

Property. Covenants and restrictions are intended to provide uniformity and maintain reasonable standards for the benefit of all the homeowners. The covenants of an addition or subdivision may by statute be amended by the owners after 10 years with approval of 70% of the parcels or such other amount specified in the covenants, whichever is less; the percentage is reduced to 60% after 15 years.

Title Insurance. Title insurance policies provide protection for both you and the lender. Title policies are based on an attorney's opinion after examination of an abstract of title.

Title polices protect the Buyer or lender against "hidden" title defects and unrecorded liens. A Lender's Title Policy (required on new loans) protects the lender, NOT you and should not be relied upon by you. It is recommended that an all-inclusive Owner's Policy of Title Insurance be purchased to insure your property, as an owner's policy of title insurance provides the greatest protection afforded a buyer in the purchase of real property.

If you do not choose to purchase an Owner's Policy, you, as an alternative, should obtain a title opinion from a title attorney after examination of a current abstract. The cure of title defects can extend the closing date by the number of days specified in the New Home Contract. If you choose not to purchase an Owner's Policy or obtain a title opinion, you may be required to sign a statement acknowledging such decision.

Survey, Easements, and Encroachments. A pin survey or Mortgage Inspection Certificate is recommended on all sales. A Mortgage Inspection Certificate is a representation of boundaries of the property and the improvements therein. A pin survey denotes the exact location of boundary lines, and the possibility, location, and extent of any easements or encroachments, which might affect the Property. Either the Certificate or survey will indicate the lot size, lot line, easements, encroachments and, if required, flood zone certification. The pin survey is exact and costs more than the Mortgage Inspection Certificate. Lenders require a Mortgage Inspection Certificate but will accept a pin survey. With acreages, a pin survey may be necessary. If you do not choose to obtain either a Certificate or survey, you may be required to sign a statement acknowledging

such decision.

Easements are rights granted to persons or companies (other than owners) for utilities, roads, etc. An encroachment is any improvement extending upon another property, such as sidewalk, building or driveway. Any improvement that extends into an easement or over a building line is considered a violation. Most title policies will provide encroachment coverage based on a Mortgage Inspection Certificate or a pin survey.

Deed to the Property. The New Home Contract states that title to the Property will be conveyed by a General Warranty Deed in recordable form unless specified otherwise in the New Home Contract. If title is conveyed by a deed other than a General Warranty Deed, you are advised to seek legal advice.

Taxes. The County Assessor's office will have assessed the taxes on new construction based on the lot or land only. If you are obtaining a loan and required to place taxes in an escrow account, the closer of the title company generally will estimate the taxes based on the sales price by a formula used by the assessor's office. The actual tax will not be formally determined until the County Assessor places a taxable market value on the Property.

Closing Companies. You have the right to close at any title company of your choice under Real Estate Settlement Procedures Act (RESPA). Many Builders are able to provide a savings to a buyer who closes at a title company used by the Builder. Many Builders can negotiate lower fees based on the volume of business the Builder or developer sends to one company. You should investigate whether any savings is available before making a selection of a closing company.

Expense Sheet and Financing. When preparing the offer, you will be given a copy of the Estimate of Buyer's Expenses, which is an ESTIMATE of expenses the Buyer will incur (different from the disclosure which will be provided by the lender). On new construction where the home will not be finished within 60 days, some lenders charge an extra fee to lock-in the interest rate, and some require the interest rate to float. If a firm interest rate is not available at the time the expense sheet is prepared by the Broker or Sales Associate, there may be a difference in your monthly payment based on the final, locked-in interest rate.

Hazard Insurance Policy. Hazard insurance is purchased through an insurance agent to protect your investment in the home in case of a loss. You are encouraged to obtain several estimates on the cost of a homeowner's insurance policy as soon as possible. The deductible amount will affect the cost of the policy. The lender will require a mortgagee clause.

Sex Offenders Registration Act. Under the Oklahoma Megan's Law (Sex Offenders Registration Act), residents can obtain information about habitual sex offenders convicted of certain sex crimes and who have moved into neighborhoods. Only crimes committed since 1989 are covered under the Act. You may contact the police department or the Oklahoma Department of Corrections for further information prior to making an offer on the Property. Real estate licensees have no duty to investigate or to disclose any information regarding an offender required to register.

