

Sign In | Register | Newsletters

Part of the Bay Area News Group

eEdition / Subscriber Services
Mobile | Mobile Alerts | RSS



News Publications My Town Sports Business Entertainment Living Columns Opinion Help

Jobs Cars Homes Classifieds Shop

Site Web Search by YAHOO! Walnut Creek, CA Now:80°F High:80°F Low:55°F City or zip

Share

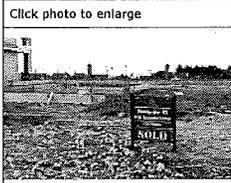
How did Toll Brothers survive the housing slump? By keeping buyers' deposits

By Matthias Gafni Contra Costa Times
Posted: 07/27/2012 09:12:54 AM PDT
Updated: 07/27/2012 12:17:04 PM PDT

As newly minted empty-nesters, Daven Sharma and his wife, Anu, spent 2010 searching for a spot for their dream house with views of San Francisco Bay. They found it in the Hayward hills, within a Toll Brothers development.

Shortly after plunking down about \$100,000 in deposits, the couple's dream fizzled. The Sharmas lost not only the house, but their deposit, attorney and arbitration fees -- and a sense of justice.

Critics say and records show that Pennsylvania-based Toll Brothers -- the nation's largest luxury homebuilder, with developments in Contra Costa, Alameda, Santa Clara and San Mateo counties -- has made it a regular practice to collect forfeited deposits from prospective homebuyers. In fact, it was the builder's No. 1 source of profit during the down years of the housing market, according to a Maryland class action lawsuit.



The lot in the Hayward hills that Daven

homebuyers.

Though Toll Brothers insists that it keeps deposits only when buyers violate the terms of signed contracts, an attorney who represents clients trying to recoup deposits said the builder is the most aggressive firm in the industry in resisting fair settlements and keeping deposits even when the company suffered no financial harm from a failed deal.

"I represent builders who would never consider deposits as a potential profit center," West Chester, Pa., attorney James Tupitza said.

Advertisement

Most deposits are lost due to Toll Brothers' rigid loan-approval contract language, he said. He provided this newspaper with contracts from other builders that include more permissive language, reducing buyers' risk when financing falls through.

Holding buyers to contractual deposits is an industry standard necessary to provide protection when building customized homes and to recover costs, such as real estate taxes, borne from carrying vacant properties, Toll said in a prepared statement.

And what is undisputed is the Sharmas and other Toll Brothers buyers upset by the company's actions all signed Toll Brothers' contracts. In fact, the Sharmas in arbitration this year lost their argument that the company should repay them.

"Right now ... if I can save other people from falling into this same trap," said Daven Sharma, 53, a self-employed CPA, "that's the only positive I can think of."

Is it a trap?

A March 3, 2011, class action lawsuit against Toll Brothers alleges the cancellation of contracts after failure to obtain loan approvals made up the bulk of Toll Brothers' forfeiture profits.

Attorney Dan

Marino, who filed the lawsuit, declined to comment.

Tupitza said he had to pull out the loan contingency paragraph in Toll Brothers' contract, write it in large letters on a white board in his office and then diagram it as a sentence to try to make sense of it, he said.

One of his clients received a loan commitment from Toll Brothers that included such unrealistic conditions as his client selling his own home for \$85,000 above the listed price and qualifying for a loan amount higher than any bank would offer. And when the conditions aren't met, Toll Brothers keeps the deposit.

"They can make more money by not building the house," he said.

'Standard in the industry'

In a one-page statement, Toll Brothers explained that down payments are a "critical part of the homebuying process."

"In general, we do not build a home until it is contracted by a homebuyer, which enables our buyer to customize their home to their specific tastes and preferences with extensive option selections," the company said. "The down payment is intended to protect us against the significant risk associated with building a house customized for a certain buyer who does not close on it, the costs associated with holding such inventory until another buyer is found, and the discounts or incentives we must give the new buyer."

1 2 3 4 5

Related

- How to avoid a disastrous home contract
- Toll Brothers loses arbitration case, buyers still out \$42K for arbitration, lawyer fees

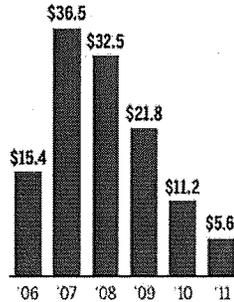
Most Viewed Most E-Mailed

- (From the last 12 hours)
- 1. Monte Poole: A candid talk with Reggie McKenzie about Raiders...
- 2. California investigates up to \$2.3 billion in public funds hiding in...
- 3. Felton man, 19, arrested on suspicion of having sex with 13-year-old
- 4. How did Toll Brothers survive the housing slump? By keeping buyers'...
- 5. DA considers adding torture count to murder charges in Orinda...
- 6. Toll Brothers loses arbitration case, buyers still out \$42K for...

Toll deposits

Over a six-year period, during the lean housing market, luxury home builder Toll Brothers single biggest profit maker was keeping forfeited deposits from buyers. The program netted them \$123 million.

Cancelled deposits in millions:



Source: Toll Brothers 10-K SEC statements

BAY AREA NEWS GROUP

In addition, Toll Brothers said it has costs for carrying a vacant home, such as real estate taxes, landscaping, utilities, interest, transaction expenses and homeowner association dues.

"Our policy of retaining down payments is not a profit center; rather it is designed to mitigate these risks and costs," the company said. "Such a policy is standard in the industry."

Jim Daman went toe-to-toe with Toll Brothers in 2007 after putting down \$104,000 for a \$2.2 million home in Danville. He was promised the home would be built in six months, but as construction lagged the market value dropped to \$1.4 million. A manager told him he would get his whole deposit back, but then reneged, he said.

