

Understanding Your New Home Sales Contract

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Buying a brand-new home can mean a lot of different things—an opportunity to get the home you really want, a dream come true, an investment for the future, an achievement to be proud of.

It is also a legal transaction that should never be done without a detailed written contract!

The first rule of homebuying is to get it in writing! A contract, or Agreement of Purchase and Sale, as it is often referred to, spells out the terms between you and your builder—who, what, how, when and how much. It also sets out the rights, restrictions and obligations for each party.

Without a detailed contract, there may be no reference point in case of a misunderstanding or disagreement between you and your builder. It may be impossible to prove what was agreed to, and difficult to enforce any arrangement or promise that's not written down.

Unlike resale transactions, there is no standard form of Agreement of Purchase and Sale for buying a new home. In some areas, builders may adapt model contracts prepared by their local home builders' association or their new home warranty provider. Often, though, builders prepare their own agreements and require that you use those forms. As a result, new home contracts can vary considerably from one builder to another.

Typically, a contract will contain information that's specific to you, the purchaser, and the home you are buying,

as well as general information outlining the builder's practices, limitations, disclaimers and warranty.

This fact sheet presents information on some of the terms and provisions that you may find in a new home sales agreement to illustrate what a contract can cover and why.

Before you sign a contract with your builder, make sure you fully understand what's in it and what's not, and that your interests and concerns are addressed and your questions are answered to your satisfaction.

What's in a New Home Contract?

New home Agreements of Purchase and Sale are generally more complex than resale contracts. This simply reflects the fact that a new home is usually a more complex purchase.

Contracts can range from a few pages to sizeable documents with many schedules or attachments. A quick rule of thumb may be “the more specific, the better”—having things on paper, even minor items, reduces the potential for confusion and conflict.

The purchase of a brand-new home can happen in a number of ways. You may buy a home in a new development from a large building company, or buy from a custom builder to have greater flexibility and choice. You may own a lot and hire a company to construct your home. You may buy a factory-built home for a lot you own or lease. Or you may buy a condominium unit in a high- or low-rise building project.

Each scenario has its own practices and requirements that must be reflected in the contract; however, many contractual considerations are common to all. While this fact sheet is oriented toward the purchase of a home on a lot from a larger builder, it may provide helpful and useful information in other situations.

The following pages highlight some of the information you may find in a builder's contract. Keep in mind that each builder does business differently. Beyond legal requirements that everyone must follow, each builder has its own unique practices, and the contract will reflect this.

Also be aware that a builder's contract may include provisions or restrictions for the benefit of the builder. You want to go into your new home purchase with your eyes open. Read the contract carefully and make sure you are familiar and comfortable with everything in it. If you have questions and concerns, talk with your builder. Also have your lawyer or notary review the contract before you sign it.

Please note that “builder” refers to the company or the company representative that you will be dealing with when buying a home. This could be the owner of the company or, in the case of large companies, more likely a salesperson—either a staff member or an outside sales specialist.

