

These materials were presented at a continuing legal education seminar sponsored by the Real Estate Law Section of the Washtenaw County Bar Association. For additional reading on this topic: Katherine Salant, *The Brand-New House Book* (New York: Three Rivers Press, 2001).

CHECKLIST FOR RESIDENTIAL BUILDING CONTRACTS

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Article 1. Basic principles

Section 1.01 There is no such thing as a standard building contract.

Most Builders have their own contract and want to use their form, though they will usually entertain an addendum that modifies provisions in their contract.

With smaller Builders the contract is often a product of evolution and may contain internal inconsistencies and either omit necessary provisions or include provisions that are inapplicable.

Larger Builders usually have a contract that is legally sound, but since it is written for the Builder, it typically reflects the Builder's viewpoint and offers few safeguards for the Customer.

A contract for a truly custom home may be written on an AIA (American Institute of Architects) standard form.

The Customer is entering into a transaction that inherently involves risk. The best-written contract cannot protect a Customer against all risks. The contract is not a substitute for doing homework and checking out the Builder's references. The process of reviewing the contract with the attorney will help to educate the Customer about the risks, and may result in changes to the contract that better protect the Customer. Any Customer who is totally risk adverse should avoid new construction.

Section 1.02 The nature of the contract and the necessary provisions depend on several key factors:

- (a) How far has the work progressed when the contract is signed?

If the home is a spec home that is completed or nearly completed, the parties often use the standard sales agreement used for existing homes, with an addendum to address certain issues. See Section 4.01 below.

If the Customer is starting from the ground up, the parties will usually start with the Builder's contract form and modify it to fit the specifics of the transaction.

- (b) How custom is the home?

If the Customer is working with an architect, often the plans and specs that are put out to bid will include an AIA standard form contract.

- (c) Does the Builder or the Customer own the building site?

When the Builder owns the building site, the contract must include all the standard provisions appropriate to the transfer of ownership of land. These include, for example, a requirement that the Builder convey title with a warranty deed, that the Builder provide title insurance and pay transfer taxes, that current property taxes (and condominium association fees, if applicable) be prorated, that special assessments be paid off or assumed by the Purchaser, etc.

When the Customer owns the building site, the contract does not include provisions related to conveyance of title, but other issues need to be addressed. These include, for example, liability concerns like indemnification and insurance, builder's risk insurance, construction lien waivers, etc.

- (d) Is the Builder or the Customer financing the construction?

If the Builder is financing the construction, the title usually remains in the Builder's name until the house is complete and a closing takes place. The Customer typically makes a down payment and takes out an end loan mortgage (conventional loan) at closing when the balance of the purchase price is paid. The Customer needs to make sure the mortgage loan commitment will not expire before the home is completed.

If the Customer is financing the construction, the title must be in the Customer's name to close on a construction loan. This will be the case if the Customer already owns the building site. If the Builder/Developer owns the site, as part of the transaction the Builder/Developer may transfer title of the land to the Customer simultaneously with the Customer's closing on the construction loan.

If the Builder calls for progress payments, the draw schedule set forth in the contract must coordinate with the draw schedule used by the Customer's lender. Progress payments are typically made monthly or by stage of completion. The Builder submits an itemized Application for Payment showing the amount of labor and materials incorporated in the work as of the cut-off date, and the Customer pays 90%, less the aggregate of previous payments. Payments would include a proportionate amount of the Builder's fee subject to a holdback, typically 10%. Ideally the Customer would hold a portion of the final retention until all punch list work is complete. If the Customer's lender is making the progress payments, does the Customer have the right to disallow the payment if the Customer has a dispute with the Builder? This depends on the terms of the loan agreement.

The contract should require the owner to file a Notice of Commencement before the work starts, not when the construction loan closes. The contract should outline a procedure for handling sworn statements and lien waivers in connection with progress payments.

Article 2. Basic components of the contract

Section 2.01 Delineation of the work to be performed by the Builder

For both the Builder and the Customer, a clear delineation of the work to be performed or included in the contract is essential.

The Customer should carefully review *plans* for accuracy and completeness. Even if the Customer is not working with a private architect, consideration should be given to hiring an architect just to review the plans. If many changes are made to the plans in the negotiation stage, a clean final set should be prepared. The final plans should be clearly identified (by date) and initialed by both parties so they are not confused with preliminary versions. If the

Developer or an architectural control committee must approve the plans, the contract should state who is responsible for obtaining the approval.

