

# The ups and downs of working with a developer-recommended lender

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**Q:** Should I pursue a lawsuit against the builder because the companies recommend a lender and the lender backed out three days prior to closing? The builder decided to keep my earnest deposit even though I wanted to close. I didn't default in any way.

**A:** Our first question to you would be to figure out why the lender backed out of giving you a loan. It's not unusual for developers and builders to work with particular lenders on their projects. These lenders generally will know the ins and outs of the development and have a better handle on the underwriting issues involved with new construction developments.

There are always pluses and minuses to using a lender recommended by your developer, builder or seller. One disadvantage in using a seller-recommended lender is that the lender may give you an above-market deal for your loan. The lender may not have your best interests at heart and may not be the best lender out there for the loan.

The advantage of using the recommended lender may be that the lender may have incentives to pass along to you that other lenders may not have. The lender should have all the information it needs about the developer and the development to give you the loan, which should save you time. They may have given the developer the construction loan financing and have an incentive to make sure that the development is successful by vetting prospective buyers and giving those buyers loans to purchase homes in the seller's development. You may also be able to lock in your loan for a longer while the property is being built.

There are so many factors that a buyer should consider in deciding whether to use the "preferred" lender in a development. From our perspective, the important thing is to make sure you are working with a well-known, reputable lender.

We have seen lenders deny loans to buyers in your situation. When that has happened, it has generally been a credit issue. Now, if the lender could not give you the loan due to an issue caused by the lender, you'll have to look at your contract to determine what your

remedies might be.

You've told us that the lender backed out, and we wonder if the lender backed out of your loan or doing any loans for this developer. If the lender backed out of handling loans with this developer due to something the lender found out about the developer or his business interests, you'll need to find out what those issues are and then decide how to proceed. If the lender backed out because you bought a car a week before closing and threw your debt-to-income ratios out of whack, well, that might be on you.

Do you know if your contract had a provision that allowed you to terminate the contract in case you were unable to get financing for the purchase of your home? If so, did you notify the seller of your inability to get financing during the time limits set in the contract? By following the terms of your contract, you could protect yourself and assure the return of your earnest money in case your lender failed to give you financing.

Your best move now is to talk to a good real estate attorney in your area to decide how to go forward.

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