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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	

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
LANDAMERICA 1031 EXCHANGE SERVICES, INC. TO MOTION BY KENDALL
SQUARE, LLC, CLA REAL ESTATE INVESTMENTS, AND PC REAL ESTATE
INVESTMENTS FOR TURNOVER AND ASSIGNMENT OF NOTE**

COMES NOW the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the "LES Committee") and files this objection (the "Objection") to the

Motion for Turnover and Assignment of Note (the “Motion”) filed by Kendall Square, LLC (“Kendall”), CLA Real Estate Investments (“CLA”), and PC Real Estate Investors, LLC (“PC,” and collectively with Kendall and CLA, the “Exchangers”). In support of the Objection, the LES Committee represents as follows:

I. PRELIMINARY STATEMENT

1. By the Motion, the Exchangers request that LandAmerica 1031 Exchange Services, Inc. (“LES”) divest itself of funds, namely the Note and the Deed of Trust (both as defined below), which currently fall within the ambit of the LES estate. The relief requested by the Motion is no different than a request of an exchanger to remove cash from the LES estate. This would result in the improper diversion of estate monies. Accordingly, the Motion must be denied.

II. JURISDICTION

2. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This Court has authority to grant the relief requested pursuant to sections 541 and 105 of title 11 of the United States Code (the “Bankruptcy Code”).

III. BACKGROUND

3. On November 26, 2008, LandAmerica Financial Group, Inc. (“LFG,” and collectively with LES, the “Debtors”) and LES filed their respective petitions for relief in the Bankruptcy Court for the Eastern District of Virginia.¹

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

4. On December 3, 2008, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee appointed: (i) the Official Committee of Unsecured Creditors of LandAmerica Financial Group, Inc.; and (ii) the LES Committee.

5. On September 30, 2008, the Exchangers entered into that certain exchange agreement (the “Exchange Agreement”) with LES, as qualified intermediary, to facilitate a tax deferred exchange (the “Exchange”) under 1031(a)(1) of the Internal Revenue Code (the “Tax Code”).² See Motion, ¶ 3. Pursuant to the Exchange Agreement, the relinquished property was sold (the “Sale”) to Town and Country Mobile Lodge, L.P., a California limited partnership (the “Buyer”) on August 19, 2008. *Id.* at ¶ 5. In connection with the Sale, the Buyer assigned to LES, as qualified intermediary, a promissory note in the principal amount of \$100,000.00 (the “Note”) secured by a deed of trust (the “Deed of Trust”) which was itself secured by the relinquished property. *Id.*

6. On December 22, 2008, the Exchangers filed the Motion requesting an order compelling: (i) the turnover and assignment to the Exchangers of the Note; or (ii) in the alternative, the substitution of a qualified intermediary for LES under the Exchange Agreement. The Exchangers assert that the requested relief is appropriate because: (i) the Exchangers have been informed that LES does not intend to consummate any section 1031 exchanges which are the subject of LES’s various executory exchange agreements, including the Exchange; and (ii) the Note is not property of the LES estate. *Id.* at ¶ 6-7.

² A section 1031 tax deferred exchange allows a deferral of taxes on the sale of property that would otherwise be due. In a 1031 exchange, an exchanger has 45 days from the date of a sale of relinquished property to identify a like-kind replacement property and 180 days from the date of sale of relinquished property to close on the purchase of replacement property. I.R.C. § 1031(a)(3)(A)-(B). To preserve the tax deferral, the exchanger cannot take title to the proceeds of its first sale, but must instead deposit the proceeds with a qualified intermediary until such time as the exchanger is ready to close on the replacement property. I.R.C. § 1031(a)(1).

IV. OBJECTION

A. This Court Has Not Yet Determined Whether Funds Held by LES Under Exchange Agreements are Property of the Estate

7. LES's property rights with regard to the Note and the Deed of Trust constitute a monetary interest and should be treated no differently than cash held by LES under any other exchange agreement. The Court has not yet determined whether funds held by LES under its various exchange agreements are property of the estate of LES, or whether LES is merely holding such funds in constructive trust for the various exchangers.³ Until this Court rules on this matter, there exists the possibility that the requested relief may improperly divert funds, namely the Note and the Deed of Trust, that belong to the LES estate. If another qualified intermediary is selected, and it is subsequently determined that the Note and the Deed of Trust are property of the LES estate, the estate will have suffered quantifiable monetary damage and there will be no mechanism in place by which losses may be recouped. The above concerns are amplified by the fact that if this Court grants the requested relief, the door will be opened for identical requests by numerous similarly situated exchangers. Accordingly, the Motion must be denied.

V. WAIVER OF MEMORANDUM OF LAW

8. The legal authority supporting the relief requested by this 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

³ The LES Committee would note that the Motion appears to seek declaratory relief with respect to ownership of the Note. To the extent the Exchangers are requesting a determination that the Note is not property of the LES estate, the Exchangers have failed to comply with Rule 7001(9) of the Federal Rules of Bankruptcy Procedure which requires a party to initiate an adversary proceeding to obtain declaratory relief. Fed. R. Bankr. P. 7001(9).

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

VI. CONCLUSION

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

Dated: Richmond, Virginia
January 8, 2009

/s/ Mary A. House

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Exchange Services, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing *Objection to the Motion for Turnover and Assignment of Note filed by Kendall Square, LLC, CLA Real Estate Investments, and PC Real Estate Investors, LLC* has been served via email on the following and on the parties listed on the attached service list by first class mail, postage pre-paid on this the 8th day of January, 2009.

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