

1987

46250

After Recording Return to:  
McClellan Mfg Company  
3225 W. Central Ave.  
Suite 800  
Phoenix, AZ 85012

DOCKET 718 PAGE 756  
JUDITH ALLEN, CLERK  
BY 5 DEP.

1987 SEP -3 PM 1:58

Vol. 92 Page 13104

2611C:FFD87-272  
ROBERT K. CORBIN  
Attorney General  
PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division  
CHARLES R. JOHNSON #006366  
Assistant Attorney General  
Department of Law Building, Room 259  
1275 West Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 255-3702  
THOMAS E. PALEN 009237  
Assistant Attorney General  
ARIZONA BANKING DEPARTMENT  
Century Plaza, Suite 815  
3225 North Central  
Phoenix, AZ 85012

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, ex rel.  
MARY C. SHORT, Superintendent  
of Banks,

Plaintiff,

vs.

MCCLELLAN MORTGAGE COMPANY, an  
Arizona corporation; EDWIN GALE  
MCCLELLAN aka EDDIE MCCLELLAN and  
DONNA MAE MCCLELLAN, individually  
and doing business as MOUNTAIN VALLEY  
HOMES; MCCLELLAN INVESTMENT COMPANY  
an Arizona corporation; INVESTORS  
PROTECTION CORPORATION, an Arizona  
corporation; PINETREE DEVELOPMENT  
CORPORATION, an Arizona corporation,

Defendants.

NO. CV 87-20936

CONSENT JUDGMENT

The State of Arizona having filed a complaint alleging  
violations of the mortgage brokers statutes and the trust  
company statutes under the Arizona Banking Act, A.R.S.

92 JUN 16 AM 9 12

185.00

1        §§ 6-131, 6-137, 6-851, et seq. and 6-901, et seq., and the  
2        defendants McCLELLAN MORTGAGE COMPANY, an Arizona corporation;  
3        EDWIN GALE McCLELLAN aka EDDIE McCLELLAN and DONNA MAE  
4        McCLELLAN, individually and doing business as MOUNTAIN VALLEY  
5        HOMES; McCLELLAN INVESTMENT COMPANY an Arizona corporation;  
6        INVESTORS PROTECTION CORPORATION, an Arizona corporation;  
7        PINETREE DEVELOPMENT CORPORATION, an Arizona corporation,  
8        having been duly served with a copy of the Summons and  
9        Complaint; having been fully advised of their right to a trial  
10       in this matter and having waived same; having admitted the  
11       jurisdiction of the court and having admitted solely for the  
12       purposes of this action, and not for any criminal case or other  
13       civil action, that the following finds of fact are true and  
14       conclusions of law are correct; and having consented to the  
15       entry of this judgment; the Court makes the following findings  
16       of fact and conclusions of law and enters the following  
17       orders.

18                                FINDINGS OF FACT

19                1. Defendant McCLELLAN MORTGAGE COMPANY ("MMC") is an  
20        Arizona corporation which was licensed to act as a mortgage  
21        broker within the state of Arizona under A.R.S. § 6-904 until  
22        revoked on August 26, 1987, but has never been licensed to  
23        conduct trust business as defined in A.R.S. § 6-851. MMC has  
24        solicited funds within or from Arizona since 1980, for the  
25        purpose of funding loans secured by real property and for the  
26        purpose of investing funds of members of the public solicited

13106

1 by MMC for that purpose in its regular course of business as a  
2 fiduciary. MMC's principal place of business is located at 508  
3 S. Montezuma, Prescott, Arizona, in Yavapai County, Arizona,  
4 but it has also conducted business in other counties in Arizona.

5 2. Defendant McCLELLAN INVESTMENT COMPANY  
6 ("INVESTCO") is an Arizona corporation which wholly owns MMC  
7 and which has aided and abetted in the violations described in  
8 the Findings of Fact.

9 3. Defendant EDWIN GALE McCLELLAN ("McCLELLAN") aka  
10 "Eddie" McClellan is the President and Treasurer of MMC and  
11 INVESTCO and is designated in MMC's mortgage broker's license  
12 as the responsible individual under the Mortgage Brokers' Act,  
13 Title 6, Chapter 9, Arizona Revised Statutes, and has  
14 conducted, controlled and participated in the business of MMC  
15 and INVESTCO, owns 50% of INVESTCO, and has authority to speak  
16 on behalf of MMC and INVESTCO.

17 4. Defendant DONNA MAE McCLELLAN is the wife of  
18 McCLELLAN and the Secretary/Vice President of INVESTCO and MMC,  
19 owns 50% of INVESTCO, and has authority to speak on behalf of  
20 INVESTCO and MMC.

21 5. McCLELLAN and DONNA MAE McCLELLAN do business as  
22 Mountain Valley Homes.

23 6. INVESTORS PROTECTION CORPORATION ("IPC") is an  
24 Arizona corporation formerly known as and the successor to  
25 Pinetree Development Corporation, an Arizona corporation.  
26 McCLELLAN is the President of IPC.

1           7. McCLELLAN and DONNA MAE McCLELLAN are husband and  
2 wife, and, at all pertinent times, acted for the benefit of the  
3 marital community and with the knowledge and consent of the  
4 other.

5           8. Each Defendant acted individually, jointly and  
6 severally and engaged in or aided and abetted the acts of the  
7 others.

8           9. In connection with conducting its business, MMC  
9 engaged in the following acts and practices:

10           A. MMC engaged in the trust business, without  
11 ever being licensed as a trust company, through the  
12 use of a "High Yield Living Income Family Trust  
13 Agreement" ("LIFT" Agreement, Exhibit B hereto) and  
14 holding itself out to the public at large by  
15 advertising, solicitation or other means that MMC was  
16 available to act as a fiduciary in this state and was  
17 accepting and undertaking to perform the duties as  
18 such fiduciary in the regular course of its business.

19           B. MMC's account records are incomplete and not  
20 current.

21           C. Amounts reported by MMC to its investors as  
22 having been invested in interest-bearing accounts for  
23 the benefit of such investors were substantially in  
24 excess of the corresponding amounts actually present  
25 in MMC's interest-bearing bank account. MMC's trust  
26 account is "out of trust" and has a negative balance

1 in the amount of \$146,496.21.

