

§1022. Undue influence

1. Presumption. In any transfer of real estate or major transfer of personal property or money for less than full consideration or execution of a guaranty by an elderly person who is dependent on others to a person with whom the elderly dependent person has a confidential or fiduciary relationship, it is presumed that the transfer or execution was the result of undue influence, unless the elderly dependent person was represented in the transfer or execution by independent counsel. When the elderly dependent person successfully raises the presumption of undue influence by a preponderance of the evidence and when the transferee or person who benefits from the execution of a guaranty fails to rebut the presumption, the elderly dependent person is entitled to avoid the transfer or execution and entitled to the relief set forth in section 1024.

[PL 2003, c. 236, §1 (AMD).]

2. Confidential or fiduciary relationship. For the purpose of this section, the transfer of property or execution of a guaranty is deemed to have been made in the context of a confidential or fiduciary relationship if the transferee or person who benefits from the execution of a guaranty had a close relationship with the elderly dependent person prior to the transfer or execution. Confidential or fiduciary relationships include the following:

A. A family relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, including relationships by marriage and adoption; [PL 2003, c. 236, §1 (AMD).]

B. A fiduciary relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, such as with a guardian, conservator, trustee, accountant, broker or financial advisor; [PL 2003, c. 236, §1 (AMD).]

C. A relationship between an elderly dependent person and a physician, nurse or other medical or health care provider; [PL 1987, c. 699, §1 (NEW).]

D. A relationship between the elderly dependent person and a psychologist, social worker or counselor; [PL 1987, c. 699, §1 (NEW).]

E. A relationship between the elderly dependent person and an attorney; [PL 1987, c. 699, §1 (NEW).]

F. A relationship between the elderly dependent person and a priest, minister, rabbi or spiritual advisor; [PL 1987, c. 699, §1 (NEW).]

G. A relationship between the elderly dependent person and a person who provides care or services to that person whether or not care or services are paid for by the elderly person; [PL 1987, c. 699, §1 (NEW).]

H. A relationship between an elderly dependent person and a friend or neighbor; or [PL 1987, c. 699, §1 (NEW).]

I. A relationship between an elderly dependent person and a person sharing the same living quarters. [PL 1987, c. 699, §1 (NEW).]

When any of these relationships exist and when a transfer or execution is made to a corporation or organization primarily on account of the membership, ownership or employment interest or for the benefit of the fiduciary or confidante, a fiduciary or confidential relationship with the corporation or organization is deemed to exist.

[PL 2003, c. 236, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 699, §1 (NEW). PL 2003, c. 236, §1 (AMD).

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