



THE BUILDING CONTRACT

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Contracts vary in form, length, content, and print size. Expect standard elements such as the names of the parties, dates, and signatures to show up on every contract. Contracts often contain clauses that address company experiences and regional items.

The contract for the purchase of a new home includes a collection of documents. These may include the purchase agreement itself, blueprints, specifications, option and color selection sheets, lighting schedule, site drawing, and limited warranty. Besides drawing this collection together, the purchase agreement includes many common clauses such as those briefly described here.

Price and Allowances

The total cost of the home should be stated in the contract. This cost is subject to change based on change orders and selections. Customers may be ready to get the building process moving but still need more time to finalize choices for items like carpet, cabinets, tile, appliances, and light fixtures. To address these items, builders and customers can agree to an allowance in the contract. An allowance is the estimated cost of each listed item. This amount is included in the contract total. If the actual cost of the item exceeds the allowance, the customer can pay the difference in cash or ask their lender to approve a higher mortgage.

Financing

Unless your customer is paying cash, they will need to apply for a mortgage shortly after signing the contract. A standard finance contingency clause is often included in contracts to protect the customer in the event they do not qualify for the financing described. Having a customer pre-qualify for financing helps to avoid these situations. However, if this did occur this clause says that the contract is void and the builder returns the customer's deposit.

Construction

The contract lists the plans, specifications, and buyer selections sheet - by name, number of pages, and date - that describes the work to be done. The builder commits to doing this work in a "workmanlike manner" as defined by general practice in the region.

Commence and Complete Construction

Understandably, the buyers are anxious for the builder to start their home. However, several preliminary tasks usually need to be completed before the builder begins construction. Many builders wait for the buyer's loan to be approved before beginning to build the home. Obtaining a permit can take from a few days to a few months. Skilled labor shortages, weather, and change orders can extend the construction schedule. Contracts often specify that the home is considered complete and ready to close when the building department issues a certificate of occupancy. The builder should keep you updated about the target delivery date. Seldom does either party intentionally delay the process; the buyers generally want their home and the builder wants to be

paid. However, most contracts describe the liability for extra expenses due to avoidable delays caused by either the builder or the buyer.

Change Orders

Many builders allow buyers to request changes during construction. Wise buyers and builders make all changes in writing, including detailed descriptions of materials and labor, whether added or deleted, schedule extension, and costs.

Conformance With Plans and Specifications

This clause allows the builders to make changes required by code revisions, site conditions, or other events outside his or her control. If a supplier goes out of business or a manufacturer updates models, the builder has no choice but to alter the intended home accordingly. "The builder has the right to substitute materials or equipment of equal or better value" appears in nearly every new home contract.

Similarly, since a home is handcrafted by human beings, exact reproduction is unlikely. Measurements will vary slightly from any model or plans. The exact placement of switches, outlets, and vents change slightly. Buyers often review each detail of their home's specification carefully and define the material and methods the builder will use to construct their home.

Plan Ownership

Production and semi-custom builders own the plans from which they build, even if they allow some custom changes. A few builders will sell a copy and grant permission to use them with limitations. The cost is usually significant since house plans are intellectual property.

Site Visits

Your builder may restrict site visits due to increased safety regulations and insurance liability. Recognizing buyers' understandable interest, some builders schedule tours of the home at specified stages of construction.

Noninterference

The builder's routine inspections identify items that need attention. Buyer's input should be given to the builder, not the people working on-site. They have no authority to change anything, and confusion can easily result.

Inspection and Acceptance

Shortly before closing, the buyer will review their home to confirm that it includes all the items ordered and that the builder met the promised standards. Most builders combine this tour with an educational demonstration of the new home and discussion of maintenance and limited warranty coverage.

Site Clean Up

Keeping the construction site clean and safe is the builder's and trade contractor's responsibility.

Mandatory Clauses

An Insulation Notice is one example of a mandatory clause. Builders must specify the standards of insulation used in the home. This information can appear in the contract or an addendum to the contract. A notice discussing radon, while not required, has become common.

Warranty

Another document "incorporated herein by reference" is the builder's limited warranty. The limited warranty the builder provides defines responsibilities if something goes wrong in the home after the closing. The limited warranty is part of the legal agreement between yourself and your builder.

Homeowners Association

The contract will reference applicable homeowners association documents as part of the agreement. These include Covenants, Conditions, and Restrictions, known as "CC&Rs." The buyer should review them carefully and take them seriously.

Settlement

This clause explains how the builder transfers ownership of the home to the buyer. The Real Estate Settlement Procedures Act, RESPA, regulates this event.

Possession

When the title or escrow company has recorded transfer of title to the property, the buyer can take possession and move their belongings into their new home. In most jurisdictions, the buyer must obtain a certificate of occupancy from the building department.

Insurance

Adequate insurance coverage for construction work is essential. The contract designates the type and amount of coverage the builder will maintain.

Default or Termination

A termination clause defines the circumstances under which either party defaults or fails to fulfill its duties under the contract.

Alternate Dispute Resolution (ADR)

No one plans to have disagreements during construction of a new home or the warranty period but they can occur. Some contracts address this possibility by providing for arbitration or mediation. In arbitration, each side presents its views and the arbitrator makes a decision. In mediation, a mediator facilitates communication and guides the discussion as the two parties try to come to their own solution. Either can forestall court action, at least until the parties have used the ADR method described in the contract. Make sure the contract is clear about whether the result of ADR is binding.

Co-op Broker

If applicable, the name and address of a real estate agent may appear in the contract along with the percentage or amount of commission due at closing.

Miscellaneous

Most contracts contain clauses covering standard legalities; the "entire agreement" clause is one of the most significant. It says that only what is in writing counts. The contract documents should contain all points of agreement. In fairness to the buyer and the builder, do not rely on human memory regarding undocumented promises. Other miscellaneous clauses might include information such as the following:

- Where notices about the contract must be mailed,
- That pronouns and gender words do not limit the application of the clauses,
- That if one clause is found unenforceable by a court or is waived by either party, the rest of the contract still applies, and
- That the term of the contract survives or continues in force after the closing or settlement on the home.

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