

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:)	
)	Chapter 11 Cases
TOUSA, Inc., <u>et al.</u> , ¹)	Case No. 08-10928 (JKO)
)	Jointly Administered
Debtors.)	
)	

**EX PARTE MOTION TO SHORTEN NOTICE FOR HEARING ON
MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS PURSUANT TO 11 U.S.C. §§ 105(a), 1102(b)(3)(A)
AND 1103(c) FOR ENTRY OF AN ORDER CLARIFYING ITS
REQUIREMENT TO PROVIDE ACCESS TO INFORMATION
UNDER BANKRUPTCY CODE SECTION 1102(b)(3)(A)**

The Official Committee of Unsecured Creditors (the “Committee”) of TOUSA, Inc., (“TOUSA”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through its proposed co-counsel, Akin Gump Strauss Hauer & Feld LLP and Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., hereby moves (the “Motion”) this Court for entry an order, substantially in the form annexed hereto as Exhibit A, shortening the notice required on the contemporaneously-filed Motion of the Official Committee of Unsecured

¹ The Debtors in the cases are: TOUSA, Inc.; Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, LLC; Engle Sierra Verde P5, LLC; Engle/Gilligan LLC; Engle/James LLC; LB/TE #1, LLC; Lorton South Condominium, LLC; McKay Landing LLC; Newmark Homes Business Trust; Newmark Homes Purchasing, L.P.; Newmark Homes, L.L.C.; Newmark Homes, L.P.; Preferred Builders Realty, Inc.; Reflection Key, LLC; Silverlake Interests, L.L.C.; TOI, LLC; TOUSA Associates Services Company; TOUSA Delaware, Inc.; TOUSA Funding, LLC; TOUSA Homes Arizona, LLC; TOUSA Homes Colorado, LLC; TOUSA Homes Florida, L.P.; TOUSA Homes Investment #1, Inc.; TOUSA Homes Investment #2, Inc.; TOUSA Homes Investment #2, LLC; TOUSA Homes Mid-Atlantic Holding, LLC; TOUSA Homes Mid-Atlantic, LLC; TOUSA Homes Nevada, LLC; TOUSA Homes, Inc.; TOUSA Homes, L.P.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; and TOUSA/West Holdings, Inc.



Creditors Pursuant to 11 U.S.C. §§ 105(a), 1102(b)(3)(A) and 1103(c) for Entry of an Order Clarifying Its Requirement to Provide Access to Information Under Bankruptcy Code Section 1102(b)(3)(A) (the “Information Protocol Motion”). In support of this Motion, the Committee respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 1102 and 1103 of title 11 of the United States Code (the “Bankruptcy Code”).

RELIEF REQUESTED

2. On January 31, 2007, this Court entered its Order (the “Case Management Order”) [D.E. # 100] Establishing Certain Notice, Case Management and Administrative Procedures (the “Procedures”).

3. The Procedures provide, in pertinent part, that “[i]n accordance with Rule 9073-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of Florida... the Clerk’s Office shall set motions on the date of the upcoming Omnibus Hearing no less than fifteen (15) days after the next filing of the request for relief” (the “Ordinary Scheduling Procedures”). Procedures ¶ A.2.a. The Procedures provide further that “[n]othing herein shall prejudice the right (a) of any entity to move the Court to further limit or expand notice of contested matters and adversary proceedings upon a showing of good cause, including without limitation the right to file a motion seeking emergency *ex parte* relief or relief upon shortened notice or (b) of any entity to request an enlargement or reduction of any time period under Bankruptcy Rules 9006(b) or 9006(c).” Procedures ¶ B.10.

4. Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) provides, in pertinent part, that “...when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by an order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.” Fed. R. Bankr. P. 9006(c).

5. Contemporaneously herewith, the Committee is filing the Information Protocol Motion. Pursuant to the Ordinary Scheduling Procedure, the hearing on the Information Protocol Motion would not be scheduled for hearing until April 9, 2008 – the next omnibus hearing date scheduled for these cases that is at least 15 days after the date hereof. Given the importance of ensuring timely access to information for unsecured creditors in accordance with Bankruptcy Code section 1102(b)(3)(A), the Committee seeks to shorten the notice period required by the Ordinary Scheduling Procedure in order for the Information Protocol Motion to be heard at the hearing scheduled for March 20, 2008 (the date of the next scheduled hearing in these cases) with a corresponding objection deadline of March 19, 2008 at 12:00 p.m. (et).

6. To the extent the relief requested herein is granted, the Committee shall serve notice of the Information Protocol Motion on the Service List (as defined in the Case Management Order) no later than one business day after the entry of an order approving this Motion. The Committee has communicated its intention to seek the relief requested herein to the Office of the United States Trustee and counsel to the Debtors, neither of which has expressed an objection to the relief requested herein.