Square Footage. Square footage calculations are external measurements but do not include the garage. Buyers who are concerned about the accuracy of the square footage should: (1) personally measure and compute the square footage, (2) have an expert (appraiser, etc.) compute the square footage, (3) ask for the Builder's plans prior to signing an offer to purchase.

Seller's Disclosure or Disclaimer Statement for Residential Property. The Oklahoma Residential Property Condition Disclosure Act exempts newly constructed, never lived-in property.

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INFORMATION FOR NEW HOME BUYER

INFORMATION FOR USE WITH RESIDENTIAL REAL ESTATE PURCHASE CONTRACT FOR NEW HOME

Oklahoma City Metropolitan
Association of REALTORS®
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Oklahoma City, OK 73112

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A common goal in the real estate transaction is the sale and purchase of a new home, whether you are the Buyer, Seller, or real estate salesperson. As the consumer, you need to know about certain provisions in the *Real Estate Purchase Contract For New Home* ("New Home Contract") and certain information pertaining to the Property. The New Home Contract uses the term "Seller". Generally, Seller is synonymous with Builder. In this pamphlet, "Seller" is referred to as "Builder", "Contract" as "the New Home Contract", and "Buyer" is sometimes referred to as "you". Otherwise, all the terms used in the New Home Contract and this pamphlet have the same meaning.

Type of Contracts. The New Home Contract is a form prepared by the Oklahoma City Metropolitan Association of REALTORS® ("Realtor Association"). It provides for Construction Documents to be attached to the New Home Contract so that it can be adapted for any type of new home. Some Builders use their own contract. Those contracts have not been approved by the Realtor Association and may contain different terms and conditions. Sales Associates are unable to give advice on contracts, which are not approved and published by the Realtor Association. Every Buyer should seek legal advice before executing any contract, especially a form not approved by the Realtor Association.

Earnest Money. There is no set amount of earnest money required on any contract. The amount of earnest money is what a buyer is willing to give and a seller is willing to accept; in other words, it is negotiable. A greater amount of earnest money may be required in the purchase of a new home than an existing home. This often occurs when you require modifications to be made to the Builder's customary plans. Usually, the earnest money is deposited in the Listing Broker's trust account, which is subjected to periodic audits by the Oklahoma Real Estate Commission ("Commission"). A space is provided in the New Home Contract to insert the name of the trust account holder. Occasionally, contracts provide for the title company to hold the earnest money in escrow. If a Builder is a licensed broker, then the earnest money would have to be placed in a trust account subject to audit by the Commission. If the Builder is not a licensed broker and Builder's own contract form provides for the Builder to hold the earnest money, you should determine how the funds will be safeguarded. Before making an offer to purchase a new

home, you should inquire whether the earnest money will be commingled with Builder's operating account and decide if that is acceptable.

Construction Documents. The Construction Documents shall be attached to the New Home Contract as exhibits if the improvements on the property are to be custom built or are incomplete. Construction Documents include plans, specifications and allowances. The plans generally are drawings necessary for the construction of the home. The specifications are detailed drawings that show how a builder will proceed with construction of the home. The allowance will set forth the items that you may select and the portion of the purchase price allocated to each group, i.e., floor coverings, ceramic surfaces, lighting fixtures, countertops, hardware, doors, sinks, appliances, etc. In the event you exceed the allowance, you are required to pay for any overage at the time the Builder receives the invoices for the product and presents you with the overage charge on a change order. The overage is non-refundable. Any changes in the plans and specifications or allowance should be covered by a written change order and agreed by the Builder and you. All change orders shall be forwarded to the Broker or Sales Associate involved in the transaction.

