

real estate

10 things homebuilders won't tell you

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Building homes is complicated, so make sure you understand enough to get the job done right – and for the right price.

By SmartMoney



1. "I'll build your house on marshmallow."

Population growth and urban sprawl mean there's not much residential land left in many areas these days — and what there is may not be ideal. Shortly after John Duffy and his family moved into their \$234,000 home in Highlands Ranch, Colo., long cracks started showing up in the walls, and the porch started pulling away from the house. After badgering his builder for the soil report, Duffy learned his lot was a hot spot for potential swell. (Writer Homes, the builder, was ordered to pay Duffy \$544,000. John Palmeri, Writer's attorney, says the company offered to fix the house, but "they were bent on going to court.")

The Duffy family isn't alone. In fact, a number of homes today are being built on "[expansive soil](#)" — earth that swells when it rains — without adequate safeguards. How common is the practice? About 50 percent of homes in Southern California are built on expansive soil, according to Patrick Catalano, founder of The Law Firm of Catalano and Catalano in San Francisco and San Diego, which specializes in real-estate and construction defect litigation.

But soil isn't the only issue when it comes to shoddy construction. In October 2007, four hillside homes built in La Jolla, Calif., slipped off their foundations, burying two other dwellings in an alley below, after a landslide that damaged 111 homes. Catalano, who's representing the owners of 25 of

these homes, says that in about 20 percent of cases, the homebuilder is at fault, since the landslide occurred within 10 years of the home being built. (These cases are pending.)

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2. "I won't just cut corners — I'll sever them."

Standard work has always existed in homebuilding, but the collapse of the housing market and the increased costs of construction are making the problem worse, says Jonathan Alpert, a retired Tampa, Fla., attorney who represented homebuyers. Alpert says he's handled cases in which builders didn't seal roofs, in which two-inch concrete slabs were used instead of the four-inch slabs specified, and in which sewage pipes were cross-connected to drinking-water pipes.

In some cases, builders are skipping steps dictated by municipal building codes. In one Sarasota, Fla., gated community called Turtle Rock, four families cut open their houses in 1998 to ferret out the source of some mold growth. What they found, in addition to wet lumber, were several code violations, including missing hurricane straps, which are steel plates that tie the wood frame together and to the concrete base. Says Brian Stirling, the structural engineer hired by the homeowners to investigate, "If we'd had a strong storm, they would have had some serious problems." Like what? "Like losing their top floor." In 1999, the builder, U.S. Home, agreed to buy back the four houses and said it would make county-supervised repairs on 12 others in the subdivision. "We dispute the extent of the problems," says the builder's attorney, Fred Zinober. But by settling the case, he says, "U.S. Home did the right thing."

"It used to be during the housing boom that builders were cutting corners because they were putting things up as quickly as they could stand," Alpert says. Now the issues are inflationary pressures on builders and the need to increase profits. "The cost per square foot for construction is actually increasing while home prices are decreasing," Alpert says, "so that's putting pressure on builders to cut corners."

3. "This is a rogue's industry."

Given how complicated it is to build a home, and how serious the implications are if it's done incorrectly, you might expect homebuilders to answer to rigorous regulatory authority. Think again. According to the most recent survey by the [National Association of State Contractors Licensing Agencies](#), only 18 of the association's 27 member states regulate homebuilders. And of those member states that do regulate, only 15 require any kind of exam — Arizona and Maryland being two of them — and only 13 require on-the-job experience. Two states, Louisiana and Utah, have continuing-education requirements, but they're the exception.

But greater regulation comes with a price. "Red tape and compliance issues add cost to building a new home," says Carlos Gutierrez, assistant staff vice president for the National Association of Home Builders. "And that cost is inevitably passed on to the consumer in the form of a higher-priced home." While he acknowledges that some regulation of the industry is necessary -- even welcome -- Gutierrez adds that "at a time when affordable housing continues to be a crisis nationwide, governments ought to be careful not to overregulate."

