

# KB HOME

## FORM 8-K (Current report filing)

Filed 11/13/06 for the Period Ending 11/12/06

Address	10990 WILSHIRE BLVD LOS ANGELES, CA 90024
Telephone	3102314000
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Symbol	KBH
SIC Code	1531 - Operative Builders
Industry	Construction Services
Sector	Capital Goods
Fiscal Year	11/30



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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of Earliest Event Reported):

November 12, 2006

**KB Home**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction  
of incorporation)

1-9195

(Commission  
File Number)

95-3666267

(I.R.S. Employer  
Identification No.)

10990 Wilshire Blvd., Los Angeles,  
California

(Address of principal executive offices)

90024

(Zip Code)

Registrant's telephone number, including area code:

(310) 231-4000

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

On November 12, 2006, KB Home (the “Company”) entered into an agreement with Mr. Bruce Karatz, the Company’s former Chairman and Chief Executive Officer (the “Tolling Agreement”), pursuant to which Mr. Karatz has voluntarily agreed to pay the Company the difference between the initial strike price and the closing price on the new measurement date for certain annual stock options grants he has exercised that were incorrectly priced. In addition, with respect to certain unexercised options Mr. Karatz has agreed that each new strike price will be the closing price on the new measurement date. The Company and Mr. Karatz have not agreed upon the other terms of his departure from the Company and the Tolling Agreement provides that both parties reserve all rights. A copy of the Tolling Agreement is attached hereto as Exhibit 99.1 and incorporated herein by reference.

**Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers; Compensatory Arrangements of Certain Officers.**

On November 12, 2006, Mr. Karatz retired as Chief Executive Officer, Chairman and a director of the Company, effective immediately. Mr. Jeffrey T. Mezger, 51, the Company’s Executive Vice President and Chief Operating Officer since 1999, was appointed by the Board as Chief Executive Officer, a director and a member of the Board’s Executive Committee.

**Item 8.01 Other Events.**

On November 12, 2006, the Company announced that a subcommittee of the Audit and Compliance Committee of the Board of Directors and its independent legal counsel conducting an investigation into the Company’s past stock option practices have concluded that the Company used incorrect measurement dates for financial reporting purposes for annual stock option grants during the period from 1998 to 2005. The Company expects that the incremental non-cash compensation expense arising from these errors is not likely to exceed an aggregate of \$50 million, spread over the vesting periods of the options in question. The errors may also require an increased tax provision. The Company is evaluating, with its independent auditors, whether a restatement of certain previously-filed financial statements will be required. The Company has cooperated and will continue to cooperate with the inquiry of the SEC and other government agencies.

The Board of Directors has announced a series of actions in a press release attached hereto as Exhibit 99.2 and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

Exhibits

99.1 Tolling Agreement

99.2 Press release of KB Home dated November 12, 2006.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

KB Home

November 12, 2006

By: /s/ WILLIAM R. HOLLINGER

Name: *William R. Hollinger*

Title: *Senior Vice President, Controller*

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## Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
99.1	Tolling Agreement
99.2	Press release of KB Home dated November 12, 2006.



November 12, 2006

### AGREEMENT

This Agreement is entered into by and between KB Home and Bruce Karatz (“**Karatz**”), the Chief Executive Officer and Chairman of KB Home, and relates to the Amended and Restated Employment Agreement dated July 11, 2001 (“**Employment Agreement**”) by and between KB Home and Karatz. All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Employment Agreement.

In consideration of the covenants undertaken and contained herein, the adequacy of which is herein acknowledged, the parties agree as follows:

1. Pursuant to a mutual understanding between Karatz and the Board of Directors of KB Home, Karatz hereby gives notice of his retirement from employment under the Employment Agreement, with his retirement to become effective immediately. In addition, Karatz hereby resigns effective immediately from any and all positions he holds with KB Home, Kaufman and Broad, S.A. and any of their respective subsidiaries, including his positions as Chairman of the Board and Director of the Corporation.

2. KB Home shall promptly pay to Karatz (i) his unpaid base salary earned under Section 4(a) of the Employment Agreement for services rendered through, and including, the date hereof and (ii) the dollar value of all accrued and unpaid vacation benefits and sick pay based upon Karatz’s most recent level of base salary and unreimbursed business expenses. All of Karatz’s outstanding unvested stock options, restricted stock and other equity awards, plans and programs shall be retained but suspended, and Karatz shall be entitled to the medical and dental benefits at least equal to those which would have been provided to Karatz under KB Home’s plan had he not retired, until the parties reach agreement with respect thereto or until a determination is made pursuant to the arbitration provisions of the Employment Agreement. Karatz’s vested interests in all vested stock options, restricted stock and other equity awards and qualified and nonqualified retirement plans of KB Home shall be retained, subject, in the case of vested stock options, restricted stock and other equity awards, to any policies restricting the exercise or transfer thereof generally applicable to officers of KB Home.

3. Both Karatz and KB Home reserve all rights under the Employment Agreement and under the other option, restricted stock, retirement or other benefit plans to which Karatz is a party or is subject. In particular, neither the entry into this Agreement or Karatz’s retirement hereunder shall constitute an admission by either party as to the circumstances or characterization of Karatz’s departure from KB Home, including without limitation whether under the Employment Agreement such departure constitutes a “retirement” or other form of termination.

