

THE LAW FIRM
OF
JESSICA H. MILLER, LLC
CANYON PROFESSIONAL BUILDING
595 CANYON BOULEVARD
BOULDER, COLORADO 80302

JESSICA H. MILLER,
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE: 303-443-0568
FACSIMILE: 303-443-3488

**IMPORTANT CONSIDERATIONS FOR BUYERS OF NEWLY-CONSTRUCTED HOMES AND HOMES
WITH EXPRESS WARRANTIES**

The purchase of a home or other property that is newly-constructed brings an assortment of additional considerations that do not typically arise when purchasing older, existing homes. In many instances, new homes include an express (written) warranty requiring the repair of the property within specific time limits and requiring a specific procedure for seeking coverage under the warranty. Any individual considering the purchase of a new home or receiving a written warranty should ensure that the issues associated with new construction and warranties are considered when entering into a contract and that they fully understand their legal rights related to the contract and any warranty. In many circumstances, an attorney's initial review of a purchase contract and warranty can avoid much larger and more costly issues down the road.

PURCHASE CONTRACTS

It is common for a purchase contract associated with the purchase of a newly-constructed home to differ significantly from a purchase contract for existing homes as sellers of newly-constructed properties in Colorado have additional legal obligations to purchasers as a "builder-vendor" and often utilize the purchase contract to limit their legal obligations regarding their construction of the property. Many home builders will insert clauses into their "standard" purchase contracts that attempt limit the builder's ongoing repair obligations and limit your ability to sue for construction defects. Therefore, it is critical that any purchaser fully understand the terms of a purchase contract, how it may affect or restrict their legal rights, and for the purchaser to attempt to negotiate the removal of any unfavorable, unfair and/or one-sided contract terms. Oftentimes the review and advice of an attorney can assist a purchaser to understand all of a purchase contract's terms and the purchaser's legal rights, and in many situations an attorney may be able to negotiate for the removal or revision of unfavorable contract terms.

CONSTRUCTION DEFECTS

The primary difference between the purchase of a new property as opposed to an existing property is that purchasers of new property will move into the property soon after construction is completed. In the vast majority of cases, defects in the design or construction of a property will not become evident until years time after construction is completed. Most builders are aware that major defects may not appear for many years and structure their contracts and warranties so that the builder is not responsible for repairs by the time major defects become noticeable to the homeowner. The process of construction itself often results in further concealing defects as many structural, electrical, plumbing and other components of the property will be concealed by the construction of walls and other finishes. Since construction and design defects in a new home may take years to manifest, it is important for new property owners to consider additional measures to ensure that the construction and design of the home has been undertaken properly and that the builder will be fully responsible for any problems that may develop in the future.

STRUCTURAL DEFECTS AND CONCERNS

While the structural integrity of any building is always a major concern, the expansive soil found throughout Colorado, which is even more pronounced in the Front Range, heightens this concern in new construction because expansive soil requires special considerations to protect a building's long-term structural integrity, which typically will require additional costs to prevent structural problems. If the building is not designed and constructed to specifically manage for the lot's soil conditions, these failures may only reveal structural defects years after construction once the soil has settled and had time to affect the foundation and other structural components. Due to the prevalence of expansive soil in Colorado, many builders will attempt to limit their obligations and liability associated with structural and expansive soil problems in the purchase contract. Since it commonly will cost builders more to build a property with structural components adequate to deal with expansive soils, some unscrupulous builders will cut corners, knowing that the problems related to expansive soil will not develop until after the home is sold and their repair obligations have long expired. Therefore, purchasers of newly-constructed properties should ensure their contract and warranty do not limit a builder's liability and obligations on structural and expansive soils problems, ensure an adequate warranty is provided that covers these issues, and confirm that proper structural design was utilized that are adequate for the soil conditions. Review of a warranty and purchase contract by an attorney specializing in construction law can greatly assist in understanding if these issues are covered by a warranty or liability for soils issues is limited.

