

AS IS HOME SALE

Protect yourself when buying a home 'as is'

Whether you are a home buyer or seller you will probably encounter the term "as-is" sale. Just as used-car dealers sell thousands of automobiles "as is" without any warranty or representations, houses and condominiums are sold using the same term.

But an "as is" home sale is different. Thanks to state laws and court decisions, a real estate "as is" sale is far more complicated than the sale of an "as is" used car.

An automobile "as is" sale means "buyer beware." However, the best way to describe a real estate "as is" sale means "trust, but verify," as the late President Reagan said many times when referring to political situations.

WHAT IS AN "AS IS" HOME SALE? Simply stated, an "as is" home sale means the seller must disclose to the buyer all known defects, but the seller will not pay for any repairs.

Does an "as is" home sale mean the seller doesn't have to disclose known defects and can conceal them, as the seller of a used car might do? The answer is "definitely not."

Although two or three states still seem to follow the old common-law rule of "caveat emptor" (let the buyer beware), the modern law today in most states has evolved to "Let the home seller beware of the buyer and the buyer's lawyer."

In other words, even "as is" home sellers must reveal to the buyer all material defects of which they are aware. But "as is" sellers do not have to make any warranties or representations, and need not pay for any repairs to correct material defects.

WHY MANY HOMES ARE SOLD "AS IS." The reason many older homes are sold "as is" is because the seller doesn't want to pay for any repairs.

For example, if I were selling my house "as is" today, I would have to disclose the wood garage door is slightly warped and doesn't close tightly. As an astute buyer, you would surely observe this 1-inch gap at one corner. But the automatic door opener functions well and does its job. I would leave it up to the buyer to decide if he or she wants to install an expensive new garage door, but I'm not going to waste money repairing or replacing the still-good existing door.

There are at least four major reasons some home sellers want to sell "as is": (1) the seller doesn't have the money to correct the disclosed defects and prefers to let the buyer fix the problems; (2) the buyer is likely to renovate an older "fix up" house so the seller would be wasting money on minor repairs; (3) the seller has owned the house many years and doesn't insist on earning top dollar; and (4) the seller doesn't want the hassle and inconvenience of fixing the problem.

Possible additional reasons for "as is" home sales include the seller (1) recently acquired the residence by inheritance or purchase and is reselling for a quick profit; (2) hasn't lived in the property and is not aware of its problems; and (3) doesn't want any responsibility for fixing problems that might occur after the sale closes.

HOME WARRANTY POLICIES OFFER LITTLE PROTECTION. When purchasing an "as is" house, buyers should not be lulled into a sense of security if the seller offers a one-year home warranty policy as a sales incentive. Such policies have many exclusions and offer little real protection against serious home defects.

Home warranty companies are "pros" at using the pre-existing-condition exclusion. Although they are eager to accept the seller's or realty agent's policy cost of \$400 or more, these companies are notorious for refusing to repair or replace items by claiming the defect existed at the time of the home sale but was not yet manifest. Buyers who collect anything from a home warranty company should consider themselves very fortunate.

HOW "AS IS" HOME BUYERS CAN PROTECT THEMSELVES. Knowing the key reasons many home sellers elect to sell "as is," home buyers can benefit from such sales if they know how to protect themselves. Rather than reject such a home sale, usually advertised "as is" in the local MLS (multiple listing service), savvy buyers welcome such profit opportunities.

The best way for a buyer to protect against an unscrupulous seller who "forgot" to disclose a serious but known home defect is for the buyer to include a professional inspection contingency clause in the purchase offer.

Buyers of every house and condominium should include such an inspection clause making the purchase offer contingent on the buyer's approval of their professional home inspector's report. That means, after the home seller accepts the buyer's purchase offer, the buyer hires a professional inspector and then approves or disapproves their written report.

Home buyers should be wary of inspectors recommended by the real estate agent. Such an inspector might be known as "easy" and not a "deal killer." Ask such inspectors recommended by a realty agent about their experience, background and professional memberships.

An excellent credential is an experienced independent inspector who belongs to one of the professional home inspections organizations. Personally, I recommend members of the American Society of Home Inspectors (ASHI) because of their tough membership requirements. Local ASHI members can be found at www.ashi.com or 1-800-743-ASHI .

WHEN "AS IS" MEANS A BARGAIN PURCHASE. As explained, there are many legitimate reasons for selling a house or condo "as is" after all known defects are disclosed so the buyer can consider them when making a purchase offer.

Many home sellers are not fully aware of their home's defects. For example, years ago I bought a run-down, fixer-upper, "as is" house that obviously needed work. It had been listed for sale at least six months. The seller was an estate. Noticing many defects, I made a very "lowball" purchase offer, thinking it would be rejected. To my shock, it was accepted.

But my offer included a professional inspection contingency clause. I accompanied my professional inspector, as home buyers should always do. He discovered several problems of which I was not aware. We discussed them and he estimated the approximate repair costs (ethical home inspectors are not in the repair business but they usually know if a problem is expensive or inexpensive to fix).

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When I received the complete written inspection report a few days later, I showed it to the listing agent. He asked me point blank "OK. How much of a repair credit do you want?" Based on my inspector's very rough estimate, I said \$25,000. Later that day, the estate representative agreed to a \$25,000 repair credit, which more than covered my fix-up costs.

"AS IS" HOME-BUYER ALTERNATIVES. Even when buying an "as is" home where the seller fully discloses all known defects, as in my home purchase explained above, a professional inspector will often discover unexpected serious defects. When that happens, the buyer has several alternatives.

One is to cancel the purchase and obtain an immediate full refund of the buyer's good faith deposit. But a better alternative is to use the professional home inspector's written report to re-open negotiations to obtain a repair credit for the estimated cost of correcting the unexpected problems.

Especially in a slow "buyer's market," many home sellers are so glad to receive any purchase offer they will gladly agree to credit the buyer with the estimated repair cost.

A repair credit is usually better than a price reduction because the mortgage amount is usually not affected. Another advantage of a repair credit is the buyer can shop around after the sale closes and often reduce the actual repair cost.

SUMMARY: Just because a house or condo is offered for sale "as is" does not mean it should automatically be rejected. But buyers should be very cautious of "as is" sales, realizing the seller might not have disclosed all known defects.

However, savvy buyers insist on a written disclosure of all known defects and a purchase offer contingency clause for the buyer's approval of a professional home inspector's written report. For more details on "as is" home sales, please contact a local real estate attorney.