

OK, so: “What is: “AS IS?”

When an attorney representing a Seller prepares a Contract, the general rule is that the property is sold “AS IS”. The standard provision of a Purchase and Sale Agreement reads: “The Buyer represents, that the Buyer has inspected the property and is fully satisfied with the physical condition of the property and neither the Seller nor any representative of the Seller is making any representation, warranty or guarantee upon which the Buyer can rely: the property is being sold “AS IS”.”

First, let us remember that legally, what is being bought and sold is . . . the LAND, not the house. It is the PROPERTY that is being conveyed in the Deed transferring TITLE. A TITLE Search is ordered of the PROPERTY. The documents being searched and recorded are done so on the LAND records and the bank requires TITLE insurance. In addition to the land, however, the Deed also conveys anything that happens to be “affixed” to the property such as a septic, well, driveway, fence, stone wall . . . and a home, if, in fact, these items are located within the confines of the property being conveyed. Sellers never warrant what actually is located on the property being conveyed (Buyers accept the property “subject to any state of affairs an accurate survey of the property reveals”) so unless there is a Plot Plan (an article for the future) no one actually knows what is physically on the land being conveyed.

Because the Seller, then, is not legally selling the house, the contract is generally missing any representations about that which the Buyer emotionally and financially thinks s/he is buying: the home. Even, however, when Sellers make representations (such as the Residential Property Condition Disclosure Report or in Riders that Buyers lawyers may attach to contract) they are, in my opinion, pretty much worthless (another article for the future).

The fact that a property is being sold **“AS IS”** however, still allows a Buyer to determine what **“AS IS” . . . IS**. Standard “Offers” or “Binders” are most often made “subject to satisfactory inspections”-- with “satisfactory” meaning in the sole discretion of the Buyer. Therefore, even if the Seller wants to notify potential Buyers up front that the property is being sold **“AS IS”**, it simply means that the Seller is attempting to put the Buyer on notice that regardless of what the inspection reveals, the Seller is not going to do anything about any inspection issues the Buyers may raise.

Sometimes that works. Oftentimes, however, it does not. If the inspection were to reveal matters previously unknown to the Seller that would now require disclosure of those matters to future Buyers (either by the Listing Agent because the issues are “material” or by the Seller, as part of the Property Condition Disclosure Report), Sellers may find themselves needing to address the issues and negotiate further with Buyers. So long as the Offer was made subject to “satisfactory inspections”, if those negotiations were unsuccessful, the Buyer has the absolute legal right to withdraw from the transaction and receive the binder monies back – even if the Seller had written into the Offer that the property was being sold “AS IS”.

This article is not intended for use as specific legal advice about a particular matter, Offer, Binder or Contract and parties should always consult with attorneys regarding their legal rights, responsibilities, duties and liabilities.

For further information or any questions or concerns about this or other real estate related matters, please always feel free to always contact me at 203-744-RIEF (7433) or at lriefberg@riefberglaw.com.

Thanks and I hope the information provides so valuable insight. Larry