

TRUST AND ESTATE LITIGATION – CAUSES OF ACTION

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CHAPTER 633 - WILL CONTEST BASICS

- Grounds to Contest
 - Lack of General Mental Capacity.
 - Low standard.
 - Testator must know:
 - The natural objects of his or her bounty.
 - The nature and extent of his or her property.
 - The distribution he or she desires to make of his or her property.
 - The nature of the instrument he or she is executing. *In re Estate of Adams*, 234 N.W.2d 125 (Iowa 1975).
 - All of the above four facts must exist coextensively at the time the will is executed. *In re Estate of Gruis*, 207 N.W.2d 571 (Iowa 1973). Failure to meet any one factor invalidates the will. *In re Estate of Springer*, 110 N.W.2d 380 (1961).
 - Evidence of the condition of the mind of the testator times subsequent to execution “may be received if there is a reasonable basis for the conclusion that it throws some light on his mental competence at the time the will was made.” *Estate of Gruis*, 207 N.W.2d at 573.
 - Insane Delusion.
 - General rule – in order to invalidate a will, an insane delusion must be shown to be a wholly unfounded belief to which testator clings in spite of all disproving evidence and which controls the making of his will.

- “Even though testator meets the test to establish testamentary capacity in the execution of the testamentary instrument, a contestant may succeed in having the testamentary instrument invalidated if he or she can establish that the testator suffered from an insane delusion.” 28 Causes of Action 2d 99 (Originally published in 2005); *see also Hardenburgh v. Hardenburgh*, 109 N.W. 1014, 1015 (Iowa 1906)
 - Undue Influence.
 - A will executed at a time decedent was under the undue influence of another is invalid. *Walters v. Heaton*, 271 N.W. 310 (1937).
 - “Undue influence means a person substitutes his or her intentions for those of the person making the will. The will then expresses the purpose and intent of the person exercising the influence, not those of the maker of the will. Undue influence must be present at the very time the will is signed and must be the controlling factor. The person charged with exercising undue influence need not be personally present when the will was being made or signed but the person's influence must have been actively working at the time the will was being made and signed.” Iowa Civil Jury Instruction 2700.5; *see also Olsen v. Corp. of New Melleray*, 60 N.W.2d 832, 836 (Iowa 1953).
 - Elements:
 - Susceptibility to undue influence,
 - Opportunity to exercise such influence and effect the wrongful purpose,
 - Disposition to influence unduly for the purpose of procuring an improper favor, and
 - Result clearly the effect of undue influence. Iowa Civil Jury Instruction 2700.4; *In re Estate of Davenport*, 346 N.W.2d 530, 532 (Iowa 1984).
 - More than a scintilla of evidence is required. *Id.*
 - In a will contest, the issue of undue influence and lack of testamentary capacity are so intertwined they are impossible to separate. *Matter of Estate of Olson*, 451 N.W.2d 33, 36

(Iowa Ct. App. 1989). “Conduct which might be insufficient to influence unduly a person of normal mental strength might be sufficient to operate upon a failing mind. One who is infirm is more susceptible to undue influence than one who is not.” *Frazier v. State Central Savings Bank*, 217 N.W.2d 238, 243 (Iowa 1974).

- “A suspicion, but not a presumption, of undue influence arises where the dominant party in a confidential relationship participates in either the preparation or execution of the contested will.” *Matter of Estate of Baessler*, 561 N.W.2d 88, 93 (Iowa Ct. App. 1997), *abrogated by Jackson v. Schrader*, 676 N.W.2d 599 (Iowa 2003).

- Fraud.

- Fraud as a basis of a will contest is usually attempted to be shown in connection with undue influence, but fraud and undue influence are two separate grounds for setting aside a will.
- Fraud consists of willfully false statements of fact by a beneficiary to a testator, which are made in bad faith or with intent to deceive testator, which do deceive him and induce him to make a will he would not otherwise have made. *In re Hollis' Estate*, 12 N.W.2d 576 (Iowa 1944).

- Mistake.

