



ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Felecia A. Rotellini
Superintendent of Financial Institutions

Janice K. Brewer
Governor

June 24, 2009

Re: Landmarc Receivership
State v. Landmarc Capital & Investment Company, Maricopa County Superior
Court, cause number CV 2009-020595.

Dear Landmarc Lender:

As the Superintendent of the Arizona Department of Financial Institutions, I have been appointed by the Maricopa County Superior Court as Receiver of Landmarc Capital & Investment Company ("Landmarc") with exclusive authority over the assets and the business and affairs of Landmarc. Enclosed is a copy of the *Order Appointing Receiver* issued by the court today. I have appointed Lawrence J. Warfield as my Special Deputy Receiver to carry out my duties authority under the enclosed order. Mr. Warfield's work will be supervised by the Court appointed Deputy Receiver, Thomas J. Giallanza, of my office. Mr. Giallanza can be reached at (602) 771-2778.

Until further notice, all payments by Landmarc have been suspended. If you were receiving payments from Landmarc please be patient with my staff as we attempt to deal with the myriad of issues facing us. The Superintendent has determined that Landmarc is insolvent and for this reason it is necessary to suspend payments until we can determine the appropriate disposition of Landmarc's assets. Some lenders may have security interests that we need to address. As soon as we have made progress on these issues you will be contacted. If your mailing address changes, please notify Mr. Warfield at the Landmarc address. As you might imagine, we have a number of issues that must be dealt with in the first several weeks of this receivership. If you do have an urgent question, please contact Mr. Warfield or his assistant, Candice Jones, at Landmarc's main telephone number.

Sincerely,

Felecia A. Rotellini, Superintendent
Receiver of Landmarc Capital and
Investment Company
Enclosure

COPY FOR CERTIFICATION

FILED
6/24/09 9:22 am
MICHAEL K. JEANES, Clerk
By A. Marquis
A. Marquis, Deputy

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CERTIFIED COPY

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7 Attorneys for the Plaintiff

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR MARICOPA COUNTY

10 STATE OF ARIZONA ex rel. FELECIA)
11 A. ROTELLINI, Superintendent of the)
Arizona Department of Financial)
12 Institutions,)

13 Plaintiff,

14 v.

15 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)

16 Defendant.)

CV 2009-020595

Cause No.

ORDER APPOINTING RECEIVER AND
ORDER TO SHOW CAUSE

17 The Court having considered the *Verified Complaint and Application for*
18 *Appointment of Receiver, Injunction and Order to Show Cause and Attorney's Certificate*
19 *and the Memorandum Of Points and Authorities in Support of The Superintendent's*
20 *Application for Appointment of a Receiver, Temporary Restraining Order, and Injunction*
21 and exhibits thereto filed by the Plaintiff; the Court finds that that the appointment without
notice of the Superintendent as Receiver of Landmarc Capital & Investment Company

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1 ("Landmarc") and ancillary injunctive relief provided herein is necessary to prevent
2 immediate and irreparable injury, loss and damage to Landmarc and to the creditors,
3 borrowers and lenders who have done business with Landmarc; there being sufficient cause
4 to enter an order without notice appointing the Superintendent of the Arizona Department of
5 Financial Institutions as Receiver of Landmarc pending a hearing in this matter; and it
6 appearing to the Court that Defendant is insolvent and has engaged in and is engaging in
7 conduct in violation of the laws regulating mortgage bankers, including violations of the
8 following mortgage banker statutes and rules, including:

- 9 a. A.R.S. §6-946(A) by failing to keep and maintain at all times correct
10 and complete records clearly reflecting the financial condition of Landmarc.
- 11 b. A.R.S. §6-947(L) by making misrepresentations and concealing
12 essential or material facts in the course of the mortgage banker business, as alleged in
13 Plaintiff's verified Complaint;
- 14 c. A.R.S. §6-945(A)(3) by failing to furnish information, records and
15 reports required by the Superintendent for examination purposes;
- 16 d. A.R.S. §6-943(D)(3) by failing to have a net worth of not less than
17 \$250,000 and by being insolvent;
- 18 e. A.R.S. §6-947(M) by failing to truthfully account for the monies
19 belonging to a party to a mortgage loan or mortgage banking loan transaction or
20 failed to disburse monies in accordance with its agreements;
- 21