4. "Public inspectors won't catch my shoddy work."

Max Curtis, a Livermore, Calif., private home inspector, says he hears it all the time from his homebuying clients: "Their builder tells them, 'Why do you need your own inspector? This has been signed off on by the municipal building department.'"

Sure, the public inspector is required to check out your new house, but only to ascertain that it's built to code — essentially, that it's safe to live in — not that it is well-constructed. "They're just looking to see if that wall is up and painted," says Dwayne Jones, a Memphis builder.

And sometimes they don't even do that well. On one inspection, Curtis found 64 items that the municipal inspector had missed, including a gas water heater lacking flues (without which the heater may leak poisonous carbon monoxide). Bottom line: Don't rely solely on the word of a public inspector; hire your own person to inspect the building as well.

5. "Your warranty may be worthless."

Many homebuilders tout 10-year warranties as protection against future problems. But these warranties are often extremely limited in coverage, particularly after the second year. "It gives people a false sense of security," says Brent Lemon, a Dallas attorney who represents homebuyers. "Most of these basically require that the house fall down on top of you before they kick in." Consider the warranty offered by Denver, Colo.-based Home Buyers Warranty. It lists 71 exclusions and, like many, states that the home must be "unsafe, unsanitary or otherwise unlivable" to get structural-defect coverage. Em Fluhr, the warranty company's CEO, says, "If (homebuyers) detect any worsening of the situation, they can submit another claim."

The root of the problem with warranties is that builders characterize them too broadly when they say they'll help protect homeowners who discover a structural problem, says Anne Stark, a Dallas attorney specializing in homebuyer complaints. "Structural-defect coverage often covers only catastrophic failure," Stark says. "Builders will say you've got a great warranty, but then you wake up in the third year with cracks all over your house and you call the warranty company and they say, 'Sorry, it's not a structural failure.'" Some states, like Texas, are aiming to alleviate the problem: In 2003, it created the Texas Residential Construction Commission to help builders resolve disputes without litigation. "We require a warranty whether the builder wants to give it or not, and that warranty needs to meet the minimum level of state standards," says Duane Waddill, executive director of the commission. "Even if the builder goes bankrupt, the buyer has additional protection."

6. "Once you move in, you'll never see me again."

Even before Denise Burton and her husband closed on their Glendale, Ariz., home, they knew there were problems. Their walls weren't plumb, for example, and there was no framing behind one. Worried about losing their low-interest rate, they moved in anyway, with a promise from the builder, Diamond Key Homes, that everything would be fixed once they got in.

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It didn't happen. Burton says she made at least a dozen calls to the Phoenix-based builder over a four-month period and sent letters and faxes. Mostly, she says, she was ignored. And when the builder did send workers to her house, Burton says, "they'd make it worse." It took a year for the builder to finally make all the proper fixes, she says — and that was only after the state agency that regulates contractors, acting on Burton's complaint, temporarily revoked Diamond Key's license. (Diamond Key declined to comment and has since been acquired by another company.)

Professional Services

issues, "you can't find the builder with a Texas posse."

Indeed, it's one of the ironies of building a house. During construction, you can't wait to finally get all those construction workers out of your sight. But "once the home is built," says Jason Clark, a consumer advocate focused on homebuilding

7. "Good luck going after me."

Buried in nearly every home-purchase contract is a clause that reads something like this: "Any dispute that arises between the builder and the purchaser will be decided in binding arbitration." Most buyers sign on the dotted line, not knowing that they have just waived their right to take their builder to court. "Arbitration is being sneaked into those contracts, and nobody knows what it means until it's too late," says Dennis K. Drake, a San Antonio attorney who represents homebuyers.

What's wrong with arbitration? Well, for starters, arbitrators are less likely than juries to award triple damages — or three times the amount they lost — say construction-industry attorneys. Also, though arbitration costs have significantly declined in recent years, it's still expensive. First there's the filing fee — which, for a homebuyer's claim of less than \$75,000 is \$375, if administered through the American Arbitration Association— plus the added expense of a lawyer. Often, "it's so prohibitively expensive that consumers may find they just don't want to pursue a claim," Drake says.