4. Karatz’s retirement under this Agreement will not affect any advancement of fees or indemnification (including those in connection with the stock options investigation) to which he otherwise would be entitled under applicable state law, the

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Articles of Incorporation and Bylaws of KB Home, and any agreement with KB Home, including the Employment Agreement. Karatz will continue to be a named insured under KB Home's D&O insurance policies and KB Home shall use its best efforts to ensure that he continues to be covered under any renewals or replacements of those policies.

5. Karatz agrees to refrain from criticizing or making disparaging or derogatory comments about KB Home and its officers and directors, and KB Home agrees that the officers and directors of KB Home shall refrain from criticizing or making disparaging or derogatory comments about Karatz. Karatz and KB Home agree that (a) a press release attached as Exhibit A hereto shall be released by KB Home on or prior to November 12, 2006 and (b) the parties shall not make statements inconsistent with those in the press release. The Section shall not apply to statements that either party reasonably concludes are required in order to cooperate with government or regulatory investigations, to provide appropriate information to independent auditors, that are otherwise required to comply with their fiduciary or legal obligations, or that are made in connection with any arbitration under the Employment Agreement.

6. Karatz acknowledges and agrees that the exercise price of each annual stock option granted to him since October 2, 1998 (the "**Subject Options**") shall be changed to the closing price per share of the Company's common stock on the new measurement dates selected by KB Home for such grants as reflected in the restated financial statements or adjusted books and records expected to be completed by KB Home. For each Subject Option exercised by Karatz prior to the date hereof, Karatz shall pay to KB Home, in cash, the product of (i) any positive difference between the exercise price and the fair market value of KB Home common stock on the new measurement date for the Subject Option and (ii) the number of shares subject to such Subject Option. KB Home will provide Karatz with a schedule containing reasonable detail regarding the new measurement dates and amounts payable by Karatz in respect of the Subject Options within 15 days of filing financial statements with the Securities and Exchange Commission and Karatz shall make the required payments and enter into amended option agreements within 90 days thereafter. Karatz acknowledges that KB Home makes no representation as to the tax treatment of Karatz's KB Home stock options and shares of restricted stock and that he will be responsible for any tax obligations that may arise therefrom.

7. Karatz shall provide such reasonable consulting or transition services as may be requested by the Board of Directors for a period of 3 months following the date hereof. Karatz shall vacate his office and return all KB Home property within ten days after the date of this Agreement and will be entitled to remove any and all of his personal property or effects.

8. Karatz agrees and acknowledges that he remains subject to all confidentiality agreements and similar obligations to which he was subject as an officer and employee of KB Home.

9. Both parties agree to cooperate with the other in determining the benefits and amounts due to Karatz (if any) in connection with his retirement, taking into account

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his years of service and the success and growth of KB Home during the period of his leadership and such other factors as the parties consider relevant. If an agreement with respect to benefits and amounts due to Karatz in connection with his retirement cannot be reached by agreement between the Board and Karatz, either party may commence an arbitration as provided in the Employment Agreement. None of the periods of time set forth in the Employment Agreement within which events may occur or actions must be taken, and no statute of limitations or any claims either party may have under the Employment Agreement or related to Karatz's employment, shall begin to run until the parties reach agreement or an arbitrator's decision is rendered as to the characterization of Karatz's departure from KB Home. Such agreement or decision shall be in lieu of the notice and cure provisions in section 5(h) of the Employment Agreement.

10. Nothing contained in this Agreement shall be deemed as an admission by any party.

11. This Agreement shall not be deemed to constitute a waiver of any rights, claims or defenses of any of the parties to this Agreement. This Agreement does not constitute a release of any claims that either party may have against the other.

12. This Agreement can be modified only in writing signed by the parties.

13. Both parties have cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

14. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which shall constitute one instrument.

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If the following is in accordance with your understanding of our agreement, please sign and return to us a duplicate hereof, whereupon this Agreement and your acceptance shall represent a binding agreement between the parties hereto.

KB HOME

/s/ JEFFREY T. MEZGER

By: Jeffrey T. Mezger

Title: Chief Operating Officer

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

BRUCE KARATZ

/s/ BRUCE KARATZ



### **KB Home Announces Results of Options Investigation**

**Los Angeles (November 12, 2006)** — KB Home (NYSE:KBH) today announced the results of the Company's options investigation and a series of changes in its executive leadership.

These actions are being taken in connection with the substantial completion of an independent investigation into the Company's past stock option granting practices. The investigation has been led by members of the Audit and Compliance Committee of the Company's Board of Directors, in conjunction with independent legal counsel from Irell & Manella LLP and accounting assistance from FTI Consulting.

The investigation has concluded that the Company used incorrect measurement dates for financial reporting purposes for annual stock option grants during the period from 1998 to 2005. The Company expects that the incremental non-cash compensation expense arising from these errors is not likely to exceed an aggregate of \$50 million, spread over the vesting periods of the options in question. The errors may also require an increased tax provision. The Company is evaluating, with its independent auditors, whether a restatement of certain previously-filed financial statements will be required.

