

# *FIGHTING BACK AGAINST ABUSIVE SALES TACTICS !*

by George F. Dickerman, Attorney At Law

I regularly receive calls from prospective clients who have been unduly influenced, coerced or, through duress, have signed sales contracts to purchase goods they don't need, want, or can't afford.

The facts are always different, but the circumstances behind the cases are always the same: Overly aggressive salespersons verbally and psychologically wear down an elder's concentration and ability to defend their position, and ultimately manipulate them into signing contracts they never wanted to enter into. In a nutshell, they have taken advantage of an elder.

For a contract to be valid, the law requires that both parties must mutually consent to the agreement. "Consent" is not real or free when it is obtained through duress, menace, fraud, undue influence or mistake. [See California Civil Code Sections 1565, et seq.]

Simply because one reaches, for example, 65 years of age or older does not at all mean that we have a weaker state of mind. To the contrary, many older adults have accumulated a lifetime of experience, information and knowledge and can certainly put together the "logical modes of inference" which enable them to understand what is being sold, the payments, the finance charges, and the ultimate price.

As we age however, lifestyle, illness, our separation from the daily business world and, perhaps, some social isolation may mean that we do not have the stamina or desire to match wits with an aggressive salesperson. Perhaps, a loving spouse has "always handled those things" in the past.

Unscrupulous salespeople, who only have an interest in completing a sale and making money off their commission, are often skilled at double-talk, intimidation, and badgering. When combined with prolonged negotiations and a "won't-take-no-for-an-answer-attitude", these con artists can eventually wear down our resistance. Ultimately the senior may give in to the constant pressure and sign the contract.

What has happened is that the salesperson has used duress and undue influence to take unfair advantage of another. And there are legal remedies which can cancel these contracts even after they have been signed. The Civil Code allows for rescission (or un-doing) of a contract where it can be shown that undue influence took place.

The better approach though is to prevent such unscrupulous sales techniques from working on us!



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- **When you need to make a substantial purchase, arrange for friends to be present when you meet with the salesperson. There is strength in numbers!**
- **Discuss the details of any contract with a trusted relative, friend, or professional advisor before you sign.**
- **If you feel you are being badgered, just get up and leave or show the salesperson to the door!**

**Prevention is the best solution, but the law provides remedies if you have been ripped off.**

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