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WILL CONTESTS

In Wisconsin, any person of sound mind who is at least eighteen years old is presumed capable of making a will. A will should be created voluntarily and express how the testator desires his or her property to be distributed upon death. However, when another person's influence over the testator becomes so strong it overpowers the testator's free will, such influence is "undue," and the resulting will may be invalid.

As the baby boomer generation ages, many people forecast an increase in challenges to wills or trusts based on undue influence. Generally, these legal challenges are brought when elderly or ill people make or change wills or trusts which are inconsistent with that person's character, and often involve generous bequests to non-family members. The unnatural beneficiary is often someone who holds a position of power and influence over the testator.

Under Wisconsin law, undue influence can be shown in two ways. The first way to show undue influence is by proving four things. First, it must be proved that the testator is susceptible to undue influence. Factors include the testator's age, personality, physical and mental health, and his or her ability to handle business affairs. Second, it must be proved that the other person had the opportunity to exercise such influence and effect the wrongful purpose. Third, it must be proved that the other person had a disposition to influence unduly in order to gain an improper favor. This implies willingness to do something wrong or unfair, such as overreaching or taking advantage of the testator, not just a desire to benefit from the estate. Finally, it must be proved that a result occurred that was clearly the effect of the supposed influence. The fact that the other person benefits from a will does not prove undue influence. Instead, this requirement is met when a person benefits from a will against natural expectations under the circumstances.

The second test for proving undue influence has two requirements: (1) a confidential or fiduciary relationship between the testator and the favored beneficiary; and (2) suspicious circumstances surrounding the making of the will. However, a will is not set aside based on someone's suspicion alone.

Other states have established similar elements to prove a claim of undue influence. Undue influence challenges to wills or trusts can be difficult to prove because they depend almost entirely on the particular facts and circumstances in an individual case. These facts often must be proved by indirect evidence because often one who is attempting to unduly

influence a testator acts subtly and in secret.