The Customer should also carefully review the *specifications* for accuracy and completeness. Specifications should be as detailed as possible. Again, a consultation with a private architect may be helpful. As with plans, the final specs must be clearly identified to avoid later confusion. They should be initialed by both parties and dated. In addition to specifying the materials to be used in the work, the specs often contain other important provisions. For example, the specs may provide that the Builder can reverse the footprint; this can be a significant issue if the Customer chose the lot for a particular view only to discover the view is lost to the garage. Or the Builder may pass through costs resulting from changes in the building code. (The contract should state that the Builder is not aware of any pending building code changes.) Another example is that the Builder may substitute specified materials without notice. Regarding substitutions, sometimes the Builder is simply unable to obtain a particular material without delaying completion and reserves the right to substitute materials or equipment of comparable function and quality. Ideally the Customer would have the right to approve such changes, but at a minimum, the Customer should be notified of changes.

The Builder's obligations regarding site work should also be clear. The specs should provide that the Builder will grade the land to provide positive drainage away from the house. It should also be clear whether the Builder will be responsible for finish grade or rough grade only. Will the Builder install the driveway, walkways, etc.?

The *foundation* is an area of special concern. If the Customer can afford it, a review of the plans and specs by a structural engineer is well advised. This is a situation where an ounce of prevention is worth a pound of cure.

Once the contract is final, changes to the work can be expensive, if indeed the Builder agrees to make changes. A careful review of the plans and specs before the contract is finalized will minimize *change orders*. No matter how carefully the Customer reviews the plans and specs, changes may be inevitable. The contract should specify a procedure for making changes:

- (i) All changes should be in a written change order and signed by both parties.
- (ii) Any changes in the contract price or completion date should be part of the change order.
- (iii) The change order should include any credit the Customer is entitled to receive as a result of deductions from the work.
- (iv) The contract should indicate whether the Builder is obligated to make changes and what the Customer's remedy is if the Builder fails to carry out a change order.
- (v) The contract should also state when costs or credits from change orders are required to be paid or will be credited.

Section 2.02 Total price for the work and what it includes

Most contracts are for a lump sum price. Occasionally a Builder and Customer will negotiate a *cost plus* arrangement, but such contracts are beyond the scope of these materials.

From the Customer's standpoint, the contract should state that the lump sum price includes permit fees, inspection fees, survey work, insurance, temporary utilities, well and septic or utility hook-ups, plans, and all costs applicable to the work, unless expressly excluded.

Even with a contract that provides for a lump sum price, there are often provisions for allowances. Allowances can be in the body of the contract, in the specs, or in a separate addendum to the contract. The Customer should do some homework and satisfy himself/herself that the desired house can be built without cost overruns (without exceeding the allowances). The contract should indicate how allowances will be handled:

- (i) If allowances are exceeded, when will the Customer be required to pay the overage?
- (ii) Will the Customer receive a credit for unused allowances?
- (iii) Is the cost of labor/installation included in the contract price or is that part of the allowance?
- (iv) Are the allowances at the Builder's cost, retail, etc.?

- (v) Are the allowances limited to items that reflect the Customer's personal preferences, or do they include structural components over which the Customer has no control, such as lumber?

Are there any circumstances under which the Builder can change the contract price after the contract is final, other than signed change orders? E.g., unexpected subsurface conditions that affect the cost of the foundation (watch out for this if the Builder is providing the lot); changes in code requirements (the Builder should at least represent that no pending changes are known at the time of signing the contract); etc.

Section 2.03 Time of commencement and completion of the work

(a) Commencement

The contract should provide when the Builder will start the work.

Usually the Builder will not be obligated to begin the work until all contingencies are removed.

(b) Completion issues

Except for a completed or nearly completed spec home, Builders rarely commit to completion dates because there are too many circumstances beyond their control that can result in delays. The Customer needs to plan for flexibility.

The contract can require the Builder to provide sufficient competent workers, equipment and materials for the prompt and diligent prosecution of the work and to use "best efforts" to complete the work as expeditiously as possible.

The Builder may be willing to commit to providing a completion date after the home has reached a specified stage, such as dry-walled.

The Builder may agree to provide an estimated completion date and prompt written notice of any event that may cause delay in meeting the estimated completion date.