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<p>What to look for in a contract</p>	<p>Why? Details, explanations</p>
<p>Description of your home</p> <ul style="list-style-type: none"> • Model name or number • Lot number (or legal description) <p>Possible attachments:</p> <ul style="list-style-type: none"> • Site plan (location of the home on the lot/street) • Floor plan • Builder’s rendering (artistic drawing of home) • Elevations (drawings of the front, rear or side of the home) • Specifications • Construction plans (working drawings) • Disclosure statement (condominium or strata lot home) <p><i>All attachments, or schedules, should be dated and initialed by you and the builder.</i></p>	<p>You want to eliminate all possibilities for mistakes. If a builder offers several versions of a model or variations on the exterior appearance, verify that the contract describes the right home and the correct details.</p> <p>Also verify the lot and orientation of the home. Developers may assign certain models to specific lots in order to create a diverse and attractive streetscape—if you have looked at several models and several lots, make sure you know which lot you are buying. Sometimes homes may be built as “reverse plans” to fit into the overall community design—check with your builder if this is the case with the home you chose.</p> <p>Be aware that renderings (drawings) used to showcase builder’s homes in the sales office as well as in printed sell sheets may be an artistic impression only, not a precise depiction of the home. Items such as windows, doors, cladding and landscaping, for instance, may be enhanced for presentation purposes.</p> <p>Specifications list the materials and products that will be used in building your home, from lumber and mechanical systems to windows and bathroom fixtures.</p> <p>Usually, the construction plans for your home will not be part of the contract. Minor changes will be marked on the floor plans. However, if you are making significant changes to the builder’s model, the modified construction plans may be attached to the contract. Plans for custom homes are generally included—if you have paid a separate design or architectural fee, you normally own the plans.</p>
<p>Price</p> <ul style="list-style-type: none"> • The home • Upgrades and options <p><i>Most builders offer a range of upgrades to the standard products used in the home, for example, higher quality carpeting or premium countertops; or additional, optional items, from built-in wine-racks to sunrooms.</i></p>	<p>The cost of buying a new home normally consists of two parts: the actual price of the home and other costs associated with the purchase (see later).</p> <p>Know what’s included in the price of the standard model, and what’s not. If your buying decision is based on a model home, the model most likely has upgrades and options that are not included in the standard price. If you are uncertain, ask the builder to walk through the model to clarify standard items as well as upgrades and options. Further, the contract should note if there will be any rental equipment in the home you are buying, such as the hot water heater, furnace or heat pump.</p> <p>All the upgrades and options you select for your home should be listed and described in detail (such as brand, model name, product number, colour and cost). Some builders may ask you to choose upgrades and “extras” right away, and the additional cost will be included in the purchase price up front. More commonly, you will have an opportunity to choose upgrades and extras at a later date, usually as part of the colour selection process (see below) and the contract will be amended as needed. Usually you will pay the cost of these “extras” at the time of closing, when you take possession of the home.</p>

Price (cont'd)

<ul style="list-style-type: none"> • GST/HST and the GST/HST New Housing Rebate <p><i>Homebuyers can choose to apply for the rebate themselves, or they can assign the rebate to the builder, in essence redirecting payment from Canada Customs and Revenue Agency to the builder.</i></p> <ul style="list-style-type: none"> • Payment schedule <p>Possible attachments:</p> <ul style="list-style-type: none"> • Detailed pricing sheet • Listing of upgrades and options • GST/HST rebate assignment form • Receipt for deposit 	<p>A new home purchase is subject to GST/HST; however, there is usually a rebate of up to 2.5 per cent of the GST payable. To qualify, the home and the purchaser have to meet certain criteria.</p> <p>In the vast majority of new home purchases, the GST/HST rebate is assigned directly to the builder. In fact, the rebate is often calculated right into the purchase price of the home, and when you sign the Agreement of Purchase and Sale, you'll be asked to sign a rebate assignment form at the same time.</p> <p>Contact your local Canada Customs and Revenue Agency office for more information, or visit www.ccra-adrc.gc.ca.</p> <p>The contract should set out a schedule of payments with dates and amounts. It normally begins with a deposit when you sign the contract, and often an additional deposit once all conditions (see below) have been met. Your builder may require progress or milestone payments throughout construction. The balance is normally payable on closing, i.e. the day you take possession of the home.</p> <p>The deposit amount required by builders can vary significantly; ask upfront what is considered "normal" and reasonable. You will also want to know if your deposit will be held in trust, if it will be insured and for how much, and whether it is refundable if you have to back out of the sale.</p> <p>Builders may differentiate between "deposit" and "reservation" money. The latter may be used in cases where the builder is putting a hold on a particular lot or home for you for a short period of time, while you "think it over". Some builders may also allow you to reserve a home for a longer period while they may be waiting for municipal approvals, for instance.</p>
<p>Other costs</p> <ul style="list-style-type: none"> • Additional costs and charges <ul style="list-style-type: none"> • Adjustments • Closing costs <p>Possible attachments:</p> <ul style="list-style-type: none"> • List of additional charges 	<p>Builders may charge for a variety of other items, to be paid on closing. Check the contract carefully for mention of any additional costs. Also ask the builder to list all additional charges—you want to avoid surprises when you sign the final cheque in your lawyer's or notary's office.</p> <p>Additional costs may involve, but not be limited to: installation and hook-up of utilities; connection of appliances; tree planting; a second coat of asphalt on the driveway; the cost of the new home warranty and fees for the builder's lawyer/notary to prepare the deed. Builders may also include a clause in the contract related to additional charges in the event they hit bedrock when excavating, or encounter other soil conditions that could add significantly to their cost.</p> <p>There may also be costs related to adjustments on closing, such as utilities and pre-paid taxes, or insurance premiums if you assume the builder's policy. Again, check the contract and talk with your builder and your lawyer/notary.</p> <p>Finally, you will have a number of other closing costs, such as legal fees, land transfer tax and mortgage fees. While not directly involving your builder, most companies will be able to give you a list and an estimate of these costs. Also talk with your lawyer/notary and mortgage lender about closing costs, so you have a clear idea of your final financial obligations.</p>

