

This checklist should serve as a conversation guide for REALTORS® and their clients. It is not a substitute for attorney review of a purchase contract. Agents should make sure that any contract to purchase a new build includes a contingency of attorney review!

It is highly recommended that agents procure all documents for the Buyer's approval prior to meeting with the Builder/Builder's rep, in order to give the buyer time to review the documents and prepare questions.

It is strongly suggested that a new home be inspected by a licensed home inspector.

☐ 1. CONSTRUCTION UNDERTAKING (DEFINING THE WORK)

- a. Name, lot number, parcel, size and address of property must be clearly defined in writing;
- b. Seller to furnish all materials?
- c. Seller to perform all construction of home?
- d. In accordance with plans which the Buyer has examined & approved?

☐ 2. PURCHASE PRICE AND CONTRACT DEPOSITS

- a. Price
 - 1. Initial deposit;
 - 2. Additional deposit;
 - 3. Balance due at closing.
- b. Total amount is subject to adjustment (change orders, etc.)

☐ 3. DEPOSITS/CONSTRUCTION DEPOSITS

- a. If purchase offer is not accepted deposits returned to Buyer
- b. If purchase offer is accepted deposits applied to purchase price when home closes.
- c. If purchase offer is accepted but Buyer fails/refuses to comply then deposit is applied to Seller's costs at Seller's option.

☐ 4. COMPLETION OF CONSTRUCTION

- a. Occurs after removal of any conditions or contingencies and finished construction of home.
- b. Permanent or Temporary Occupancy Certificate – If temporary, does the chosen lender allow?

☐ 5. PROGRESS PAYMENTS (BUILD ON BUYER'S LOT)

Payment Draws:

- a. Upon completion of foundation, % of purchase price or \$ dollar amount, paid to Seller
- b. Upon completion of framing, % of purchase price or \$ dollar amount, paid to Seller
- c. Upon completion of drywall, % of purchase price or \$ dollar amount, paid to Seller
- d. Upon completion of trim, % of purchase price or \$ dollar amount, paid to Seller
- e. Upon substantial completion of work, % of purchase price or \$ dollar amount, paid to Seller

☐ 6. FINANCING CONTINGENCIES:

- a. Obtaining Loan:
 - 1. Buyer to obtain a certain loan amount within so many days;
 - 2. Buyer to provide Seller with copy of loan agreement.
- b. After Buyers, in good faith, attempt to obtain a loan, but are not able to get a loan:
 - 1. Agreement terminates.
 - 2. Deposits returned unless Seller retains an agreed upon portion.
- c. If Buyer does not need a loan, but does not prove it:
 - 1. Seller can terminate agreement;
 - 2. Deposit returned, less deductions or expenses.
- d. If Buyer fails to apply for loan:
 - 1. Seller may retain all deposits;
 - 2. Seller may pursue rights & remedies.

☐ 7. CONSTRUCTION SCHEDULE & EFFECTS OF DELAYS

- a. Seller is often not liable for delays in construction completion, based on:
 - 1. Buyer's changes/requests/interference;
 - 2. Weather, governmental control, strike/walk-out, inability to obtain materials, or other circumstances that are out of Seller's control;
 - 3. Accommodations for the Buyer;
 - 4. Buyer's loss of loan commitment/increased loan costs.

- ❑ 8. COSTS OF FINANCING
 - a. Buyer responsible for any/all costs or fees instituted or charged by Buyer's lender?
- ❑ 9. CHANGES AND MODIFICATIONS
 - a. Changes or modifications signed by both parties
 - b. When will costs of changes be paid?
- ❑ 10. POSSESSION
 - a. Possession given to Buyer at closing?
 - b. Visiting property before closing:
 - 1. Accompanied by Seller or Seller's representative;
 - 2. Buyer must not interfere;
 - 3. If Buyer interferes Seller will inform;
 - 4. If Buyer continues, Seller has right to do whatever to keep Buyer from interfering;
 - 5. Buyer's visits are at Buyer's risk, Seller is not liable.
- ❑ 11. CONSTRUCTION REPRESENTATIONS
 - a. Seller allowed minor substitutions with similar pattern, design, quality;
 - b. Seller reserves right to make modifications, additions, deletions to plans;
- ❑ 12. CLOSING/COMPLETION OF WORK
 - a. Close ASAP after completion, often not later than 5 calendar days after approval of final inspection/walk-through.
 - b. If the closing is delayed by Buyer:
 - 1. Balance of purchase price bears interest.
 - c. Punch list prepared by Buyer approximately 2 business days prior to final walk through:
 - 1. Walk through and prepared list of items - may need to be completed after closing;
 - 2. Does not delay closing;
 - 3. Seller still gets full amount of money.
- ❑ 13. EVIDENCE OF TITLE
 - a. Seller furnishes/pay owner's title insurance;
 - b. Title evidence updated within 30 days prior to closing;
 - c. Buyer pays additional costs for lender's mortgage title insurance;
 - d. If title to all/part of the real estate is unmarketable, Seller must cure or remove deficiency, within an agreed-upon number of days.
 - e. Survey – who pays?
- ❑ 14. DEED
 - a. Seller conveys to Buyer marketable title in fee simple by transferable and recordable general warranty deed with release of dower.
- ❑ 15. TAXES & ASSESSMENTS
 - a. Seller, at closing, pays or credits on the purchase price:
 - 1. All real estate taxes;
 - 2. Special assessment / Community Development charges (CDA);
 - 3. Agricultural use tax recoupments;
 - 4. Unpaid real estate taxes;
 - 5. Community/HOA application or transfer fees?
 - b. Buyer should request tax letter from Seller regarding fully assessed real estate taxes.
- ❑ 16. UTILITIES
 - a. Seller pays all accrued utility charges through date of closing.
 - b. Buyer arranges transfer of accounts to Buyer's name by closing.
- ❑ 17. DAMAGE OR DESTRUCTION OF PROPERTY
 - a. Seller bears risk of any loss until closing.
 - b. Seller may terminate agreement if there is loss.
- ❑ 18. LIMITED WARRANTY
 - a. Seller:
 - 1. Should provide buyer with a written copy of a limited warranty prior to closing.
 - 2. Turns over all manufacturer's warranties and guarantees to Buyer at closing.

