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BUILDING NEWS



2026 GAHBA INSTALLATION AND
AWARDS CEREMONY

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Greater
Atlanta
Home Builders
Association

925 NORTH POINT PARKWAY, STE. 300
ALPHARETTA, GA 30005
(770) 938-9900
WWW.ATLANTAHOMEBUILDERS.COM

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Builders **Should Not** Sign CP Loan Agreements Without **Carefully Reading** Them

by Tyler Dunn, Weissman P.C.

As a condition to making a construction-to-permanent loan (“CP Loan”), many lenders now require builders to sign CP Loan agreements between lenders and residential borrowers. For two main reasons, builders should carefully read these agreements before agreeing to sign them. First, they generally include provisions that significantly increase a builder’s responsibilities and liabilities to the borrower from those in an underlying construction agreement and limited warranty between the builder and borrower. Second, they include provisions that create potential liability for the builder in favor of the lender.

Some common provisions in CP Loan agreements that should be of concern to builders are the following:

- Provisions that broadly state that the terms of the CP Loan agreement prevail over conflicting terms in the construction agreement and/or warranty. These provisions, which may seem like innocuous boilerplate language and may not be conspicuous in the agreement, can drastically alter the terms of carefully drafted construction agreements and limited warranties between the builder and borrower.
- Provisions that increase the construction standards from those in the construction agreement.
- Provisions that alter the conditions or schedule of payments to the builder from those in the construction agreement.
- Provisions that impose a completion deadline tied to the period of the loan, the deadline of which is not included in the construction agreement and is not contemplated by the builder.

- Provisions that require the builder to make various warranties and representations to the lender.
- Provisions that require the builder to carry greater insurance than specified in the construction agreement or by law.
- Provisions that allow a lender-chosen architect to make binding decisions in the event of disputes between the builder and borrower about the meaning of plans or specifications.
- Provisions that require the builder to guarantee to the lender that construction of the home will be completed.

These are but examples. CP Loan agreements that builders are required to sign may include other provisions of concern to builders.

Builders faced with objectionable CP Loan agreements should attempt to have them revised. If a lender is unwilling to revise its CP Loan agreement, the builder might decline to construct the house. Construction agreements should include provisions clarifying that the builder is not obligated to alter the terms of that agreement or its warranty by signing a CP Loan agreement with conflicting terms. 📌

Tyler C. Dunn is General Counsel to the Greater Atlanta Home Builders Association Inc. and is a shareholder at Weissman P.C. For questions or comments regarding this article, he may be reached at (404) 926-4660 or tylerd@weissman.law.