<p>Financing</p> <ul style="list-style-type: none"> • Builder mortgage • New mortgage <p><i>Pre-approval usually means that your lender is committed to giving you a mortgage loan up to a certain amount, at a set interest rate and other terms. This commitment is for a specific length of time, after which you have to negotiate new terms and conditions with your lender.</i></p> <p>Possible attachments:</p> <ul style="list-style-type: none"> • Mortgage information • Financing conditions 	<p>Some builders offer mortgages through their financial institution, sometimes at preferential rates or with added incentives. Before you accept, check the conditions and requirements carefully, and any processing costs involved.</p> <p>You can also arrange for your own mortgage. If you have pre-approval from your lender, you already know how much you can borrow and on what terms. If not, you want to make the purchase conditional upon obtaining a mortgage. Also be sure that you understand the timeframes—a “pre-sale” home (a home from plans) may take a long time to completion; check that your lender’s mortgage commitment doesn’t expire prior to the closing date on your new home.</p> <p>Some builders, particularly those building custom homes, may require regular milestone payments during construction. Construction loans (known as draw mortgages in some areas) can be established to allow you or the builder to draw advances from your future mortgage at agreed intervals during the building process. Your builder may decide to pay for fees or accrued interest when using this process.</p>
<p>Other conditions</p> <ul style="list-style-type: none"> • For the purchaser’s benefit <p><i>The language in a condition should be easy to understand—what needs to be done, by whom and by when.</i></p> <ul style="list-style-type: none"> • For the builder’s benefit <p>Possible attachments:</p> <ul style="list-style-type: none"> • Conditions 	<p>In addition to financing, a contract can include other conditions to protect your interests. For instance, you will want your lawyer/notary to review the contract before you sign. Some builders’ agreements contain a standard clause to that effect; in other cases, you may have to add a condition in the body of the main document or as an attachment.</p> <p>There are other circumstances: for instance, you may want to make the purchase of the new home conditional upon the sale of your current home. Or if your spouse or partner is not available during discussions with the builder, you may want to add a condition related to their approval of the contract.</p> <p>The agreement may also include conditions for the benefit of the builder. For instance, your purchase may be conditional upon the builder getting a building permit. Or the builder may not yet have municipal approval for the subdivision plan; if not approved, construction cannot go ahead. Your contract should set timeframes and state what will happen if the builder has to terminate the agreement, for example, refund of deposit.</p>
<p>Restrictions on title</p> <ul style="list-style-type: none"> • Easements 	<p><i>“The builder promises that the title is free and clear of all encumbrances, except for ...”</i> Your contract should include information about any restrictions on title. Subdivisions may have some form of restrictions that limit what you can do on your property, so it’s important to know.</p> <p>For instance, developers may have agreements with the municipality or other landowners that must be passed on to the purchaser. Easements normally allow access or use of your land by others, including rights-of-way for utilities, telephone and cable lines, drainage or sewers, and backyard access for other residents. Usually, you cannot build permanent structures (e.g. garden sheds, decks or play equipment) over easements. Sometimes, easements can be temporary, giving the builder or developer access to your lot until the community is fully developed and built.</p>

