

## The Intersection of Testamentary Capacity and Undue Influence

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Oftentimes, a family member of a deceased will contact us convinced that the decedent must have lacked testamentary capacity at the time the decedent executed their will or trust. The family member is correct in that Ohio law requires that the testator or settlor be of sound mind and memory to make a will or a trust. Yet, what the family member may not appreciate is that there is a legal presumption of testamentary capacity on behalf of a testator or settlor, and that the relevant evidence as to an individual's testamentary capacity is properly confined to the testator's capacity at the time of the execution of the will or trust, as well as to a reasonable time both prior to, and after, its execution.

As our friends in the estate-planning field know well, testamentary capacity exists when the testator or settlor possesses sufficient mind and memory to: (1) understand the nature of the business in which he or she is engaged; (2) comprehend generally the nature and extent of their property; (3) hold in their mind the names and identity of those who have natural claims upon their bounty; and (4) be able to appreciate their relationship to the members of their family.

A person need not be mentally sound in all respects in order to possess testamentary capacity. For example, evidence of dementia alone is not sufficient to establish a lack of testamentary capacity. Instead, there must be evidence of how the dementia impacted the person's testamentary capacity. Further, general references to medical records that may depict an elderly, ill, forgetful, or confused person do not, without more, demonstrate lack of testamentary capacity.

The question of whether the testator or settlor possessed the requisite capacity to execute a will or trust often arises when there is a claim of undue influence as relates to the testator or settlor. Further, the Supreme Court of Ohio stated that the disposition of an individual's property in a manner that is considered unnatural does not invalidate the person's Last Will & Testament. Instead, the focus is on whether there is a manipulation that renders the settlor unable to make their own decisions.

The burden of proving such undue influence is upon the contestants of the will or trust. Undue influence to invalidate a will or trust is defined as that influence which substitutes the wishes of another for those of the testator or settlor. The alleged undue influencer's acts must be so controlling that the testator or settlor could no longer make decisions for himself or herself and that their acts had a direct bearing upon the testator or settlor's decisions to transfer and dispose of their property.

In order to prove undue influence, the asserting party must allege and demonstrate such evidence sufficient to show that the presence in the life of the testator or settlor unduly influenced their ability to manage their finances and estate. While not insurmountable, the contestant must appreciate this burden, and retain knowledgeable counsel that can assess the strength of the case and guide the contestant to favorable resolution.