1 f. A.R.S. §6-946(B) by failing to maintain its records and prepare its
2 financial statements in accordance with Generally Accepted Accounting Principles;

3 It appears to this Court that if a Receiver is not appointed without notice, Landmarc
4 or others may transfer or otherwise dispose of assets and destroy books and records, thereby
5 rendering recovery and preservation of such assets, fiduciary funds and records difficult or
6 impossible. It also appears Landmarc may convert, transfer, liquidate, or dissipate such
7 assets and fiduciary funds all to the irreparable injury, loss or damage to lenders, borrowers,
8 investors and the State of Arizona.

9 NOW THEREFORE IT IS HEREBY ORDERED that this Court takes exclusive
10 jurisdiction of Landmarc Capital & Investment Company ("Landmarc"), and all of its assets,
11 real or personal, tangible and intangible, of whatever kind and description and wherever
12 located ("Receivership Assets"), and Felecia A. Rotellini, the Superintendent of the Arizona
13 Department of Financial Institutions ("Receiver"), is appointed Receiver of Landmarc
14 Capital & Investment Company and all Receivership Assets. The Receiver shall be the agent
15 of the Court, shall be accountable directly to this Court and may designate a Special Deputy
16 Receiver to carry out her duties and responsibilities under this order.

17 IT IS FURTHER ORDERED that pursuant to A.R.S. §§6-131(A) and 6-131.01(A),
18 no bond shall be required of the Superintendent for acting as Receiver.

19 IT IS FURTHER ORDERED that Thomas J. Giallanza, is appointed Deputy
20 Receiver, with full authority to act for the Receiver in carrying out the Receiver's duties and
21 responsibilities under this order.

1 **IT IS FURTHER ORDERED** that the Receiver is directed and authorized to:

2 1. Assume full control of Landmarc by removing, as the Receiver deems
3 necessary or advisable, any director, officer, independent contractor, employee, or agent of
4 any of Landmarc, from control of, management of, or participation in, the affairs of
5 Landmarc.

6 2. Take exclusive custody, control and possession of all Receivership Assets and
7 all documents and other records belonging to or pertaining to Landmarc ("Receivership
8 Records"). The Receiver shall have full power to divert mail and to sue for, collect, receive,
9 take in possession, hold, and manage all assets and document of Landmarc and other persons
10 or entities whose interests are now held by or under the direction, possession, custody, or
11 control of Landmarc.

12 3. Enter and take all steps necessary to secure any premises, wherever located or
13 situated, in order to take possession, custody or control of, or to identify the location or
14 existence of any Receivership Assets or Receivership Records including without limitation
15 the offices of Landmarc located at 4110 N. Scottsdale Rd, Suite 330, Scottsdale, Arizona.
16 Such steps may include, but are not limited to, the following as the Receiver deems necessary
17 or advisable: (a) serving and filing this Order; (b) completing a written inventory of all assets
18 of Landmarc; (c) obtaining pertinent information from all employees and other agents of
19 Landmarc, including, but not limited to, the name, home address, social security number, job
20 description, method of compensation, and all accrued and unpaid commissions and
21 compensation of each such employee or agent; (d) video taping all portions of the location;

1 (e) securing the location by changing the locks or other security devices and disconnecting
2 any computer modems or other means of access to the computer or other records maintained
3 at that location; or (f) requiring any persons present on the premises at the time this Order is
4 served to leave the premises, to provide the Receiver with proof of identification, or to
5 demonstrate to the satisfaction of the Receiver that such persons are not removing from the
6 premises Receivership Assets or Receivership Records.