<p>Change orders: when you want to change something</p> <ul style="list-style-type: none"> • Policy • Process • Payment <p>Possible attachments:</p> <ul style="list-style-type: none"> • Change orders 	<p>From start to completion, the construction of your new home will usually take several months. During that time, you may change your mind about some of your decisions, or want to add extra items.</p> <p>Most builders, but not all, allow for change orders, when possible. Some builders will give their clients a schedule of construction phases, and certain alterations may not be permitted once a particular phase has been reached. Or alternatively, you may have to accept significant extra cost and possible construction delays.</p> <p>Change orders are considered to be separate and independent contracts. Change orders should be made in writing and signed by both parties—this prevents surprises such as finding out that an order you placed over the phone with “someone” in the office or on site was not executed, and there is no record of it anywhere.</p> <p>You may be asked to pay for change orders on signing, or the cost may be added to the amount payable at closing. Some builders may also charge an administration fee to process the order.</p>
<p>Deviations from the plans: when the builder needs to change something</p> <p><i>Dealing with the prospect of builder changes is also a matter of knowing whom you are dealing with. Choose a reputable builder and check with previous homebuyers on their experience buying from the company—that way you are one step closer to avoiding surprises, disagreements and having to live with choices you didn't make.</i></p>	<p>Most builders' agreements contain provisions that allow the builder to make minor changes to the home, if needed, without notifying the buyer. As a rule, builders avoid making changes whenever possible; however, there are times when it's unavoidable.</p> <p>Typically builders reserve the right to substitute products and materials of a similar or superior quality. This can be necessary if the builder faces shortages, delayed deliveries or discontinuation of a product or material; otherwise work on your home could fall behind schedule or come to a standstill.</p> <p>Your contract may also state that your builder can make minor changes without notification for other reasons, for instance, <i>“siting, plans and specifications of the home, including architectural details and exterior finishes may be subject to approval by the municipality, and homebuyers shall accept minor modifications”</i>. Such changes could include sizes and dimensions of the lot as well as the house or rooms within it.</p> <p>There is no standard industry agreement on what constitutes a “minor” change. Contracts typically include a statement to the effect that the value of the property shall not be diminished by any such alterations. In addition, some third-party new home warranty programs may cover substitutions where purchasers have exercised a selection option, and for items of construction and finishing referred to in the contract; this may include discrepancies in design or square footage.</p> <p>The key issue for homebuyers is one of degree: what is reasonable for builders to change without telling you, and what's not? How extensive is the modification? Will it alter the home, and would it have made a difference to your buying decision? For instance, you may not even notice six inches off the width of your driveway; on the other hand, you will undoubtedly want to be notified if the builder has to reduce the number, size or location of windows and doors, or reverse the plan of your home.</p>

<p>Deviations from the plans: when the builder needs to change something (cont'd)</p>	<p>If you are concerned about the possibility of unexpected changes, talk with your builder and try to be as specific as possible. How often does this occur? How likely is it to happen with your home? How does the builder define “minor” and “major” “modifications”? In the event of a “major” change, will you be notified and have the option of canceling the contract, or choosing another lot, for instance? Also contact the builder’s warranty provider for information and advice.</p>
<p>Warranty</p> <ul style="list-style-type: none"> • Builder’s warranty • Third-party warranty <p><i>Depending on the province you live in, builders’ third-party warranty is provided by non-profit new home warranty programs and/or by private insurance companies.</i></p>	<p>The contract should spell out the builder’s warranty on your new home. Almost all builders offer a one-year after-sales warranty on workmanship and materials. In addition, third-party warranty from an independent warranty corporation is mandatory in Quebec, Ontario and British Columbia (some exceptions apply); everywhere else it is optional. Third-party warranty programs set minimum warranty requirements that builders must comply with; these often go beyond what’s offered by builders who are not covered. The contract should note if your builder is registered with a new home warranty provider, and also specify if your home will be covered by that provider—normally each home is enrolled separately and given an identification number.</p> <p>Ask the builder to explain: how does the warranty work and what’s covered for what periods of time? Is your deposit protected? Is construction completion guaranteed and what’s your recourse if the builder is not able to complete construction? Get written information, so you can study the details further on your own.</p> <p>Also check with the builder’s warranty provider: visit their website, request their publications and call for further information and answers to any questions you may have.</p> <p>You may also want to check with your financial institution—lenders may insist that your home purchase be protected with a third-party warranty as a condition of giving you a mortgage loan.</p> <p>Usually there is a standardized approach to what’s covered under warranty, and what’s not. Some builders (and some warranty providers) will itemize what’s excluded from warranty. Many builders also provide buyers with a manual on home maintenance—lack of proper homeowner care may void warranty.</p>
<p>Manufacturers’ warranty</p> <p>Possible attachments:</p> <ul style="list-style-type: none"> • Warranty information • List of items not covered • After-sales service policy 	<p>In addition, the builder will pass on to you the manufacturers’ warranties on products used in the construction of your home. However, this does not mean that the builder assumes responsibility for these additional warranties.</p> <p>Finally, find out about the builder’s after-sales service policy. Most have an established process and timeframe for regular contact and visits during your first year in the home, as well as an emergency service, should you need it.</p>

