



The Bank is Selling a House - What Now?

Part II: The bank is selling As-Is, what does this mean to the buyer if something fails before closing?

by Brad Boyd, Esq., Thomsen & Nybeck, PA

This will depend on what is meant by "As-Is". An "As-Is" sale typically refers to a sale of property where the parties have contractually agreed to have an As-Is Addendum as part of the purchase agreement. What these addenda say can vary, but the MNAR standard form has a few provisions that you should be aware of. First, it voids lines 210-212 of the MNAR standard form purchase agreement. Those lines are a warranty by the seller that the air conditioning, heating, plumbing and wiring systems will be in working order on the day of closing.

It also states that the property will be sold in its current condition, subject to the fact that if there is a "material change in the condition of the property" between the purchase agreement and closing date, the Seller will have to restore the property to the condition it was in at the date of purchase agreement. However, it shifts the "risk of loss" to the buyer for those items listed above that are normally warranted in the purchase agreement. That means that if the furnace, plumbing or other named items fail between the date of agreement and closing, it is now the responsibility of the buyer to take the property with those faults, and the seller is not required to repair or replace those items.

Clearly such an addendum could create concern for a buyer, and the buyer should only enter such an addendum fully aware of the possible repercussions. One provision that could provide some security to a buyer is that if the property is destroyed or substantially damaged before the closing date, the purchase agreement is cancelled at buyer's option. This could offer buyer justification to cancel if something goes significantly awry.

Keep in mind, however, not all "As-Is" sales use the MNAR As-Is Addendum. Particularly in sales of foreclosed properties, banks often create their own version of an As-Is Addendum, which often tend to be extremely favorable to the seller (bank), and extremely problematic or risky for buyers. A buyer must carefully read (and ideally review with their attorney) what the bank is asking them to "sign away" with such an Addendum, and they should fully understand the risks of such an agreement before they sign it. It is just as fair for a buyer to condition the purchase on the bank using an MNAR "As-Is" Addendum, as it is for a bank seller to instruct the buyer that their bank form has to be used.

Consequently, before a buyer enters an "As-Is" sale, they not only need to know what that Addendum says and what it means, but how it could impact the value of the property or condition of the property that they purchase. Purchasing a foreclosed property is not an "ordinary" transaction. Although it has certain and definite potential advantages, particularly with the possibility of a discounted price, it comes with a set of risks. This type of transaction is one that buyers should enter cautiously, and with the help of their attorney.

