

# The Ultimate Guide to Buying New-Construction in Colorado!

Housing inventories are at an all-time low in Colorado making finding an existing home to purchase a major challenge. Fortunately, home-builders are finally beginning to ease the inventory shortage with an influx of new-construction. However, the process to buy a new home from a builder is much riskier than buying an existing home from an individual. Unlike the “buyer friendly” contract agents use for resales; builder contracts are written to greatly favor the rights of the builder. If you’re interested in purchasing new construction, it’s wise to hire a Real Estate agent well-versed in interpreting builder contracts.

When you visit a new-home community, the builder’s salesperson is present to “sell you” on the community and convince you to buy a home. However, much like a car salesperson, the builder’s salesperson absolutely serves the interests of the builder - not you. Their primary goal is to help the builder maximize profits and reduce the builder’s risks. Smart buyers understand the importance of having their own real estate agent present to protect their interests. Walking into a builder’s sales office without an agent representing you is a lot like walking into divorce court without an attorney and expecting your former spouse’s attorney to structure a fair deal. It simply isn’t going to happen!

## Here are the top 12 things to know before buying new construction

### 1. Be careful how you fill out the builder’s Registration Form

The builder’s salespeople tenaciously press everyone who enters the model homes to fill out a registration card. Much like an Open-House on a resale, the onsite salesperson wants to capture your information for follow-up purposes. However, those registration cards serve another purpose. The card includes the question, “How did you hear about the neighborhood?” with options like “online, radio commercial, Zillow or My Realtor”. If you check any box other than “My Realtor” or “My Agent”, the sales office may use it to avoid paying any agent that represents you in the future. Builders only want to pay an agent if the agent was the procuring cause that helped you discover and visit their development. If you don’t communicate that your agent initially helped you find them, they may refuse to compensate the agent.

If you initially visit the sales office without an agent, you’ll be fine as long as you specify on their registration card that you’re represented by an agent. The other acceptable alternative is to politely decline to fill out their card. They typically won’t force the issue because they don’t want to alienate you or appear too pushy.

### 2. You pay for agent representation whether or not you use it

Home builders add 3% to the price of every home they build to cover agent costs. Contrary to popular misconception, choosing not to have an agent does **not** enable you to negotiate a lower price. If a buyer chooses not to bring an agent, the 3% simply becomes profit for the builder.

Almost all major builders now operate on a One-Price Policy, and they don't negotiate or offer additional incentives to buyers without agents. Major builders realize real estate agents are crucial to their long-term survival during down markets so they're careful not to alienate them during hot-markets. Builders also realize the best-qualified buyers usually hire agents. Therefore, offering better pricing to unrepresented buyers is counter-productive and foolish for the builders. They certainly didn't grow to be multimillion-dollar operations by making foolish business decisions. Bottom line, the price you pay a builder entitles you to bring representation. Exercise your right to have a real estate agent in your corner representing your interests.

### **3. Builder contracts are 60-80 pages of legalese designed to limit your rights in the transaction.**

In Colorado, most issues with builders arise from the builder-slanted language in the proprietary purchase contracts. Colorado real estate laws are particularly Consumer-Friendly. Agents buying or selling re-sale properties are required to use a standard, state-provided purchase contract drafted with terms designed to offer buyers maximum protection of their earnest money.

However, Colorado allows builders to circumvent the standard state-provided resale contract and substitute their contract instead. These proprietary contracts are crafted by the builder's attorneys and contain extensive language that *heavily favor the rights of the builder*. This language makes it simple for a builder to keep a buyer's deposit money if the deal fails to close or a buyer backs out. A typical builder's contract is 60 to 80 legal-sized pages long. An experienced real estate agent interprets the builder's contract and carefully explains the buyer's rights or lack of rights as stated in the contract. This includes noting any crucial deadlines related to the buyer's right to terminate without forfeiting the deposit.

For example, if completion timelines are delayed by things like bad weather, material shortages, labor strikes of unionized trades, delays with county permit issuance, or project financing issues, the builder's contract ensures they aren't liable. Most builders typically promise delivery somewhere between 6 and 13 months, but the contract may allow them to delay completion up to 24 months without penalty or legal recourse. These kinds of details are why it's critical to bring an agent who understands and can explain all the legalese contained in the builder's contracts.

An experienced agent obtains a copy of the contract in advance to carefully read in its entirety and highlight any key dates or clauses for the buyer. The signing process goes smoother because you don't have to interpret a massively long contract on the spot. Or worse yet, not properly understand the details outlined in the contract you're signing. Many experienced agents keep a file in their office containing example contracts from every active builder in their area. This means your agent is prepared to protect your interests from the start.