The Company has cooperated and will continue to cooperate with the inquiry of the SEC and other government agencies.

#### Leadership Transition

Bruce Karatz has retired as Chairman of the Board, Director and Chief Executive Officer, effective immediately. Mr. Karatz has served the Company for 34 years and had been the Company's only chief executive officer during its existence as a public company. The Board expressed its appreciation for Mr. Karatz's contributions to the Company and the value he has helped to create for shareholders, employees and customers of KB Home. During the decade from 1995 to 2005, KB Home increased total revenue from approximately \$1.4 billion to more than \$9.4 billion annually, and the number of housing units produced by the Company increased from 7,857 per year to 37,140 per year.

Mr. Karatz has voluntarily agreed to pay the Company the difference between the initial strike price and the closing price on the new measurement date for options he has exercised that were incorrectly priced. In addition, with respect to unexercised options Mr. Karatz has agreed that each new strike price will be the closing price on the new measurement date. This is expected to involve an aggregate voluntary value transfer from Mr. Karatz to the Company of approximately \$13 million. The Company and Mr. Karatz have not agreed upon the other terms of his departure from the Company and have entered into an agreement under which both parties reserve all rights.

The Board has elected Jeffrey T. Mezger to succeed Mr. Karatz as President, Chief Executive Officer and a Director. Mr. Mezger joined the Company in 1993 and has been the Company's Executive Vice President and Chief Operating Officer since 1999. In this capacity Mr. Mezger has been responsible for U.S. homebuilding operations.

The Board has created the position of independent non-executive chairman of the KB Home Board and will conduct a search to fill this position. In the interim until this position is filled, the Board created the position of Lead Director and elected Kenneth M. Jastrow II, a director of KB

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Home since 2001 and Chairman and Chief Executive Officer of Temple-Inland Inc., to serve as Lead Director.

“Jeff Mezger has been instrumental in KB Home’s growth and success as the Company’s Chief Operating Officer,” said Mr. Jastrow on behalf of the Board. “Jeff’s broad-based expertise in all facets of the business, together with his outstanding management and leadership skills, are invaluable assets that will serve our Company well. The Board has full confidence in the Company under Jeff’s leadership.”

“I am extremely proud of everything that the entire KB team and I have accomplished over the past 20-plus years as a public company,” said Mr. Karatz. “We have grown to be one of the leading homebuilders in the world and one of the most respected companies in the industry. I wish Jeff Mezger and the team continued success with this outstanding company.”

The Board has terminated the employment of Gary A. Ray, the Company’s head of Human Resources.

Richard B. Hirst has resigned as Executive Vice President and Chief Legal Officer, effective immediately.

Based on the report of the investigative committee, the Board of Directors concluded that Mr. Karatz and Mr. Ray selected grant dates under the Company’s stock option plans. Additionally, the investigative committee concluded that the Board of Directors, Mr. Mezger and the other current senior executives of the Company had no role in establishing incorrect grant dates.

### Compliance

The Board also acted to create the positions of Chief Compliance Officer and Risk Assessment Officer. These officers will report within the management team and will also have reporting obligations to the Audit and Compliance Committee of the Board. The Company will conduct a search to fill these positions.

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### **About KB Home**

Building homes for nearly half a century, KB Home is one of America’s premier homebuilders with domestic operating divisions in some of the top markets in the following regions and states: West Coast — California; Southwest — Arizona, Nevada and New Mexico; Central — Colorado, Illinois, Indiana, Louisiana and Texas; and Southeast — Florida, Georgia, Maryland, North Carolina, South Carolina and Virginia. Kaufman & Broad S.A., the Company’s publicly-traded French subsidiary, is one of the leading homebuilders in France. In fiscal 2005, the Company delivered homes to 37,140 families in the United States and France. KB Home also offers complete mortgage services through Countrywide KB Home Loans, a joint venture with Countrywide Financial Corporation. Founded in 1957, and ranked the #1 homebuilder in Fortune Magazine’s 2006 list of America’s Most Admired Companies, KB Home is a Fortune 500 company listed on the New York Stock Exchange under the ticker symbol “KBH.” For more information about any of KB Home’s new home communities, call 888-KB-HOMES (888-KB-CASAS) or visit <http://www.kbhome.com> (<http://www.kbcasa.com>).

Certain matters discussed in this press release, including any statements concerning our future business and prospects, and our future actions and their expected results, are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995. These forward-looking statements are not guarantees of future performance and are subject to risks,

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uncertainties, assumptions and other factors that could cause actual results to be materially different. See our Quarterly Reports on Form 10-Q for the quarters ended February 28, 2006 and May 31, 2006, Annual Report on Form 10-K and Annual Report to Shareholders for the year ended November 30, 2005 and our other public filings with the Securities and Exchange Commission for a further discussion of these and other risks and uncertainties applicable to our business. We do not have a specific policy or intent of updating or revising forward-looking statements.

CONTACT: KB Home  
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SOURCE: KB Home