- “The general rule is that the validity of a will or any part of it is not affected by a mistake of either law or fact inducing the execution of the will, unless fraud or undue influence was perpetrated upon the testator.” *In re Estate of Henrich*, 389 N.W.2d 78, 83 (Iowa Ct. App. 1986).

- An action to contest or set aside will must be commenced within four months of the date of the second publication of notice of admission or one month following the mailing of notice to all heirs of the decedent and devisees whose identities are reasonably ascertained, whichever last occurs, or be forever barred. Iowa Code § 633.309 (2021).

- This statute of limitations will not be tolled by the defendant fraudulently concealing information which would have put the plaintiff on notice of grounds for a will contest. *In In re Estate of Thompson*, 346 N.W.2d 5 (Iowa 1984).

- An action objecting to the probate of a proffered will, or to set aside a will, is triable in the probate court as an action at law, and the rules of civil procedure governing law actions, including demand for jury trial, shall be applicable thereto. Iowa Code § 633.311 (2021).
- Burden of Proof.
- The proponent of the will has burden of proof with respect to due execution. *In re Estate of Matt*, 205 N.W. 770 (Iowa 1925).
- On other grounds of contest, the contestant has the burden of proof. *Bishop v. Scharf*, 241 N.W. 3 (Iowa 1932).
- Who is entitled to contest?
 - Any interested person may petition to (i) set aside the probate of decedent's will by filing a written petition therefor which shall state the grounds for such relief or (ii) object to the probate of a will prior to its admission by filing written objections thereto with the court, in which case the will may not be admitted until such objections have been adjudicated. (Iowa Code §§ 633.308; 633.310).
 - No statute defines who is an interested person. Generally, an interested person is any person who gains a pecuniary benefit in a decedent's estate in the absence of a will. *In re Estate of Stewart*, 77 N.W. 574 (1898). The Iowa Supreme Court has held that the following persons have a sufficient interest to object to a will:
 - Judgment creditor of an heir whose judgment would attach to decedent's real property passing to the heir in intestacy. *In re Estate of Duffy*, 191 N.W. 165 (1940).
 - Any heir of the decedent. *In re Estate of Kenny*, 10 N.W.2d 73 (1943).
 - Devisee under a prior will who petitions to set aside probated will on basis that will under which devisee claims is the last will. *Kostelecky v. Scherhart*, 68 N.W. 591 (1896).
- Who is not entitled to contest?
 - General creditor of an heir. *Burk v. Morain*, 272 N.W. 441 (1937).
 - A person whose interest will not be diminished by the probate of the will. *Hoover v. Hoover*, 26 N.W.2d 98 (1947).
 - A devisee or beneficiary who would receive nothing except under the will. *Seery v. Murray*, 77 N.W. 1058 (1899).

- An executor under a prior will who has no other interest, receiving nothing under the will or otherwise. *In re Stewart's Estate*, 77 N.W. 574 (1898).
- One without any interest in the decedent's estate or property. *Burk v. Morain*, 272 N.W. 441 (1937).
- A daughter-in-law of the testator whose husband was a beneficiary under a prior will and who claimed that her dissolution settlement would be increased if her husband inherited his share of the property. *In re Estate of Pearson*, 319 N.W.2d 248 (Iowa 1982).

INTENTIONAL INTERFERENCE WITH INHERITANCE & YOUNGBLUT

I. Overview of Case - *Youngblut v. Youngblut*, 945 N.W.2d 25 (Iowa 2020)

- The *Youngblut* case involved a will contest between two brothers – Plaintiff Harold Youngblut and Defendant Leonard Youngblut. Three months prior to their deaths, the testators in *Youngblut* revised their Wills so that a parcel of land known as the South Farm would pass to Leonard. The new Will also set forth an anti-contest provision stating that if any beneficiary challenged the new Will, he or she would receive nothing. In previous Wills, the South Farm had been left to Harold.
- Harold did not challenge the new Will via a traditional will contest under Iowa Code §§ 633.308 – 633.320. Instead, Harold brought only a separate tort claim for intentional interference with an inheritance against Leonard. The underlying basis for Harold’s claim was that the Wills had been revised as a result of Leonard’s wrongful acts.
- Under these facts, the Iowa Supreme Court held that a disappointed heir (i.e. Harold) could not forego a Will Contest and then challenge that Will via a separate intentional interference claim.
- In reaching this holding the Supreme Court stated as follows:

For those reasons, we now hold that a party alleging a decedent’s will was procured in whole or in part by tortious interference must join such claim together with a timely will contest under Iowa Code § 633.308.

