

# ELDER LAW REVIEW

March 2018

## Capacity

Capacity is a tricky term. A person can have the capacity in one instance but not in another. There are different types of capacity needed to execute different documents. The requirements for each will vary. This month we are going to outline the various types of capacity, then next month we will discuss options for individuals who lack capacity.

### **Testamentary Capacity:**

- ❖ This type of capacity is used with signing a will or trust. *In re Estate of Congdon*, 309 N.W.2d 261,266 (Minn. 1981).
  - The individual is able to understand the nature, situation, and extent of his or her property.
  - The individual understands the claims of others on his estate.
  - The person is able to form a rational judgement regarding these things.
- ❖ This is less stringent than the capacity required to sign a contract. *In re Estate of Anderson*, 384 N.W.2d 518, 520 (Minn. App. 1986).
  - Things the court may consider regarding testamentary capacity
  - The reasonableness of the property disposition
  - Testator's conduct before and after the disposition
  - Prior adjudication involving the testator's mental capacity
  - Expert testimony involving capacity.

### **Capacity to Sign Power of Attorney:**

- ❖ Minnesota statutes are unclear as to the level of capacity required to create a valid power of attorney, however case law has addressed this to an extent.
  - Person has enough mental capacity to understand to a reasonable extent, the nature of what he is doing. *Rebne v. Rebne*, 13 N.W.2d 18, 20 (Minn. 1994).

### **Capacity to sign a contract:**

- ❖ Competency to execute a contract is a question of fact. *Rebne* at 19.
- ❖ A person is competent to sign a contract if the party can understand the nature and effect of their actions when executing the contract. *Nelson v. Holland*, 776 N.W.2d 446, 451 (Minn. App. 2009).
- ❖ Mental weakness alone is insufficient to prove incompetency to contract if the party reasonably understands the nature and effect. *Timm v Schneider*, 279 N.W. 754, 755 (Minn. 1938).

### **Capacity to Sign a Health Care Directive:**

- ❖ Minnesota law does not define capacity in terms of Health Care Directive except to say that it applies when the physician determines the principal "lacks decision making capacity". Minn. Stat. § 145C.02 (2018).
- ❖ Decision making capacity is defined as; "The ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision". Minn. Stat. § 145C.01 (2018).

**Pluto Boes Legal recently added Guardianship-Conservatorship to our practice so if you have any questions please give us a call.**

Pluto Boes Legal, PLLC offers prospective clients a NO-cost, NO-obligation consultation. This is a great opportunity for you to become informed of the options available to you for your Estate Planning and Medical Assistance Planning needs.

We have many free, educational workshops coming up, so please give us a call, toll free at 1-866-457-3131 or visit our website [www.PlutoBoesLegal.com](http://www.PlutoBoesLegal.com) to see when our attorneys will be presenting a workshop in your area. Like us on Facebook! [www.facebook.com/PlutoBoesLegal](http://www.facebook.com/PlutoBoesLegal)

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