<p>Pre-delivery inspection, or homeowner walk through</p> <p><i>Deficiencies are items that have not been completed at the time of the inspection (for example, missing cabinet handles).</i></p> <p><i>Defects refer to items that are supposedly finished but require additional work to meet quality standards (for example, windows that stick, a gouge in the floor).</i></p> <p><i>Put everything you note during the inspection in writing, even the smallest item; this helps to eliminate confusion or dispute.</i></p> <p>Possible attachments:</p> <ul style="list-style-type: none"> • Copy of Certificate of completion and/or possession 	<p>Before you take possession of your new home, your builder will usually schedule a time to go through the home with you, usually about a week before closing. The purpose of this is twofold—to inspect the house for completion and to show you how the systems work. Going through the house from top to bottom, inside and out, you will be asked to note any deficiency or defect. This written record, often referred to as the Certificate of completion and/or possession, will be forwarded to the builder’s warranty provider. Most items will be corrected or completed by the builder before you move in, or shortly thereafter. “Seasonal deficiencies” related to items such as decks and landscaping will usually be addressed as soon as weather conditions allow.</p> <p>Different builders take different approaches to the pre-delivery inspection. Some will allocate several hours to a thorough walk-through, looking at everything in detail with you. Others may keep it short and focus on familiarizing you with the home and identifying outstanding items, but will give homebuyers 24 or 48 hours after taking possession to conduct a detailed inspection on their own.</p> <p>Builders also have different policies regarding who can attend the pre-delivery inspection. Many permit you to bring other family members who may lend an expert eye to the process, or a professional home inspector. Other builders restrict participation to the principal purchasers only.</p> <p>Know the company’s inspection system and policies before you sign the contract. Ask your builder to explain, and check for details in the contract.</p>
<p>Insurance</p>	<p>Normally the builder is responsible for insuring the home during construction. Buyers may be asked to take over the builder’s insurance policy after closing, if they are also assuming the builder’s mortgage on the home.</p>
<p>Disputes</p>	<p>Once the contract has been signed, and the conditions have been met, it is binding. There is no easy way for a purchaser to terminate the agreement or change any parts of it, unless the builder agrees.</p> <p>Disputes between home purchasers and builders are usually resolved through discussion. If the parties have difficulty in reaching a solution, disputes can be referred to a third party for mediation. This may be the builder’s new home warranty provider or someone else that both parties can agree to. Failing that, you need to pursue legal remedies through your lawyer.</p>

<p>Completion</p>	<p>Many contracts contain a provision to the effect that <i>“the home shall be deemed to be completed when all interior work has been substantially completed so that the building may be reasonably occupied, notwithstanding that there may be outstanding exterior work, such as painting, driveway, grading, sodding and landscaping,”</i> or similar wording.</p> <p>The legal transfer of the house should take place only after the municipality has approved the plumbing, electrical and gas systems to verify that the house is ready for occupancy.</p> <p>Buyers may be required to pay the builder in full on closing even when there is still work outstanding. The contract may make provisions for holdbacks to account for unfinished work such as seasonal items that cannot be completed by closing. In such cases, the buyer holds back a certain amount from the final payment; this money is usually placed in trust with a lawyer/notary. Check the contract for details.</p> <p>Be aware that financial institutions may require a certain degree of completion before releasing mortgage funds. Ask your lender about their policy, if you believe there may be significant work outstanding on your home on closing, such as siding or brickwork.</p>
<p>“This is the whole agreement”</p>	<p>Many contracts also include a statement noting that <i>“the final Agreement (i.e. contract) supersedes all previous agreements and understandings”</i>, or similar wording.</p> <p>In plain language, this means that any agreements or understandings that are not included in the written contract are not part of the deal. A salesperson may agree over the telephone to change the colour of the carpet, or a worker onsite may promise to move an electrical outlet, but if there is no written record of your request, there is little you can do about it if the change hasn’t been made. That is why it is so important to deal with the appointed contact person only, and to get everything in writing.</p>
<p>Privacy and consent to disclosures</p> <p>Possible attachments:</p> <ul style="list-style-type: none"> • Authorization for disclosure • Privacy policy 	<p>Much of the information that you provide to the builder is covered by privacy legislation. This includes your contact information; location of the property; construction and finishing details; payment instructions; and insurance and warranty information. Your builder will ask you to sign an authorization to relay this information to the company’s suppliers, the warranty program and other parties as relevant, including your condominium corporation, if applicable. The authorization will also specify that this information cannot be used except for those purposes. If you want further clarification, ask for the builder’s privacy policy.</p>