### **4. Negotiating price, incentives, and inclusions can be trickier than expected.**

Just like at a car dealership, new home salespeople often offer extra inclusions or discounts to secure a contract. Many builders insist their prices are non-negotiable. This actually depends on

the market, neighborhood, and builder. If a particularly hot neighborhood is selling faster than a builder can release lots, then odds are they won't offer a deal on the price.

This is currently true in Denver and its more popular suburbs where builders simply can't build homes fast enough to keep up with the present demand. In red-hot neighborhoods, they have no need to discount prices. They realize if you won't pay full price the next person through their door will. Of course, there are exceptions to every rule. In some circumstances, an agent can help you negotiate with the builder for a better price, lot placement, landscaping, or incentives. A good agent recognizes these instances and makes sure you're able to capitalize on them.

If the builder has several unsold "spec" homes in inventory, they're usually willing to negotiate. The odds for negotiation are even greater at the end of the month, the end of the fiscal fourth quarter, or when the builder is down to the last few homes and they're trying to close out the development. In these instances, a smart agent negotiates hard for you!

#### **5. If you need to sell a house first, most builders have strict policies on contingencies.**

Builder policies on contingencies are an extremely tricky balancing act. In fact, most builders in Colorado won't even entertain a contingent offer on a completed inventory home. The ones that will take a contingent offer on an inventory home, won't allow the contract to remain contingent for long. Therefore, if they do accept an offer that's contingent on the sale of your current home, the timeframe they allow your home to remain unsold is generally brief. If you fail to sell quickly, most builders retain the right to cancel your contract and sell the home to another buyer. Their contracts also define this scenario as a reason to retain your deposit money. You can potentially be placed in an ugly situation of losing the new home, along with your deposit.

In situations where your new home is a dirt-start, the policies on contingency are often only slightly looser. Most builder contracts require the contingent sale to be completed within six months even if the new home won't be completed for 10 months. Therefore, the buyer must seek temporary housing and make a double-move. It's important to have an agent in your corner well-versed in managing new-construction timeframes. Your agent times the sale of your home to coincide with the completion of the new home. Threading that needle can be tricky due to the need to manage marketing time, days under contract, and possession dates, all while minding the builder's contractual deadlines. If an agent mismanages this delicate juggling act, a buyer could end up with their current home sold out from under them and the contract on the replacement home terminated by the builder. In states with strong laws pertaining to Specific Performance, a seller can be sued for attempting to back out of a sale, and the court can force them to complete the transaction. It's crucial to have an agent experienced with builder transactions working on your behalf.

#### **6. Builder's advertised base prices are often quite deceptive.**

The builder's advertised base price is generally tens of thousands of dollars below the final completed price. The final price includes lot premiums, design center options, structural upgrades, low voltage options, appliances, landscaping, and builder incentives. The model home is packed with every imaginable upgrade. It's essential to ask what features are included with

the basic home and what items are upgrades. Even basic things like lawn grass, sprinklers, and fences are often not included. Refrigerators, garage door openers, window blinds, and central air conditioners aren't always included either.

Also, the builder won't normally allow changes to materials or structural features once construction has started. This is because the builders cannot deviate from the initial building plans they submitted to the county to obtain the building permit. Likewise, materials such as tile, wood flooring, countertops, and appliances cannot easily be changed midstream. Builders place their material orders in bulk to receive wholesale pricing; therefore, it isn't feasible to make changes after the materials order has been placed.

Review my **"Ultimate Builder Questionnaire for Buying New Construction"** as a guide for the specific elements to consider when purchasing new construction and common questions about modern building materials.

### **7. Understand soil surveys, engineering reports, and issues with high water tables**

A real estate agent understands how to interpret the meaning of the soil surveys and engineering reports pertaining to the chosen lot and also reads blueprints and floor-plans. The amount of expansive soils found during the soil survey determines the type of foundation the home requires. Slab-on-grade foundations can be used when the expansive soil content is low, but costlier pier-and-beam foundations must be used when high amounts are present.

Give special consideration to lot selection when dealing with properties like golf course homes or homes on hillsides. Poor drainage, moist basements, and erosion issues can arise from unique topography and elevated water tables often found along golf courses. An agent with extensive builder experience typically knows the soil conditions in the areas they work in and knows how to best advise you on the pros and cons associated with various lots.

### **8. Strategize to maximize a limited budget with a builder**

A real estate agent advises you to make the best use of your budget. Choices like lot location, structural upgrades, and design center options can make-or-break a buyer's budget. Some cosmetic options are more affordable to complete after closing, while some structural items cannot easily be done after the house is completed. Most builders also require additional deposit money once a buyer's design center choices exceed a set amount. The required deposit can be up to 50% of the cost of the upgrades if the cost of the options exceeds a predetermined dollar amount.

