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Insights

Mental Capacity: An Easy Challenge Or A Tough Road?

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As the population in Florida continues to age, litigation stemming from allegations related to lack of capacity is on the rise. Family members or other beneficiaries looking to challenge legal documents often gravitate towards this cause of action. This could encompass a challenge to a wide array of legal documents, including: wills, trusts, or powers of attorney. Clients often seek our counsel about the standard in Florida for testamentary capacity. Many are surprised to learn that the standard is actually fairly low. Physical failings and advanced age do not automatically result in lost capacity. Even use (or sometimes abuse) of alcohol or narcotics is often not enough to demonstrate a lack of capacity. Individuals with mental health diagnoses are not precluded from making a valid estate plan either.

In Florida, there is a heavy burden to prove by a preponderance of the evidence that a person making a will lacked capacity at the time that the will was executed. Courts will presume mental health is intact until that is rebutted by strong evidence to the contrary. Obtaining relevant evidence to demonstrate a lack of capacity can be difficult but is certainly possible with the right set of facts and appropriate legal strategy. Further, trust documents can provide a different standard for proving testamentary capacity.

Florida's public policy favors following the disposition that is set out in a person's estate plan. In order to effectuate those wishes, testamentary capacity need only be present at the time the document is executed. Generally, the person must understand the following: (1) the nature and extent of their estate; (2) the relationship to the people who would naturally claim a benefit; and (3) a general understanding of the practical effect of the will.

If you have questions about an issue related to lack of capacity, please contact Melody Lynch at 407-418-6447 or melody.lynch@lowndes-law.com.

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