**Consent vs. Undue Influence: Subject Areas to Explore**

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| **Consent** | **Undue Influence** |
| * Does client have capacity to make a gift?
* Health status?
* What did client understand s/he was agreeing to do
* Whose idea was the gift/transaction?
* What was client told about the transaction?
* Were any promises made? Threats?
* Any misstatements/lies told?
* How will the client survive/manage/live in light of the transaction? Why did client agree to the transaction?
* What did client think would happen?
* Has decision affected client’s life? Life of family members who are affected by “consent”
 | * What role does A/P/POI play in client’s life? How long has client known A/P/POI? What does A/P/POI do for client?
* How did the relationship begin? Progress?
* Did client have time to think over the transaction? Was client “rushed to act”?
* Whose idea was the transaction?
* With whom did client discuss the transaction? With whom does client usually discuss such decisions?
* How recently has client had contact with family/friends? Is there a reason client have not seen them for so long?
* Were promises made? Threats?
* Who drew up the paperwork? Is that client’s usual attorney/advisor? Who selected this person?
* Did client have the opportunity to consult with a neutral third party?
* Does client understand the transaction?
* What events preceded the discussion about the transaction?
* What are the relative benefits to client and A/P/POI?
* Have there been other “gifts” or transactions with the A/P/POI?
* Prior plan for disposition of house or other asset given to the A/P/POI? Prior wills, trusts?
* Changes in relationship with person who had been expected to get the asset?
* Did client have the opportunity to consult with a neutral third party?
* Does client understand the transaction? Was the transaction fully explained?
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