

TOLL BROTHERS INC
Form S-8
December 27, 2007

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
Toll Brothers, Inc.
(Exact name of registrant as specified in its charter)**

Delaware
(State or other jurisdiction of
incorporation or organization)

23-2416878
(I.R.S. Employer
Identification No.)

250 Gibraltar Road, Horsham, Pennsylvania
(Address of Principal Executive Offices)

19044
(Zip Code)

Toll Brothers, Inc. Employee Stock Purchase Plan
(Full Title of the Plan)

Joel H. Rassman
Executive Vice President and Chief Financial Officer
Toll Brothers, Inc.
250 Gibraltar Road
Horsham, Pennsylvania 19044

(Name and address of agent for service)
(215) 938-8000

(Telephone number, including area code, of agent for service)

Copies to:

Darrick M. Mix
Wolf, Block, Schorr and Solis-Cohen LLP
1650 Arch Street, 22nd Floor
Philadelphia, PA 19103-2097
(215) 977-2006

CALCULATION OF REGISTRATION FEE

Title of each class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee (2)
Common Stock, par value \$0.01 (3)	715,967 shares	\$ 20.45	\$ 14,641,525	\$ 449.49

(1) Pursuant to
Rule 416 under
the Securities
Act of 1933, as

amended, this registration statement also covers such additional shares and associated preferred stock purchase rights as may hereinafter be offered or issued to prevent dilution resulting from stock splits, stock dividends, recapitalizations or certain other capital adjustments.

- (2) Calculated pursuant to Rule 457(h) under the Securities Act of 1933, as amended, based upon the average (\$20.450) of the high (\$20.78) and low (\$20.12) prices of Toll Brothers, Inc.'s Common Stock reported by the New York Stock Exchange on December 20, 2007, which is within five (5) business days prior to the date of this registration statement.
- (3) Attached to each share of Common Stock is one preferred stock purchase

right. Each preferred stock purchase right entitles the registered holder to purchase 1/10,000th of a share of Series A Junior Participating Preferred Stock, par value \$0.01 per share, issued pursuant to the Rights Agreement.

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OPINION AND CONSENT OF WOLF, BLOCK, SCHORR AND SOLIS-COHEN LLP

CONSENT OF ERNST & YOUNG LLP

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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by Toll Brothers, Inc. (the Registrant) with the Securities and Exchange Commission (the Commission) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated by reference in this Registration Statement:

1. The Registrant s Annual Report on Form 10-K for the year ended October 31, 2007;
2. The description of the Registrant s Common Stock contained in its Registration Statement on Form 8-A dated June 19, 1986 (File No. 001-09186);
3. The description of preferred stock purchase rights contained in the Company s registration statement on Form 8-A filed with the Commission on June 19, 2007.

In addition, all documents subsequently filed with the Commission by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, and prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated by reference or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document that also is incorporated by reference herein modifies or supersedes such earlier statement.

Any statement so modified or superseded shall not be deemed to constitute a part of hereof except as so modified or superseded.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

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Item 6. Indemnification of Directors and Officers.

For information regarding provisions under which a director or officer of the Registrant may be insured or indemnified in any manner against any liability which he may incur in his capacity as such, reference is made to Section 145 of the Delaware General Corporation Law, which provides in its entirety as follows:

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

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(d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

(h) For purposes of this section, references to the corporation shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this section with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this section, references to other enterprises shall include employee benefit plans; references to fines shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to serving at the request of the corporation shall

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include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner not opposed to the best interests of the corporation as referred to in this section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(k) The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The Court of Chancery may summarily determine a corporation's obligation to advance expenses (including attorneys' fees).