2 D. MMC commingled funds held for investors with  
3 its own corporate funds and those of INVESTCO, IPC,  
4 McCLELLAN, and DONNA MAE McCLELLAN.

5 E. MMC used investors' funds, held pending  
6 investment, for corporate use of MMC, INVESTCO, and  
7 IPC, and for the personal use of McCLELLAN and DONNA  
8 MAE McCLELLAN.

9 F. MMC failed to make payments to customers as  
10 required by its agreements.

11 G. MMC exceeded and violated the loan-to-value  
12 ratios set forth in its agreements with customers.

13 H. MMC wrongfully inflated the face value of  
14 security assigned to LIFT investors' accounts by an  
15 amount in excess of \$400,000.00.

16 10. Defendants omitted to inform LIFT customers of  
17 the facts set forth in paragraph 9 above.

18 11. Defendants misrepresented to LIFT customers that  
19 Defendants were authorized to engage in the LIFT account  
20 transactions.

21 12. Defendants misrepresented to LIFT customers that  
22 Defendants guaranteed the payment of a 15% investment return.

23 13. Defendants' ability to pay a 15% return to LIFT  
24 account customers depended upon the deposit of funds by  
25 subsequent LIFT account customers and not upon Defendants  
26 obtaining a 15% return upon investment of funds received from

1     LIFT account customers.

2                     CONCLUSIONS OF LAW

3             1. Defendants MMC, INVESTCO, McCLELLAN and DONNA MAE  
4     McCLELLAN conducted the business of a mortgage broker, as  
5     defined in Title 6, Chapter 9, Arizona Revised Statutes without  
6     maintaining correct and complete records of all mortgage loan  
7     transactions, together with records clearly reflecting the  
8     financial condition of the business; failed to observe  
9     generally accepted accounting principles and practices; failed  
10    to maintain clients' funds in trust accounts; and commingled  
11    clients' funds with their own funds, all in violation of A.R.S.  
12    §§ 6-813, 6-906, 6-907 and 6-910.

13            2. Defendants MMC, INVESTCO, McClellan and DONNA MAE  
14    McCLELLAN engaged in the trust business through holding  
15    themselves out to the public at large by advertising,  
16    solicitation, or other means that they were available to act as  
17    a fiduciary in the State, and accepted and undertook to perform  
18    the duties of such a fiduciary in the regular course of  
19    Defendants' business, in violation of A.R.S. § 6-851.

20            3. The conduct described in paragraphs 9 through 13 of  
21    the foregoing Findings of Fact violated the Arizona Consumer  
22    Fraud Act, A.R.S. § 44-1521, et seq.

23            4. The conduct described in paragraphs 9 through 13 of  
24    the foregoing Findings of Fact violated the Arizona Securities  
25    Act, A.R.S. §§ 44-1841, 44-1842, 44-1991, 44-2066, and  
26    44-2066(05).

1           5. The conduct described in paragraphs 9 through 13  
2 of the foregoing Findings of Fact was engaged in wilfully in  
3 violation of A.R.S. §§ 6-132, 44-2037, and 44-1531.

4           6. MMC and INVESTCO conveyed to McCLELLAN and DONNA  
5 MAE McCLELLAN, doing business as Mountain Valley Homes, assets  
6 which rightfully belong to LIFT account customers of MMC.

7           7. MMC, INVESTCO, McCLELLAN and DONNA MAE McCLELLAN,  
8 conveyed to IPC funds which rightfully belong to LIFT account  
9 customers of MMC.

10           8. The aforesaid conveyances violated A.R.S.  
11 § 44-1001, et seq.

12           9. A constructive trust should be imposed upon all  
13 such funds transferred by Defendant in favor of the LIFT  
14 account investors.

15                           ORDER

16           1. IT IS THEREFORE ORDERED appointing Mary C. Short,  
17 Superintendent of Banks, as receiver of McCLELLAN MORTGAGE  
18 COMPANY ("MMC"), and Roy O. Schuetze and Francis R. Connelly as  
19 deputy receivers and directing the receiver to:

20           A. Collect, receive and take exclusive custody,  
21 control and possession of all bank accounts,  
22 securities, business accounts, goods, chattels, causes  
23 of action, credits, monies, affects, books and records  
24 of account and other papers and property or interests  
25 listed on Exhibit A hereto and all other assets and  
26

1 records owned or held by MMC or placed under the  
2 control of the receiver by court order ("receivership  
3 properties") with full power to sue for, collect,  
4 receive and take possession of such receivership  
5 properties;

6 B. Conserve, hold and manage all receivership  
7 properties in order to prevent loss, damage and injury  
8 to creditors and others who have done business with  
9 MMC to obtain an accounting thereof, and to adjust and  
10 protect the interests of such creditors and other  
11 persons doing business with MMC, as approved by the  
12 Court;

13 C. Engage and employ current or previous  
14 employees of MMC or replacements of same to carry on  
15 the day-to-day business of MMC, as the receiver may  
16 deem necessary in the performance of her duties and  
17 responsibilities in discharging the authority  
18 conferred by this order;

19 D. Engage and employ, attorneys, accountants,  
20 appraisers and other persons to evaluate any  
21 receivership properties, as the receiver may deem  
22 necessary in the performance of her duties and  
23 responsibilities in discharging the authority  
24 conferred by this order;

25 E. Make such payments and disbursements from the  
26 receivership properties and to incur such expenses as



1 may be necessary and advisable in discharging her  
2 duties as receiver, and to present to this court from  
3 time to time an accounting of all such payments,  
4 disbursements and expenses;

5 F. Subject to approval by this Court, institute,  
6 prosecute, defend, compromise, intervene in, seek  
7 stays in, or become a party to, such suits, actions or  
8 proceedings at law or in equity as may in the  
9 receiver's opinion be necessary for the collection,  
10 recovery, protection, maintenance or preservation of  
11 the receivership properties;

12 G. Present to this court, as soon as practicable,  
13 her written report reflecting the existence and value  
14 of all receivership properties, the extent of any  
15 liabilities, both those claimed by others to exist and  
16 those which the receiver believes to be the legal  
17 obligations of MMC, and any further information the  
18 receiver believes may assist the court in the  
19 administration of this receivership. The receiver's  
20 report shall include a recommendation regarding the  
21 best methods for liquidation of MMC;

22 H. Upon reasonable notice to the receiver, make  
23 the books and records in the possession and control of  
24 the receiver available to investigators of agencies of  
25 federal, state or local governments for their  
26 inspection and copying in a reasonable manner as

1 deemed appropriate by the receiver.