- ❑ 19. DEFAULT BY BUYER
 - a. Seller has right in event of default by Buyer to select one of the following:
 - 1. Return any/all deposits;
 - 2. Apply any/all deposits towards Buyer's account and proceed with action at law;
 - 3. Seller may continue or cease building.
- ❑ 20. NOTICES
 - a. Must be written;
 - b. Hand-delivered, mailed by registered mail, or electronically delivered.
 - c. Return receipt requested;
 - d. Sent to address in this agreement.
- ❑ 21. RADON NOTIFICATION
 - a. Does Seller provide active or passive radon mitigation system? Or a credit?
 - b. Seller or Agent to provide EPA booklet on radon gas to buyer.
- ❑ 22. SELECTION OF SUBCONTRACTORS
 - a. Can Buyer request/select subcontractors?
 - b. If so, does Buyer waive any warranties, responsibilities against Seller?
 - c. If building on Buyer's lot, is Buyer responsible for licenses, permits, inspections, workers' compensation, and unemployment compensation, and to get lien waivers pertaining to the amount of work? Who pays?
- ❑ 23. INDEPENDENT CONTRACTOR
 - a. In the case of construction on Buyer's lot, Seller is independent contractor and is responsible for people under him/her.
- ❑ 24. INSURANCE (BUILDING ON THE BUYER'S LOT)
 - a. Buyer shall obtain property insurance "All Risk."
 - b. Seller shall obtain liability insurance.
 - c. Buyer shall obtain liability insurance.
- ❑ 25. LIENS (BUILDING ON THE BUYER'S LOT)
 - a. Seller shall maintain premises free of liens (pay all subcontractors promptly).
 - b. Seller shall negotiate for removal of liens.
 - c. If lien is not removed from property in 60 days builder shall:
 - 1. Remove lien by payment or bonding as Seller's expense;
 - 2. Pay into escrow.
- ❑ 26. LAWS: REGULATIONS (BUILDING ON THE BUYER'S LOT)
 - a. Seller obtains all permits and makes subcontractors obtain permits
- ❑ 27. BUYER'S USE OF ARCHITECT/ENGINEER
 - a. Seller is not responsible for Buyer's architect's/engineer's work.
 - b. Seller is not responsible for any incurred expenses for a home properly built according to Architect's plans which are not in compliance with local laws or building codes.
- ❑ 28. PRODUCT DATA AND SAMPLES (BUILDING ON THE BUYER'S LOT)
 - a. Seller makes no warranty of any kind as to accuracy or sufficiency of product data or product samples specified within plans.
- ❑ 29. PROCEDURE IN CASE OF DISPUTES
 - a. Buyer gives written notice to builder.
 - b. Seller reviews and evaluates claims.
 - c. If Seller and Buyer do not come to agreement, arbitration is recommended.
- ❑ 30. RIGHT TO REMOVE MATERIALS, SUPPLIES, AND TOOLS
 - a. Seller may remove their tools, materials, etc., except items for which Buyer has already paid.
- ❑ 31. OWNERSHIP OF PLANS
 - a. If Seller provides plans, Buyer acknowledges that he/she has no ownership rights to the plans.
- ❑ 32. BROKER/AGENT COMPENSATION
 - a. Upon closing, or as agreed, Seller pays a percent of the purchase price or a dollar amount, to Buyer's Broker/Agent.

❑ 33. ADDENDUMS/DISCLOSURES:

- a. Insulation disclosure;
- b. Landscape maintenance information;
- c. Wooded lot agreement;
- d. Others?

❑ 34. DURATION OF THE OFFER

- a. Seller's response usually falls during: Mon.-Fri., 9:00 A.M.-5:00 P.M.
- b. Be patient.

❑ 35. COMMON QUESTIONS FROM THE BUYER:

- a. Flood Zones.
- b. Owner association dues.

THIS LIST IS NOT EXHAUSTIVE. **PLEASE CONSULT LEGAL COUNSEL BEFORE SIGNING ANY CONTRACT.**