

What Contract Should I Use?



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The answer to this question depends on your transaction. If your deal is commercial, use the FR commercial contract. If your deal is vacant land, use the FR vacant land contract. If

your deal is residential, however, you have two basic choices – the FR-BAR standard contract or the FR-BAR AS-IS contract. Real estate agents should consider all legal and practical considerations when deciding which form to use.

STANDARD CONTRACT

The standard contract allows a buyer to inspect the property and requires a seller to repair items up to an agreed-upon repair limit (default being 1.5 percent of the purchase price). The same concept applies to wood-destroying organisms and open permits. The inspection and repair procedures under the standard contract can be difficult to understand and follow, even for a seasoned real estate agent. The following is a simplified summary of these inspection and repair provisions.

- 1 | **Inspection:** Buyer may have a general inspection done by a professional inspector within the inspection period, and buyer must notify seller within the inspection period of any repair items.
- 2 | **Estimates:** Seller must have the repair items estimated within ten days after receiving buyer's repair notice.
- 3 | **Estimates Under or Over Repair Limit:** If the cost to repair all items is under the repair limit, seller must repair or replace all items. If the cost to repair exceeds the repair limit, then within five days after receipt of the last estimate, seller may notify buyer that seller will pay the excess, or buyer may notify seller which repairs to make up to the repair limit.
- 4 | **Right to Terminate:** If no such notice is given by buyer or seller, then either party may terminate the contract (agents beware)!



AS-IS CONTRACT

Conversely, the AS-IS contract is quite simple – seller does not have to repair anything or close any open permits. The buyer can terminate the contract within the inspection period if buyer is not satisfied with the condition of the property. Another difference is the AS-IS contract has no limitation on the type of inspections or who can do these inspections. For instance, under the AS-IS contract a buyer can get a mold inspection, which cannot be done under the standard contract (unless there is a separate mold inspection addendum). Practically speaking, to avoid termination seller will often agree to make certain repairs or alternatively agree to a repair credit or a price reduction. If seller agrees to make repairs, keep in mind there are no repair standards under the AS-IS contract, so buyer should require (by addendum) that all repairs be done by appropriately licensed persons and that receipts be provided.

Both the standard contract and the AS-IS contract have pros and cons, which sometimes vary depending on whether you represent a buyer or seller. A real estate agent should consider all these factors when deciding which contract is best for your deal. ▶

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