Your agent questions the builder about all the inclusions, contingency terms, financing, and incentives to meet your budget. Also, a quality agent advises you not to over improve the home above the norm for the neighborhood. New construction homes almost always appraise for financing unless the buyer goes overboard with design center options. However, most builder contracts state the buyer is still required to close on the home even if the appraisal comes in low.

Aside from the buyer's loan getting declined due to no fault of the buyer or the builder failing to complete the home in time, builder contracts generally have no other provisions in place for a buyer to terminate without forfeiting their deposit. You must understand how to manage your budget to protect your investment.

### **9. Issues with quality and defects during the construction process**

As stated above, the builder's salesperson protects the interests of the builder. They're not responsible for protecting the buyer. Because building a home is a complex process with plenty of room for errors, you want a second set of experienced eyes looking for potential issues during the stage-inspections.

Your real estate agent accompanies you at walk-throughs with the foreman at the various stages of construction – pre-drywall, electrical, low voltage, and the final pre-closing walk-through to identify touch-ups. It's the agent's job to help catch deficiencies and hold the builder's foreman accountable for completing all repairs or necessary corrections prior to closing.

New homes are fully covered by the builder's warranty, and a builder's reputation depends on delivering homes that are free of problems. However, pay close attention to the language in their contract that deals with defects discovered during the routine walk-throughs. Most builders will not allow a buyer to terminate over these items but insist that the buyer allow them to correct the issues before the home is delivered.

### **10. Protecting your Deposit Money is always a major concern with new-construction**

Builders typically require a larger deposit than with a traditional resale purchase. The deposit amount usually falls between \$10,000 to \$15,000. As we said, some builders may require additional deposits of 50% of the cost of your upgrades. Many buyers end up with \$30,000 to \$50,000 in the hands of the builder prior to closing.

Much of the builder-slanted language in their proprietary contract revolves around their recourse if the buyer fails to close on the home. Most of this language grants the builder the right to keep all of your deposit money if the deal gets derailed and fails to close.

However, the contract also contains a few clauses that grant the buyer the ability to back out of the deal with a full return of their earnest money. Don't count on the builder's salesperson to point these out. They are incentivized to close the sale. Once again, an agent in your corner ensures you understand your rights.

Your real estate agent helps protect your earnest money. There aren't as many vital deadlines with a new build. However, the real estate agent works to ensure crucial deadlines like the loan application deadline and the contingent sale deadline are met. Also, some builder's contracts have verbiage that entitles them to keep a percentage of the deposit even if you back out for a legitimate reason defined in the contract. A real estate agent works closely with you to avoid unpleasant surprises.

### **11. If interest rates rise too much during construction, there can be major repercussions**

Most mortgage lenders typically won't lock-in interest rates more than 90 days in advance of a closing. Therefore, when dealing with new construction that likely won't be completed for 4 to 18 months, this can pose a substantial risk. If your debt-to-income ratios barely qualify you to purchase the home at the time it's contracted, there's a risk you may no longer qualify to buy if mortgage rates increase before you're eligible to lock-in the rate.

Interest rates are unpredictable. It's prudent to ensure you'll still qualify even if the rates increase. A good rule of thumb is to know you'll still qualify if the rates climb by one percent. If not, then you're taking a major gamble buying new-construction. It may be best to buy an existing home where you can lock in your rate.

Most builders also have an ownership stake or affiliated business arrangement with a lender and title company. Additionally, most builders require buyers to use their lender and title company to qualify for incentives and discounts. While they cannot force you to use these service providers, they will routinely withhold discounts and incentives if you insist on using an outside lender or title company. The good news is that the builder's lender usually has competitive rates and wants buyers to qualify.

## **12. Hire a Real Estate Agent experienced in dealing with builders**

The Pareto Principle (also called the 90/10 rule) describes the real estate industry accurately. It states that 90% of homes in the market are sold by only the top 10% of agents. This also means that the remaining 90% of agents fight over scraps for the remaining 10% of transactions. In other words, if you lined up 10 real estate agents, one of them sells far more homes than the other 9 combined! To make matters worse, out of the 10% who are doing most of the business, a substantial percentage of those agents have rarely dealt with builders. This means finding an agent extremely well-versed at new-construction transactions is like finding a needle in a haystack!

David Hakimi is one of the most experienced New-Construction Specialists in Denver, Colorado and the entire country. In fact, David is nationally published by The National Association of Realtors and Realtor Magazine on this topic. He has written several articles on selling new construction, and his article **"The Rookie Agent's Guide to Selling New Construction"** was published by the National Association of Realtors (NAR) and Realtor Magazine. It was one of NAR's most read articles in 2017 and was shared online by over 18,000 agents nationally!

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