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*Proposed Attorneys for The Official Committee of Unsecured  
 Creditors of LandAmerica 1031 Exchange Services, Inc.*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
LandAmerica Financial Group, Inc., <u>et al.</u> ,	:	Case No. 08-35994
	:	
Debtors.	:	Jointly Administered
	X	

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED  
 CREDITORS OF LANDAMERICA 1031 EXCHANGE SERVICES, INC. TO THE  
 DEBTOR’S APPLICATION PURSUANT TO 11 U.S.C. §§ 105(a) AND 363  
 REQUESTING AUTHORITY TO ENTER INTO AGREEMENT WITH ZOLFO  
 COOPER AND JONATHAN A. MITCHELL TO, INTER ALIA, SERVE AS CHIEF  
RESTRUCTURING OFFICER NUNC PRO TUNC TO THE PETITION DATE**

The Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the “LES Committee”), by and through its proposed undersigned counsel, files

this limited objection (the “Limited Objection”) to the Debtors’ Application Pursuant to 11 U.S.C. §§ 105(a) and 363 Requesting Authority to Enter Into Agreement With Zolfo Cooper and Jonathan A. Mitchell to, *Inter Alia*, Serve as Chief Restructuring Officer *Nunc Pro Tunc* to the Petition Date (the “Application”) filed by LandAmerica Financial Group, Inc. (“LFG”). In support of the Limited Objection, the LES Committee respectfully represents as follows:

## **I. BACKGROUND**

1. On November 26, 2008, LFG and LandAmerica 1031 Exchange Services, Inc. (“LES,” and collectively with LFG, the “Debtors”) filed their respective petitions for relief in the Bankruptcy Court for the Eastern District of Virginia.<sup>1</sup>

2. That same day, LFG filed its Motion for an Order (A) Scheduling Expedited Sale Hearing to Consider Approval of Sale of Debtor’s Stock in Certain Underwriting Subsidiaries; (B) Approving Related Stock Purchase Agreement; (C) Approving Form and Manner of Notice of Sale Hearing; and (D) Granting Related Relief (the “Sale Motion”). The Sale Motion seeks the expedited sale of the companies (the “Underwriting Companies”)<sup>2</sup> that produce substantially all of LFG’s revenue through a private sale to Fidelity National Title Insurance Company and Chicago Title Insurance Company (collectively, the “Buyers”). The Sale Motion contemplates a purchase price of: (i) \$298 million in cash; and (ii) the assumption by the Buyers of (a) \$150 million in alleged intercompany liabilities owed by LFG and its non-debtor subsidiaries to the Underwriting Companies, (b) approximately \$45 million in deferred compensation liabilities and other employee-related liabilities, and (c) LFG’s obligations under a number of contracts, licenses, and leases that provide services to the Underwriting Companies.

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<sup>1</sup> On November 26, 2008, the Court entered an order administratively consolidating the Debtors’ cases.

3. On December 5, 2008, LFG filed the Application, whereby LFG requested Court authority to appoint Jonathan A. Mitchell of Zolfo Cooper Management, LLC (“Zolfo Cooper”) as Chief Restructuring Officer of LFG. The Application proposes that Zolfo Cooper’s compensation consist both of a standard hourly rate and a contingent fee (the “Contingent Fee”). Under the Contingent Fee, Zolfo Cooper will receive the sum of: (i) not less than \$1 million for proceeds of a sale up to \$50 million, plus; (ii) 1.5% of the proceeds between \$50 million to \$100 million, plus; (iii) 1% of the proceeds over \$100 million.

4. On December 10, 2008, LFG filed an amended version of the Application, which, *inter alia*, altered the calculation of the Contingent Fee. After the amendments, Zolfo Cooper will now receive for the Contingent Fee the sum of: (i) 2% of the proceeds of a sale up to \$50 million, but not less than \$500,000; (ii) 1.5% of the proceeds between \$50 million to \$100 million, plus; (iii) 1% of the proceeds over \$100 million.

## **II. LIMITED OBJECTION**

### **A. Zolfo Cooper Should Not Be Compensated for Assets Sold Pursuant to the Sale Motion**

5. The LES Committee objects to the Application to the extent the Contingent Fee applies to assets proposed to be sold pursuant to the Sale Motion. LFG seeks authority to compensate Zolfo Cooper pursuant to Bankruptcy Code section 363. The Debtors assert that making the proposed payment is an exercise of the LFG’s good business judgment. *See* Application at ¶ 14. The Bankruptcy Code generally discourages the payment of fees for services which fail to benefit the estate. *See* 11 U.S.C. §§ 330(a)(4)(A), 502(b)(4); *In re Bowe*, 365 B.R. 585, 588 (Bankr. D. Md. 2007) (stating that the Bankruptcy Code does not allow

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<sup>2</sup> The Underwriting Companies consist of Commonwealth Land Title Insurance Company, United Capital Title Insurance Company, and Lawyers Title Insurance Corporation.

payment out of the estate for services which do not benefit the estate). *See In re Mattress Discounters Corp.*, No. 08-21642-TJC, 2008 WL 4542989, at \*5 (Bankr. D. Md. Oct. 10, 2008); *see also In re U.S. Airways Group, Inc.*, 287 B.R. 643, 645-46 (Bankr. E.D. Va. 2002) (in applying the business judgment rule, the court should ensure that creditors are not being short-changed).

