REAL ESTATE

“As-Is” Doesn’t Mean No Disclosure: A California Seller’s Real Obligations

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In 1983, a California buyer learned from her neighbors that her new house had been the scene of a multiple murder ten years earlier. The seller hadn’t mentioned it. In *Reed v. King*, the Court of Appeal let her lawsuit proceed, holding that “reputation and history can have a significant effect on the value of realty.” A fact can be material without being a physical defect.

Sellers still underestimate that duty, and the “as-is” clause is usually why. In California, an as-is sale changes who pays to fix a problem. It doesn’t change what the seller has to disclose.

What “As-Is” Actually Does

An as-is clause means the buyer accepts the property in its visible, observable condition, with no promise of repairs or credits. That limits post-inspection demands. It does not excuse the seller from disclosing what the seller knows. Since *Lingsch v. Savage* (1963), California courts have required sellers to disclose known facts that materially affect value or desirability when those facts aren’t accessible to the buyer.

The Required Disclosures Can’t Be Waived

For most sales of residential property with one to four units, Civil Code § 1102 requires a Transfer Disclosure Statement, and § 1102(c) makes “any waiver of the requirements of this article void as against public policy.” The same goes for the Natural Hazard Disclosure, the federal lead-based paint disclosure for pre-1978 homes, and other statutory notices. Timing matters too: a TDS delivered after the offer gives the buyer three days (five if mailed) to walk away.

What counts as “material” is read broadly. Beyond *Reed*, courts have allowed claims over undisclosed noisy neighbors (*Shapiro v. Sutherland*, 1998). One narrow exception: under Civil Code § 1710.2, a seller needn’t disclose a death on the property more than three years earlier, but can’t answer a direct question falsely.

Where Sellers Get Caught

Treating silence as safer. A disclosed problem is priced into the deal. An undisclosed one the seller knew about is the basis for a fraud claim.

Repairs that hide the problem. Painting over water damage without fixing, or disclosing, the cause turns an ordinary disclosure into active concealment.

Counting on the buyer’s inspection. That argument works for visible conditions, not for problems behind walls, intermittent issues, or things known only from the seller’s history with the property.

Assuming an exempt sale means no duty. Some probate, foreclosure, and family transfers are exempt from the TDS form, but not from the common-law duty to disclose.

Treating commercial deals as different. The TDS doesn't apply, and courts give more weight to negotiated as-is clauses. But Civil Code § 1668 still bars contracting out of liability for fraud.

The Consequences

A TDS violation doesn't undo the sale, but under § 1102.13 the seller is liable for the buyer's actual damages. Fraud or concealment can add rescission and punitive damages. And the three-year fraud deadline runs from when the buyer discovers the problem, not from closing.

Final Thoughts

Think of the sale as "as disclosed," not just "as-is." Disclose fully, document what was disclosed and when, and let the as-is clause do its real job: limiting negotiation over what the buyer can see. A thorough disclosure package is the seller's best protection.

About the Author

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