Where the Builder/Developer is providing the home and building site, the Builder may be willing to allow the Customer to cancel the contract and get his/her money back if the home is not completed within a certain timeframe, such as one year.

If the Builder is willing to commit to a completion date, the Builder should provide a construction schedule so the progress can be monitored. The Customer should have the right to insist that the Builder take measures to catch up the work if it falls behind schedule.

- (c) Defining completion--the contract should define when the work will be considered complete.

A certificate of occupancy should be required, preferably final and unconditional, and any other governmental approvals required. If only a temporary CO can be obtained for weather related reasons, funds should be escrowed or performance should otherwise be secured for completion of exterior work as soon as the weather permits.

If the Customer is obtaining a mortgage, lender approval should also be required in order to assure that funds will be available to close.

The Builder should be required to meet any reasonable requirements of the title company for issuance of an owner's policy of title insurance without standard exceptions. This will require a sworn statement and final and unconditional waivers of lien. It will also require a clean survey or mortgage report.

Every Customer should obtain at least one inspection by an experienced private contractor before closing, and the contract should provide for this right. A private inspector can be particularly helpful with preparing a *punch list*. What does the contract say about completion of punch list items? Is a timeframe indicated? At a minimum the contract should provide that prior to closing the parties will agree on a punch list with completion dates. Is the Customer authorized to arrange to have the work done if the Builder does not meet the timeline?

Ideally the Customer would not close until the home is completed to his/her satisfaction.

Most Builders' contracts do not allow the Customer to delay closing due to punch list items.

Most often the Customer will have to close even though some work remains to be done. Does the contract allow for an escrow, and if so, for what items? How is the amount to be escrowed determined? Who holds the escrow, and on what conditions may it be released?

Section 2.04 Incorporation of ancillary documents

The building contract may be very short. There may be many other documents or papers that combine to state the entire agreement. It is very important to identify and incorporate by reference all other documents or papers that constitute part of the contract. Examples of such documents are the plans, specs, allowances, and the warranty.

Certain other documents may be referenced for a particular purpose; for example, the construction loan agreement between the Customer and the lender may be referenced for the draw schedule. A homeowner's manual provided by the Builder may be referenced for performance standards.

If the Developer has a "Feature sheet" or brochure that describes materials, the quality of construction, or other matters the Customer is relying on, it should be incorporated by reference.

Section 2.05 The warranty and what it encompasses

(a) Express warranty

Just as there is a broad range of building contracts, there is also a broad range of warranties. Under Michigan law a Builder is not required to give an express warranty, but a one-year to eighteen-month warranty is customary.

As with the building contract itself, changes to the warranty may also be negotiated.

Watch for the following issues:

- i) Does the warranty begin to run at closing, or at issuance of the CO (which may be a much earlier date, especially with a spec home)?

- ii) Almost all express warranties are actually "limited" express warranties. Are the exclusions reasonable? Note that superficial defects that could have been observed on the final walk through (such as scratches and dents) will not be covered under the warranty unless they were noted on the punch list. This is another reason to hire a private inspector to assist with the final walk through inspection.
 - iii) Is the warranty assignable? An owner with a non-assignable warranty can be at a disadvantage if the house must be sold before the warranty expires and is competing against new homes with warranties.
 - iv) If the Builder provided the plans, the Builder should warrant against design defects.
 - v) If the Customer provided the plans, the Builder should warrant that the home is built in accordance with the contract documents.
 - vi) Are there clear and reasonable procedures for carrying out warranty work? Is there a stated timeframe for the Builder to perform warranty work?
 - vii) What is the Builder's obligation to remedy a defect? Does the Builder have the right to choose between repair and replacement? What if the replacement material does not match (as when the replacement material is from a different dye lot)?
 - viii) Does the Customer have recourse if the Builder does not honor the warranty? Is the Customer entitled to remedy the defect and charge it back to the Builder if the Builder does not perform timely?
 - ix) How are emergencies handled, such as loss of heat?
- (b) Implied warranty of habitability

By judicial authority Michigan law implies a warranty of habitability from the Builder to the first Purchaser/occupant of a new home. There is no stated expiration of the *implied warranty of habitability*, so it appears to be governed by the six-year contract action statute of limitations.

Some Builders attempt to disclaim or limit implied warranties. Sometimes the disclaimer is very direct and other times it is vague. Sometimes it limits the duration of implied warranties to the duration of the Builder's express warranty.

