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Encouraging an Existing Home Purchase

A National Problem

A recent investigation on the ABC network's Nightline spotlighted a problem being seen in communities across the nation – new home construction in which significant problems and defects in the dwellings present themselves not long after completion. One house had an improperly hung window that created a leak and evolved into major water damage just six months after the homeowners moved in. Another homeowner referred to her home as “having the measles” after hundreds of nails popped through the drywall.

The program, which initially aired in November 2016, found through their investigation that the builders were reluctant to fix the problems. Since a builder often constructs an entire neighborhood at a time, ABC found pods of angry homeowners who were all encountering similar problems along their streets.

It is no secret contractors are well-prepared to deal with claims from dissatisfied homeowners. One large national builder reported in their most recent

Securities and Exchange Commission (SEC) filing that they earmark \$400 million annually for claims and indicated they see it as a cost of doing business.

Jerry Howard, Chief Executive Officer of the National Association of Home Builders (NAHB) has said, “I think American consumers expect a perfect home. There's no such thing as a perfect home and so I think there are often disputes that arise out of that.” The concern among consumers seems to be more of an issue over how construction problems are handled and less about there being a problem.

Accusations of builders stringing homeowners along until warranties expire have been reported to the American Society of Home Inspectors (ASHI). Owners with construction problems claim builders cancel appointments or fail to show up to look at alleged issues multiple times after a complaint has been lodged, purposely dragging out dealing with the problem until the warranty has ended. This causes the dispute to escalate and eventually land in arbitration since most instances are not handled in the courtroom. Understandably, this is a source of frustration for dissatisfied homeowners.

Protection for the Home Buyer

With the NAHB reporting that just over one million homes will be built this year, it is important for homeowners to understand their rights.

In Virginia, a purchase contract for the first sale of a new home must contain an implied warranty according to VA Code 55-70.1. The warranty is good for one year from the date the buyer takes the title or moves into the dwelling, whichever is earlier. The implied warranty says a home is free from defects, is constructed properly, and is fit for habitation. The exception to this is a five year implied warranty for structural defects in the house's foundation. A builder has six months from the date of written notification of the claim to fix the defect. Let's repeat – the builder has **six months** to fix the defect.

Those having a home built need to be aware of the distinction between a purchase contract for a new home and a construction agreement. A purchase contract is used when the buyer is obtaining the land and the newly constructed home in one transaction. A construction agreement is used when the buyer already owns

a piece of property and is having a dwelling constructed on it. An implied warranty is not required by law in a construction agreement.

Buying an Existing Home

Potential homebuyers should be made aware that it is almost always less expensive to purchase an existing home. The NAHB reported new construction costs are 23% more than buying a home that is already built.

In addition to the actual cost of the home, the financing of the purchase needs to be considered. A construction loan usually has a variable rate as compared to a traditional fixed rate mortgage. A construction loan typically finances 65% of a cost of a home versus the 80% of a home covered by a typical mortgage.

Clients who choose to purchase an existing house will usually be able to move in sooner, not have to deal with the decisions and hassles of new construction, can be confident that all water, sewer, and electrical hook-ups already exist on the property, and will not be surprised by new construction issues. Picking the layout, design, and color scheme of a house is appealing for some but the risk of your home being hastily built as the contractor rushes to keep up with the demand for new houses is one that many are unwilling to take.

A home is the single biggest purchase most people will make in their lifetime so why would they want to endure the frustrations the disappointed homeowners featured on ABC's Nightline had to? Helping your real estate clients understand the pros and cons of new construction versus purchasing an existing house is an important service.

See you at the settlement table!

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