What's your home worth?

For example, that builder may be in front of the association 10 to 12 times a year, versus the homeowner's one time. For that reason, some construction-industry attorneys recommend using retired judges or arbitrators instead.

In addition, construction-industry attorneys say the fact that builders are the "repeat customers" in arbitration means there's a greater chance they'll be favored. If a builder regularly nominates the American Arbitration Association, for

"The builders do put arbitration clauses in their contracts, but it's the homeowner that files the complaints," says Robert Meade, senior vice president of the arbitration association. "We get 130,000 cases a year, and less than 300 of those are homeowner cases, so the dollar amount is meaningless to us."

8. "Your home won't look like the ones you toured."

It's easy to be impressed with the model home your builder shows you. Who wouldn't love the lush curtains and intricate crown moldings? Unfortunately, the house you buy may not have the same flourish or feel as the model. Few decorative touches are standard, and builders are notorious for using sneaky design

tricks to make model homes more attractive, such as putting in scaled-down furniture to make rooms look bigger.

Maria Lo Bianco, a buyers' broker in Springfield, Va., admits to playing this game in her previous job as a builder's marketing executive. "If I know it's a small foyer, my challenge is to get the buyer's eye off it so he has no idea how small it is — until he goes to settlement and can't fit his furniture," she says. "If the dining room is visible from the foyer, I might do an exotic color design there and leave the foyer plain." Showing a home in its best light is one thing, but some practices are downright deceitful. Builders, for example, will often plant grass where the driveway would go to make the lawn look bigger, according to Alan Fields, co-author of "Your New House."

Bottom line: "If you think you're getting the model home," advises Tim Carter, a builder and syndicated columnist, "you'd better be writing down language in the contract that says it's going to be exactly like the model."

9. "I haven't budgeted enough for decent light fixtures."

It sounds like a reasonable practice — rather than specifying every item for a house, a builder will set cost allowances for things such as light fixtures or carpeting. That way the buyer gets to pick out what he wants. The trouble is that many builders use allowances as a bidding strategy, lowballing the cost to keep the total price down and land the contract.

When author Fields and his wife bought their house back in 1990, he says their builder gave them a \$500 allowance for all their light fixtures. That sounded great — until "we walked into the store and were just floored by the prices," he says. The couple shopped for discounts but still ended up spending double that amount on lighting.

Jones, the Memphis builder, says that lowball allowances are common in his region. Today the usual range is roughly \$1,000 to \$1,500 for light fixtures in a three-bedroom house, but the real bill is probably going to be more than double that. "And that's for cookie-cutter fixtures," Jones says.

10. "You may wind up seeing double."

It's no surprise that if you buy a tract house, you'll eventually come across a carbon copy, probably in your own neighborhood. But you don't expect that to happen when you've ponied up for an "exclusive" design. Nonetheless, "we see 'custom builders' offering standard floor plans on their Web sites all of the time," says Ralph Hudson, owner of Florida-based American Builders Network, a resource for consumers looking to connect with home builders. "So often the exteriors and elevation are the same, but the interior is slightly modified."

In most cases, if an architect makes an exclusive design for a home, that design is licensed to the builder and the builder has the right to use the design for one specific project and nothing beyond that, explains Jay Stephens, vice president and general counsel at the American Institute of Architects. If that builder turns around and executes that design for other houses down the road, legal recourse is warranted: "If a design is copyrighted, you'll ultimately have to bring it to court," says Gutierrez of the NAHB.

Though difficult, it is possible to take preventive measures. If a homeowner has a contract directly with an architect, Stephens suggests asking him to include a clause that states that the design will not be replicated.

Excerpted from the book "[1,001 Things They Won't Tell You](#)," which was published in May 2009 and highlights popular columns from SmartMoney's long-running "10 Things" feature.

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