



BUYER RELATIONS MARKETING, SALES AND PURCHASE CONTRACT

The expectations of today's homebuyers are far different than those of a few years ago. Indeed, they are markedly different from even a year ago. There are a number of reasons why dealing with homeowners is particularly difficult for builders in our current chaotic market. The number of law firms dedicated to suing builders and their insurers for alleged construction defects are increasing at a frightening rate. These firms advertise their "services" in community newspapers, door-to-door flyers, and billboards. Homeowners are asked to notify them of virtually any problem they may have (or think they have) with their home.

Homebuyers today are typically well educated, discriminating, and demanding. Buyers expect a quality product, and the builder must implement whatever procedures are necessary to "give them what they paid for". Buyers also want to know that their concerns are going to be addressed, or at least recognized, by their builder. Homeowners who feel that they have been ignored or forgotten by the builder frequently believe that their only recourse is to retain an attorney in order to have their issues addressed. The vast majority of construction defect litigation is the result of apathy or perceived apathy on the part of the builder. Therefore, it is extremely important that builders establish policies and procedures within their company to deal effectively with their buyers concerns.

It is essential that builders today have the tools to efficiently guide the buyer through the various departments and processes, and to be able to consistently reinforce the policies and procedures of your company. Setting reasonable levels of expectation for the buyer, and meeting or exceeding those expectations is of paramount importance if the builder truly wishes to manage and control the buyer.

Establishing clearly defined ground rules regarding the procedures that you want the buyer to follow and adhere to offers benefits to both the builder and the buyer. Both parties know what to expect from each other, and "surprises" and misunderstandings are kept to a minimum. It is important that senior management become involved when establishing these policies and procedures. The knowledge that upper management is supportive of individual departmental policies reduces the likelihood of inconsistent buyer management by others in the company.

Sales and Marketing

- All advertising and marketing should be truly representative of the products, options, and lot availability that are referenced or offered in printed material. Proof all printed material carefully. If possible, ensure that you are not promoting models or lots that have come under contract just prior to print. Have available what you advertise.
- Disclose to the buyer any future plans for construction (yours or others) that you are aware of that may take place near the buyers' property. This is especially important if future construction may be commercial, or have lighting or noise issues that could adversely affect the buyer. Inform the buyer if future construction could possibly affect views that are unobstructed at the time of contract signing.
- Clearly label or tag any option, nonstandard feature or decorating in model homes. Also, label or tag any components or features that have been discontinued, or have been replaced with a similar item (appliances, fireplaces, built-ins, HVAC units, etc.). Doing so will eliminate disputes during the warranty period and will ensure that the buyer is confident of what he/she is actually purchasing. Buyers hate thinking that they have somehow been misled. Disputes of this type are common; the end result of which is a buyer who believes that he did not get what they paid for. These buyers are typically very difficult to deal with during the warranty period.
- Provide the Homebuyer with an insurance-backed third-party warranty from 2-10 Home Buyers Warranty[®] that clearly defines the builder's responsibilities and includes binding arbitration as a dispute resolution method.
- When the purchase agreement is signed, require the buyer to execute a form that acknowledges that they have had the opportunity to:
 - Review specimen copies of the warranty you provide to them
 - Review the soils/geotechnical report for the lot on which their home is to be constructed
 - Review CC&R's if applicable
 - Review any other relevant subdivision, geographical or situation specific documents
 - Review site safety requirements
 - Review site visit scheduling procedures

Place these documents in a notebook that is kept in each sales office. Provide the buyer with copies of as many of these documents as possible. Always require the buyer to sign this form at the same time the Purchase Agreement is signed.

- Insert provisions into your purchase agreement that will assist you in managing your buyer and help eliminate confusion and misunderstandings. Purchase agreements are to a large degree builder specific and should be drafted to help you manage your particular business needs. However, the following suggestions are fairly generic and universal:
 - Insert deadline dates for option selections
 - Insert deadline dates for structural modification requests
 - Insert provisions that relate to third party site visit requirements

- Insert provisions that explain grade maintenance requirements
- Insert provisions that thoroughly inform the buyer of your company's site safety requirements. Insert a release of liability provision in purchase agreement regarding third party site visits, and that acknowledges the buyers' agreement and acceptance of these requirements.
- Insert default provisions that cover costs incurred by the company (installed options for example) by means of earnest money retention.
- Insert provisions that mandate deadline dates for loan approval
- Other company specific provisions, exclusions, addendums as deemed necessary
- Thoroughly explain how to schedule with the decorator center, and the necessity of on time decorator and option selections.
- Require your sales staff to become familiar with warranty procedures and the walk-through process. The warranty manager, and the individuals responsible for performing the walk-through should provide this training.
- Have all sales staff spend a full day with a superintendent on both the front and back ends of the construction process.
- Remind your sales staff to avoid making any statement that could be construed as a misrepresentation. Provide only information that the sales person knows to be true. An inadvertent statement or slip of the tongue has come back to haunt a great many builders.
- Avoid contractor recommendations for work that is not part of the original construction contract. If recommendations are made, mandate that sales people confine any contractor recommendations to those contractors that have signed subcontractor agreements. Landscapers and basement finish contractors, for example, have caused builders considerable trouble (lawsuits) due to alterations of established grades, or because of improper basement framing. You have some degree of leverage if the contractor is under contract with the builder.