<p>Purchaser’s acknowledgement</p>	<p><i>The purchaser acknowledges that he/she has read and understands this agreement and the terms, conditions, limits and exclusions as described therein.</i></p> <p>You may find a statement such as this in your builder’s contract. Your builder may also go through the contract with you point by point, explaining the significance of each, and what it means. This is also your opportunity to ask questions—how do things work, what if, and so on.</p> <p>Also discuss with your lawyer/notary before you commit to the purchase—is there anything in the contract you should be worried about? Are you protected well enough?</p> <p>It is advisable that before signing the contract, you carefully read it in its entirety, seek the advice of your lawyer/notary and have all your questions answered to your satisfaction.</p>
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What Else Should I Know Before We Get to the Contract Signing?

Buying a new home is a big decision. Here are a few more things to consider before you sign on the dotted line.

- Before you even sit down with a builder to “put it on paper”, find out if you can “pre-view” a blank copy of their contract form. That way, you will know in advance what concerns you may have and what questions to ask. Also consider asking your lawyer/notary to review it and advise you on questions and points to discuss with your builder before writing up the contract.
- Often you will deal with a builder’s sales representative and not the “builder” personally, particularly when buying from a larger builder. The new home salesperson should be knowledgeable, professional and able to guide you through the whole sales process. If you are not comfortable with a sales representative, ask to deal with someone else. Also request that all decisions and agreements be written down, dated and signed by

both parties. That way, both the administrative office and the construction department should have a clear record of everything agreed to in the sales office.

- Don’t sign anything unless you are ready. Don’t let yourself get pressured into making a premature decision. Instead, ask the builder if they can hold the lot or house for 24, 48 hours or even longer for you—they usually will if they know you are seriously interested.
- When you are purchasing a condominium, or strata lot home, as they are called in some parts of Canada, read the disclosure statement carefully to understand what items are part of your unit and which ones are common elements. Statements often include a description of the site and buildings, landscaping, common facilities and a proposed budget of expenses for the first few months of operation. Condominium buyers may have a cooling-off period—generally three to ten days—when they can review the disclosure statement. During this time, condominium buyers may cancel the deal with written notice to the builder.

- Not all builders may allow changes to the standard clauses in their contract. This is a factor that you have to balance against the builder’s reputation, the quality of the homes and the recommendations of past customers, as well as your own impressions of the builder.
- Some builders may include allowances in the price of the home. Allowances are “lump sums” allocated to finishing products, for instance, lighting, flooring or/and kitchen cabinets. Homebuyers can decide themselves how to spend this money, often working directly with the builder’s suppliers. If your choices end up costing more or less than the allowance, the price of your home will be adjusted accordingly on closing. It is not uncommon for allowances to be set at the low end, so it may be wise to allocate additional money for finishing products to make sure you can get what you want.

About Your House

Understanding Your New Home Sales Contract

- A new home contract is most often a “living document” that keeps growing, with the addition of schedules, attachments, waivers, colour selections, change orders and so on. Start a file and keep a copy of everything. Read everything in the file, even the smallest print. Also keep note of all meetings and discussions with the builder—a good paper trail makes for a good relationship with your builder.
- The purchase of a new home can be time-consuming. While your home is being built, you will have to be available to the builder, sometimes during working hours or at short notice, to deal with your obligations under the contract, such as colour selection or site inspections.

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