

PROS AND CONS OF BUYING OR SELLING AN 'AS IS' HOME

What is an 'as is' transaction?

Spring is the peak season for house and condo sales. April, May and June traditionally have the largest number of home-sale closings. As mortgage interest rates slowly edge upward, the result is expected to be a surge of home buyers who want to buy before home loans become more expensive.

In many communities, there is currently a shortage of home-listing inventory. Nobody is certain what caused this decline in numbers of houses and condos for sale in many areas. The result is a "seller's market" where there are more qualified prospective home buyers than homes available for sale.

Although many home sellers who want to receive top dollar follow their realty agent's advice to fix-up their residences before listing them for sale, other sellers decide to skip the fix-up work and sell "as is." There are pros and cons to such a decision.

WHAT IS AN "AS IS" HOME SALE? An "as is" sale means the home seller will not pay to fix-up or repair any defects in the residence. "What you see is what you get" is a common interpretation.

However, state statutes and court decisions have modified the classic "as is" home-sale definition. Today, in most states, the home seller must disclose in writing to the buyer all known defects in the residence. But an "as is" seller need not repair those defects.

The consequence for a home seller who fails to disclose significant known home defects is often a lawsuit by the buyer who later discovers the undisclosed defect. The home buyer's difficulty, however, is proving the seller knew of the defect.

For example, several years ago I bought a rental house "as is" from an absentee seller. He said there were no significant defects in the house. But shortly after purchase, my holdover tenant phoned to complain about the ceiling leak in the kitchen. When I asked if there was a leak there earlier, she reported the seller tried to patch the leak several times.

If I wanted to take my seller to local Small Claims Court for the cost of repairing that leak, I would have easily won because my tenant was willing to testify as a witness that the seller knew about the undisclosed leak and had tried several times to repair it.

Instead, I asked several roofers to inspect the roof and estimate the cost of either repairing the leak or replacing the entire roof (which appeared to be at least 15 years old). Although the leak repair cost was only around \$300, I decided to replace the entire roof, which appeared to be ready to start leaking elsewhere.

My seller got away with his "as is" sale and failure to disclose a known defect because it wasn't worthwhile taking him to court after he denied knowledge of the leak.

"AS IS" HOME SALES OCCUR FREQUENTLY. The three major reasons home sellers elect to sell "as is" after disclosing known defects are: (1) the seller doesn't have the funds to make repairs and is willing to discount the sales price to compensate, (2) the older home is likely to be renovated by the buyer, and (3) the seller doesn't want the inconvenience and hassle of making repairs.

Many elderly home sellers fall into these categories. As a result, home buyers willing to buy "as is" can often purchase at bargain prices.

For example, when my elderly parents sold their house, they didn't want to paint it and do more than ordinary cleanup. They sold "as is." That was a very wise decision. Their buyer radically remodeled the house so any fix-up work would have been wasted money for my parents who were very satisfied with the sales price they received.

Especially in a busy "seller's market," realty agents report many home sellers prefer "as is" sales to the hassle of fixing up the home before listing it for sale.

However, when the local home sales market is slow, indicating a "buyer's market" with more homes listed for sale than there are qualified buyers, then fixing up a home before sale often makes it stand out from the other residence listings.

HOW BUYERS CAN PROTECT AGAINST PURCHASING A "LEMON." Whether or not the house or condo is offered for sale "as is," every house and condo buyer should include in their purchase offer a contingency clause for the buyer's approval of a professional inspection report.

Such a clause can protect the buyer against purchasing a "lemon," which has serious undisclosed defects.

Buyers of "as is" homes can often obtain bargain purchase prices because the sellers aren't willing to make repairs. After the seller accepts the buyer's purchase offer, my recommendation is the buyer accompany their professional home inspector. Many buyers fail to do so, losing the big benefit of discussing any defects with their inspector.

For example, several years ago I made a purchase offer to buy an obviously run-down house. The seller accepted my low offer which had an inspection contingency clause. My major concern was a big crack in the fireplace. I accompanied my professional inspector who paid special attention to the fireplace and chimney.

After he climbed up in the attic, when he came down he said the crack in the brick could be repaired for about \$150 with special fireplace mortar. As a result, I bought that house, which I later learned had been rejected by many other buyers based on that ugly fireplace crack, which was easily and safely repaired at low cost.

Personally, I recommend professional home inspectors who are members of the American Society of Home Inspectors (ASHI) because of ASHI's tough membership requirements. Local ASHI members can be located at www.ashi.com or 1-800-743-ASHI.

The cost of a typical professional home inspection is \$300 to \$400 and well worth it because even an honest home seller might not be aware of hidden home defects a professional inspector can discover.

DON'T REJECT AN "AS IS" HOME. Some realty agents advise their prospective buyers to not even bother looking at homes that are listed for sale "as is." That can be a costly mistake for both the buyer and the agent.

My experience has been there are many reasons sellers decide to sell "as is," and such houses and condos should not automatically be rejected. In fact, they are often tremendous bargains because many other buyers won't even inspect "as is" residences.

If the "as is" house or condo is what you want to purchase, negotiate your purchase offer as to the price and terms, but be sure your offer contains a professional inspection approval contingency. Then make your final purchase decision after you receive the results of your professional home inspection.

HOW TO HANDLE UNDISCLOSED HOME DEFECTS. When the home buyer's professional inspection report reveals significant undisclosed defects, the buyer has two choices: (1) cancel the purchase and obtain an immediate refund of the good faith deposit, or (2) negotiate a credit with the seller for the cost of repairing the undisclosed defects.

Many sellers are so anxious to get rid of their home they will gladly offer the buyer repair credits for the undisclosed defects even if the seller was unaware of those problems.

SUMMARY: There are pros and cons for both buyers and sellers of an "as is" home sale. Sellers should understand the benefits and drawbacks of listing their homes for sale "as is."

But buyers should not automatically reject "as is" homes. Instead, buyers should seriously consider such purchases, which are often bargains. But always make purchase offers contingent on the buyer's approval of a satisfactory professional home inspection report. For more details on "as is" home sales, please consult a local real estate attorney.