Managing Someone Else's Money Guide:** https://buff.ly/wARyXCj
- **211 Maryland - Reporting Abuse:** 211md.org/abuse
- Tips adapted from Clear Counsel Law Group

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This is not legal advice. Please consult an attorney about your specific situation. To get free legal help visit: WWW.MVLSLAW.ORG/FREE-LEGAL-HELP/ or call intake between 9 a.m. and 12 p.m. on Monday through Thursday at 1(800) 510-0050 or (410) 547-6537