II. Intentional Interference as a Part of a Will Contest

- *Youngblut* makes clear that a disgruntled beneficiary cannot upset the dispositive scheme set forth under a Will by *only* bringing an intentional interference claim outside of the probate court.
 - Cannot avoid anti-forfeiture clause.
 - Cannot avoid compressed statute of limitations for a Will Contest.

III. Intentional Interference as a Stand-Alone Claim

- An Intentional Interference Claim as a stand-alone claim remains viable after *Youngblut* – The Iowa Supreme explicitly noted that the tort continues to have value outside the context of challenging a testator’s Will.
- An Intentional Interference claim outside the context of a Will Contest remains an important mechanism in which to challenge non-probate transfers that do not pass under a Will – i.e. assets that pass via beneficiary designation or to a joint owner or via pre-death gifts.

CHAPTER 633A - BREACH OF TRUST

- The various duties and obligations of a Trustee include, but are not limited to, the following:
 - Iowa Code § 633A.4201 imposes fiduciary duties on a trustee when exercising a power under the trust, to act in accordance with fiduciary principals.
 - Iowa Code § 633A.4202 imposes a duty of loyalty on a trustee to administer the trust solely in the interest of the beneficiaries, and to act with due regard to their respective interests.
 - Iowa Code § 633A.4203 imposes a standard of prudence on the Trustee: “A Trustee shall administer the trust with reasonable care, skill, and caution as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.” In addition, the trustee has

the duty to take control of and safeguard the property of the trust. See Iowa Code § 633A.4209.

- A violation by a trustee of a duty the trustee owes a beneficiary is a breach of trust. The remedies of a beneficiary for breach of trust are exclusively equitable and any action shall be brought in a court of equity. Iowa Code § 633A.4501 (2021).
- A beneficiary may charge a trustee who commits a breach of trust with the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred, or, if greater, the amount of profit lost by reason of the breach. Iowa Code § 633A.4503.
- One year statute of limitations.
- In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy. Iowa Code § 633A.4507.
- A person who, in bad faith, wrongfully takes, conceals, or disposes of trust property is liable for twice the value of the property, attorney fees, court costs, and where consistent with existing law, punitive damages, recoverable in an action by a trustee for the benefit of the trust. Iowa Code § 633A.4605.

CHAPTER 633B – ABUSE OF POWER OF ATTORNEY

I. Iowa Code Chapter 633B

- **Adoption of the Uniform Power of Attorney Act**
 - The Uniform Law Commission (formally the National Conference of Commissioners on Uniform State Laws) adopted the Uniform Power of Attorney Act in 2006. The Uniform Law Commission promulgated this Act in response to a “growing divergence among states’ statutory treatment of powers of attorney” and to incorporate safeguards for the protection of an incapacitated principal. See Uniform Power of Attorney Act (2006), Prefatory Note.

- Iowa passed its version of this Uniform Act under Iowa Code Chapter 633B in April of 2014. To date, 28 states have adopted some version of this Uniform Act.
- Prior to its adoption of the Uniform Power of Attorney Act, Iowa had not adopted the previous version of the Uniform Act, and statutory law on the operation of powers of attorney was sparse. There was nothing setting forth an agent's actual duties to a principal and there was nothing setting forth the extent of an agent's liabilities for action or inaction while operating under the power of attorney.
- **What is a Power of Attorney:**
 - A general power of attorney allows individuals who need or want assistance with financial matters to designate an agent (usually a close friend or family member) to handle affairs on their behalf.
 - This designation is often done on a form which is set forth verbatim under Iowa Code § 633B.301 (See Appendix A for Statutory Power of Attorney form).
 - These power of attorney forms are very popular. They are inexpensive and widely available, and they allow everyone to plan for their financial future short of having a conservatorship or a trust in place.
 - In Iowa the default rule is that the power of attorney provided to an agent is *durable* which means that the authority of the agent survives the incapacity of the principal he/she is assisting. Iowa Code § 633B.104.
- **Agent's Duties under a Power of Attorney:**
 - Iowa Code § 633B.114 sets forth an agent's duties to the principal. Some of the duties are as follows:
 - Agent must act in accordance with the principal's reasonable expectations or to the extent unknown, in the principal's best interest (mandatory).
 - Agent must act in good faith (mandatory).

