

Topic No. 11: Step 7 - Drafting The Contract

Topic objective: To inform home buyers about contracts from pre-purchase to close, and things to watch out for.

Builders who market their homes through brokers who manage new home developments often will use contracts that are standard new home construction contracts. If you have an experienced buyer agent, the agent will be very familiar with these documents. Other builders will have contracts drafted by an attorney. If you must use unfamiliar contracts, it is important that you and your agent review the entire document before you begin drafting an offer.

The initial work on the contract should begin with the document that outlines what is included in the sale price of the home. This document is often referred to as the Allowance Addendum. When upgrades are added to the contract, they should be included in this addendum or as a separate addendum. It is a good practice to require the builder to provide a specification list of all building materials. Adding the costs of the upgrades to the lot price and the price of the home will allow you to establish the contract price. When the contract price is established, you are ready to proceed to the first page of the contract where you will determine the amount of the earnest money deposit. You should always negotiate to keep this deposit as low as possible, because this deposit is normally non-refundable. A good practice is to make this payment in two or more deposits, delaying the final deposit until when the home is completely enclosed. When considering the amount of the loan and the down payment, be conscientious of the cash that will be required for closing costs, as well as all upgrade costs that may not be included in the contract.

The builder will normally set the closing date and specify that the buyer will not get possession until the deed is recorded. Most builders will not take any responsibility for missing the closing schedule. The language in the contract will specify that the builder will not be responsible for delays due to weather conditions, labor shortages, materials availability, or the buyer delaying the job because of change orders and/or a delay in selecting flooring, paint, appliances, etc.

The contract also may address how and when the buyer can be on the building site to observe construction. One of the reasons for this is the safety/liability stipulations the builder has with the insurance carrier. However, a greater concern is that most builders do not want the buyer closely observing the construction.

Somewhere on the contract, you should request permission for you and your agent to visit the site under specific conditions. It also would be wise to request the right to take photos as the construction process progresses.

Most contracts will provide the option for the buyer to conduct inspections for radon and/or other environmental hazards, but will state that the builder will not be responsible for any costs associated with unacceptable conditions.

Buyers need to carefully read the paragraph that address subsurface conditions and site preparation. The purchase price may be predicated upon no rock or shale being encountered while excavating or ditching, or any condition below the surface of the ground presenting problems due to the presence of spring or other water streams, or unexpected utility or sewer elevations, unstable soil or any substantial movement or alterations to or from the property. It is the buyer's responsibility to understand how these conditions are addressed in the contract. If you are to be liable for any of these additional costs, require that a statement be added to the contract stating that the builder shall provide invoices to document any costs that will be charged to the buyer.

The contract should specify what type of home warranty is provided on the home. You will want to know the details of the warranty.