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## Proceed with caution with clauses found on contract's 'extras'

**Make it clear you won't take house without requested features.**

Maria and Tony are a nice young couple in their early 20s. Their names have been changed, but their story is true. After their wedding, they visited a number of builder site offices in the Markham area and eventually settled on the plans and location of their dreamhome.

They picked a house in their price range, the low 300s, and signed an agreement of purchase and sale. The house came with two exterior design options - elevation A and elevation B. Although the differences were basically cosmetic, the newlyweds had their hearts set on elevation B.

On the main floor sketch, opposite the kitchen and dinette was a modest family room of 11 feet by 16 feet next to a den of 11 feet by 9 feet. Centered on the exterior-side family room wall was a built-in gas fireplace.

Maria and Tony decided that they wanted the family room and den combined into one big family room, measuring 11 feet wide and 25 feet long. Removing the wall between the two rooms was the answer, but this meant that the fireplace would have to be centered on the 25-foot wall so the room would not be unbalanced.

They clearly marked on the floor plans attached to the offer that the fireplace was to be centered on the 25-foot wall. Everybody initialed the sketch - purchasers and builder.

Also attached to their agreement was a sheet entitled Purchaser Extras. Item one on the list reads "delete wall between family room and den completely as per sketch."

Item two reads "centre fireplace on exterior wall of new family room as per sketch."

Every few days Maria and Tony would drive by to watch as their home rose from the foundations to the framing stage. One day they realized that the builder had made a horrible mistake and had started construction of elevation A by mistake.

After some panicky phone calls, the builder stopped work, tore out some of the framing and recast the house exterior as elevation B.

But what could or would not be changed was the fact that the foundations had already been poured and they allowed for the fireplace in its original location, near the corner of the now 25-foot long family room. The builder refused to rip out the foundations as construction of the framing was well underway. A series of letters, phone calls and personal visits did not help and the house stands today with the fireplace sitting awkwardly near the end of the 25-foot wall.

Did the builder breach the contract? Apparently not, at least not according to the wording of the extras page in the contract. In small print at the bottom of the extras page is this paragraph.

It says, "The vendor will undertake to incorporate the work covered by the sales extra (sic) in the construction of the house but will not be liable to purchaser in any way if for any reason the work covered by the extra is not carried out. In that event, any monies paid in connection with the same shall be returned to the purchaser, without interest."

This, or similar wording, is typical of the extras page in most builder contracts. What it means is that Maria and Tony were not entitled to any compensation since they had not paid extra for moving the fireplace. If they had paid for the extra, they would have received a refund but not the extra.

After some tears and perhaps a few heated words, the builder eventually put hardwood flooring in the elongated family room without charge. But he was within his rights to refuse to move the foundation for the fireplace.

Maria and Tony learned that the wording on the extras page is just as important as the wording in the rest of the contract.

Another clause on the extras page that can trap unwary buyers reads similar to this one: "If for any reason the transaction of Purchase and Sale is not completed, the total cost of extras ordered is not refundable to the purchaser."

This means that even if the builder breaches the contract and the purchaser wants to but cannot close, there is no claim for a refund of extras bought and paid for.

Most extras clauses also require the purchasers to close the transaction even if the extras are not installed or not completed.

Extras pages are usually not directly tied into the offer, but are expressed as a request or direction to install additional features, which the builder can accept or decline. This could leave the purchasers locked into a house even if the builder refuses to put in the extras.

The moral of the story - and the lesson to be learned from Maria and Tony's fireplace - is: Always read the wording on the extras page. If it's wishy-washy or waffly, and if it isn't an unqualified obligation to construct or include the extras, delete or change the wording. Make it clear that if the extras aren't included, you don't have to take the house.