

Class-action lawsuit targets homebuilder
Arbor Homes denies it misled buyers regarding down-payment 'gift' program.

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A lawsuit alleges that an Indianapolis homebuilder led customers to believe a down payment "gift" went toward reducing the price of homes, but that the money was added to the price of the homes and financed in their mortgages.

Arbor Homes counters that it complies with the terms of the Nehemiah Program and other down-payment assistance programs and is following common practices among builders. FHA and conventional loans permit down-payment gifts from charitable or nonprofit organizations such as Nehemiah. Builders often present the gift option to buyers who don't have enough money for a down payment.

The suit filed in Marion Circuit Court by Marjorie A. Bezaury alleges that Arbor sales agents last year made misrepresentations that a \$3,904 gift from the OWN Program would reduce the amount to be financed on her Johnson County home.

Instead, the down payment was added to the price of the home and rolled into her mortgage so that she effectively financed her down payment, according to the suit seeking class-action status on behalf of about 1,800 Arbor customers in the last six years.

"She believed that the down payment was being taken care of," said Bezaury's attorney, Eric Pavlack of Cohen & Malad.

In the home-selling industry, such gifts may show up in mortgage documents as a down payment from the seller. Some conventional mortgages require a minimum 6 percent; FHA loans typically require 3 percent down.

"The reason the FHA has the requirement in the first place is they want people to have the 3 percent without having to borrow. The reason is so people don't get upside-down on their mortgage and have at least a thread of equity," said Pavlack.

Arbor's vice president of sales and marketing, Steve Hatchel, said a company sales agent explained the nature of the gift program to Bezaury.

"We don't believe we've done anything wrong in this situation. We've certainly been very upfront with homebuyers about how the down-payment assistance program works," Hatchel said.

Consumer watchdogs warn that financing a down payment lengthens the time it takes to establish enough equity to sell a home.

Mildred Wilkins, an Indianapolis real estate agent who runs the consumer-advocacy Web site www.HomeOwnershipMatters.com, said the way Arbor accounted for the gift money sounds consistent with the way the programs work.

"It's presented as a gift. It is not actually a gift," however, she said. "That doesn't mean it's fair or straightforward. It literally puts them (borrowers) at risk."

Hatchel said an independent appraiser prior to the closing of the sale reviewed Bezaury's house.

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