

## Use of an “as is” Clause

### **Are the C.A.R. purchase agreements “as is” contracts?**

Yes. All of the C.A.R. purchase agreements state that the property is sold in “as is” condition. In the RPA-CA, for example, this exact language is found in paragraph 11.

### **Is it necessary for the seller to include additional language in the purchase agreement to ensure that the property is sold “as is?”**

No. The C.A.R. “as is” clause is sufficient.

### **Does the “as is” clause eliminate any obligation on the part of the seller to make any repairs whatsoever?**

No. Under the terms of the C.A.R. contracts, the seller is still obligated to maintain the property in its condition as of the date of acceptance. If the property is damaged during the escrow, as long as the buyer was not at fault for causing the damage, the seller will likely be obligated to repair it prior to close. Also, since the as-is paragraph begins with ‘Unless otherwise agreed in writing...’ a particular statement in the agreement could require the seller to make repairs (see question below for example) to that item despite the as-is clause.

### **Is the seller also required to make repairs for state (and local) retrofit requirements?**

In most transactions there will be state (and sometimes local) point-of-sale retrofit requirements which may require repairs to be made to the property despite the “as is” clause. For example, water heater bracing and smoke alarm installation laws will often require repairs to be done prior to close of escrow. However, the seller may negotiate to shift the cost to the buyer and require the buyer to make or hire someone to make repairs if necessary.

### **Does the “as is” clause relieve the seller of the obligation of having to make disclosures?**

No. The seller is obligated to provide all disclosures required by law and contract regardless of the “as is” clause. These will typically include the TDS, the SPQ and material fact disclosures.

### **Does the “as is” clause mean that the buyer has waived their right to investigate the property?**

No. The “as is” clause only touches upon the condition of the property, it does not affect the buyer’s right to investigate it.

### **Does the “as is” clause mean that the buyer has waived their contingencies for investigations?**

No. The mere statement that the property is sold “as is” in no way constitutes a waiver of the investigation or disclosure contingencies.

### **What’s the single most common mistake in using an “as is” provision?**

When a buyer writes an offer requesting a repair, the seller will sometimes counter stating that the property is sold “as is.” That is ambiguous at best. Instead, the seller should explicitly counter out the repair request.