

Does an "As Is" Clause in a Real Estate Contract Protect a Seller from Liability?

Sellers will often insert an "as is" clause into real estate purchase contracts to avoid future liability for misrepresentation regarding the condition of the property being sold. The purpose of an "as is" clause is to force the buyer to rely upon its own investigation, rather than upon the seller's representations, in determining whether or not to purchase the property.

An "as is" clause will protect a seller from the duty to disclose property defects if:

- the seller is unaware of the defects;
- the buyer has actual knowledge of the defects; or
- the seller knows of the defect but remains silent, and the defect is one that is readily discoverable by the buyer through reasonable investigation.

Meanwhile, an "as is" clause will not relieve a seller from the duty to disclose property defects if:

- the seller somehow prevents the buyer from discovering the defects;
- the seller makes an affirmative misrepresentation regarding the condition of the property; or
- the seller knows of the defect but remains silent, and the defect is of such a nature that a typical buyer is in a poor position to uncover it.

Accordingly, sellers can best protect themselves from liability for misrepresentation by taking the following steps:

- using an "as is" clause in the real estate purchase contract;
- granting broad inspection rights to the buyer; and
- disclosing any defects known to the seller that are not readily discoverable by the buyer.

POSTED:

Feb 17, 2008

RELATED PRACTICES:

[Real Estate](#)

<https://www.reinhartlaw.com/practices/real-estate>

RELATED PEOPLE:

[Justin F. Oeth](#)

<https://www.reinhartlaw.com/people/justin-oeth>



These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.