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Contract Matters: The Spec Home



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As the supply of homes increases, so does the number of "spec homes." By spec home I am referring to the home that a builder has in inventory that is almost completed. While some of the large home builders will require the use of their own contract, many of the small "custom" home builders will accept an offer written on the CBR/CBA Real Estate Purchase Contract.

Writing an offer using the CBR/CBA standard sales contract for a spec home requires a bit of additional foresight to anticipate various events. First, is the identification of exactly what is included with the home. A detailed specifications list should be made part of the contract. Furthermore, for those included items which have not been completed, a timeline should be created. If the buyer needs to make any decisions as to material or finish selections, that too should be set out in a clear timeline. While these timelines may not be available at the time of drafting an offer, a simple contingency requiring them within a reasonable period of time should be included.

Second, how will changes be handled? It is quite common that the buyers will want to make some changes to what the builder has done or will do to complete the home. The buyers should give careful consideration to all parts of the house. If they know upfront that some specific changes are desired, set them forth in the contract. For those changes not identified up front, have a procedure for change orders to be in writing and signed by the parties.

Third, always provide for the right to inspect the property. The law in Ohio is buyer beware. The standard form contract provides significant rights to the buyer with respect to inspections. Why would it not be in the buyer's best interest to retain those explicit rights? Furthermore, the inspection report can also be used as a punch list. Like any existing home, the spec home should be inspected and the buyer should have the same rights as they would if it were an existing home.

The seller/builder may or may not provide a warranty, so make sure the buyer understands fully what the seller/builder will be responsible for before submitting the offer. Will the home be covered by the BIA warranty, if so, get a copy of it for the buyer's review. What will be the procedures for warranty items? Will there be a 90 day and an 11 month follow up? Whatever the warranty is, it is imperative that the buyer understands all aspects of the warranties.

Is there an investor involved? It may be that the builder is not really the seller and it is an investor who actually owns and is selling the spec home. If this is the case, it is important to understand the relationship. For example, who is authorized to execute change orders, the builder or the investor/seller? In most cases, all communication should be directed to the seller, whoever that may be.

While spec homes may present an opportunity for a buyer they also present challenges for the drafting of a contract. The list above represents some of the common issues but may not address every issue in every particular case. Spec home contracts are an ideal situation to involve your manager, broker, and attorney. The better the contract anticipates issues, the smoother the transaction will be for all concerned.

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