

Preamble

One may wish to heed the following quote from a recent U.S. Supreme Court opinion, which reflects that “[a]ll good trust-and-estate lawyers know that ‘[d]eath is not the end; there remains the litigation over the estate.’”¹ The number of estate plans that have come under attack on the premise that they are the product of undue influence appears to be escalating. While cases that involve the rich and famous make headlines, many more cases are brought in blended family scenarios or where dysfunctional relationships may be found to exist.

Elder abuse has been called “the crime of the 21st century.”² Elder financial abuse is just one form of such abuse, and undue influence is a form of financial elder abuse. Elder financial abuse has been defined as the “misappropriation or abuse of financial control in a relationship where there is an expectation of trust, resulting in harm to the elderly victim.” Also, “more than 200,000 scams and financial abuse cases targeting the elderly are reported to authorities every year, and most experts agree that’s just the tip of the iceberg.” Estimates “show \$1.17 billion in damages are reported to authorities, but the real figure likely dwarfs that amount when factoring in unreported elder fraud.”³

This book is not intended to be a survey or an all-inclusive resource on elder financial abuse or undue influence. However, it is our sincere desire that this book provide readers with a global understanding of undue influence, and how to identify it, plan for its possibility, litigate it, and address issues related to it.

While this book primarily is geared toward estate planners and probate litigators, it may provide a greater understanding of issues relating to

¹ *Sveen v. Melin*, 138 S. Ct. 1815, 1818–1819, 201 L. Ed. 2d 180, 86 USLW 48392 (2018) (citing Ambrose Bierce, 8 THE COLLECTED WORKS OF AMBROSE BIERCE: NEGLIGIBLE TALES, ON WITH THE DANCE, EPIGRAMS 365 (1911)).

² Kristen M. Lewis, *The Crime of the 21st Century: Elder Financial Abuse*, 28 PROB. & PROP. 11–15 (2014).

³ Paul Bischoff, *The United States of Elder Fraud: How Prevalent Is Elder Financial Abuse in Each State?* COMPARITECH (Apr. 17, 2019), <https://www.comparitech.com/blog/vpn-privacy/elder-fraud-by-state/>.

capacity, the attorney's role, and the process known as "undue influence." As such, we hope that other professionals—including financial planners, trust administrators, and health care providers—who serve vulnerable individuals derive benefit from its contents, as well.

This book does not constitute legal advice. It represents a collaborative effort by the authors to provide an overview and better understanding of a variety of issues that often are associated with rendering services when diminished capacity and undue influence may be a concern.

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