

“AS-IS” RESIDENTIAL CONTRACT FOR SALE AND PURCHASE

A. USE OF THE FORM: The “As-Is” Residential contract for Sale and Purchase (“As-Is Form”) has become the more widely used version of the Contract. The primary difference between the As-Is Form and the Standard Form is the absence of any obligation on the part of the seller to conduct General Property Repairs, WDO Repairs and permit remediation as required by Paragraph 12 of the Standard Form. As previously discussed, the Standard Form can be converted to an As-Is Form by utilizing Comprehensive Rider K (As-Is). In addition, the Standard Form can be modified through the use of Comprehensive Rider L (Right to Inspect and Right to Cancel). Rider L combines the inspection/cancellation rights with the repair and remediation obligations contained in Paragraph 12 of the Standard Form. Whether the Standard Form or the As-Is Form is used is typically a matter of negotiation between the buyer and the seller.

B. COMPARING THE STANDARD FORM TO THE AS-IS FORM: The following is a summary of the differences between the Standard Form and the As-Is Form.

1. Occupancy and Possession: In Paragraph 6 (As-Is Form), the buyer is required to accept the condition of the property at the time of occupancy without regard to repairs required under Paragraph 12 (Standard Form).

2. Repair/Remediation Limits: References to General Repair Limit, WDO Repair Limit and Permit Limit in Paragraph 9 (Standard Form) are eliminated. The escrow provision is limited to funds necessary to meet the Maintenance Requirement.

3. Seller’s Disclosure:

10(j) SELLER DISCLOSURE: Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

A disclaimer of warranties and representations with respect to the physical condition of the property is included.

4. Property Inspection: Paragraphs 12(a)(b)(c) and (d) (Standard Form) have been deleted and replaced with Paragraph 12(a) of the As-Is Form discussed in more detail below.

5. Violations of Zoning, Restrictive Covenants, Etc.: Paragraph 18 A(ii) (Standard A of the Standards for Real Estate Transactions) has been modified to eliminate the phrase, “...provided, that, unless waived by Paragraph 12(a) there exist at closing no violation of the foregoing...” This deletion places the risk of violations of zoning, land use regulations and other land use restrictions, prohibitions or requirements imposed by governmental authority (see Standard A(i)(a) on the buyer except for violations which constitute objectionable survey defects under Standard B. Notice that both the Standard Form and the As-Is Form provide that violations of items identified in Standard A(i)(b)-(f) are treated as title defects. In effect, the seller’s representation that there are no violations of zoning, land use and other governmental regulations has been deleted from the As-Is Form.

CAUTION: If the as-is form is being used, the buyer should be advised to use the inspection period to investigate the status of building permits and possible violations of building codes; otherwise, the buyer may be deemed to have accepted the property subject to any permit or building code violations without recourse against the seller.

6. Property Inspection; Right to Cancel:

12. PROPERTY INSPECTION; RIGHT TO CANCEL:

- (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have _____ (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.
- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.
- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

Under the As-Is Form, the buyer is allowed a period of time (15 days if some other time period is not inserted) beginning with the Effective Date within which to inspect the property and conduct other investigations ("Inspection Period"). The buyer has a discretionary right to cancel the contract at any time prior to the end of the Inspection Period by giving seller the required written notice of cancellation. If the Inspection Period expires without the buyer exercising the right of cancellation the buyer is accepting the physical condition of the property and any violation of governmental, building, environmental and safety codes, restrictions or requirements, except violations which are survey defects under Standard B.

CAUTION: Notice that the buyer continues to have certain protections under the contract notwithstanding the acceptance of the property in as-is condition. The title and survey provisions of Standards A and B continue to apply. In addition, the seller is not relieved from the obligation to make disclosures under Paragraph 10(j) nor from the Maintenance Requirement as provided in Paragraph 11.

The Walk-Through Inspection/Re-inspection provision in 12 (b) is modified to eliminate reference to "...repairs and replacements required by this Contract". The seller's only repair responsibility is to comply with the Maintenance Requirement.

Section 12 (c) imposes the obligation to resolve open or needed building permits on the buyer. The seller is obliged to deliver any plans or documentation related to the improvements which are the subject of the open or needed building permits and to cooperate with the buyer without incurring any costs or liabilities. The responsibility for resolving permit issues can be re-assigned to the seller by including a special provision in Section 20.

Section 12 (d) of the As-Is Contract eliminates reference to “Repair Standards” since the seller has no repair obligations other than those imposed by the Maintenance Requirement. The provision requires seller, upon request, to assign any assignable repair, treatment and maintenance contracts along with warranties.

ADVANTAGES OF USING THE AS-IS FORM: The use of this form eliminates the obligations of the seller to obtain cost estimates, employ contractors and pest control companies to make repairs and treat/exterminate pests. The seller is not required to undertake any repairs other than those required by the Maintenance Obligation. Having the buyer responsible for and in control of repairs is often preferred. This simplifies the sale process. Upon expiration of the Inspection Period, the parties and brokers have reasonable certainty that either the sale is cancelled, or the buyer will proceed to closing, subject to any other contingencies. There can be some anxiety as the end of the Inspection Period draws near. The buyer may be concerned about various deficiencies discovered. Occasionally the parties engage in last minute negotiations for a price reduction or credit under a perceived or actual threat of cancellation.

7. BUYER WAIVER OF CLAIMS:

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X. BUYER WAIVER OF CLAIMS: *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

Standard X has been added to the As-Is Form to provide protection to the seller and broker/ agent from claims of the buyer relating to property defects possibly existing at closing but discovered subsequently. In keeping with the concept of an as-is sale/purchase, the buyer is waiving these types of claims. As stated in Standard X, the waiver does not apply to material non-disclosures by the seller or agent. Also, it will not protect a seller or agent from claims of misrepresentation and other forms of fraud or claims unrelated to physical condition.