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6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 STATE OF ARIZONA ex rel. THOMAS)
L. WOOD, Superintendent of the)
Arizona Department of Financial)
9 Institutions,)

10 Plaintiff,)

v.)

11 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)

12 Defendant.)

Cause No. CV2009-020595

PETITION NO. 4

PETITION FOR ORDER APPROVING
PROCEDURES FOR DISPOSING OF
CERTAIN LOANS WHERE OWNERSHIP
BY THIRD PARTIES IS NOT IN DOUBT

(Assigned to Judge Sam Myers)

14 Thomas L. Wood, the Superintendent of the Arizona Department of Financial
15 Institutions and court appointed Receiver of Landmarc Capital & Investment Company,
16 respectfully petitions the Court as follows:

17 1. On June 24, 2009, this Court entered its, *Order Appointing Receiver and Order*
18 *to Show Cause* which appointed the Superintendent of the Arizona Department of Financial
19 Institutions as Receiver of Landmarc Capital & Investment Company. On July 10, 2009, this
20 Court entered its *Order Appointing Permanent Receiver and Injunction*. (“Receivership
21 Order”).

1 **Loans Held For Servicing**

2 2. Landmarc holds the file and has servicing responsibility for approximately 344
3 loans.¹ A chart showing the breakdown of these loans by aging status is attached as Exhibit
4 “A.” In most cases, various investors have acquired an interest in these loans through a
5 Participation Agreement or a Warehouse Credit Facility. Since Landmarc is insolvent and
6 will ultimately be liquidated, the Receiver has concluded that where possible loans that are
7 being serviced by Landmarc and in which the Receiver is not aware of clouds on the title of
8 the beneficial owners or other potential litigation claims by Landmarc against the beneficial
9 owners, should be transferred out of the receivership to qualified third party loan servicers or
10 to the beneficial owners of the loans. To this end the Receiver established a loan review
11 committee of former Landmarc employees and qualified title and legal personnel to review
12 all of the loans held for servicing by Landmarc. That review is substantially completed. To
13 date the Receiver has identified a total of 50 loans in which the records of Landmarc and a
14 limited title check does not disclose clouds or defects in the title of the beneficial owners and
15 they appear to meet the other requirements set forth in paragraph 8 below. The Receiver
16 seeks in this petition to obtain authority to transfer out of the receivership without the
17 necessity of further orders of the Court these 50 loans and such additional loans that meet the
18 requirements set forth in paragraph 8 below.

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¹ Approximately 93 of these loans have already resulted in a foreclosure of the lien under the deed of trust and resulted in Landmarc acquiring title or control of the underlying security. These “REO” loans will be addressed in a subsequent petition.

1 3. For those loans that do not meet the criteria described below, the Receiver will
2 file a petition seeking a court order resolving disputes or clouds on the title of the Beneficial
3 Owners or the extent or nature of any claims of the Receiver.

4 4. The decision to release loans on the criteria set forth below will be based in part
5 on the assumption that the loan funding ledger and trust account data in the computerized
6 database of Landmarc is reliable in so far as it shows that certain persons invested identified
7 amounts to fund certain loans made by Landmarc and that the receipts and disbursements
8 from the Trust Account were proper. (See the one issue with the Trust Account identified by
9 the Receiver and discussed below in paragraphs 5 through 7). An accounting of these
10 transactions will be provided to each Beneficial Owner before the transfer to a new servicing
11 agent is made under the order requested herein. The Receiver has not audited these
12 accountings or ascertained the accuracy of the information contained therein, although the
13 information has been compared and reconciled to the recorded assignments of beneficial
14 interest. In the judgment of the Receiver, to complete an audit of Landmarc's financial data
15 would take many months and resources which are not available at this time to the estate. To
16 protect the estate and the general creditors, the transfer agreement described in paragraph 12
17 below will require that the Beneficial Owners indemnify the estate should it be determined
18 later that the estate incurred a loss because of the transfer.

