CALIFORNIA REAL ESTATE LAW

3 Contract Clauses that Create Risk in California Real Estate Transactions

A Plain-English Guide for Buyers, Sellers, and Investors

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Most California real estate disputes don't begin with fraud. They begin with a clause no one explained at signing.

Purchase contracts, lease agreements, and development deals often contain provisions that quietly shift risk — sometimes significantly — in ways that aren't obvious from a plain read. The language looks standard. The deal moves forward. And the problem surfaces later, when options are limited.

You don't need to be a lawyer to close a real estate transaction, but you do need to understand what you're agreeing to. Below are three provisions that frequently create issues in California real estate deals — and what each one actually means for the party signing on the dotted line.

1

"As-Is" Property Condition Clauses

What This Clause Is

An "as-is" clause means you are buying the property exactly as it exists on the day of closing — with all of its known and unknown conditions, defects, and problems. The seller is not promising that anything is in working order, up to code, or free of hidden issues. They are simply transferring ownership, and whatever comes with the property is now yours.

This clause does not mean you can't inspect the property before buying. Inspections are a separate part of the transaction. What the as-is clause does is limit your ability to go back to the seller after closing and say, "This wasn't disclosed — I want compensation."

> *Note: As-is language limits warranty claims — it does not eliminate a seller's separate obligation to disclose known material defects under California law.*

Why Sellers Use It

Sellers include as-is language to create a clean break. Once the deal closes, they want finality — no calls, no claims, no litigation over conditions they may not have even known about. It's a risk transfer mechanism, and it's extremely common in California commercial real estate.

Sample Language

> *"Buyer acknowledges that the Property is being conveyed 'AS IS, WHERE IS' with all faults and without representation or warranty, except as expressly set forth herein."*

What Buyers Often Misunderstand

Many buyers assume that getting an inspection protects them from an as-is clause. It doesn't — at least not automatically. An inspection tells you what was found. The as-is clause determines what you can do with that information legally. If you proceed to close without negotiating any repair credits or price adjustments, you are accepting the property in whatever condition the inspector documented.

The critical question to ask before signing is: if something serious is discovered after closing that wasn't visible during inspection, what are my options? In many as-is transactions, the honest answer is: very limited.

Example

> A buyer closes on a commercial property in Los Angeles after a 10-day due diligence period. Several months later, environmental testing reveals soil contamination requiring significant remediation. Because the contract contained an as-is clause and the due diligence period had already expired, the buyer had limited contractual recourse — even though the contamination predated their ownership.

2

Due Diligence Period Limitations

What This Clause Is

A due diligence period is the window of time after a purchase contract is signed during which the buyer can investigate the property before committing fully to the deal. Think of it as the "tire-kicking" phase — the time to hire inspectors, review title records, check zoning regulations, pull environmental reports, and verify that the property is what you think it is.

During this period, a buyer typically has the right to walk away from the transaction and recover their deposit if something concerning is discovered. Once the due diligence period expires, that right usually disappears. At that point, backing out of the deal can mean losing your earnest money deposit or facing other legal consequences.

Why This Clause Creates Risk

The problem isn't the due diligence period itself — it's when the period is too short to actually complete a meaningful investigation. Commercial real estate transactions often involve complex title histories, environmental conditions, zoning requirements, and physical infrastructure that can take weeks to properly evaluate. A 10- or

15-day window sounds reasonable on paper, but it may not be enough time to get environmental testing results back from a lab, let alone review them with an expert.

Sample Language

> *"Buyer shall have fifteen (15) days from the Effective Date to conduct all inspections, after which Buyer shall be deemed to have approved the Property."*

What "Deemed to Have Approved" Actually Means

That phrase — "deemed to have approved" — is doing a lot of work. It means that if you haven't formally objected to something and terminated the contract before the deadline, the law treats you as though you reviewed everything and accepted it. It doesn't matter whether you actually finished your review. The clock ran out, and your silence is treated as approval.

This is why due diligence deadlines should be negotiated carefully, not just accepted as a standard term. The right timeline depends on the type of property, its history, and the complexity of the transaction.

Example

> A buyer purchasing a small industrial property is given a 15-day due diligence window. They schedule an environmental Phase I assessment, but the report isn't delivered until day 17. The due diligence period has already expired. The buyer now faces a choice: proceed without the report's findings informing their decision, or attempt to terminate and risk losing their deposit.

3

Seller Representations That Expire at Closing

What a "Representation" Is

In a real estate contract, a representation is a formal statement of fact made by one party to the other. When a seller represents something — for example, that there are no pending lawsuits affecting the property, that all permits are current, or that no known environmental issues exist — that statement becomes part of the deal. If it turns out to be false, the buyer may have legal recourse.

But that recourse depends on one critical detail: whether the representation "survives" closing.

> *Note: An important exception applies if a seller made a knowingly false statement.*

What "Surviving Closing" Means

When a representation survives closing, the seller's statement continues to be legally enforceable after the transaction is complete. If you discover a month later that a representation was false — say, the seller told you there were no code violations, but there were — you can pursue a claim.

When a representation does not survive closing, the seller's obligations under that statement end the moment you take ownership. The deal is done. Whatever you discover afterward, you generally have no claim based on what the seller told you before signing.

Why Sellers Use Non-Survival Language

Sellers prefer non-survival clauses for the same reason they prefer as-is provisions: finality. Once the deal closes and proceeds are distributed, they do not want to remain exposed to claims that could arise months or years later. This is a legitimate interest — but it puts the burden squarely on the buyer to discover problems before closing, not after.

Sample Language

> *"Seller's representations and warranties shall terminate upon Closing and shall not survive thereafter."*

Buyers should carefully review which representations, if any, survive closing and for how long. Negotiating even a limited survival period — six months to a year — can make a meaningful difference in post-closing exposure.

Final Thoughts

The three provisions covered here — as-is clauses, due diligence periods, and expiring seller representations — share a common thread: they each transfer risk from seller to buyer, and they each do so most effectively when the buyer isn't paying close attention.

That doesn't mean these clauses are inherently unfair. They serve legitimate purposes and are standard features of well-drafted California real estate contracts. But 'standard' doesn't mean 'harmless.' Every clause in a purchase contract was negotiated and placed there by someone with a specific interest in mind.

Before signing any real estate agreement, take the time to understand what you're agreeing to — not just the price and the timeline, but the risk allocation embedded in the language. If you have questions about a specific provision or want to review an agreement before closing, Tuchman Law, APC is available to help.

About the Author

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