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## **Contract Review Course – Understanding the “As Is” Contract**

The prevalence of foreclosure and short sales in the past decade increased the use of the FR/BAR “As Is” real estate contract. These are contracts that specify buyers must take the property “As Is” — in its existing condition — without the seller having to make any additional repairs or improvements.

The “As Is” contract gives the buyer a short period of time — the default is 15 calendar days — to get an inspection done of the property. If the inspection reveals repairs to be made, the buyer can ask the seller to lower the sale price of the home or give a credit at closing to cover the cost of those repairs. If the seller refuses, the buyer has the option to back out of the deal within that 15-day period without losing his or her deposit.

The “As Is” contract does not alleviate a seller from making mandated disclosures about the property to prospective buyers. These disclosures include the existence of:

- Any potential or actual claims, complaints or legal proceedings that affect the property;
- Any boundary disputes;
- Any environmental hazards;
- Any damage or infestations from termites or other pests;
- Any potential or actual damage from sinkholes, past or present;
- Any problems with essential components such as HVAC, roof, plumbing, electrical, etc.;
- Any condominium or homeowner’s association rules that require compliance.

There has been a split between Florida appellate courts on whether sellers or seller’s agents are required to disclose information to a buyer that is a matter of public record. In 1997, the Third District Court of Appeal held that because local flood regulations are available as public records, the buyer is responsible for knowing if a property is in a flood zone.

In 2001, the First District Court of Appeals held that even though certain information about a property may be part of the public record and could be ascertained prior to a purchase, the availability of the information does not bar claims for fraud or negligent representation against a seller or seller’s agent.