2 2. IT IS FURTHER ORDERED that, except by leave of  
3 this court, during the pendency of the receivership ordered  
4 herein, MMC, INVESTCO, IPC and all customers, principals,  
5 investors, creditors, stockholders, lessors, lessees and other  
6 persons seeking to establish or enforce any claim, right or  
7 interest against or on behalf of MMC, INVESTCO, IPC and all  
8 others acting for or on behalf of such persons including  
9 attorneys, trustees, agents, sheriffs, constables, marshalls  
10 and other officers and their deputies and their respective  
11 attorneys, servants, agents, employees, be and are hereby  
12 stayed from:

13 A. Commencing or prosecuting any suit or  
14 proceeding against MMC, INVESTCO, IPC;

15 B. Commencing, prosecuting, continuing or  
16 enforcing any suit or proceeding in the name or on  
17 behalf of MMC, INVESTCO, IPC;

18 C. Accelerating the due date of any obligation or  
19 claimed obligation, enforcing any lien upon, or taking  
20 or attempting to take possession of, or retaining  
21 possession of, any receivership properties, or  
22 attempting to foreclose, forfeit, alter or terminate  
23 any interests of MMC, INVESTCO, IPC, in any property,  
24 whether such acts are part of a judicial proceeding or  
25 otherwise;

26 D. Using self-help or executing or issuing, or

1 causing the execution or issuance of any court  
2 attachment, subpoena, replevin, execution or other  
3 process for the purpose of impounding or taking  
4 possession of or interfering with, or creating or  
5 enforcing a lien upon any receivership properties;

6 E. Doing any act or thing whatsoever to interfere  
7 with the taking control, possession or management by  
8 the receiver appointed herein of the receivership  
9 properties or to in any way interfere with the  
10 receiver, or to harass or interfere with said  
11 receiver, or to interfere in any manner with the  
12 exclusive jurisdiction of this court over the  
13 receivership properties; and

14 F. Transferring servicing accounts from the  
15 receivership to anyone else for servicing; and

16 3. IT IS FURTHER ORDERED that nothing in the  
17 foregoing paragraphs shall prevent any person from maintaining  
18 an action against any other persons in connection with matters  
19 arising out of business transacted by MMC, INVESTCO, or IPC,  
20 providing that such person does not maintain or prosecute said  
21 action against MMC, INVESTCO, IPC or the receiver appointed  
22 pursuant to this order, in violation of this order; and  
23 provided that without leave of court, lenders do not initiate  
24 lawsuits against borrowers, including without limitation  
25 foreclosure actions, if borrowers are current in making their  
26 payments to the receiver.

1           4. IT IS FURTHER ORDERED that the receiver named  
2 herein may delegate the exercise of her duties to a deputy who  
3 shall be an employee of the Arizona State Banking Department.

4           5. IT IS FURTHER ORDERED that MMC, INVESTCO and IPC,  
5 and their officers, directors, agents, servants, employees,  
6 attorneys, successors, accountants and assigns, and those  
7 persons in active concert or participation with them and each  
8 of them be and hereby are enjoined permanently from directly or  
9 indirectly:

10           A. Transacting any of the business of MMC,  
11 INVESTCO, or IPC except at the direction and under the  
12 supervision of the receiver; expending its assets,  
13 obtaining preferences, judgments, attachments, or  
14 other liens or making levy against MMC, INVESTCO, or  
15 IPC;

16           B. Destroying, secreting, defacing, transferring,  
17 removing, or otherwise altering or disposing of any  
18 books, records, accounts, or any other papers of any  
19 kind or nature of MMC, INVESTCO, or IPC;

20           C. Transferring, receiving, altering, selling,  
21 encumbering, pledging, assigning, liquidating or  
22 otherwise disposing of any assets, funds or property  
23 listed on Exhibit A hereto or owned, controlled or in  
24 the possession of or in which an interest is held or  
25 claimed by MMC, INVESTCO, or IPC or the receiver  
26 appointed herein;

1 D. Obstructing or interfering or refusing to  
2 cooperate with the receiver appointed pursuant to this order,  
3 or her duly authorized agents, in the exercise of their lawful  
4 authority under the orders of this Court;

5 6. The defendants McCLELLAN MORTGAGE COMPANY, an  
6 Arizona corporation; EDWIN GALE McCLELLAN aka EDDIE McCLELLAN  
7 and DONNA MAE McCLELLAN, individually and doing business as  
8 MOUNTAIN VALLEY HOMES; McCLELLAN INVESTMENT COMPANY an Arizona  
9 corporation; INVESTORS PROTECTION CORPORATION, an Arizona  
10 corporation; PINETREE DEVELOPMENT CORPORATION, an Arizona  
11 corporation, and their respective officers, directors, agents,  
12 including but not limited to Unicorn Development Co., an  
13 Arizona corporation, and Platmetco, Inc., an Arizona  
14 corporation, servants, employees, attorneys, successors and  
15 assigns and all persons in active concert or participation with  
16 them, in connection with offering services relating to  
17 investment, escrow, fiduciary, real estate, trust, estate  
18 planning, mortgage brokering, securities, or the offer and sale  
19 of merchandise, which is defined in A.R.S. § 44-1521(5) are  
20 permanently enjoined from, directly or indirectly;

21 a. Engaging in any misrepresentation, deceptive  
22 acts, practices, false promises, concealments, suppressions and  
23 omissions of material fact within or from Arizona.

24 b. Purchasing or selling securities, including  
25 but not limited to real property securities, within or from  
26 Arizona except for Defendants' own accounts and not as

1 Defendants' trade or business.

2 c. Offering investment, real estate, escrow,  
3 fiduciary or trust business as defined in A.R.S. § 6-851,  
4 estate planning, mortgage brokering as defined in A.R.S.  
5 § 6-901, or acting as a securities salesman or dealer as  
6 defined in A.R.S. § 44-1801 within or from Arizona.