Many Builders will remove such disclaimers upon request.

It is not clear in Michigan if a Builder can validly disclaim or limit the implied warranty of habitability. In an unpublished decision Papazian v Lichtman (Michigan Court of Appeals, No. 180755, decided September 6, 1996) the court said, in dictum, that an "as is" clause waives implied warranties. However the case involved an action by a buyer against the seller of an existing home. Pursuant to a recent Federal case, unpublished cases may now be cited as authority.

Section 2.06 Default provisions

The Builder will want the right to terminate the contract if the Customer defaults. If the Builder owns the property, the contract should address whether the Builder will retain all payments received to that time, or whether the Builder will be obligated to return a portion to the Customer. If the Customer owns the property, the Builder will have a construction lien on the property. The contract should address whether the Builder will be entitled to recover lost profits from the Customer.

The Customer will want the right to terminate the contract if the Builder defaults. If the Builder does not remedy the default after reasonable written notice and the Customer owns the property, the contract may provide that the Customer can terminate the contract, without waiving any rights or remedies against the Builder. Under such circumstances the Customer would take possession of the work and complete the work by whatever means the Customer deems expedient and recover from the Builder any excess cost to complete the work. If the Builder owns the property, the Customer will, at a minimum, want a refund of all money paid to the Builder.

If a dispute arises during construction and progress payments are being made, the contract may allow the Customer to withhold payment for defective work not remedied or work that does not conform to the contract documents. If deficiencies are not promptly corrected after

written notice, the contract may allow the Customer to rectify the deficiency at the Builder's expense and deduct the costs incurred from the payment withheld. The same method can be used to protect the Customer against construction liens filed or threatened during construction. If there is a dispute between the Customer and the Builder over whether the Customer may withhold money from a payment, the contract should require the Customer to make all payments due over which the Customer does not have a good faith dispute. Likewise, upon such payment the contract should require the Builder to continue the work. Mediation may result in a quick resolution of such disputes.

For the Customer's protection, the contract should provide that making a payment, including final payment, will not be construed as acceptance of defective or improper work.

Article 3. Miscellaneous provisions

Section 3.01 Standard of performance

The contract should provide that the home will be built with all new materials and built in a good and workmanlike manner strictly in accordance with Contract Documents, Code, permits, and manufacturer's requirements with respect to equipment and materials. The Builder may want the contract to provide that the home will be built in "substantial" conformance with the contract documents.

If the home is based on a model, the model can be directly referenced as the standard for workmanship and materials.

Sometimes the Builder provides a homeowner's manual that sets specific construction standards.

If the Customer has chosen the Builder based on a particular construction supervisor or other staff, the contract may require the Builder to use designated staff.

If the Customer's architect provides construction phase supervision, the architect will decide issues of performance standards.

The Customer may want to include a provision in the contract that at closing the house shall be delivered in clean condition with clean windows and with all construction debris removed.

Remind the Customer that a “new” home is not synonymous with a “perfect” home.

Remember that an "A" only requires 93%, not 100%.

Section 3.02 Contingencies

Many construction contracts have no Customer contingencies. If the Customer is purchasing property in a new condominium development (including a site condo) from the Developer, the Developer will provide the condominium documents and the Purchaser will have an automatic 9 day review/rescission period beginning when the Purchaser receives the documents. Note that if the Purchaser is not buying the land from the *Developer* (but rather from a Builder who is not the same entity as the Developer) this right does not apply.

Unless the Customer is paying cash or is pre-approved for a mortgage, the contract should have a standard financing contingency. Some building contracts have a provision that sounds like a financing contingency, but the provision only allows the Builder (not the Customer) to terminate the contract if the Customer cannot obtain financing. Sometimes these provisions do not even state that the Customer’s money will be refunded.

The contract should contain contingencies for review by the Customer’s attorney and attorney review of the title work if the property is being purchased as part of the transaction.

Section 3.03 Provisions pertaining to the purchase of the site.

The Builder should provide the Customer with an owner’s title insurance policy in the amount of the final contract price. From the Customer’s standpoint the policy should be issued without standard exceptions to protect against construction liens and boundary/encroachment issues. However, the title company may not be willing to remove the lien exception from the owner’s policy. This is usually not a problem as to the policy issued to the lender. Even if the contract provides for an owner’s policy without standard exceptions, the title company should be contacted in advance to verify that it is willing to remove the lien exception from the owner’s policy.