WHEREFORE, the Committee respectfully requests that this Court enter an order, in the form attached hereto as Exhibit A (a) allowing for a shortened notice period for the hearing on the Information Protocol Motion; (b) scheduling the hearing on the Information Protocol Motion

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
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)	
In re:)	Chapter 11 Cases
)	Case No. 08-10928 (JKO)
TOUSA, Inc., <u>et al.</u> , ¹)	Jointly Administered
)	
Debtors.)	
)	

**ORDER GRANTING *EX PARTE* MOTION TO SHORTEN NOTICE
FOR HEARING ON MOTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS PURSUANT TO 11 U.S.C. §§ 105(a),
1102(b)(3)(A) AND 1103(c) FOR ENTRY OF AN ORDER CLARIFYING
ITS REQUIREMENT TO PROVIDE ACCESS TO INFORMATION
UNDER BANKRUPTCY CODE SECTION 1102(b)(3)(A)**

¹ The Debtors in the cases are: TOUSA, Inc.; Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, LLC; Engle Sierra Verde P5, LLC; Engle/Gilligan LLC; Engle/James LLC; LB/TE #1, LLC; Lorton South Condominium, LLC; McKay Landing LLC; Newmark Homes Business Trust; Newmark Homes Purchasing, L.P.; Newmark Homes, L.L.C.; Newmark Homes, L.P.; Preferred Builders Realty, Inc.; Reflection Key, LLC; Silverlake Interests, L.L.C.; TOI, LLC; TOUSA Associates Services Company; TOUSA Delaware, Inc.; TOUSA Funding, LLC; TOUSA Homes Arizona, LLC; TOUSA Homes Colorado, LLC; TOUSA Homes Florida, L.P.; TOUSA Homes Investment #1, Inc.; TOUSA Homes Investment #2, Inc.; TOUSA Homes Investment #2, LLC; TOUSA Homes Mid-Atlantic Holding, LLC; TOUSA Homes Mid-Atlantic, LLC; TOUSA Homes Nevada, LLC; TOUSA Homes, Inc.; TOUSA Homes, L.P.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; and TOUSA/West Holdings, Inc.

Upon the *Ex Parte Motion* (the “Ex Parte Motion”) to Shorten Notice for Hearing on Motion (the “Information Protocol Motion”) of the Official Committee of Unsecured Creditors Pursuant to 11 U.S.C. §§ 105(a), 1102(b)(3)(A) and 1103(c) for Entry of an Order Clarifying Its Requirement to Provide Access to Information Under Bankruptcy Code Section 1102(b)(3)(A) [D.E. No. ___], filed by the Official Committee of Unsecured Creditors (the “Committee”) of TOUSA, Inc. et al. (collectively, the “Debtors”) on March 10, 2008; and it appearing that the relief requested in the Ex Parte Motion is in the best interests of the Debtors’ estates, their creditors and all other parties in interest; and the Court having jurisdiction to consider the Ex Parte Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Ex Parte Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice need be provided;; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED as follows:

1. The Ex Parte Motion is granted.
2. The hearing on the Information Protocol Motion is set for March 20, 2008.
3. Objections to the Information Protocol Motion shall be filed and served no later

than March 19, 2008 at 12:00 p.m. (et) on the following parties:

- (a) Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue
New York, NY 10022
Attn: Daniel H. Golden, Philip C. Dublin
- (b) Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Attn: Patricia A. Redmond

- (c) Kirkland & Ellis LLP
153 E 53rd St
New York, NY 10022-4611
Attn: Rick Cieri, Paul Basta, Natasha Labovitz

- (d) Berger Singerman, P.A.
200 South Biscayne Boulevard, Suite 1000
Miami, FL 33131
Attn: Paul Steven Singerman

- (e) United States Trustees Office
51 SW First Avenue
Room 1204
Miami, FL 33130
Attn: Steven D. Schneiderman

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Submitted by:

**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**

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-and-

AKIN GUMP STRAUSS HAUER & FELD LLP

Daniel H. Golden (New York Bar No. 1133859)
Philip C. Dublin (New York Bar No. 2959344)
590 Madison Avenue
New York, NY 10022
Telephone: (212) 872-1000
Facsimile: (212) 872-1001

*Proposed Co-Counsel to the Official Committee of
Unsecured Creditors of TOUSA, Inc., et al.*

Copies to:

Patricia A. Redmond

(Attorney Redmond shall upon receipt serve a copy of this Order upon all interested parties and file a certificate of service.)