7 4. To the extent necessary to maintain the peace and upon request of the Receiver,
8 any peace officer of this State is authorized and directed to assist the Receiver in order to
9 carry out his duties and to take possession, custody or control of Receivership Assets and
10 Receivership Records, including but not limited to the Receiver's right and authority to (a)
11 enter into and secure any premises, property or real estate, wherever located or situated, in
12 order to take possession, custody or control of or to identify the location or existence of any
13 Receivership Assets and Receivership Records, (b) take actual or constructive possession,
14 custody and control of any Receivership Assets or Receivership Records, (c) secure or
15 remove the personal property of any third party that is located in or on any premises or real
16 estate constituting a Receivership Asset, (4) remove any person or that person's property from
17 any premises or real estate constituting a Receivership Asset whose claim of a right to have
18 property located at or to be on or possess such premises or real estate is not evidenced by a
19 written lease agreement with the owner of such premises or real estate and (d) remove any
20 person from any premises or real estate constituting a receivership asset that attempts to
21

1 interfere with the Receiver, his attorneys or agents in the performance of their duties as
2 Receiver.

3 5. Conserve, hold, and manage all assets of Landmarc, and perform all acts
4 necessary or advisable to preserve the value of those assets in order to prevent any irreparable
5 loss, damage, or injury to consumers or creditors of Landmarc, including, but not limited to,
6 obtaining an accounting of the assets and preventing transfer, withdrawal, or misapplication
7 of assets.

8 6. Enter into contracts and purchase insurance as advisable or necessary.

9 7. Prevent the inequitable distribution of assets and determine, adjust, and protect
10 the interests of consumers and creditors who have transacted business with Landmarc.

11 8. Manage and administer the business of Landmarc until further order of this
12 Court by performing all incidental acts that the Receiver deems to be advisable or necessary,
13 which includes retaining, hiring, or dismissing any employees, independent contractors, or
14 agents.

15 9. Choose, engage, and employ attorneys, accountants, appraisers, and other
16 independent contractors and technical specialists, as the Receiver deems advisable or
17 necessary in the performance of duties and responsibilities under the authority granted by this
18 Order.

19 10. Make payments and disbursements from the Receivership Assets that are
20 necessary or advisable for carrying out the directions of, or exercising the authority granted
21 by, this Order. The Receiver shall apply to the Court for prior approval of any payment of

1 any debt or obligation incurred by Landmarc prior to the date of entry of this Order, except
2 payments that the Receiver deems necessary or advisable to secure assets of Landmarc, such
3 as rental payments.

4 11. Institute, compromise, adjust, appear in, intervene in, or become party to such
5 actions or proceedings in state, federal or foreign courts that the Receiver deems necessary
6 and advisable to preserve or recover the assets of Landmarc, or that the Receiver deems
7 necessary and advisable to carry out the Receiver's mandate under this Order.

8 12. Defend, compromise, adjust, or otherwise dispose of any or all actions or
9 proceedings instituted in the past or in the future against the Receiver in his role as Receiver,
10 or against Landmarc that the Receiver deems necessary and advisable to preserve the assets
11 of Landmarc or that the Receiver deems necessary and advisable to carry out the Receiver's
12 mandate under this Order.

13 13. Continue to conduct the business of Landmarc in such a manner, to such extent,
14 and for such duration as the Receiver may in good faith deem to be necessary or appropriate
15 to operate the business profitably and lawfully.

16 14. Issue subpoenas to obtain documents and records pertaining to the receivership,
17 and conduct discovery in this action on behalf of the Receivership Estate.

18 15. Open one or more bank accounts as designated depositories for funds of
19 Landmarc. The Receiver shall deposit all funds of Landmarc in such a designated account
20 and shall make all payments and disbursements from the receivership estate from such an
21 account.

1 16. Maintain accurate records of all receipts and expenditures that he makes as
2 Receiver.

