



## RealTalk® about Real Estate

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### **Topic: Undue Influence and Unconscionability in Real Estate**

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A recent decision from the Alberta Court of Appeal did not find undue influence nor unconscionability in a real estate transaction where an elderly rancher sold his land well below market value to a young ranching couple.

#### What Happened?

An elderly man exhibiting early signs of Alzheimer's sold his land to a young ranching couple in his community. Two years later, the ranching couple subdivided the land, made some improvements and listed the land at a significantly higher price. The Seller's brother commenced a lawsuit to set aside the transaction on the basis of undue influence and unconscionability.

The Alberta Court of Appeal found that:

1. even though the sale was financially disadvantageous, it gave him the seller an intangible satisfaction in knowing the land would be used by a young family who would continue the ranching tradition;
2. the seller received independent legal advice that confirms he understood the transaction he was voluntarily entering into. Advice as to the price was not required;
3. the seller had mental capacity at the time of the sale; and
4. the buyers were not aware of the seller's decline in cognitive functioning in the time prior to the transaction.

We believe that the buyers got lucky in this one, and that they narrowly avoided having the transaction rescinded.

#### The Law

Generally, the law will not protect you from making a bad bargain. However, if the Courts determine a party knowingly gained an unfair advantage over another due to an imbalance in bargaining power, leading to a grossly unfair transaction, or if an individual was unfairly persuaded into a transaction the legal doctrines of unconscionability and undue influence may be used to set the transaction aside.

#### Why Does it Matter to you?

If you are acting on a transaction which appears to be significantly under fair market value, watch out for red flags which may lend themselves to an unconscionable transaction, especially if the transaction involves elderly or other vulnerable sellers.

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