Inspections. The New Home Contract permits you to inspect the home on or before seven days before closing. The termite company treating the structure will, in most cases, provide a 5-year warranty, which is effective from the date the ground was treated under the slab. The New Home Contract allows you to have a termite inspection. The reason for this inspection is that the treatment may not be recent. Any questions regarding termite treatment should be directed to the Oklahoma Department of Agriculture, which licenses and regulates termite inspection and treatment services. The Broker or Sales Associate, assisting you in this transaction, encourages you to obtain an inspection of the Property since the Broker or Sales Associate is not an expert in quality, design, or construction. You should select an inspector who is experienced in new home construction and who will submit an inspection report within the time frame stipulated in the New Home Contract.

Environmental Conditions. There are substances in all new homes that may be toxic, produce an allergic or other adverse or unpleasant reaction to some individuals. Formaldehyde is found in some carpeting and pressed

wood products. Arsenic is found in some treated wood products. Fiberglass is found in some insulation products. Petroleum, petroleum products and petroleum by-products are found in some vinyl and plastic products. Methylene chloride is found in some paint thinners. The foundation of the home is treated against termites using a pesticide. Some builders require buyers to sign waivers, holding the builder harmless from these substances and their effects, including but not limited to mold, mildew, fungus, radon, environmental pollutant, pesticide and building material components. You should seek legal counsel before executing any waivers.

Construction on Acreages. In the event the construction site is on acreage or outside of the public utility areas, you need to be aware of other considerations. You should be assured that you have legal access to the Property; e.g., recorded easement. The Property may have a well and a septic tank. You should ask the Builder to provide you documentation showing the well has been tested and certification of the septic tank by the state or county health department or other authorized entities. You should endeavor to be educated on the use and maintenance of these systems. Some sites will have rural water available rather than wells. The deposits, water taps or membership fees for rural water, ranging over \$1,000 in some areas, can be more expensive than in public water areas. Rural areas may be serviced by volunteer fire departments and cooperative electricity. Insurance coverage can be higher. You should investigate both the cost for rural water, other utilities and insurance. The State Water Resources Board sets the construction standards for wells, and the State Department of Environmental Quality sets the construction standards for septic systems.

Warranty. Most homebuilders provide warranties; however, some homebuilders may not provide warranties. All members of the Central Oklahoma Home Builders Association are required by Association guidelines to provide a written one-year warranty, which may be a commercially purchased warranty, or a written warranty from the individual builder. It is the responsibility of the Builder to provide a copy of the written warranty to you and all other interested parties. All Builders may not be a member of the local association. A limited one-year warranty is on the reverse side of page 2 of the New Home Contract which the Builder may honor or substitute with another warranty. Warranties vary in terms, conditions, and limitations. You should obtain copies

prior to executing any agreement with the Builder and determine that the terms are acceptable and reasonable based on industry standards. A limited time-period for review, objection or approval is provided in the New Home Contract if you have not received the warranty before the New Home Contract is signed. You should seek legal advice.

Assignable Warranties. The Builder will assign all assignable manufacturer warranties to you at closing. These warranties cover consumer products, e.g., microwave, air conditioning system, or security alarm as defined by the Federal Trade Commission under the Magnuson-Moss Warranty Act. You receive whatever warranty is available on the individual consumer product. These warranties may be limited and vary from product to product. The Builder does not warrant the consumer products.

Closing Acknowledgment and Release. You will be provided with a Closing Acknowledgment and Release document to sign at closing. This document, which survives the closing, (1) provides for your acceptance of the Property in its present condition, (2) states the name of the termite company providing the termite certificate, and (3) releases all Brokers and their affiliated licensees, employees and the Builder from claims, demands, charges, losses, and liability. It does not release the Builder from lienable claims or from any warranty on construction.

Mandatory Homeowners Association. The Property may be subject to mandatory membership in a homeowner's association. If so, you are obligated to pay assessments to the homeowner's association. These assessments are subject to change. Failure to pay an assessment could result in a lien on and the foreclosure of the Property. The fees will vary according to the amenities that the homeowner's association services. The developer of an addition or a subdivision usually controls the association until a designated number of residences in the addition or subdivision are completed. At that time, control of the association is relinquished to the property owners.

Covenants and Restrictions. The covenants and restrictions govern the use and occupancy of the Property. You are advised to review them carefully to determine whether they would affect any intended use for the