

# Understanding Undue Influence

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Understanding undue influence is a core component of advising clients in their advance planning, as well as preventing and spotting elder abuse. Undue influence replaces the will or free choice of the individual with the will or choice of another person. When someone exerts undue influence over another person, they are abusing persuasion to overpower the will of the individual. This influence can be core to acts of financial exploitation, psychological abuse, physical abuse, and health care decisions that do not reflect the true wishes of the person.

State law and case laws define the necessary elements to assert a claim of undue influence in each state. Generally, in a claim for undue influence:

- The person is vulnerable—has a reduced ability to resist persuasion;
- The perpetrator is in a position of power or authority;
- The perpetrator overpowered the will of the person;
- The outcome was unfair or improper.

## Undue Influence and Elder Abuse

Lawyers counseling older adults should always be on the lookout for undue influence. The most common claims of undue influence involve financial exploitation. For example, the older adult may make a gift, sign a document, sell property for less than fair market value, or overpay for goods or services. These situations may be signs that an abuser is using undue influence on the client. Undue influence is often used by abusers to convince a person that the abuser is the only person who cares for them. This isolates the older adult from others—a form of psychological abuse. Isolation increases risk of further abuse and exploitation. Undue influence is used to convince persons that physical acts they would not willingly consent to are acceptable. Undue influence is used to persuade people on what health care they should receive or not receive.

## Undue Influence Screening Tool

[California has developed a screening tool](#) for undue influence for use by Adult Protective Services (APS). The tool provides a clear step-by-step screening process and has application well beyond APS. It directs the agent through questions on four areas: vulnerability of the person, the position of power or authority of the perpetrator, the actions used to persuade the person, and how or why the outcome is bad for the person. This tool can be used across disciplines or customized to particular settings. Rather than relying on instincts, the tool gives guidance to understanding what the client is experiencing.

[The California Elder Justice Coalition website](#) has a good collection of resources and research on undue influence and elder abuse.

NCLER has created several resources to help attorneys counseling older adults to help prevent and address elder abuse:

- [Elder Abuse: The Impact of Undue Influence](#)
- [Legal Basics: Elder Financial Exploitation](#)
- [Drafting Advance Planning Documents to Reduce Risk of Abuse or Exploitation](#)

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