

As you prepare to spend hundreds of thousands of dollars on your new home, the two things you need most are an attorney and a building contract.

The “do-it-yourself” approach is not wise for most new home builders. Building contracts are full of clauses that need to be worded precisely so as to avoid future confusion and liability on the part of either party. What you think is “precise” may well contain a loophole that could be exploited—often in a way that is not in your favor. Unless you are an attorney yourself, don’t try to save money by handling the legal issues. Get a pro and rest easy.

Your building contract is crucial. All of your concerns, needs, specifications, assets and more must be put in writing and signed off by you and your contractor. If your contractor offers a “standard contract” and adopts a “take it or leave it” attitude, walk away. Your goal is to negotiate terms you can live with, without alienating a good, honest contractor in the process. With that in mind, work toward a contract that includes, but is not limited to, the items listed in the table in this article. Include as much detail as possible.

Trouble coming

Even with the best intentions on the part of the homeowner and the builder, a construction project can go awry and the relationship can sour. If this happens to you, don’t panic. Consider third-party arbitration.

An arbitrator can help to settle disputes when both parties are digging in their heels. For this reason, it’s a good idea to include an arbitration clause in your contract. Contact the American Arbitrators Association and the National Academy of Conciliators and find out their fees before you include either of them by name in your contract. Or, you could name a different third party—say, a local attorney who isn’t representing either of you—to settle any unforeseen disputes.

If you’re nervous about the added cost, remember that

Peace of mind. An airtight contract will let you sleep better at night.

Scope of work	Who will clear the site? Who will obtain the needed permits? Which spaces in the house will remain unfinished? These and other questions should be answered. Be specific.
Change orders and delays	Create a change order policy at the outset. Define which delays are acceptable (inclement weather, manufacturer delay, etc.) and which are not (contractor decision based on his other projects).
Allowances and payment schedule	Have your contractor include a detailed list of products and services that his estimate does not include. Calculate a payment schedule that is flexible and yet gives you some control over the process and final product.
Specifications	Include a detailed list of the products and services that your contractor should provide in the construction of your home.
Default clause	If you or your contractor breach the contract, a clause should be found in your contract that explains exactly what action is to be taken to deal with the breach.

arbitration fees are a drop in the bucket compared to litigation costs.

Your builder might have an arbitration clause in the contract he asks you to sign. This will protect his reputation by keeping all disputes off of the public’s radar. Keep in mind, though, that the possibility of negative publicity might be your only leverage to resolve a future problem. If you find an arbitration clause on your builder’s contract, you would be wise to discuss its inclusion with your attorney. 🏠

[Editor’s note: The legal information on this page is not intended to be your final source. Consult with a local attorney as your primary source of legal information for your state.]

