

“as is where is” clause

An “as is where is” clause (the “**Clause**”) can be commonly found in conveyancing contracts, notably contracts for sale and purchase of properties and even tenancy agreements, as well as a variety of other contracts. It can be considered a clause expounding the theory of “let the buyer beware”. While it is generally found in contracts for sale and purchase of residential properties, the Clause is not necessarily the norm for commercial properties where parties are freer to contract on specific terms.

What is an “as is where is” clause?

Generally, the Clause when used in connection with the sale of a property means that the property is sold in its existing condition without modification, thus relieving the seller from liability for defects in that condition. In other words, the buyer “takes them (in this case the property) as I see them” and the seller makes no representations as to the property. The buyer is deemed to have inspected the property on or before the signing of the agreement, and is satisfied as to the state and condition thereof.

When is an “as is where is” clause invoked?

The Clause is usually found in contracts for sale and purchase of residential properties as a standard clause but can also be invoked in the case of commercial properties depending on the negotiations of the parties. In addition, the Clause

can also be found in other types of contracts, for example, contracts for sale and purchase of ships, airplanes, and large equipment, or sale at an auction.

Does an “as is where is” clause apply to all defects?

The Clause extends only to defects that can be discovered upon inspection by the buyer, including physical inspection and proper due diligence, and does not, for example, include defects in title. However, fraud on the part of the seller can negate the application of the Clause. For example, if the seller deliberately withholds information from the buyer, the seller cannot then rely on the Clause to claim that the buyer bought the property at the buyer’s own risk.

What happens when an “as is where is” clause applies?

When the Clause is invoked, should the buyer find any defects (for example, physical defects in a property like a damaged roof, or discoverable defects like a registered caveat on the property), the buyer will be unable to claim against the seller for damages. Even if the defect is so serious as to warrant a repudiation of the contract in a normal situation, the buyer will have to take the property and honour his part of the contract because of the existence of the Clause.

The content of this article is only intended to provide general information on the subject covered. Nothing in this article should be treated as legal advice.

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