

BUSINESS

Q&A: What property owners should know before they sign a contract with a homebuilder



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Florida has been going through a building boom as migration experts point to a huge influx of people to the Sunshine State.

However, supply chain snarls, a labor shortage and cost increases have presented builders with challenges in meeting demand for new home construction, leaving some prospective homeowners scrambling to find a qualified builder to construct their Florida home.

Brett M. Henson, a board certified construction attorney and partner at Shumaker, Loop & Kendrick LLP recently discussed with the Herald-Tribune what people should know as they seek to build a home.

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What should property owners consider when signing a contract with a homebuilder?

Property owners should verify with the Florida Department of Business and Professional Regulation (“DBPR”) or the local building department that the builder holds the appropriate license for the home to be constructed. At minimum, owners should request a current certificate of insurance to verify the insurance coverages held by the builder.

Property owners should also pay close attention to the contract provisions relating to the cost to construct and the time for completion of construction. As it relates to cost, owners should understand whether the builder has agreed to build the home for a fixed price, or to bill the owner on a time and materials basis, and if so, whether there is an agreed cap on these

billings. With respect to time, owners should ask the builder to commit to a deadline for completion of the home in the contract.

What are some things that should raise red flags before a contract is signed? How about after a contract has been signed?

Before the parties sign a contract, if a builder is unwilling to commit to a fixed price for a home, especially if the plans and drawings for the home are completed, this would be a red flag. While volatility within the building materials market poses some challenges to fixing the price of a construction contract, it is possible to address these uncertainties by including a materials price escalation clause that is mutually agreed upon and fair to all parties.

Also, if the builder is unwilling to commit to a time period for completion of construction, this is another red flag. Florida law does require that a builder who receives an initial payment for construction must apply for permits within 30 days, and commence construction within 90 days, of receipt of payments. However, Florida law does not impose any hard and fast deadlines with respect to the completion of construction, so it is imperative that the parties include such a deadline for completion in their contract.

After the parties sign a contract, an owner is entitled to receive partial lien releases from the builder's subcontractors or suppliers who provide written notice to the owner that they are working on the project. If a builder is unwilling or unable to produce lien releases from its subcontractors or suppliers with its periodic or final pay requests, the owner should be concerned as to whether the builder is paying its subcontractors and suppliers. Relatedly, liens recorded by a subcontractor or supplier should be a cause of concern for the owner. Even if an owner pays the builder, if the builder does not pay its subcontractors and suppliers, the owner can have to pay twice for these parties' work, if the owner does not follow the process for making proper payments under Florida's Construction Lien Law.

Once there are concerns, what should a homeowner do?

Before signing a construction contract, owners, especially those unfamiliar with Florida's construction laws, should consult with a qualified construction lawyer to understand the terms of their construction agreement, and negotiate for terms that protect them. A qualified construction lawyer can also explain the process for making proper payments under Florida's lien law, so that the owner doesn't have to pay twice for the work performed by the builder.

If problems arise during construction, owners should consult with counsel to determine whether they have grounds to terminate the builder. Termination of a contractor during an ongoing construction project can be a cumbersome process, as the owner will have to ensure that it gives proper notice to the terminated builder's subcontractors and suppliers before recommencing construction. In addition to legal remedies, owners should also bear in mind that the builder's abandonment or failure to remove liens from a project can result in administrative discipline, either through Florida's DBPR or the local building department. Finally, Florida law imposes criminal penalties on contractors who receive payment from an owner, but fail to properly apply the payment to amounts due and owing for labor and services on the project. Owners should consider reporting such activity to the applicable regulatory or law enforcement agencies.