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The Voice - 2022 Q1



from **The Voice - 2022 Q1**

by **NMAssocofREALTORS**

LEGAL UPDATE

What Exactly Does “As-Is” Mean?



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from ['By Ashley Strauss Martir General Counsel'](#)



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The “as-is” language is ambiguous and should be avoided whenever possible. Brokers love pithy phrases that they believe “sum up” the concept, while it’s well known that attorneys get paid by the word. Somewhere between the ambiguity often borne from brevity and the labyrinth often resulting from verbosity resides the perfection of concision. Unfortunately, the term “as-is” is not that.

The NMAR Residential Re-Sale Purchase Agreement (Purchase Agreement) does not require the seller to do any repairs. If the buyer conducts inspections and asks for repairs to be made, the seller may always say “no.” Further, in the Purchase Agreement, the seller makes no warranties about the property. Therefore, the parties must be trying to say something more when they insert “as-is” language than simply “the seller won’t do any repairs”; otherwise, the “as-is” language is not just ambiguous, it’s redundant. Which begs the question – what are the parties trying to accomplish?

Normally, the buyer conducts inspections and based on inspections, the buyer may:

1. Terminate the contract; 2. Ask for repairs; 3. Ask for a seller concession; or 4. Ask for a price reduction.

With this “as-is” language, is the seller simply alerting the buyer to the fact that the seller won’t do any repairs, but the buyer is still permitted to do inspections, ask for whatever they want as a result of those inspections and when the seller says “no”, then the buyer can terminate? Then why not just say: “Seller will not do any repairs.”

If the seller does not want the buyer to ask for repairs, a seller concession or a price reduction, but is willing to let the buyer conduct inspections and terminate based thereon, then why not say:

“Seller will not conduct any repairs on the property, reduce the price or provide any seller concessions. Buyer retains the right to conduct inspections and to terminate the purchase agreement in accordance with the Objection Deadline.”

Under New Mexico law, including the term “as-is” in the Purchase Agreement only “provides absolute protection to a seller... when the buyer and seller possess equal knowledge of the property”. Further, it provides no protection for sellers if the seller intentionally misrepresents the property to the buyer: “a claim for fraud may be predicated on concealment where there is a duty to disclose” and “if a party actively misrepresents the condition of the property, then an “as-is” clause does not preclude recovery.”

Another highly flawed phrase often used is “inspections for informational purposes only.” When this language is used on its own, it is ambiguous. Does it mean the buyer is waiving the inspection contingency? When it is used with an inspection contingency waiver, it again begs a question – what is to be gained by the buyer conducting inspections

BEFORE closing if the buyer has waived the inspection contingency? While the buyer may claim they are just “curious”, it is highly likely that if/when the buyer discovers deficiencies in the property, they will ask for repairs or concessions. If the seller refuses, relying on the inspection contingency waiver, the buyer may claim the seller failed to disclose adverse material facts, even if the seller had no prior knowledge of the deficiencies revealed during the buyer’s inspections.

In conclusion, the parties and brokers need to be clear as to what is intended when adding language to the Purchase Agreement. Less words is not always better. Further, the parties should consider what they wish to accomplish with the language. Remember, the better the understanding between the parties in the beginning, the less likely it is there will be a problem down the road.

ADA Website Accessibility DOJ Guidance On Friday, March 18, 2022, the Department of Justice (DOJ) published guidance on website accessibility under the Americans with Disabilities Act (ADA). While the DOJ has not provided regulations setting out detailed standards, it has established a new web-page providing information about how state and local governments and businesses open to the public, such as real estate brokerages, can use existing standards to make their websites accessible to people with disabilities in line with the ADA’s requirements.

In the absence of a formal regulation, businesses will have flexibility in how they comply with the ADA’s general requirements of non-discrimination and effective communication but they must comply with the ADA’s requirements. Brokers should work with their website vendors to conduct accessibility audits of their business websites to identify any accessibility deficiencies.

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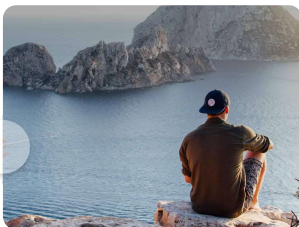


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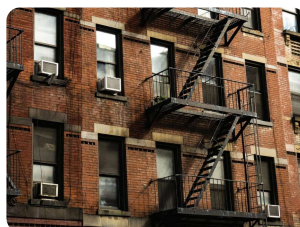
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