Michigan law requires the Seller to pay transfer taxes. With the cost of new homes today, and the combined transfer tax at .86% of the sale price, this can be a substantial sum. Some Builders ignore the Michigan law that requires the Seller to pay transfer taxes and include a provision in the contract that requires the Purchaser to pay the transfer taxes. The Purchaser may be unaware of this added expense, or that it is contrary to law. Other Builders try to minimize the cost of transfer taxes by selling the land to the Purchaser up front and then building the house on the land now owned by the Purchaser. The transfer taxes are then based on the lower unimproved value of the land instead of the higher completed cost of the home. Some Customers first learn of this practice at the closing, when they are asked to accept a deed or sign a valuation affidavit with a much lower price than they are paying for the home. Washtenaw County is challenging this practice when there is no genuine sale of the land to the Customer. Although this practice is designed to reduce transfer taxes, if there is a genuine sale there are some unintended consequences. It puts the Purchaser in the position of the landowner while the house is being constructed and raises liability concerns that must be addressed in the contract. See Section 3.04 below. Also, since the Builder is selling only the land, the title insurance coverage will not be for the full value of the completed home unless arrangements are made with the title company to increase the policy coverage when the house is completed. Who will pay the premium for that?

The Seller usually remains responsible for property taxes until the home is complete and title transfers, when they are generally prorated. Some building contracts provide for the Purchaser to assume responsibility from the date of the contract instead of the date of closing.

Ordinarily the Seller pays off any special assessments at closing. Often properties in new developments are subject to special assessments for roads and other improvements. Some building contracts provide for the Purchaser to pay them or more obliquely state that the Builder will pay any installments that come due prior to closing (leaving the Customer to pay the installments that come due after closing, which can be thousands of dollars). Like the pass through of the transfer taxes, this can be an unpleasant surprise for the Purchaser, especially if the lender requires the outstanding balance to be paid in full at closing. Even if a special assessment has not yet become a lien, the Builder is likely to know of planned or pending work that may result in a special assessment.

Similar to special assessments, some properties may be subject to a substantial utility surcharge resulting from utility improvements. Unlike special assessments, such surcharges do not show up on title work, but instead show up on the utility bill after closing.

As some protection for the Purchaser, the contract can require the Builder to represent that there are no special assessments against the property. The Builder should also represent that the Builder has no notice or knowledge of any utility surcharges or any public improvements that are planned or commenced that might result in special assessments or otherwise directly and materially affect the property.

Section 3.04 Insurance and indemnification provisions

If the Builder owns the property throughout construction until closing, the Builder should provide *builder's risk* insurance and assume all risk of loss to the work until closing. If the property is titled in the Customer's name, the contract should clarify whether the Builder or the Customer is providing the builder's risk insurance coverage and who is responsible for the deductible. If the Customer owns the property and the Builder is providing the insurance, the policy should name the Customer as an additional insured. The policy should be issued on a completed value basis with special form of loss with a reasonable deductible and theft coverage for materials delivered to the site and not yet incorporated into the work. The Builder should assume all risk of loss to the Builder's equipment and tools.

If the Customer owns the property or if the Builder/Developer conveys the property to the Customer before construction is complete, whether by land contract or deed, the Customer faces liability concerns. Since the Builder is building on property owned by the Customer, the contract should provide for the Builder to indemnify and hold the Customer harmless against all claims arising out of performance of the work under the contract caused by the Builder's negligence or anyone under the Builder. The indemnification should survive the contract.

The contract should require the Builder to provide proof (by delivering certificates of insurance before work begins) of contractual liability insurance, workers compensation insurance, commercial general liability, and automobile liability coverage for owned, non-owned and hired vehicles. The insurance should be from companies and with limits acceptable to the Customer.

Ideally the Builder's subs would meet the same requirements, but as a practical matter this may be difficult to enforce. The commercial general liability policy should name the Customer as an additional named insured and provide 30 days advance notice of cancellation.

The Customer should always have the insurance provisions of the building contract reviewed by his/her insurance agent, particularly subrogation provisions.

Section 3.05 Construction liens

If the Customer owns the land, the contract should provide for the Customer to file and record a Notice of Commencement before construction begins.