3 17. File with this Court and serve upon the parties, within sixty (60) days after the
4 entry of this Order, a preliminary report setting out the identity, location and value of the
5 Receivership Assets, and any liabilities pertaining thereto, and a recommendation to the Court
6 whether, in the Receiver's opinion, based upon her initial investigation, claims against
7 Defendant, should be adjudged in the Bankruptcy Court.

8 18. Cooperate with reasonable requests for information or assistance from any state
9 or federal law enforcement agency.

10 IT IS FURTHER ORDERED that the Receiver shall have all powers, authorities,
11 rights and privileges heretofore possessed by the officers and directors of Landmarc under
12 applicable state and federal law and by the By-Laws and Articles of Incorporation of said
13 corporation, in addition to all powers and authority conferred upon the Receiver by this order
14 and the provisions of A.R.S. §6-131. The authority of the directors, officers, employees and
15 agents of Landmarc to act on behalf of Landmarc is hereby suspended pending further order
16 of the Court. Such persons shall have no authority with respect to Landmarc's operations or
17 assets, except as may hereafter be expressly granted by the Receiver. The Receiver shall
18 assume and control the operation of Landmarc and shall have exclusive authority to pursue
19 any rights or claims of Landmarc, including without limitation the authority to file a petition
20 on behalf of Landmarc for protection under the United States Bankruptcy Act or bring suit on
21 any causes of action which Landmarc has against any parties liable to Landmarc.

1 IT IS FURTHER ORDERED that:

2 1. Immediately upon receiving notice of this Order, or within such period as may
3 be permitted by the Receiver, the officers, directors and employees of Landmarc and any
4 other person or entity receiving notice of this order shall transfer or deliver to the Receiver
5 possession, custody, and control of all Receivership Assets, all Receivership Records, and all
6 assets belonging to members of the public now held or controlled by Landmarc.

7 2. The officers, directors and employees of Landmarc and any other person or
8 entity receiving notice of this order shall fully cooperate with and assist the Receiver, which
9 shall include, but not be limited to, providing information to the Receiver that the Receiver
10 deems necessary to exercising the authority and discharging the responsibilities of the
11 Receiver under this Order; providing any password required to access any computer,
12 electronic file, or telephonic data in any medium; advising all persons who owe money to
13 Landmarc that all debts should be paid directly to the Receiver; and provide to the Receiver
14 all keys and codes necessary to gain or to secure access to any Receivership Assets or
15 Receivership Records.

16 3. All banks, broker-dealers, savings and loans, escrow agents, title companies,
17 commodity trading companies, or other financial institutions shall cooperate with all
18 reasonable requests of the Receiver relating to implementation of this Order, including
19 transferring funds at his direction and producing records related to the assets of Landmarc.

20 IT IS FURTHER ORDERED that the officers, directors and employees are hereby
21 restrained and enjoined from directly or indirectly:

- 1 1. Transacting any of the business of Landmarc;
- 2 2. Destroying, secreting, defacing, transferring, or otherwise altering or disposing
- 3 of any documents of Landmarc, including, but not limited to, books, records, accounts,
- 4 writings, drawings, graphs, charts, photographs, audio and video recordings, computer
- 5 records, and other data compilations, electronically-stored records, or any other papers of any
- 6 kind or nature;
- 7 3. Transferring, receiving, altering, selling, encumbering, pledging, assigning,
- 8 liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or
- 9 custody of, or in which an interest is held or claimed by, Landmarc, or the Receiver;
- 10 4. Excusing debts owed to Landmarc;
- 11 5. Failing to notify the Receiver of any asset, including accounts, of a receivership
- 12 defendant held in any name other than the name of the receivership defendant, or by any
- 13 person or entity other than the receivership defendant, or failing to provide any assistance or
- 14 information requested by the Receiver in connection with obtaining possession, custody, or
- 15 control of such assets;
- 16 6. Doing any act or refraining from any act whatsoever to interfere with the
- 17 Receiver's taking custody, control, possession, or managing of the assets or documents
- 18 subject to this receivership; or to harass or interfere with the Receiver in any way; or to
- 19 interfere in any manner with the exclusive jurisdiction of this Court over the assets or
- 20 documents of Landmarc; or to refuse to cooperate with the Receiver or the Receiver's duly
- 21 authorized agents in the exercise of their duties or authority under any order of this Court; or

1 7. Filing, or causing to be filed, a petition on behalf of Landmarc for relief under
2 the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, without prior permission from this
3 Court.