See also Article Six of the Registrant's Second Restated Certificate of Incorporation, and Article VII of the Registrant's By-laws, as Amended and Restated, pursuant to which the Registrant is granted the power to indemnify any director, officer, employee or agent of the Registrant.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following Exhibits are filed as part of this Registration Statement:

- 4.1 Second Restated Certificate of Incorporation dated September 8, 2005 is hereby incorporated by reference to Exhibit 3.1 of the Registrant's Form 10-Q for the quarter ended July 31, 2005.
- 4.2 By-laws of the Registrant, as amended and restated June 15, 2006, are hereby incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K filed with the Securities and Exchange Commission on June 20, 2006.
- 4.3 Amendment to By-laws of the Registrant, dated December 12, 2007, is hereby incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K filed with the Securities and Exchange Commission on December 17, 2007.

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- 4.4 Certificate of Amendment of Certificate of Designations, Preferences and Rights of Series A Junior Participating Preferred Stock of the Registrant is hereby incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 18, 2007.
- 4.5 Rights Agreement dated as of June 13, 2007, by and between the Registrant and American Stock Transfer & Trust Company, as Rights Agent, is hereby incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 18, 2007.
- 4.6 Toll Brothers, Inc. Employee Stock Purchase Plan (Amended and Restated Effective January 1, 2008) is hereby incorporated by reference to Exhibit 10.32 to the Registrant's Form 10-K filed with the Securities and Exchange Commission on December 21, 2007.
- 5.1* Opinion and Consent of Wolf, Block, Schorr and Solis-Cohen LLP.
- 23.1* Consent of Ernst & Young LLP.
- 23.2* Consent of Wolf, Block, Schorr and Solis-Cohen LLP (contained in Exhibit 5.1).
- 24.1* Power of Attorney (included on signature page of this Registration Statement).

* Filed
electronically
herewith

Item 9. Undertakings.

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the Securities Act);

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the

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maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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SIGNATURES AND POWER OF ATTORNEY

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Horsham Township, Commonwealth of Pennsylvania, on this 27th day of December, 2007.

TOLL BROTHERS, INC.

By: /s/ Robert I. Toll
Robert I. Toll,
Chairman of the Board of Directors and
Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Robert I. Toll, Zvi Barzilay, Joel H. Rassman and Joseph R. Sicree, and each of them, the undersigned's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for the undersigned and in the undersigned's name, place and stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including, without limitation, post-effective amendments to this Registration Statement), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Robert I. Toll Robert I. Toll	Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer)	December 27, 2007
/s/ Bruce E. Toll Bruce E. Toll	Vice Chairman of the Board	December 27, 2007

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Signature	Title	Date
/s/ Zvi Barzilay Zvi Barzilay	President, Chief Operating Officer and Director	December 27, 2007
/s/ Robert S. Blank Robert S. Blank	Director	December 27, 2007
/s/ Edward G. Boehne Edward G. Boehne	Director	December 27, 2007
/s/ Richard J. Braemer Richard J. Braemer	Director	December 27, 2007
/s/ Roger S. Hillas Roger S. Hillas	Director	December 27, 2007
/s/ Carl B. Marbach Carl B. Marbach	Director	December 27, 2007
/s/ Stephen A. Novick Stephen A. Novick	Director	December 27, 2007
/s/ Joel H. Rassman Joel H. Rassman	Executive Vice President, Treasurer, Chief Financial Officer and Director (Principal Financial Officer)	December 27, 2007
/s/ Paul E. Shapiro Paul E. Shapiro	Director	December 27, 2007
/s/ Joseph R. Sicree Joseph R. Sicree	Senior Vice President, Chief Accounting Officer (Principal Accounting Officer)	December 27, 2007

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**TOLL BROTHERS, INC.
EMPLOYEE STOCK PURCHASE PLAN
(AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2008)
REGISTRATION STATEMENT ON FORM S-8
EXHIBIT INDEX**

Exhibit No.

5.1* Opinion and Consent of Wolf, Block, Schorr and Solis-Cohen LLP.

23.1* Consent of Ernst & Young LLP.

23.2* Consent of Wolf, Block, Schorr and Solis-Cohen LLP (contained in Exhibit 5.1).

24.1* Power of Attorney (included on signature page of this Registration Statement).

* Filed
electronically
herewith