BUSINESS VIABILITY OF BUILDER

Another significant concern in purchasing a new home or receiving an express warranty is the future business viability of the builder and/or warranty company. If a builder or warranty company goes out of business, has no assets, and/or declares bankruptcy, in most cases, it is impossible for the property owner to receive repair work or warranty coverage, or collect on any judgment received from a lawsuit. Therefore, it is crucial for purchasers of new homes to investigate the business history, assets, and future viability of any builder or warranty company to establish that this business will likely be in business and have assets years later to cover warranty claims. Do not be afraid to ask your builder about its business and how it will pay for repairs years down the road.

EXPRESS WARRANTY RIGHTS AND OBLIGATIONS

Many builders of newly-constructed properties will provide the purchaser with an express (written) warranty either directly from the builder or from a separate warranty company. While many purchasers will feel reassured if they are receiving an express warranty, it is important to remember that a warranty, like any contract, is only as good as the terms contained within it. Therefore, it is crucial for purchasers to ensure that they fully understand the terms of the warranty and their legal rights and purchasers should strongly consider retaining an attorney to review these documents and provided legal advice. Many express warranties will exclude coverage for certain kinds of defects (such as soil issues) or certain portions of the construction work. In some instances, express warranties may give a purchaser no more warranty rights than are already provided under Colorado law without any written warranty. Some warranties may also require you to pay a portion of the repairs or filing fees for claims. In some instances under an express warranty, the builder or warranty company may have final say on whether or not a defect is really a problem or needs to be corrected. As noted above, the warranty is only as good as the company that stands behind it and the terms contained within it. Therefore, if you are receiving an express warranty as part of the purchase of a property, it is crucial that you or your attorney carefully review and understand the terms of the warranty so that you can be fully aware of what is and is not covered, how it will operate if repairs become necessary, and how well the builder is standing behind its work.

STEPS YOU CAN TAKE

- Have an attorney review your purchase contract and warranty.
- Review and understand the terms of your contract, warranty, and any other controlling documents.
- Negotiate the revision or removal of unfair or one-sided contract or warranty provisions.
- Ask for information from the builder on the construction and design of the property.
- Involve yourself and/or your own independent professionals (engineers, home inspectors, etc.) in the construction process; ask the builder to allow you or your professionals to inspect the home at certain phases throughout construction if construction is not complete.
- Speak with other residents in the same development who have purchased nearby homes from the same builder.
- Speak with others who have previously bought homes from the builder about problems with their home, the builder's responsiveness to warranty claims, etc.
- Ask your builder for references. Look at other homes the builder has constructed.
- Ask your builder about its business history, its assets and financial viability, and ability to fulfill warranty and repair claims years down the road. Ask for documentation to back up this information. Ask the same questions about business history and viability of the warranty company if the builder gives you a warranty provided by a different company.
- Retain professionals to inspect the home and review structural plans.

FURTHER ASSISTANCE

If you have further questions about the purchase of a new property or warranties or if you need representation and review of purchase contracts, warranties or any associated documents, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillerlaw.com.

Disclaimer — This article has been prepared by The Law Firm of Jessica H. Miller, LLC (the "Firm") for general informational purposes only and its content only contains general information. These materials do not, and are not intended to, constitute legal advice for any specific matter. The information provided in this article is not privileged and does not create an attorney-client relationship with the Firm or any of the Firm's attorneys. This article is not an offer to represent you. You should not act, or refrain from acting, based upon any information in this article. The hiring of an attorney is an important decision that should not be based solely on written information about qualifications or experiences. The Colorado State Bar does not certify any attorney as a specialist or expert. Anyone considering hiring an attorney should independently investigate the attorney's credentials and ability and not rely upon advertisements or self-proclaimed expertise. The name of the attorney responsible for this article is Jessica H. Miller, who may be reached at (303) 443-0568 or by email at jessica@jhmillerlaw.com.

© 2013 The Law Firm of Jessica H. Miller, LLC. All Rights Reserved.