- Agent must act only within the scope of authority granted in the power of attorney document (mandatory).
 - Act so as not to create a conflict of interest that impairs agent's ability to act in the best interests of the principal (default).
 - Act with the care, competence, and diligence ordinary exercised by agents in similar circumstances (default).
 - Keep a record of all receipts, disbursements, and transactions made on behalf of the principal (default).
 - Preserve the principal's estate plan to the extent actually known by the agent, if consistent with the principal's best interests (default).
- **Civil Liability**
 - Several provisions of Iowa Chapter 633B are directed at identifying and remedying an agent's breach of his duties while operating under the power of attorney.
 - Iowa Code § 633B.117 provides that an agent that violates Iowa Chapter 633B is liable to the principal *or* to the principal's successors in interest.
 - Iowa Code § 633B.116 provides a wide-ranging list of parties that have standing to challenge an agent's activities while operating under a power of attorney, including:
 - The principal;
 - Any other fiduciary acting for the principal (i.e. guardian, conservator, trustee);
 - The principal's spouse, parent, descendant, or an individual who would qualify as a presumptive heir;

- A person named as a beneficiary to receive any property, benefit, or contractual right upon the principal's death;
 - Any person that can demonstrate a sufficient interest in the principal's welfare.
 - Iowa Code § 633B.114(8) provides that absent contrary language in the power of attorney form, any successor in interest of the principal's estate, may demand that an agent disclose all of the principal's records after the principal's death, and the agent is then required to disclose all transactions conducted while acting as agent within 30 days of the request.
- **When Effective**
 - 633B became effective on July 1, 2014.
 - 633B liability attaches to all actions brought against agents on or after July 1, 2014 *even if* the power of attorney form was executed prior to July 1, 2014. § 633B. 403.
 - *See Matter of Guardianship of Chott*, No. 18-1499, 2019 WL 4297854 (Iowa Ct. App. Sept. 11, 2019) (acknowledging that because the act in question occurred in September of 2017, 633B was applicable even though the power of attorney itself was created before the Act was adopted)
 - BUT 633B liability does NOT attach to financial transactions which were finalized prior to July 1, 2014. Iowa Code § 633B.403
 - **Recovery**
 - The Agent's Liability:
 - The agent that is found to have breached his duties under 633B must restore the value of the principal's property to what it would have been had the violation not occurred; AND reimburse the principal or the principal's successors in interest for attorney fees and

costs paid on the agent's behalf. Iowa Code § 633B.117 (mandatory).

- The Court may also award reasonable attorney fees and costs to the individual challenging the agent's actions if that challenger's action against the agent prevails. Iowa Code § 633B.116 (discretionary).

o Equitable Claims:

- Unlike the Iowa Trust Code (Iowa Code § 633A.4501), which explicitly states that claims against a Trustee for breach are "exclusively equitable and any action shall be brought in a court of equity," the Power of Attorney Act does not specifically mandate that claims against an agent under 633B must be tried in equity.
- That being said, the remedy is fashioned as an equitable remedy (recovery rather than damages); and
- Thus far the consensus for the few cases which have reached Iowa's appellate courts under 633B is that the claims have been tried in equity. *Matter of Guardianship of Chott*, No. 18-1499, 2019 WL 4297854 (Iowa Ct. App. Sept. 11, 2019); *Matter of Estate of Hadsall*, No. 17-2010 2019 WL 1056803 (Iowa Ct. App. March 6, 2019); 928 N.W. 2d 152; *Cich v. McLeish*, No. 18-0069, 2019 WL 1056804 (Iowa Ct. App. March 6, 2019); *Stalzer v. Smith*, No. 15-1739, 2016 WL 4384184 (Iowa Ct. App. Aug. 17, 2016) *but see Trumm v. Iowa National Heritage Foundation*, No. 15-0813, 2016 WL 3272295 (Iowa Ct. App. June 15, 2016) (discussing whether action was tried in equity or at law and ultimately determining action was tried in equity because relief requested was for specific performance of a real estate contract).