7 d. Holding out to the public at large by  
8 advertising, solicitation, or other means that they or one or  
9 more of them is available to act as a fiduciary within or from  
10 Arizona.

11 e. Engaging in any business within or from  
12 Arizona which requires a license to do so unless properly  
13 licensed at the time of engaging in said business.

14 7. The plaintiff is awarded judgment against the  
15 defendants McCLELLAN MORTGAGE COMPANY, an Arizona corporation;  
16 EDWIN GALE McCLELLAN aka EDDIE McCLELLAN and DONNA MAE  
17 McCLELLAN, individually and doing business as MOUNTAIN VALLEY  
18 HOMES; McCLELLAN INVESTMENT COMPANY an Arizona corporation;  
19 INVESTORS PROTECTION CORPORATION, an Arizona corporation; and  
20 PINETREE DEVELOPMENT CORPORATION, an Arizona corporation, for  
21 restitution in the sum of the entire assets of the Defendants  
22 as of May 31, 1987 and acquired thereafter prior to the date of  
23 this Order, including but not limited to those listed in  
24 Exhibit A hereto, except for the homestead exemption in the  
25 total amount of \$50,000.00 in the residence of McCLELLAN and  
26 DONNA MAE McCLELLAN known as 1695 Ca-Tim, Prescott, Arizona, and

1 except for their 1978 GMC pickup truck and their 1980 Cadillac  
2 Seville, and the property exempted by A.R.S. §§ 33-1123,  
3 33-1124, or 33-1125.

4 8. The Receiver shall promptly deposit all liquid  
5 funds in a trust account with an Arizona insured financial  
6 institution and shall disburse said funds to the LIFT account  
7 customers and creditors in the amounts determined by the  
8 Receiver and approved by the Court by subsequent Order. The  
9 Receiver shall disburse available funds on a pro rata basis not  
10 less than once each year. In the event that the funds cannot  
11 be delivered by the United States Post Office due to a change  
12 of address or other reason, the Receiver shall take reasonable  
13 steps to ascertain the whereabouts of said LIFT account  
14 customers or creditors. The defendants shall cooperate fully  
15 and provide any information available that may exist in  
16 locating these customers or creditors. If the customers' or  
17 creditors' new address is ascertained, the Receiver shall  
18 forthwith mail a check to the new address. Any monies which  
19 are not delivered within two hundred and seventy (270) days of  
20 entry of this judgment because the customer or creditor cannot  
21 be located or any other reason shall be deemed to constitute  
22 civil penalties which shall be in addition to these civil  
23 penalties set forth in paragraph 10 of this judgment. Upon  
24 presentment of these undelivered checks, the Receiver shall  
25 issue a single check payable to the Attorney General in the  
26 aggregate amount of the undelivered checks.

1           9. The plaintiff is awarded judgment against  
2 defendants EDWIN GALE McCLELLAN aka EDDIE McCLELLAN and DONNA  
3 MAE McCLELLAN, individually and doing business as MOUNTAIN  
4 VALLEY HOMES; for reasonable costs and attorneys' fees in the  
5 sum of Fifteen Thousand Dollars (\$15,000.00). Each of said  
6 defendants shall be jointly and severally liable for the  
7 payment of the foregoing costs and attorneys' fees.

8           10. The plaintiff is awarded judgment against  
9 defendants EDWIN GALE McCLELLAN aka EDDIE McCLELLAN and DONNA  
10 MAE McCLELLAN, individually and doing business as MOUNTAIN  
11 VALLEY HOMES; for civil penalties in the sum of Fifty Thousand  
12 Dollars (\$50,000.00). Each of said defendants shall be jointly  
13 and severally liable for the payment of the foregoing penalty.

14           11. The Attorney General shall allocate payments  
15 received under this judgment first to the payment of attorneys'  
16 fees and costs and finally to civil penalties.

17           12. Nothing in this judgment shall be construed as an  
18 approval by the State or this Court of the defendants' past,  
19 present or future conduct, and defendants are enjoined from  
20 directly or indirectly representing anything to the contrary.

21           13. Jurisdiction is retained by this Court for the  
22 purpose of entertaining an application by plaintiff for the  
23 enforcement of this judgment.

24           14. Pursuant to Rule 54(b) of the Rules of Civil  
25 Procedure, the Court has determined that there is no just  
26 reason for delay and it is therefore directed that judgment as



1 provided herein shall be entered forthwith.

2 DATED this 3 day of September, 1987.

3  
4 Elizabeth Skonin  
5 JUDGE OF THE SUPERIOR COURT  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

CONSENT TO JUDGMENT

1  
2 1. Defendants McCLELLAN MORTGAGE COMPANY, an Arizona  
3 corporation; EDWIN GALE McCLELLAN aka EDDIE McCLELLAN and DONNA  
4 MAE McCLELLAN, individually and doing business as MOUNTAIN  
5 VALLEY HOMES; McCLELLAN INVESTMENT COMPANY an Arizona  
6 corporation; INVESTORS PROTECTION CORPORATION, an Arizona  
7 corporation; and PINETREE DEVELOPMENT CORPORATION, an Arizona  
8 corporation, and agents Platmetco, Inc. and Unicorn Development  
9 Co., Arizona corporations, hereby acknowledge that they have  
10 been duly served with a copy of the Summons and Complaint, have  
11 read the foregoing Findings of Fact, Conclusions of Law and  
12 Order, and are aware of their right to a trial in this matter  
13 and have waived same.

14 2. Defendants McCLELLAN MORTGAGE COMPANY, an Arizona  
15 corporation; EDWIN GALE McCLELLAN aka EDDIE McCLELLAN and DONNA  
16 MAE McCLELLAN, individually and doing business as MOUNTAIN  
17 VALLEY HOMES; McCLELLAN INVESTMENT COMPANY an Arizona  
18 corporation; INVESTORS PROTECTION CORPORATION, an Arizona  
19 corporation; PINETREE DEVELOPMENT CORPORATION, an Arizona  
20 corporation, and agent Platmetco, Inc. and Unicorn Development  
21 Co., Arizona corporations, admit the jurisdiction of the Court  
22 and admit solely for the purposes of this action, and not for  
23 the purpose of any criminal case or other civil action, the  
24 foregoing Findings of Fact, Conclusions of Law and Order, and  
25 consent to the entry of the foregoing Judgment.