4 IT IS FURTHER ORDERED that, except by leave of this Court, during pendency of
5 the receivership ordered herein, the Defendant and all other persons and entities who have
6 actual notice of this order are hereby stayed from taking any action to establish or enforce any
7 claim, right, or interest for, against, on behalf of, in, or in the name of, the Defendant, any of
8 their subsidiaries, affiliates, partnerships, assets, documents, or the Receiver or the Receiver's
9 duly authorized agents acting in their capacities as such, including, but not limited to, the
10 following actions:

11 1. Commencing, prosecuting, continuing, entering, or enforcing any suit or
12 proceeding, except as such actions may be filed to toll any applicable statute of limitations;

13 2. Accelerating the due date of any obligation or claimed obligation; filing or
14 enforcing any lien; taking or attempting to take possession, custody or control of any asset;
15 attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts
16 are part of a judicial proceeding, are acts of self-help, or otherwise;

17 3. Executing, issuing, serving, or causing the execution, issuance or service of,
18 any legal process, including, but not limited; attachments, garnishments, subpoenas, writs of
19 replevin, writs of execution, or any other form of process whether specified in this Order or
20 not; or
21

1 4. Doing any thing whatsoever to interfere with the Receiver taking custody,
2 control, possession, or management of the assets or documents subject to this Receivership,
3 or to harass or interfere with the Receiver in any way, or to interfere in any manner with the
4 exclusive jurisdiction of this Court over the assets or documents of the Receivership
5 Defendants.

6 IT IS FURTHER ORDERED that Defendant shall forthwith give actual notice of this
7 Order to each of said Defendant's officers, directors, shareholders, agents, servants, trustees,
8 attorneys, employees, real estate agents, accountants and to each person in active concert or
9 participation with Defendant.

10 IT IS FURTHER ORDERED that Defendant appear before this Court in the
11 *Old Courthouse, Judge Robert Oberbillig*
courtroom of division 18 at the hour of 9:30 o'clock A.M. on the 30th
202
12 day of June, 2009, then and there to show cause why the appointment of the
13 Superintendent as Receiver of Landmarc should not be made permanent and why the other
14 relief prayed for in the Plaintiff's *Verified Complaint and Application for Appointment of*
15 *Receiver, Injunction and Order to Show Cause* should not be granted.

16 IT IS FURTHER ORDERED that Plaintiff shall forthwith file this Order with the
17 Clerk of the Court and personally deliver a copy of this Order on the statutory agent of the
18 Defendant not less than five (5) days prior to the hearing set above shall deliver a copy of
19 this Order on all other persons who Plaintiff has reason to believe may possess any of the
20 records or property covered by this Order or may be otherwise affected by this Order.

21


1 IT IS FURTHER ORDERED that unless extended by Order of this Court or other
2 Court, this Order shall expire on the tenth day following the date of entry.

3 DATED:

6-24-09

4 TIME:

9:20 AM



Judge of the Superior Court

ROBERT H. OBERBILLIG

0309-012(85528)

Guttilla Murphy Anderson, P.C.
4150 West Northern Ave.
Phoenix, Arizona 85051
(623) 937-2795

The foregoing instrument is a full, true
and correct copy of the original document.

Attest: June 24, 2009

MICHAEL K. JEANES, Clerk of the
Superior Court of the State of Arizona, in
and for the County of Maricopa.

By A. Margus Deputy