o Non-Exclusive Remedy

- Actions initiated against an agent under 633B are not exclusive. Iowa Code § 633B.123. Prior actions that could have been brought against an agent remain available.

II. Practical Application of 633B

- **The ‘Typical’ Case – “Gifting” and Outright Transfers from the Agent to Himself**
 - Agent’s Ability to Gift - Express Provisions Need to be Set Forth in Instrument
 - An agent cannot make a gift to herself of the principal’s assets unless the Power of Attorney document expressly gives that authority. Iowa Code § 633B.201(1)(b).
 - Even if the Power of Attorney expressly provides that the agent can make gifts, an agent that is not the spouse or a lineal relative of the principal is still precluded from making gifts to herself or to her dependents *unless* the Power of Attorney expressly states that said agent has the authority to make such gifts. Iowa Code § 633B.201(2).
 - Even if the Power of Attorney expressly provides that the agent can make gifts *and* the agent is a spouse/lineal relative of the principal, the agent’s ability to make gifts is limited to (1) an amount NOT in excess of the annual federal gift tax exclusion amount (i.e. currently \$15,000 per year per donee); (2) gifting in accordance with the principal’s objectives, if known by the agent, and the principal’s best interests by considering the value and nature of the principal’s property; the principal’s foreseeable obligations and need for maintenance; the minimization of taxes; the eligibility of a principal to receive benefits; and the principal’s customary pattern of gifting. Iowa Code §633B.217.
 - Strict Construction of the Agent’s Ability to Gift
 - An agent serving pursuant to a power of attorney is limited by the principal that “a power of attorney must be strictly construed and the instrument will be held to grant only those powers which are specified.” *In re Estate of Frye*, No. 13-1170 2014 WL 3511827 (Iowa Ct.

App. July 16, 2014) *quoting In re Estate of Crabtree*, 550 N.W. 2d 168 (Iowa 1996); *see also Cincinnati Life Ins. Co. v. Estate of Mangino*, No. 14-0039, 2014 WL 6682032 (Iowa Ct. App. Nov. 26, 2014) (finding that there was no need to address questions of fairness or whether agent acted in good faith because the power of attorney form failed to provide the agent with the ability to even make the challenged financial transaction).

- Under Iowa Chapter 633B, absent very specific authority in the Power of Attorney document allowing an agent to make gifts, any gifts which an agent makes to herself or to her loved ones in excess of the annual gift tax amount will be almost impossible to maintain *even if* the evidence indicates that the principal agreed with / consented to the transfer.
- Compensation for Service
 - Unless a bank or trust company is serving as agent, the agent operating under a power of attorney is not entitled to compensation for serving. Iowa Code § 633B.112.
- **Liability for Transactions Apart from Outright Gifts/Transfers to the Agent.**
 - Even if the Power of Attorney instrument authorizes the agent to enter into certain financial transactions, the transaction must still be in accordance with the principal's known objectives and best interests or the agent remains subject to liability under 633B.
 - One way that Iowa Courts appear to be evaluating whether a transaction is in accordance with the principal's objectives is the extent to which a challenged transaction undermines the principal's pre-existing estate plan. This is particularly the case when the challenged transaction benefits the agent or a member of his family (See Section III of this Outline regarding Presumption of Guilt).
 - Placing Funds in an Account held Jointly with Agent.