26 3. Defendants McCLELLAN MORTGAGE COMPANY, an Arizona

1 corporation; EDWIN GALE McCLELLAN aka EDDIE McCLELLAN and DONNA  
2 MAE McCLELLAN, individually and doing business as MOUNTAIN  
3 VALLEY HOMES; McCLELLAN INVESTMENT COMPANY an Arizona  
4 corporation; INVESTORS PROTECTION CORPORATION, an Arizona  
5 corporation; PINETREE DEVELOPMENT CORPORATION, an Arizona  
6 corporation, and agents Platmetco, Inc. and Unicorn Development  
7 Co., Arizona corporations, state that no promise of any kind or  
8 nature whatsoever was made to any of them to induce them to  
9 enter into this Consent Judgment voluntarily.

10 4. Defendants McCLELLAN MORTGAGE COMPANY, an Arizona  
11 corporation; EDWIN GALE McCLELLAN aka EDDIE McCLELLAN and DONNA  
12 MAE McCLELLAN, individually and doing business as MOUNTAIN  
13 VALLEY HOMES; McCLELLAN INVESTMENT COMPANY an Arizona  
14 corporation; INVESTORS PROTECTION CORPORATION, an Arizona  
15 corporation; and PINETREE DEVELOPMENT CORPORATION, an Arizona  
16 corporation, acknowledge that plaintiff's acceptance of this  
17 Consent Judgment is solely for the purpose of settling this  
18 litigation as against each of them and does not preclude the  
19 plaintiff or any other agency or officer of this State, or  
20 subdivision thereof, from instituting other civil or criminal  
21 proceedings as may be appropriate now or in the future.

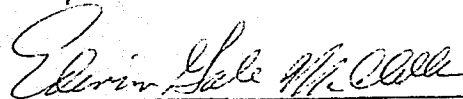
22 5. McCLELLAN represents that he is president of  
23 defendants' MMC, McCLELLAN INVESTMENT COMPANY and INVESTORS'  
24 PROTECTION CORPORATION and of UNICORN DEVELOPMENT CO. and  
25 PLATMETCO, INC., and that, as such, has been authorized by the  
26 corporations to enter into this consent order for and on behalf

1 of the corporations.

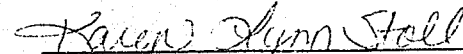
2 6. McCLELLAN, MMC, and McCLELLAN INVESTMENT COMPANY  
3 voluntarily relinquish and consent to revocation of any and all  
4 real estate dealers and salesmen licenses.

5 7. Defendants, being duly sworn and upon their oaths,  
6 represent that, to the best of their information and belief,  
7 the assets listed on Exhibit A hereto constitute the entire  
8 assets of Defendants. Defendants acknowledge that even if any  
9 assets are not listed on Exhibit A hereto, they are the  
10 property of the Receiver pursuant to this Consent Judgment,  
11 except for the \$50,000.00 homestead exemption in 1695 Ca-Tim,  
12 Prescott, ARizona, 1978 truck, and 1980 Cadillac Seville  
13 provided for in paragraph 7 of the Order, and except for the  
14 assets exempted by A.R.S. §§ 33-1123, 33-1124, and 33-1125. .

15 DATED this 3<sup>rd</sup> day of September, 1987.

16   
17 EDWIN GALE McCLELLAN

18 SUBSCRIBED AND SWORN to before me this 3rd day  
19 of September, 1987.

20   
21 Notary Public

22 My Commission Expires:

23 7-10-87

24

25

26

Donna Mae McClellan  
DONNA MAE MCCLELLAN

SUBSCRIBED AND SWORN to before me this 3rd day  
of September, 1987.

Karen Lynn Hall  
Notary Public

My Commission Expires:

7-10-88

Edwin Gale McClellan, Pres.  
MCCLELLAN MORTGAGE COMPANY  
By Edwin Gale McClellan  
President

SUBSCRIBED AND SWORN to before me this 3rd day  
of September, 1987.

Karen Lynn Hall  
Notary Public

My Commission Expires:

7-10-88

Edwin Gale McClellan, Pres.  
MCCLELLAN INVESTMENT COMPANY  
By Edwin Gale McClellan  
President

SUBSCRIBED AND SWORN to before me this 3rd day  
of September, 1987.

Karen Lynn Hall  
Notary Public

My Commission Expires:

7-10-88

*Edwin Gale McClellan, Pres.*

INVESTORS PROTECTION  
CORPORATION  
By Edwin Gale McClellan,  
President

SUBSCRIBED AND SWORN to before me this 3rd day  
of September, 1987.

*Karen Lynn Stall*  
Notary Public

My Commission Expires:

7-10-88

*Edwin Gale McClellan, Pres.*

UNICORN DEVELOPMENT CO.  
By Edwin Gale McClellan,  
President

SUBSCRIBED AND SWORN to before me this 3rd day  
of September, 1987.

*Karen Lynn Stall*  
Notary Public

My Commission Expires:

7-10-88

*Edwin Gale McClellan, Pres.*

PLATMETCO, INC.  
By Edwin Gale McClellan,  
President

SUBSCRIBED AND SWORN to before me this 3rd day  
of September, 1987.