19 **Trust Account**

20 5. A preliminary analysis of the Trust Account maintained by Landmarc pursuant
21 to A.R.S. §6-834(A) shows that the account was out of balance at the time of the receivership

1 by approximately \$27,000. The account was out of balance due to Landmarc's practice of
2 making distributions on a loan even though there were not sufficient funds held in trust for
3 the benefit of that loan. These overdraws were in some cases remedied when another loan
4 payment was received. However at any given point in time, as many as 40 loans had negative
5 balances. These negative loan accounts in effect have borrowed money from other loan
6 accounts. The Receiver estimates that the trust shortage is only about 3.6% of the positive
7 account balances held in trust.

8 6. The deficiency attributed to the loans that are current is expected to be
9 remedied by the additional loan payments received in trust as the Receiver will no longer
10 permit overdraws on an account. A portion of the deficiency attributed to owned real estate
11 (REO) will be remedied through the receipt of rental income or the proceeds generated from
12 the sale of the REO. The remaining deficiencies for loans in default or foreclosure may not
13 be remedied for some time.

14 7. The Receiver considered recommending that 3.6% of each positive account
15 balance be held back until this trust shortage can be remedied by obtaining reimbursement
16 from these accounts with negative balances or by recovery from the Escrow Recovery Fund
17 (A.R.S. §6-847.01), or by other means. After further consideration, however, the Receiver
18 feels that just the expense of accounting for this holdback arrangement could end up costing
19 the estate as much as the amount of the deficit. Accordingly, the Receiver proposes to fund
20 the trust shortage with Landmarc's general funds until such time as recoveries to the fund can
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1 be effectuated. This will permit the transfer of loans to new servicing agents as outlined
2 herein without further delay or expense to the estate and its investors and creditors.

3 **Conditions for Release of Loans to New Servicing Agent Without Further Order**

4 8. The Receiver has concluded that all loans for which Landmarc is acting as the
5 servicing agent and which meet all of the following criteria should be disposed of as provided
6 herein:

7 a. All of the beneficial owners of the loan must be evidenced by duly
8 recorded Deeds of Trust identifying the beneficial owners or by duly recorded
9 assignments of the beneficial interests under the Deed of Trust and Promissory Note or
10 assignments of a participation interest under the Deed of Trust and Promissory Note
11 (hereafter referred to as the “Beneficial Owners”).

12 b. All Beneficial Owners must agree on the terms of the transfer and the
13 identity of the new servicing agent.

14 c. The Receiver has no actual knowledge of a failure or inadequacy of
15 consideration by the Beneficial Owners or the existence of an adverse claim of
16 ownership or security interest in the loan or promissory note.

17 d. A trustee’s sale foreclosing the lien under the Deed of Trust on the
18 underlying security for the loan has not taken place.

19 e. The Receiver has no actual knowledge of claims by Landmarc against
20 any of the Beneficial Owners.