- *See Matter of Estate of Hadsall*, No. 17-2010, 2019 WL 1056803 (Iowa Ct. App. March 6, 2019): Jean's estate plan called for all of her assets to be held in a Trust which, at her death, was to be equally divided amongst her four (4) children. Years after this estate plan was in place, Jean named her son, John, to act as her agent under a power of attorney document. Later Jean sold various assets (two farms and farm equipment), but the proceeds she received from these sales was not placed in an account held in Jean's name or in the name of her Trust. Instead almost all proceeds that would have passed under Jean's Trust were placed into accounts held jointly with John.
- The Iowa Court of Appeals upheld the determination of the District Court that John could not uphold these transfers as being the product of his good faith or of Jean's free, intelligent, and voluntary consent *even though* the Court found that Jean was competent at all times relevant to the challenged transaction.
- Placing Funds in an Account that names Agent as a Transfer or Payable on Death Beneficiary.
 - *Cich v. McLeish*, No. 18-0069, 2019 WL 1056804 (Iowa Ct. App. March 6, 2019): June had two farms. Under her Will June left one of her farms (the Hawkeye farm) to her son Mark and she left her other farm (the Maynard farm) to her three daughters.
 - June later transferred the Hawkeye farm to Mark during her lifetime.
 - Years after executing the above estate plan, June designated Mark as her agent under a power of attorney instrument. As agent, Mark sold the Maynard farm.

- The sale proceeds from the Maynard farm were then placed into an account and *June* executed a transfer on death beneficiary designation so that all of the proceeds in that account would automatically pass to Mark at June’s death rather than under June’s Will.
 - The Court held that Mark could not show that June’s action was the result of a free, intelligent, and voluntary action on her part, and ordered over a \$1,000,000 be returned to June’s Estate to pass under her Will rather than in accordance with the beneficiary designation.
- Entering into a Contract with Agent.
 - *Trumm v. Iowa National Heritage Foundation*, No. 15-0813, 2016 WL 3272295 (Iowa Ct. App. June 15, 2016): Joe cash rented his Uncle Robert’s farm for several years. Evidence suggested that Uncle Robert had wanted farmland to continue to be owned “by the family” and that it upset him when land was sold outside of the family. Even so, under Uncle Robert’s Will, his farm was slated to pass to the Iowa Natural Heritage Foundation.
 - After executing the above estate plan, Uncle Robert’s health began to decline and Joe became agent under a designated power of attorney form. According to Joe, Uncle Robert was adamant that his land stay in the family, and, so Joe, as agent, entered into an installment contract with himself, as buyer, whereby Joe would make payments to Uncle Robert during his lifetime in order to purchase the farmland. Under the contract entered into by Joe, as agent, and Joe, as buyer, the payments due would cease upon Uncle Robert’s death, and Joe would own the farmland.
 - The Iowa Court of Appeals upheld the District Court’s determination that the real estate contract was unenforceable because not only was

the power of attorney instrument itself questionable for lack of capacity, but Joe could not establish that he acted in good faith in the transaction.

- **Liability for Transactions Executed by the Principal**

- Liability as an agent is not limited to those financial transaction affirmatively undertaken by the agent. The same liability can attach when the agent benefits from a transaction that the principal has ostensibly executed.
 - In *Cich v. McLeish*, No. 18-0069, 2019 WL 1056804 (Iowa Ct. App. March 6, 2019), discussed *supra*, it was the principal that executed the transfer on death designation benefitting the agent and the agent was still found to have breached his duties as agent.
 - *Mendenhall v. Judy*, 671 N.W. 2d 452 (Iowa 2003): Marilyn was serving as agent for her mother, Gladys, and providing her with substantial daily assistance. At this time, Gladys, with the assistance of counsel, executed a declaration of gift that transferred all of Gladys' shares in the family farming operation to Marilyn. Shortly before this transaction, a third party (a banker) was added to Gladys' power of attorney form in order to approve gifts. The declaration of gift of the shares to Marilyn was executed by both Gladys and the third-party agent. In spite of these precautions, the Iowa Supreme Court still held that the gifts of these shares must be set aside as the product of undue influence.

- **When is the Agent Acting Under 633B**

- Under 633B, the default provision is that a power of attorney is effective on the date it is executed. Iowa Code § 633B.109. In order to be valid under Iowa law, however, only the principal must sign the document in the presence of a notary - the named agent is not required to sign. Iowa Code § 633B.105.