*Karen Lynn Stall*  
Notary Public

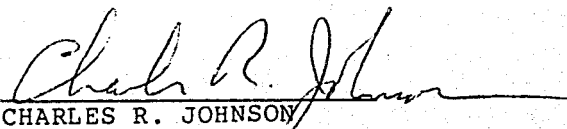
My Commission Expires:

7-10-88

## APPROVED AS TO FORM AND CONTENT:

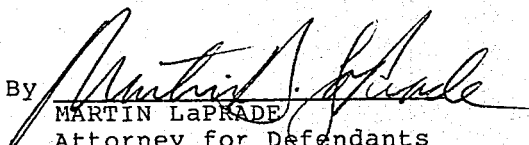
ROBERT K. CORBIN  
Attorney General  
PATRICK M. MURPHY  
Chief Counsel  
Financial Fraud Division

By



CHARLES R. JOHNSON  
THOMAS E. PALEN  
Assistant Attorneys General  
Attorneys for Plaintiff

By



MARTIN LaPRADE  
Attorney for Defendants  
EDWIN G. McCLELLAN  
DONNA MAE McCLELLAN  
MMC, INVESTCO, and IPC

[2612C]

EXHIBIT A

First Interstate Bank Accounts  
 101 South Cortez  
 Prescott, AZ

MCCLELLAN MORTGAGE COMPANY Trust Acct. EDWIN MCCLELLAN and DONNA MCCLELLAN	Account #384-167-74
MCCLELLAN MORTGAGE COMPANY Trust Acct.	Account #387-132-17
MCCLELLAN MORTGAGE COMPANY	Account #385-132-18
MCCLELLAN INVESTMENT COMPANY Trust Acct.	Account #389-127-45
MCCLELLAN INVESTMENT COMPANY, EDWIN MCCLELLAN and DONNA MAE MCCLELLAN	Account #381-127-44
MOUNTAIN VALLEY HOMES, E. MCCLELLAN, c/o E. MCCLELLAN	Account #388-15343
INVESTORS PROTECTION CORPORATION	Account #386-16891

First Interstate Bank Account  
 100 West Washington  
 Phoenix, AZ

UNICORN DEVELOPMENT CO.	Account #001115161
UNICORN DEVELOPMENT CO.	Account #15-12293

OTHER ASSETS

1. All assets of MCCLELLAN MORTGAGE COMPANY,  
 including but not limited to:

Furniture and computers; all gold investments of  
 MMC, INVESTCO and MCCLELLAN and DONNA MAE  
 MCCLELLAN, ~~and all Contract~~; and all Contract  
 receivables as listed in general ledger

2. Sedona Corp.
3. Magnum Video, Inc.
4. Unicorn Development Co., an Arizona corporation
5. Platmetco, Inc., an Arizona corporation
6. McClellan Investment Company
7. Mt. Valley Homes
8. Investors Protection Corp. and Pinetree  
 Development Corp.



July 31, 1987

## 9. LISTING OF REAL ESTATE OWNED

	Market Value	Total Loan
Residence 1695 Ca-tim Dr., Prescott	\$160,000.00	\$72,513.80
842 Quarterhorse, Willilams, Az	\$ 55,000.00	\$35,923.91
Office-508 S. Montezuma, AZ	\$150,000.00	\$63,391.50
Chimney Ranch Mobile Home Park, Mayer	\$495,000.00	\$247,043.71
Lot 1710 + MH, Tracey Lane, Prescott Vly.	\$ 28,000.00	\$ 19,500.00
Chino Valley Home & Rental (Grammer)	\$ 79,000.00	\$ 40,000.00
Mobile Home and Lot-Home Lane, Chino Vly.	\$ 42,000.00	\$ 30,500.00
4 Cabins on 2 acres, Dewey	\$100,000.00	\$23,111.00
5 Acres (with well), Dewey	\$ 9,500.00	\$ 3,505.00
5 acres, Dewey	\$ 7,000.00	\$ 1,650.00
10 Acres near Wickiup, AZ	\$ 10,000.00	F/C
PV Commercial 1736	\$ 8,500.00	\$ 1,311.96
Lot on Chisholm Trail, Prescott	\$ 17,500.00	F/C
Lot 53 AZ Rancheros Rancho 70 1.5 acres	\$ 4,000.00	F/C
3 Acres and House, Roosevelt, UT	\$ 35,000.00	F/C
Yuma Nursery-912 S. 8th Ave.	\$ 76,500.00	\$30,500.00
Warehouse Holbrook	\$ 60,000.00	F/C
Harlequin, Prescott Valley	\$ 37,500.00	\$20,000.00
161 Marilyn Drive, Dewey	\$ 32,500.00	F/C
Lot 938 and M-H, Chino Meadows II	\$ 12,500.00	F/C

## 10. PROPERTY LIST - INVESTORS PROTECTION CORP.

Lot 61 Wickiup	\$6,000.00
20 Acres Mohave	\$10,000.00
Concho Apache County	\$5,500.00
Lot 334 Indian Lakes	\$3,000.00
Lots 14, 15, 16 Eleven Lakes	\$7,500.00
1 Lot Cuisholm Trail	\$17,500.00
5 Acres Iron County, Utah	\$5,000.00
10 Mobile Homes	\$25,000.00
1- Title No. K365771	
2- Title No. F550774	
3- Title No. F550773	
4- Title No. D949375	
5- Title No. F550775	
6- Title No. H517263	
7- Title No. K365772	
8- Title No. F416584	
9- Title No. H239480	
10- Title No. F416851	

PROPERTY

---

\$ 119,500.00


---

## 11. Cash in Bank Accounts as shown

All shares issued and outstanding of MMC, INVESTCO and IPC

1,000,000  $\pm$  shares Sedona Corp.

1 share Western Bancorporation

100 shares MIC Common Stock

share IPC Common Stock

37,766.71  $\pm$  Computer Equipment

4,532,257.19  $\pm$  Contracts Receivable

Real Estate Listing

Vehicles: 80 Cadillac El Dorado

185-0001 15,600 Investment Gold

8,000 shares cherry Creek Gold  $\frac{2,600}{13,000}$  MIC  $\pm$  If any

Judgments as listed

Gem Stones previously delivered

36? Sapphires from Tony Shaw

13131

- BILL + CONNIE LOVE # 9540

\$ 22,478.17

+ 12% INTEREST

FROM FEB. 26, 1986

ATTY GILLESPIE  
FOR COLLECTION

DEFICIENCY JUDGMENT  
APRIL 22, 1986  
7TH JUDICIAL DIST. COURT  
STATE OF UTAH  
UINTAH COUNTY  
CASE NO. 85-CV-420-1

- STURDIVANT JUDGMENT # 7180

\$ 22,583.82 @ 10% FROM 2-10-83  
\$ 1,973.00 @ 10% FROM 12-12-83  
\$ 70.76 @ 10% FROM 12-12-83

YAVAPAI COUNTY  
DECEMBER 12, 1983

- LOUISE POTTS # 7420 - # 7430  
UAC COLLECTION AGENCY

\$ 1,458.49 @ 25% FROM 8-16-83

\$ 306.59 @ 10% FROM 8-1-83

\$ 300.00 @ 10% FROM 2-2-84

\$ 20.00 @ 10% FROM 2-2-84

YAVAPAI COUNTY  
J.P. FEBRUARY 6, 1984  
SUPERIOR CT. MARCH 20, 1986  
DIVISION II, NO. 46691  
RECORDED IN YAVAPAI COUNTY  
BOOK 1803 PAGES 931, 933

