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# Newmark parent files for Chapter 11, draws objections

## Austin Business Journal

Homebuilder **TOUSA Inc.** has filed for Chapter 11 bankruptcy.

In Austin, the company builds homes under the **Newmark Homes**, **Trophy Homes** and **Fedrick, Harris Estate Homes** brands.

The Hollywood, Fla.-based company said its proposed restructuring is the result of the dramatic downturn in the U.S. housing market, which accelerated over the last several months due to a number of factors including severe liquidity challenges in the credit and mortgage markets, diminished consumer confidence, increased home inventories and foreclosures and downward pressure on home prices.

According to a statement by the company, all of these factors have contributed to lower gross sales and higher cancellation rates.

Citigroup Global Markets Inc. has agreed to provide the company with up to \$150 million in debtor-in-possession financing. If approved by the court, the company will have access to the funds to implement its restructuring plan.

**At the date of the filing, TOUSA had about 2,500 homes in backlog. TOUSA anticipates delivering all of its homes in backlog and will continue to actively take new orders, construct new homes and provide financial services to its customers.**

In a video statement on Newmark Homes Web site, Houston division president Mike Moody said that, while the national homebuilding industry remains challenging, Newmark Homes has recently completed a record year in closings, income and revenue.

"We have every intention of doing business as usual," Moody said in the Web video.

Moody added that TOUSA has filed motions to continue to build and sell homes and said that those motions will be reviewed by a judge in the coming days.

Still, TOUSA's orderly restructuring plan is being pelted with objections.

The Hollywood-based home builder announced its filing on Tuesday. At the same time, it said it had received support from more than 50 percent of its senior note holders on a proposed term sheet for restructuring its equity and all its unsecured debt, and that Citigroup Global Markets agreed to provide it with debtor-in-possession financing to implement the plan and pay normal operating expenses. Because the financing would be senior to existing debt, it requires bankruptcy court approval.

TOUSA (Pink Sheets: TOUS) said its proposed restructuring agreement with the senior note holders "contemplates, among other things, that the senior note holders will receive substantially all of the common stock of the reorganized company, as well as an interest in and entitlement to proceeds received by a litigation trust that will be established pursuant to the company's plan of reorganization."

It added that holders of general unsecured claims would receive a pro rata share of the common stock and an interest in the litigation trust, and that holders of the company's subordinated notes may receive a "proportionate share" of proceeds generated by the litigation trust and may receive warrants to acquire a specific percentage of common stock in the reorganized company.

TOUSA's largest creditors are made up of senior note holders and senior unsubordinated note holders, who hold bonds with rates between 7.5 percent and 13.25 percent that are due between 2010 and 2015. Wilmington Trust Co. and HSBC Bank are the trustees for these creditors.

In line with its plan, TOUSA on Tuesday filed for permission from the court to approve a first priority and priming secured revolving credit commitment of up to \$135 million from Citigroup Global Markets, which, the filing said, could grow to \$650 million if Citigroup is successful in finding lenders. It also asked the court to waive the standard 20-day waiting period because it needed the funds to "prevent immediate and irreparable harm."

On Wednesday, some note holders filed two objections, saying that TOUSA's filing "seeks approval of DIP financing for an 'emergency' that simply does not exist," and that the note holders can prove TOUSA has substantial cash reserves.

The objections, filed by Miami law firm Genovese, Joblove & Battista, P.A., also say the company committed fraudulent conveyance in July, when it "forced" its subsidiaries to grant its first and second lien term loan lenders secured guaranties of \$500 million and to guaranty its \$700 million revolver to pay debts related to its Transeastern joint venture, which was heavily indebted and the subject of a lawsuit. The filings say the subsidiaries received no consideration from the arrangement or from certain draws from the refinanced revolver -- draws knowingly made in violation of the note holders' agreement -- and that only the TOUSA parent and one subsidiary had been liable for that debt. The subsidiaries from which the note holders expect to be repaid had not been liable.

"TOUSA sacrificed the TOUSA subsidiaries," a filing says. "TOUSA incurred \$500 million in new financing to repay the JV debt, but caused the TOUSA subsidiaries to become liable for the full amount of this new debt."

**Courtesy of JB Goodwin**