- The agent named under a power of attorney is deemed to have accepted serving in that role by exercising authority as agent, by performing duties as agent, *or* by any other assertion or conduct indicating acceptance. Iowa Code § 633B.113.
- Taken in conjunction, the end result is that there will be situations, in which an individual designated under someone's power of attorney as agent finds himself subject to the provisions of Section 633B without ever actually using his power of attorney and even without ever seeing the actual power of attorney instrument.
 - *Matter of Guardianship of Chott*, No. 18-1499, 2019 WL 4297854 (Iowa Ct. App. Sept. 11, 2019): In *Chott*, a daughter (Katherine) had been named agent under her mother (Sylvia)'s power of attorney in 2010. Katherine was not aware that she had been named agent until many years later and Katherine never used it to conduct financial transactions. But Sylvia was dependent on Katherine's assistance, and Katherine acknowledged that although she did not pay her mother's bills or control her finances, she was able to review her online account activity and had offered to pay bills on her behalf.
 - In September of 2017, Katherine drafted a letter (executed by Sylvia) in order for over \$29,000 to be withdrawn from Sylvia's account and placed in Katherine's account. Katherine testified that this was done at the behest of Sylvia who was insistent on making a large gift to both Katherine and Sylvia's other child (Katherine's brother), Kenneth.
 - Katherine argued that her actions were not subject to review under Iowa Chapter 633B because she had never accepted acting as power of attorney.
 - The Iowa Court of Appeals, while acknowledging that there was no evidence that Katherine used the power of attorney, still found that Katherine was subject to 633B because she had previously asserted that she was the one that was responsible for her mother's "well-being,

finances, and caretaking.” The Court found that these affirmations were sufficient “assertions” and “conduct” by Katherine for her to have accepted acting as Sylvia’s agent – therefore, Katherine was subject to 633B.

- Iowa legislators have at least considered amending the law related to durable powers of attorney to require *the agent* to affirmatively acknowledge his fiduciary duties to the principal before the power of attorney instrument can be valid; however, so far, no statute to that end has been enacted. *See* H.F. 416, 86th General Assembly.

III. The Presumption of Guilt

- All of the above-cited cases are unique because they place a burden upon the defendant/agent this is very difficult to overcome. All of the transactions in which the agent is benefitting are deemed presumptively fraudulent, and it is on the agent to disprove this presumption.
- Under normal circumstances, it is upon the party alleging breach, undue influence, or fraud that must support his allegation, but because an agent is always in a fiduciary relationship with the principal (and often in a confidential relationship with the principal as well), any transaction which benefits the agent is presumed to be fraudulent or the product of undue influence. *Mendenhall v. Judy*, 671 N.W. 2d 452 (Iowa 2003).
- In order to overcome this presumption of fraud, it is upon the defendant/agent to establish both of the following (1) that the grantee/agent acted in good faith throughout the transaction; and (2) that the grantor acted freely, intelligently, and voluntarily. *Jackson v. Schrader*, 676 N.W.2d 599, 605 (Iowa, 2003).
- Factors that make it more likely the agent can overcome the presumption of fraud:
 - When the principal consults with an independent professional before the challenged transaction.

- *See Stalzer v. Smith*, No. 15-1739, 2016 WL 4384184 (Iowa Ct. App. Aug. 17, 2016) (finding that agent [daughter] had overcome the presumption of fraud, after the principal's financial advisor testified that the principal [father] acted freely, intelligently, and voluntarily in naming his daughter as the sole beneficiary of a large brokerage account);
 - *See also Miller v. Eisentrager*, (finding that agent overcome presumption of fraud when principal's attorney testified that principal had wanted to transfer home to his daughter of his own free will).
- When the challenged transaction is in accordance with the principal's estate plan or established pattern of giving.
- *See Jackson v. Schrader*, 676 N.W. 2d 559 (Iowa 2003) (finding the presumption of undue influence was rebutted when evidence established a clear propensity of the mother [the principal] to favor her one daughter [the agent] over her other daughter that predated the agency relationship).