Daman, a former real estate agent, sued in Contra Costa Superior Court and eventually settled for \$70,000, but lost about \$50,000 in forfeited deposit and attorney fees.

"They're nasty people. When you said 'Toll Brothers,' I started laughing and thinking, 'There is a god somewhere,'" the Danville resident told a reporter. "The contract is 99.9 percent in their favor."

Arundel Drive

On May 24, 2010, the Sharmas agreed to pay \$1.1 million for a two-story, four-bedroom home to be built on a dirt lot with views of the Bay Bridge. They put down \$98,220 in deposits, listed their Pleasanton house on the market and signed the contract, which was contingent on a loan approval within 30 days.

The Sharmas say they were told to go through Toll Brothers' in-house mortgage company TBI Mortgage, and that if TBI or another bank would not fund the loan, they would get their deposits back.

But when their Pleasanton house did not sell, the Sharmas told Toll Brothers they would give up their contract if they could get back their deposit.

"The salesperson said, 'Too bad. You are under contract,'" Sharma said.

A few weeks later, the Sharmas received a "commitment letter" for a mortgage from U.S. Bank, to whom they had never applied for a loan. The mortgage required the sale of their Pleasanton home, a contingency at that point the Sharmas could not meet.

The two sides could not settle and headed into arbitration – the only way to dispute contractual issues with most builders, including Toll Brothers.

Representatives from the builder said the Sharmas were too far along to back out, saying "the Sharmas customized the new home to their tastes and we began construction, (and) the Sharmas changed their mind."

Said Sharma, "They sold me a piece of dirt and they got dirt back, so they were whole." A photo taken Sept. 18, 2010, a day after Toll Brothers sent a letter of default to the Sharmas, shows only wood forms on a dirt lot.

Not only did Sharma lose his full deposit in arbitration, but he had to pay \$5,600 in Toll Brothers arbitration costs.

Sharma said his family is traumatized and disillusioned.

"It amazes me that a lady who spills McDonald's coffee can make millions and here I have evidence in black-and-white and nothing can be done about it."

Contact Matthias Gafni at 925-952-5026. Follow him at [Twitter.com/mgafni](https://twitter.com/mgafni).

Loan contingency or trap?

Language in Daven Sharma's Toll Brothers contract for a Hayward home says his deposits are forfeited if he is approved for a loan and backs out. The Pleasanton resident says he was never approved for a mortgage and deserves his deposit back.

An attorney claims Toll's language is confusing and leans far in favor of the seller. Here is the sentence that leaves buyers with few ways to get their deposits back:

"Buyer's failure to fulfill any of such conditions or the termination or expiration of the mortgage commitment after it is received, for any reason, shall not release Buyer from its obligations under the Agreement."

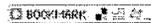
How to avoid a bad home contract

Here are some key points on what to look for when signing a contract to buy a new home:

- Make sure the contract includes a provision allowing for a refund of your deposit if you are unable to obtain financing -- within a reasonable specified time -- or if the seller or builder fails to perform his or her part of the contract.
- If possible, make your deposit and down payment into an escrow account, rather than directly to the seller.
- Have a real estate agent or attorney go over the agreement before signing.
- Make sure the sales price is specified in the contract.
- Ensure the contract requires the seller to transfer the property to you on or before a certain date. The contract should also specify your right to withdraw and get your deposit back if the property is not transferred on time.

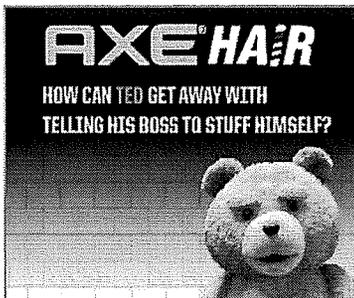
Source: Cal-Lending.com

Reprint



Print Email Font Resize Return to Top

Top Classifieds			
RENTALS	JOBS	REAL ESTATE	AUTOS
Technology			
TECHNOLOGY Cisco...			
Firmware Engineer			
Technology			
Computer Super...			
software			
Education			
Capital Projects Division Manager			
All Listings			



RECOMMENDED FOR YOU

- ▶ Chick-fil-A a political battleground with days...
- ▶ Mitt Romney continues to get attention in...
- ▶ Hot trailers: an intriguing 'Cloud Atlas'
- ▶ San Jose 8th-grader killed in savage park...
- ▶ Chick-fil-A: Bloomberg differs with fellow...
- ▶ Hicks: The Rolling Stones' 10 best songs

-- SPONSORED LINK --

Stamped relaunches, Ryan Seacrest, Justin Bieber, Ellen DeGeneres, ... (From Daily/6.com)

Powered by newstogram

• [FAQ: Article commenting how-tos and tips](#)

News»

Lafayette park fire leaves residents fuming

Oakley animal rescue group wants shelter caretaker out after removing president

Computer science becomes Stanford's most popular major

Contra Costa looks at fire parcel tax for November election

Computer-refurbishing company opens new production facility in Richmond

Chick-fil-A spokesman dies

Colorado suspect's defense says he was a psychiatric patient and contents of mailed package are nobody's business

Four men plead not guilty to murder in San Leandro triple homicide

[Home](#) | [Classifieds](#) | [Real Estate](#) | [Jobs](#) | [Cars](#) | [Place an Ad](#) | [Advertise](#) | [Find Walnut Creek Jobs](#) | [Site Map](#) | [RSS](#) 



© 2012 Bay Area News Group | [Terms of Use/Privacy](#) | [Contact Us](#) | [Help](#) | [About our Ads](#) | [About Bay Area News Group](#)

MediaNews Group - Bay Area News Group

A  MediaNews Group WEBSITE