- GEORGE + DENNIS O'BARTS

\$ 6,718.91 @ 8% FROM 12-15-81

YAVAPAI COUNTY  
DECEMBER 15, 1981  
SUPERIOR COURT NO. 37902  
HOFFMAN V. O'BARTS  
ASSIGNED TO ED + DONNA  
MAY 31, 1982  
BOOK 1638 PAGE 290

- TOM NIELSEN JUDGMENT # 6400  
UAC COLLECTION AGENCY

\$ 500.00 @ 20% FROM 10-16-81

\$ 200.00

\$ 20.00

YAVAPAI COUNTY  
JUNE 25, 1982  
J.P. NO. 18540  
SUPERIOR COURT NO. 41018  
RECORDED BOOK 1477 PAGE 6  
RENEWED APRIL 8, 1987

- MIKE FLANK #800

YAVAPAI COUNTY

MAY 5, 1986

13132

# 3,209.68 @ 22 1/2% FROM 10-12-84

# 747.50 @ 10% FROM 5-8-86

# 58.50 @ 10% FROM 5-8-86

ND. 44638 DIVISION 1

RECORDED MAY 8, 1986

BOOK 1818 PAGE 361

2 PAYMENTS OF \$125.00/EACH MAY + JUNE 1987

- DAVID + PAT KIMBLE #818

UAC COLLECTION AGENCY

YAVAPAI COUNTY

MAY 5, 1986

# 44,041.69 @ 15 1/16% FROM 5-27-84

# 422.50 @ 10% FROM 5-5-86

# 77.00 @ 10% FROM 5-5-86

ND. 44888 DIVISION 1

RECORDED MAY 8, 1986

BOOK 1818 PAGE 359

PARTIALLY SATISFIED BY EXECUTION ON REAL PROPERTY

JULY 24, 1986 \$40,000.00 LESS SHERIFF'S SALE FEE \$1,100.00

- JERRY + LYNN PURDY #912

YAVAPAI COUNTY

APRIL 28, 1986

# 43,019.75 @ 15 1/4% 6-24-85 to 10-21-85

@ 10% FROM 10-21-85

# 300.00 @ 10% FROM 4-28-86

# 143.00 @ 10% FROM 4-28-86

ND. 45707 DIVISION 2

RECORDED MAY 8, 1986

BOOK 1818 PAGE 357

PARTIALLY SATISFIED BY EXECUTION ON REAL PROPERTY

JULY 3, 1986 \$35,000.00 LESS \$1,100.00 SHERIFF'S SALE FEE

- BILL + BARLENE CLAYTON #799

YAVAPAI COUNTY

NOVEMBER 19, 1984

RELEASED AS TO YUMA PROPERTY

JULY 18, 1986 AND RECORDED RELEASE

JANUARY 15, 1987 TO PROPERTY ONLY

ND. 43919 DIVISION 2

RECORDED YUMA COUNTY

NOVEMBER 20, 1984

DOCKET 1410, PAGE 28

# 123,961.38 @ 15% FROM 6-11-84

# 63.00 @ 15% FROM 11-19-84

AT SHERIFF'S SALE MCLELLAN MORTGAGE CO. BID AND TOOK  
FOR \$65,000.00 PLUS \$1,100.00 SHERIFF'S SALE FEE

- CHARLES W. GARLING  
6301 W. CYPRESS  
PHOENIX, AZ 85035

UNPAID COMMISSION DUE TO MM.  
UNITED CREDITORS ALLIANCE CORP  
PAYTAS, LUTICH, BERNSTEIN,  
SHANNON + FLEMING  
\$ 1,557.44

- EDWARD J. HARDY  
6730 E. CAMINO DE LOS RANCHOS  
PHOENIX, AZ 85032

UNPAID COMMISSION DUE TO  
MMC  
\$ 1,241.21

- DAVID ANDERSEN #9610  
MAGNUM VIDEO

\$ 80,000.00 UNSECURED NOTE  
BANKRUPTCY  
U. DISTRICT TEXAS - FORT WORTH  
# 487-40301-JCF-7

- STURDJANT #7180  
MISSION INN/AMERICAN MOTEL

LIVE DEED OF TRUST  
POSSIBLY SUBJECT TO FORFEITURE

YAVAPAI COUNTY 13134

MAY 21, 1986

NO. 44384 DIVISION 3

RECORDED MAY 23, 1986

BOOK 1823 PAGE 8-12

HAMEZ V. THOW NO #9870  
PURCHASED HAMEZ'S POSITION  
IN FORECLOSURE SUIT - FINISHED  
AND TOOK CHISOLM TRAIL LOTS  
- FULLY SATISFIED

( QUESTIONS -

( DOCKET 718 PAGE 787 13135

- C. J. WICKES # 8660

\$ 20,000.00 @ 20.5%  
2 PAYMENTS MADE IN 1984

- C. BEVERLY # 8370

\$ 10,000.00 @ 10%  
8 PAYMENTS MADE IN 1984

- C. BEVERLY # 8510

\$ 11,983.23 @ 10%  
7 PAYMENTS MADE IN 1984

- DONALD + AVA BARRENS # 8410

\$ 107,900.00 @ 12.5%  
TRUSTEE'S SALE  
FAULTY SERVICE OF SUIT BY KDOT.



