



IS THE DOCUMENT VALID?

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In most cases, estate plan documents (e.g., wills, trusts, and powers of attorneys) are prepared and executed under inconspicuous circumstances. Sometimes the circumstances under which these types of documents are executed beg questions about their validity, and legal disputes can arise. The most common bases on which to challenge the validity of estate plan documents include (i) “undue influence” of the person executing the documents by a third party, (ii) a lack of capacity to execute such documents, and (iii) fraud. In any event, challenging the validity of estate plan documents requires an in-depth and fact-specific analysis.

Challenging the validity of a document on the grounds that it was the result of “undue influence” may be the most common basis for objection. Note that mere “influence” exerted on a person does not result in a document being invalid—the influence must be “undue.” Undue influence occurs when a party exerts power over another in order to manipulate the terms of an estate plan document to reflect the will of such party, and not that of the one executing the document. To invalidate a will or trust under Nebraska law for “undue influence,” it must be proven that (i) the signer was subject to such influence, (ii) there was an opportunity for a bad actor to exert such influence, (iii) there was intent to exert such influence for an improper purpose, and (iv) the resulting document was clearly a product of such influence. The party challenging the document must prove these elements by “clear and convincing evidence”—a hefty hurdle.

Another common objection used in challenging the validity of a document is that the signer lacked the requisite mental capacity to execute it. The capacity required to validly execute a document depends on the nature of the document. For example, to validly execute a will or trust under Nebraska law, one must possess “testamentary capacity” at the time of executing the document. This requires that the one executing the document (i) understands the nature of the act of executing the document, (ii) knows the nature and extent of his or her property, (iii) knows the proposed disposition of his or her property, and (iv) knows the “natural objects of his or her bounty,” meaning those to whom the individual most likely would bequeath his/her estate (e.g., a spouse or children). A different capacity is required to effectively execute other documents, such as a deed, power of attorney, or beneficiary designation form for a financial account.

Yet another basis for objecting to the validity of a document, though less common, is that it was the result of fraud. In the context of challenging the validity of a will or trust under Nebraska law, an aggrieved party must show that (i) a lie was made to the signer



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of the document, and (ii) the document was made (or modified) as a result of that lie. Successfully objecting on the basis of fraud can be difficult because often the bad actor is the only witness to the lie (keep in mind that in almost all cases the signer of the document is deceased and therefore cannot be a witness in a later dispute).

As CPAs, you are often privy to confidential information not only about the “numbers” but also about the dynamics of a business or family. Thus, you may be uniquely positioned to observe signs of capacity issues or undue influence, such as: (i) questionable gifts or expenditures in favor of someone, such as an adult child or other family member, caregiver, or “trusted advisor”; (ii) the frequent and domineering presence of a supposedly helpful figure; and/or (iii) isolation of the client by one person from others who are normally present in the client’s life. If you observe any of these signs, it may be best to guide clients to appropriate assistance and document the situation in the event of a future legal dispute. ◀



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