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THE BARNES WALKER EDUCATIONAL SERIES
presents:

FAR/BAR "AS IS" RESIDENTIAL CONTRACT
FOR SALE AND PURCHASE CONSIDERATIONS

Most Realtors® in Manatee and Sarasota utilize the Florida Association of Realtors®/Florida Bar ("FAR/BAR") "As Is" Residential Contract for Sale and Purchase revised 07/2023 as their preferred form of contract. The other form contracts are still being used albeit, in fewer numbers. There are many differences of opinions among Realtors® as to the best form to use, but this article focuses on considerations for using the "As Is" contract.

As with any deal, an offer is made through a contract signed by the Buyer based on the forms that are provided to the Realtors®, and therefore the Realtors® have to choose or are directed by their broker on which form to use. In some instances, the multiple listing service comments do request that offers be in an "As Is" contract form. When dealing with bank-owned properties or "REO" properties, the bank representatives do insist that the "As Is" contract be used and then they almost all require an addendum to the "As Is" contract be attached which extensively modifies the contract.

The "As Is" condition only relates to the physical characteristics and some recorded instruments, and the Seller still has to deliver free, clear, and marketable title to the property in accordance with the contract. Remember, even though it is an "As Is" contract, under Florida law and in accordance with the Contract itself, a Seller still has a duty to disclose all material facts that materially affect the value of the property that are not readily observed and/or have not been disclosed to the Buyer. By using the "As Is" contract, the Seller cannot escape his/her obligation as far as this disclosure is concerned. The Seller's disclosure form helps the Seller comply with this requirement.

From a Buyer's perspective, the "As Is" contract allows the Buyer to do whatever inspections the Buyer deems necessary and within the inspection period set out in the contract. The Buyer can terminate for any reason related to the property deemed appropriate without having to account to the Seller for said reason. On the negative side, the Buyer is taking the property "As Is" without any warranties (other than title), as the Seller is not obligated to repair any of the problems discovered during the inspection. In practice however, if a Buyer does perform an inspection and problems do exist and the Buyer requests the Seller to repair the defects, a Seller

can decline. If the defects are material, the Seller is obligated to disclose these items to the next Buyer or repair them prior to the next offer as the Seller is now aware of the defects in the property.

From a Seller's perspective, the positive aspect of the inspection provision is that the Seller is in control of spending money on repairs, because, upon request of the Buyer to make repairs, the Seller can simply say "no," and at that point the contract would terminate. The Seller would then need to disclose any newly discovered defects to a new Buyer or repair them. The negative aspect from the Seller's perspective is that the Seller is allowing the Buyer to do their due diligence at the Buyer's election and discretion possibly without having a licensed or appropriate person perform the inspection. The Seller is taking the property off of the market for said inspection, yet the Buyer can simply back out for any reason and receive the deposit back and the Seller will have lost time. The Seller also is exposed to having to negotiate repairs with the Buyer prior to the end of the inspection period because practically speaking, Buyer's right to cancel the Contract during the inspection is a right for Buyer to negotiate for the Seller to pay repairs now, especially if the need for the repairs will need to be disclosed or the repairs made for a new buyer. In addition, if the Buyer can point out that, if the Buyer cancels, the Seller will have to re-start the sales process and may be offered a lower price.

Thus, it is very important to manage the Buyer and the Seller expectations as it relates to the "As Is" contract.

Please note that it is never advisable for a Buyer to forego an inspection period and/or agree to a short time frame. From the Seller's perspective, it is advisable to provide some inspection rights. If no inspection rights are allowed and the Contract closes and then after the closing the Buyer finds issues, the Buyer may claim that he or she was not afforded the right of an inspection period and could place blame with the Realtor® and/or the Seller.

If you have any questions regarding the "As Is" Residential Contract for Sale and Purchase, please do not hesitate to call 941-741-8224 or e-mail.

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