If progress payments are made to the Builder, a sworn statement should accompany each application for payment. Beginning with the second draw, the Builder should submit partial unconditional waivers of lien from each sub, supplier and laborer listed on the sworn statement for all work performed and materials supplied as of the date of the last draw.

Before final payment, the Builder should submit a sworn statement and full and unconditional waivers of lien.

The title company will insure the Customer's lender against construction liens, but may not be willing to insure the Customer until the home is complete and the time period for filing liens expires. The Customer is at risk for liens until then, unless there is a sufficient holdback during that time, which most Builders would not welcome.

Section 3.06 The contract should require the Builder to build the improvements within the allowed building envelope and zoning setbacks. Encroachments have become a common problem particularly in site condos where the building envelope can be very tight. Violation of a zoning setback may result in denial of a certificate of occupancy, even if a closing has already taken place.

Section 3.07 The contract should provide that all money received by the Builder will be used only for the work under the contract.

Section 3.08 The Builder should not be allowed to assign the contract, since the Customer is relying on the Builder's reputation. The Builder may also want to preclude the Customer from assigning the contract.

Section 3.09 At the final closing the Builder should deliver the Builder's warranty, all manufacturers' warranties, and all maintenance and operating manuals.

Section 3.10 The contract must state the Builder's license number in order for the Builder to secure a lien on the property.

Section 3.11 Dispute resolution

The contract may provide for methods of alternative dispute resolution. If the Customer's architect designs the work and the architect also provides construction phase supervision, all construction related disputes should first be submitted to the architect for resolution. The contract may also provide for mediation and/or binding arbitration.

Article 4. A few notes about the arrangement between the Customer and Builder

Section 4.01 Spec home - the home is often completed or nearly completed when the sales contract is signed.

The standard issues regarding conveyance of land apply, such as title insurance, proration of taxes, etc. See Section 3.03.

The offer is usually submitted on a standard sales contract form. Some changes to the standard contract are needed:

- (i) Be sure to delete the "as is" clause. See Section 2.05 (b).
- (ii) Any work to be performed by the Builder to complete the home should be clearly delineated in an addendum.
- (iii) The Builder should be required to provide the Customer an express warranty at closing that warrants against defects in design, materials and workmanship. The Customer should currently receive a copy of the Builder's warranty for review by his/her attorney.

(iv) The Builder should be required to produce a Certificate of Occupancy at closing. The Customer cannot rely on the lender to assure issuance of the CO.

Contingencies should include:

- (i) Attorney approval of contract;
- (ii) Attorney approval of title work (and condominium documents if applicable);
- (iii) Contractor's inspection; and
- (iv) Other contingencies as applicable, such as financing, radon, etc.

The title policy should be issued without standard exceptions, but the title company may not be willing to issue the Owner's policy without the lien exception unless the home was completed at least 90 days before closing. The title company will usually require a mortgage certificate (mortgage survey) even if no financing is involved. The Customer should get a survey or at least a mortgage certificate, even if no financing is involved, to check for encroachments, particularly with the building envelope, and zoning setback violations. See Section 3.06 above.

A Seller's Disclosure Statement is not required.

Section 4.02 Design-build job - the Builder provides the plans and specs, and builds the home.

The Builder will typically provide its own standard building contract. Since the Customer is relying on the Builder's plans and specs for completeness and consistency, the contract should clarify that the Builder's work under the contract will include anything necessary to complete the home, even if not expressly indicated in the plans and specs. The warranty should include design defects.

If the land is owned by the Builder and is conveyed to the Customer as part of the transaction, the standard issues regarding conveyance of land apply. See Section 3.03.

If the land is conveyed before construction begins, or at least before it is completed, the additional issues regarding liability must be addressed. See Section 3.04.

Section 4.03 A custom home in the truest sense - the Customer provides the site, the Customer's Architect designs the home, the Builder builds the home.

The contract may be provided by the Architect (AIA form), the Customer's attorney, or the Builder. The Architect may provide the plans only, or may also provide construction phase supervision, depending on the arrangement between the Customer and the Architect.

The building contract should clarify that the Builder's work under the contract will include anything that may reasonably be inferred from the plans and specs.

If the Architect provides construction phase supervision, the Architect must have access to the work and the right to inspect at all reasonable times. The Architect certifies the percentage of completion for purposes of progress payments and the Architect resolves disputes regarding compliance with the plans and specs and construction quality issues.