13136

HIGH VII - LIVING INCOME FAMILY TRUST AGREEMENT

The parties hereby enter into this Trust Agreement on 7/12/19 at Prescott, Arizona, which replaces and supercedes all similar previous agreements between the parties, under which the designated Trustee shall make investments for the beneficiary in contracts for the payment of money with funds provided by the beneficiary. The following terms and conditions set forth the entire understanding of the parties hereto:

This Trust shall be known as the T M C Enterprise, a business trust organization by and between McClellan Mortgage Co., an Arizona Corporation, as Trustee, and the creator and Beneficiary of the Trust, T M C Enterprise, a business trust organization.

The Trustee shall have sole authority and responsibility to invest Trust funds and act to protect the Trust assets, with each such investment to earn a minimum computed at yield of fifteen percent on each sum invested into contracts over the scheduled investment.

The Trustee shall use his own judgment in selecting investments for this Trust, and accordingly agrees to guarantee the return to the Trust of all principal and interest due until each such investment is fully collected and repaid to the Trust in full. The Trust shall also begin any required collection action he deems necessary to collect the amount due to this Trust at his own expense, and any gains resulting from any such collection actions shall belong to the Trustee exclusively, as consideration for its costs of the collection actions and for its liability as a guarantor hereunder. Trustee shall also bear all losses incurred in the collection of each investment made under this agreement.

The Trust or the Beneficiary shall pay no Trustee's Fees to the Trustee, who may or receive fees from borrowers of Trust funds or the brokerage from sellers of contracts to the Trust. The Trustee shall perform the accounting services on repayments made to the Trust without charge, beginning with payments received after October 31, 1985, and shall mail a statement to the Beneficiary for each month, by the tenth day of the following month and an interest earned statement for each year in January of the next year. These statements shall be conclusively presumed to be correct unless the Beneficiary reports any error within 15 days after each statement was mailed. Any additional services requested by the Beneficiary may be performed at Trustee's discretion for an additional charge to the Trust.

After the initial investment, additional amounts of \$500.00 or more may be added to the Trust at any time. The Trustee shall place all funds received from Beneficiary into an interest-bearing account pending their investment, together with all repayments of funds to the Trust to maximize the yield to the Trust. Funds awaiting re-investment shall be invested from this account into contracts as it becomes practical for Trustee to do so.

Tests for Trust funds invested into real estate secured loans or contracts shall be:  
1. The scheduled term of the investment shall not be longer than a five year period.  
2. A title insurance policy shall have been issued on the real estate used for collateral.  
3. Total loans to Trustee's property valuation shall not exceed the following limits:

- Single-family residential property.....75% of value
- Multi-family or commercial property.....65% of value
- Lots or unimproved land.....50% of value

So long as these tests are met, the Trustee shall be free to invest Trust funds into loans or contracts from any source, including the portfolios of McClellan Mortgage Co., Edwin Gale McClellan personally, or McClellan Investment Co.

Trust fund repayments received shall be retained in the Trust or disbursed to Beneficiary monthly with the statement according to the plan circled below, which plan may be changed in writing by Beneficiary at the end of any monthly accounting period:

- PLAN A: Re-invest all repayments received, to maximize the effect of compounding the interest in writing by Beneficiary at the end of any monthly accounting period;
- PLAN B: Mail Beneficiary \$ 500 monthly, and re-invest all the remainder funds received in writing by Beneficiary at the end of any monthly accounting period;
- PLAN C: Mail Beneficiary all interest received monthly, and re-invest all principal received in writing by Beneficiary at the end of any monthly accounting period;
- PLAN D: Mail Beneficiary all repayments received with the regular monthly statement.

This Trust and its assets shall always be exempt from claims of creditors of either party hereto, and shall continue for the benefit of the parties heirs when applicable.

This Trust shall not be considered to be a security within the meaning of any securities regulation, and each party hereto covenants and agrees to look only to the other party for satisfaction of any liabilities hereunder, and shall not take action against any third party hereto, shall be submitted to binding arbitration, which cannot be settled between the parties provided for under the then-current rules of the American Arbitration Association.

Any dispute arising out of this agreement, which cannot be settled between the parties provided for under the then-current rules of the American Arbitration Association, as either party may begin principal distributions from this Trust by 30 days advance written notice to the other party, and after the notice period, the Trust shall operate under PLAN above until re-instated by the party giving notice, or until fully liquidated and paid in full.

Each party hereto has carefully read and fully understands the function and effect of this Trust Agreement, the Beneficiary has determined that it is a suitable investment for the funds committed to it, and warrants that he has sufficient other funds for normal living expenses and adequate liquid reserves for emergencies, and each party has received a copy of this Trust Agreement for their records.

Witness my hand and seal of the State of Arizona, this 12th day of July, 1985, at Prescott, Arizona.  
McClellan Mortgage Co., by Edwin Gale McClellan its President, as Trustee

Beneficiary: T M C Enterprise, a business trust organization  
Beneficiary, if any: T M C Enterprise, a business trust organization  
Address: 1000 North Central Avenue, Suite 100, Phoenix, Arizona 85004  
Phone: 754-3111

DO NOT REINVEST IN  
(BA)  
EXHIBIT B

EXHIBIT B

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest October 6 19 87  
JUDITH ALLEN, Clerk of the Superior Court of the State of Arizona, in and for the county of Maricopa.

By V. Wiernan Deputy

#34.00 + \$4.00 TENG  
1620 OK #16 + 4.00  
STATE OF ARIZONA, County of Gila, ss:

555311

I do hereby certify that the within instrument was filed and recorded at request of State Banking Department  
Date Oct. 30, 1987 Time 10:20 A. M., Docket 718 Official Records Page s 756 - 789  
Records of Gila County, Arizona.

WITNESS my hand and official seal the day and year first above written.  
McClellan Receivership  
STATE BANKING DEPARTMENT  
3225 N. Central Ave., Suite 901  
Phoenix, AZ 85012

MARY V. DE PAOLI, County Recorder  
By Mary V. De Paoli, Recorder

13138

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title co. the 16th day  
of June A.D., 19 92 at 9:12 o'clock A M., and duly recorded in Vol. M92  
of Co. Lien Docket on Page 13104.

FEE \$185.00

Evelyn Biehn County Clerk

By Quentin L. Mendenhall