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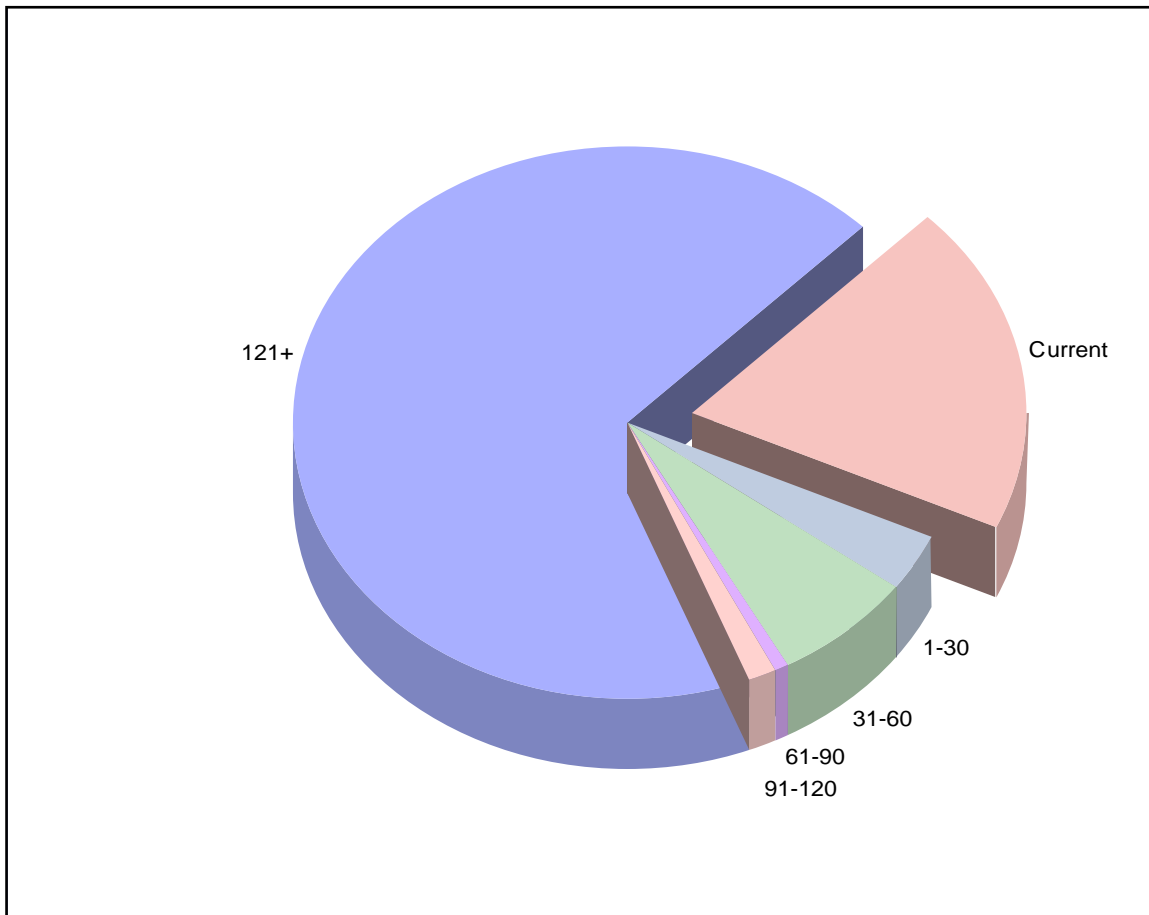
1 9. The Receiver shall disburse any accumulated payments under the loan held in
2 Landmarc's trust account to the Beneficial Owners in proportion to their respective
3 ownership, after obtaining satisfactory arrangements for the reimbursement of Landmarc for
4 any unpaid servicing fees or reimbursable expenses to which Landmarc may be entitled.

5 10. If Landmarc has no interest in the loan (other than for unpaid and earned
6 servicing fees or reimbursable expenses) the Receiver shall, upon receipt of the agreement
7 described in paragraph 12 below, deliver the Loan Documents to (a) the sole Beneficial
8 Owner for servicing by that owner, (b) to an entity unanimously designated by all Beneficial
9 Owners to which beneficial ownership and servicing is transferred, or (c) to a new servicing
10 agent unanimously designated by all Beneficial Owners, which servicing agent shall be a
11 person licensed as an escrow agent under A.R.S. §6-801 *et seq* or an attorney licensed to
12 practice law in Arizona and exempt from licensing as an escrow agent under A.R.S. §6-
13 811(1).

14 11. If Landmarc has a interest in the loan, including but not limited to an interest to
15 a portion of the interest payments or a fractional participation interest in the loan, the
16 Receiver shall, upon receipt of the agreement described in paragraph 12 below, obtain new
17 escrow instructions executed by all Beneficial Owners and deliver those instructions and all
18 Loan Documents to a new servicing agent unanimously designated by all Beneficial Owners,
19 which servicing agent shall be a person licensed as an escrow agent under A.R.S. §6-801 *et*
20 *seq* or an attorney licensed to practice law in Arizona and exempt from licensing as an escrow
21 agent under A.R.S. §6-811(1).

Aging of Landmarc Loans

As of 9/7/09



Status	Amount	Percentage	# Loans
Current	\$18,926,558	19.30%	134
1-30	\$3,235,684	3.30%	27
31-60	\$6,838,318	6.97%	22
61-90	\$643,997	0.66%	6
91-120	\$1,349,804	1.38%	7
121+	\$67,060,273	68.39%	148
Totals	\$98,054,634	100.00%	344

Exhibit A