

What about 'as is'?

Dear Edith: I have a modest home. Similar houses in my neighborhood in much better condition are selling for twice what I paid for mine in 1980.

I want to sell the house, but it has numerous problems. Disclosing them to a buyer would greatly lower the home's value — or scare the buyers off completely. I'd be happy just to recover the original cost.

As I understand it, if I sold the house at auction or if I sold through a Realtor "as is," I would not legally have to disclose anything about its condition. Is my understanding correct, and if so, which method would give me the best price for my house?

— C.

Answer: "As is" doesn't mean the seller needn't disclose the property's condition. Quite the opposite. It means the buyer agrees to take the known problems along with the property and won't come back at you about conditions you've disclosed. An as-is sale wouldn't protect you against later claims about a deliberately concealed defect.

Dear Edith: My house was listed several months ago, and I received a non-contingent offer within six days. The buyer had a home inspection done, and I had all items fixed. As we approached the closing, my attorney was unable to get updates on the status. Then I was informed that the buyer needed an additional 10 days and was having difficulty getting mortgage approval. I've since been

told the deal has fallen through.

My agent says I'm unable to keep the buyer's deposit, as the contract was contingent upon mortgage approval. Do I have any recourse? I don't want to go to small claims court, but I have not lived in this house for months and still have to pay mortgage, taxes, utilities and upkeep.

— email

Answer: You're working with a lawyer, so why not seek an opinion from him or her? Or perhaps you already have and are just hoping I'll say something different.

At any rate, you say you received a non-contingent offer, but it sounds as if it was indeed contingent — on the buyers obtaining the necessary financing. If that's true, and if they made a good-faith attempt to secure a loan, then you probably have no recourse.

Next time, investigate the buyers' financial situation before you accept an offer. Better yet, hold out for buyers who are pre-approved (not just pre-qualified) for a loan. And if it appears that the deal is shaky, start showing the property again right away. You can always accept a backup offer from another buyer, which would take effect only in the event of "non-performance" of the existing contract.

Edith Lank will respond personally to any questions sent to her at 240 Hemingway Drive, Rochester, NY 14620 (please include a stamped return envelope) or go to www.askedith.com or edithlank@aol.com.