Construction

Traditionally, communication between the construction superintendent and the homebuyer has been limited. Superintendents have been thought of as being far better with boards and bricks than with buyers. Today's homebuyers are savvy and demanding. The product builders produce in today's market is much more complicated, as are the components that go into them. Good communication between the buyer and the superintendent is an essential part of the building process. The ability to interact with the buyer is no longer limited to sales and warranty staff.

- Schedule an extended pre-construction meeting with the superintendent, sales person and the homebuyer. Thoroughly explain how the construction process works, and how the sales person, homebuyer and superintendent work together to make all the pieces come together.
 - Explain how a construction schedule works, and the variables that can impact the schedule (weather delays, subcontractor availability, backorders, etc.)

- Explain why deadlines are necessary for options and construction changes, and why these dates are not negotiable.
- Further reinforce the necessity of the company's site visit and safety requirements. Explain from a field perspective the hazards that are inherent to a construction site, and the disruption and work delays that random site visits by homebuyers can result in.
- Inform the buyer of the meetings that will need to be scheduled during the construction period. These meetings can occur at any time during construction, depending on the type and complexity of the product being built (electrical walks, built-ins, finish grade, etc.)
- Work out a mutually acceptable method to contact and communicate with the buyer. Make a point to update the buyer on the status of the home and inform the buyer of any delays that are unavoidable.
- As construction is nearing completion, explain the walk through procedure to the homebuyer.
- Deliver a clean and complete home to the buyer. All previous efforts can be significantly diminished if a home is delivered incomplete or dirty. Delay the final walk-through rather than deliver a poor product.

It is strongly suggested that builders consider performing a "Quality Assurance Inspection" on their homes prior to the homeowner walk-through. This inspection should not be confused with the superintendent's final punch list inspection. The ideal time to perform the Quality Assurance Inspection is after carpet installation and prior to final cleaning of the home. The purpose of this inspection is to find and correct as many defects in the home as possible prior to the homeowner walk-through orientation. This inspection is best performed by someone other than the superintendent who was in charge of constructing the home.

Quality Assurance Inspections are very detailed in scope, and optimum results are achieved if performed by an experienced warranty representative. Warranty personnel generally are more familiar with the issues that are of concern to the homebuyer. In any event, the inspection requires a "second set of eyes" to be truly effective. The superintendent in charge of building the home has seen the product on a daily basis for many months, and may overlook flaws or defects that someone who is unfamiliar with the home may easily detect. Obviously, the intent of this inspection is negated if the required repairs are not performed prior to the homeowner walk-through. Therefore, it is important that the insured insists on subcontractor cooperation and performance.

Remember, this inspection is intended to ensure the delivery of a home that is as defect free as possible, and to meet or exceed the expectations of the buyer. The number of service requests from homeowners can be reduced considerably. In addition, the reduction in warranty expenditures will be substantial, and can more than offset any additional overhead that may be incurred as a result of this type of program.

Homeowner Orientation Walk-Through

The homeowner walk-through is an extremely important function that is often overlooked or neglected by a large percentage of builders. The homeowner walk-through is the last opportunity the builder has to instruct, inform, and manage the buyer before the close of escrow. It is critical that the walk-through be conducted in an orderly, professional manner, by a knowledgeable and personable individual. An experienced warranty representative is a good candidate to perform this function. Warranty personnel have an eye for detail, are generally good with buyers, and know warranty policies and procedures. The homeowner walk-through should:

- Be documented on a standardized form that has a checklist and initial blocks that acknowledge the satisfactory condition of various components of the home. (mirrors, sinks, bathtubs, flooring, etc.). This form should also be initialed by the homeowner to acknowledge that they have been informed of maintenance requirements, component operations, emergency call procedures, etc.
- Be consistent in its presentation regardless of the project or subdivision in which the home is located, or who the company representative is that conducts the walk-through.
- Thoroughly explain and demonstrate the operation and maintenance requirements of the various components of the home (i.e. appliances, HVAC, windows, etc.).
- Provide the homebuyer with all manufacturers warranties for consumer products, and inform the buyer that these products are warranted directly by the manufacturer, and, in addition, that they are excluded from the builders' warranty coverage.
- Provide the buyer with a list of emergency contact numbers. Inform the buyer of the items that are considered to be emergencies (i.e. total loss of electricity, total loss of hot water, total loss of heat, sewer back-up within thirty days of closing, etc.).
- Clearly explain those items that are considered to be homeowner maintenance items (vs. items covered by the limited warranty). Address seasonal maintenance requirements.
- Explain to the homebuyer the importance of maintaining the finish grade that was established by the builder, and the potential consequences of improper landscape installation and irrigation practices.
- Inform the buyer of when they can expect any required walk-through repairs to be completed. Make strong efforts to complete these items within the stated time frames. Doing so reassures the buyer that his or her concerns are going to be addressed, and also provides for a "clean" transition to the warranty period, free of outstanding walk-through repairs to address.
- Inform the buyer of the procedures that are required to request warranty service. Advise the homeowner to become familiar with the limited warranty. Explain in detail the necessity of submitting warranty service requests in writing. Provide the buyer with standardized service request forms for this purpose. Let the buyer know how service requests are responded to.

Customer Service

Customer service has customarily been thought of as a department that produces no profit, but instead increases overhead, sometimes dramatically, for a great many builders. Warranty departments can place demands on subcontractors who often are having problems keeping up with front-end construction, sometimes cause headaches for accounting personnel, and have the reputation of being the bearers of unpleasant news.

It is critical that builders reassess the role customer service plays within their organization. The general attitude and expectation level of today's buyers are significantly different than those of a few years ago. Today's consumer is knowledgeable, and often times quite demanding and critical. Dealing effectively and appropriately with homeowners after the close of escrow is perhaps the most important component in managing the buyer. Unfortunately, many builders do not invest the same time, training, or monetary compensation in a warranty representative that they might for a construction superintendent. This is unfortunate given a warranty representative's duties and responsibilities.

As illustrated previously, attaining buyer satisfaction begins at the sales table, and the systems that the builder has or does not have in place can play a large part in determining the effectiveness of a warranty department, as well as its ability to manage the buyer. Managing the buyer after the sale of the home depends more than ever on delivering on the promises and representations that have been made to the buyer during the sales and construction processes. To effectively manage the buyer after close of escrow, the following policies and procedures should be considered:

- Forward a letter to the homebuyer approximately two weeks after closing that, again, explains the procedures that are necessary to request service or repair. This letter should:
 - Thank the buyer for purchasing their new home from you. The tone of the letter should be cordial, but the intent should be to instruct and inform the buyer of the procedures that must be adhered to in regard to the warranty service of their home.
 - Inform the buyer that, with the exception of emergency items, requests for repair or service must be submitted on the Request for Service form that was provided to them at walk-through.
 - Again inform the buyer of the items or issues that are considered to be emergencies.
 - Inform the buyer of the time frame in which a warranty representative will contact them to inspect the items on the Request for Service form.
 - Inform the buyer of the time frame in which he can expect repairs to be made.
- Attempt to have a live person answer customer service calls. If this isn't possible, check incoming warranty messages frequently.

- In order to retain credibility with the buyer, the builder must make every effort to fulfill the commitments that he has made to the buyer. Homebuyers want to know that there is a level playing field. If the stated time frames for inspection or repair cannot be met, inform the homeowner of the reason, and when he can expect the inspection or repair to be performed.
- The repair determinations made by the inspector should be documented. Items that do not qualify for service should also be documented.
- Successful customer service departments must have strong subcontractor cooperation, involvement, and performance. Inserting walk-through and warranty performance requirements in the subcontractor agreement is strongly suggested.
- Utilize a phone log to track incoming calls from homeowners. Phone logs should document the time and date of the call along with a short note regarding what the call was about.
- Closely track all work orders to ensure that repairs are not overdue.
- Require that subcontractors return completed work orders to the builder. Work orders should be signed by the homeowner to acknowledge that the repair has been performed satisfactorily.

It is extremely important for a customer service department to manage priorities appropriately. To accomplish this it is important to have an individual with a strong construction background and good organizational skills to manage the department. This individual should have strong verbal and written communication skills, and also possess the ability to make difficult decisions.

Customer service is by its nature very full of gray areas. The ability to negotiate is critical, and determining if spending a dollar will save ten is a decision that has to be made frequently. Builders should err on the side of caution. Unhappy homeowners make for aggressive plaintiffs. It is for this reason that it is recommended that the builder have the services of an attorney familiar with construction and or construction defects available to him for guidance and direction.