

DEEDS--ACTION TO SET ASIDE--DURESS.

The (state number) issue reads:

"Was the [execution] [delivery] of (identify deed) by (name grantor) procured by duress?"¹

On this issue the burden of proof is on the plaintiff.² This means that the plaintiff must prove, by the greater weight of the evidence, that the [execution] [delivery] of (identify deed) by (name grantor) was procured by duress.

Duress occurs when a wrongful act, a threat or coercion is used to force a grantor to [execute] [deliver] a deed against his will. (Duress may exist even though the grantor is fully aware of the nature and consequences of his act.) The existence of duress is for you to determine from all the facts and circumstances in evidence. You may

¹*Harshaw v. Dobson*, 67 N.C. 203 (1872).

²When the defendant contends that a fiduciary relationship was created between the plaintiff and the grantor, it may be necessary to submit an issue as to the existence of such fiduciary relationship. In those cases in which a fiduciary relationship is found to exist, the burden of proof shifts to the defendant. *McNeill v McNeill*, 223 N.C. 178, 181, 25 S.E.2d 615, 617 (1943); *In re Estate of Ferguson*, 135 N.C. App. 102, 518 S.E.2d 796 (1999). A fiduciary relationship exists where "there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Curl v. Key*, 311 N.C. 259, 264, 316 S.E.2d 272, 275 (1984). See also *McNeill v. McNeill*, *supra*. In such cases the burden of proof paragraph and the mandate will need to be altered so as to reflect the shift in the burden of proof.

DEEDS--ACTION TO SET ASIDE--DURESS. (Continued).

consider the following:³

the grantor's:

[age]

[physical condition]

[mental condition]

[access to or opportunity to have independent advice]

[the fairness of the conveyance]

[the existence of independent consideration for the conveyance]

[the relationship between the grantor and [the defendant] [*name person allegedly exerting duress*]]

[the value given up by the grantor in the transaction compared to the grantor's total net worth]

[the degree to which [the defendant] [*name person allegedly exerting duress*] sought or solicited the grantor to [execute] [deliver] the deed]

[the degree to which the grantor was already susceptible to pressure or coercion by reason of [personal distress] [family emergency]]

[*state other situation supported by the evidence*].

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence

³*Copley v. Copley*, 128 N.C. App. 658, 664, 496 S.E.2d 611, 616, *disc. rev. denied*, 384 N.C. 281, 502 S.E.2d 846 (1998); *Stegall v. Stegall*, 100 N.C. App. 398, 397 S.E.2d 306 (1990), *disc. rev. denied*, 328 N.C. 274, 400 S.E.2d 461 (1991).

DEEDS--ACTION TO SET ASIDE--DURESS. (Continued).

that the [execution] [delivery] of (*identify deed*) by (*name grantor*) was procured by duress, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