6. Specifically, the Application provides that the Contingent Fee is “based upon the cash proceeds generated from the sale of all or a portion of the Debtor’s assets.” *See* Application at ¶ 9. The Application provides that the Contingent Fee shall not apply to the sale of LFG’s interest in Centennial Bank and the “regulated insurance subsidiaries.” *See id.* The term “regulated insurance subsidiaries,” however, is not a defined term. Therefore, it is unclear whether the Contingent Fee is proposed to apply to assets sold under the Sale Motion.

7. Furthermore, the payment of a set contingent fee for proceeds up to \$50 million is simply not reasonable. The Application provides that LFG shall pay Zolfo Cooper two percent (2%) of the proceeds, but not less than \$500,000 for proceeds up to \$50 million. *Id.* at ¶ 10. The guaranteed fee of \$500,000 is unreasonable because it may result in Zolfo Cooper receiving amounts disproportionately large compared to the size of the cash proceeds. A set contingent fee that does not allow for commensurate compensation based on the size of the cash proceeds would result in an unnecessary windfall for Zolfo Cooper.

8. LFG has provided no evidence that Zolfo Cooper was instrumental in the post-petition Sale Motion process. To the contrary, the Sale Motion was filed on the Petition Date, and the Committee is unaware of any post-petition services provided by Zolfo Cooper regarding the Sale Motion. Accordingly, compensating Zolfo Cooper would violate the spirit of the Bankruptcy Code, be a waste of corporate assets, and be wholly inequitable. Therefore, the

Application should not be approved to the extent it proposes to compensate Zolfo Cooper for assets sold pursuant to the Sale Motion.

**B. The LES Committee Does Not Consent to Zolfo Cooper Being Compensated for the Sale of Any Assets in Which LES Has Interests**

9. The LES Committee further objects to the extent that Zolfo Cooper's retention could be imparted to LES. The Application fails to clearly describe the assets on which Zolfo Cooper's compensation is based. The Debtors' organization constitutes a semi-permeable membrane with LES having interests in certain assets of LFG. The LES Committee is concerned that although only LFG is seeking to retain Zolfo Cooper, Zolfo Cooper may ultimately seek compensation for services allegedly provided to LES. If this encroachment were to happen, LES should have the opportunity to object both to the terms of Zolfo Cooper's retention and its fees.

10. As further protection, the LES Committee should also be served notice of the Monthly Reports (as defined in the Application). Because Zolfo Cooper is being retained pursuant to Bankruptcy Code section 363, it will not be required to submit fee applications to the Court. The Application requires that Zolfo Cooper serve Monthly Reports on certain parties, who then have the opportunity to object to Zolfo Cooper's proposed compensation. *See* Application at ¶ 11. The LES Committee is not one of the listed recipients of the Monthly Reports. The LES Committee should receive notice such that it can ensure Zolfo Cooper is not seeking to be compensated for work allegedly provided to LES.

**III. WAIVER OF MEMORANDUM OF LAW**

11. The legal authority supporting the relief requested by this Limited Objection has been cited herein. Accordingly, the LES Committee respectfully requests that the Court waive the requirement in Rule 9013-1(H)(2) of the Local Rules of the United States Bankruptcy Court

for the Eastern District of Virginia that a response in opposition be accompanied by a memorandum of law.

#### IV. CONCLUSION

In light of the foregoing, the LES Committee respectfully requests that the Court: (i) deny the relief requested in the Application; and (ii) grant the LES Committee such other and further relief as the Court deems appropriate.

Dated: Richmond, Virginia  
December 12, 2008

/s/ Mary A. House

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*Proposed Attorneys for The Official Committee of  
Unsecured Creditors of LandAmerica 1031  
Exchange Services, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing *Limited Objection of the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. to the Debtor's Application Pursuant to 11 U.S.C. §§ 105(a) and 363 Requesting Authority to Enter Into Agreement With Zolfo Cooper and Jonathan A. Mitchell to, Inter Alia, Serve as Chief Restructuring Officer Nunc Pro Tunc to the Petition Date* has been served: (i) via United States mail, first class, postage prepaid on the parties listed on the attached service list; and (ii) via email on the parties listed below on this the 12<sup>th</sup> day of December, 2008.

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