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Families see safe savings vanish in a weekend

By Chris Adams
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On the day before Thanksgiving 2008, Jean Ann Simmons came home after picking up her children at school to find an express mail package on her front porch in this small Texas town.

A unit of LandAmerica Financial Group Inc. -- the company the Simmonses had entrusted with more than a quarter of a million dollars -- informed the family in a one-page letter that it was going out of business. Nine months earlier, officials at LandAmerica had learned that the supposedly safe investments they'd made for clients such as the Simmonses had tanked.

The Simmonses' money, which came from selling a farm that had been in the family for decades, was gone. The farm was where Simmons' husband, Kirby, had taught his children to hunt and fish, and where he'd watched his teenage daughter Payton die in an accident while tending to her horse. To cope with the pain, they'd decided to sell the place.

"I was absolutely stunned and devastated," Jean Ann Simmons said of receiving the letter. "It was Thanksgiving the next day, and we couldn't get a hold of anybody. ... We called and called and called."

"I felt," she said, "like they took money from Payton."

The nation's financial markets have rebounded from the depths of March 2009. Some families are recovering, albeit slowly. Others, however, such as the Simmonses and other families that sent their money to LandAmerica, are unlikely ever to recover completely.

Their money evaporated with the collapse of LandAmerica, and then they watched as the federal government made no attempt to intervene.

These families didn't get the press attention that Bernard Madoff's multimillionaire victims did. With the exception of coverage in LandAmerica's hometown of Richmond, Va., the plight of these ordinary Americans was eclipsed by Madoff's billion-dollar Ponzi scheme, the American International Group's massive bailout, Goldman Sachs' mammoth executive bonuses and every other swindle, outrage and boondoggle of the last two years.

Some 450 individuals and businesses that had entrusted a total of some \$265 million to a group of related companies that operated under the LandAmerica name found their savings ensnared in the mess.

Imagine depositing your money in a savings account on a Friday afternoon, and then being told on Monday that it was gone. That's essentially what happened in the LandAmerica case. Or imagine that the money you gave the company was your life savings. That happened to many LandAmerica families.

They were innocent bystanders in February 2008 when the market for something called "auction rate securities" collapsed. LandAmerica, which held hundreds of millions of dollars in those investments, had assumed they were safe and, in turn, had told its clients that their money was safe.

Even after the market collapsed, LandAmerica continued to say that its services were safe. Beyond that, after warning the U.S. Treasury Department that "hundreds of innocent businesses and individuals will be needlessly harmed" if the company didn't get help, LandAmerica continued to collect customers' money.

Then, one day, it couldn't pay it back.

McClatchy couldn't reach former executives of LandAmerica for comment. The company has ceased or sold all its operations. Rachel Strickland, a New York lawyer who handled the company's bankruptcy, said that people who lost their money were "understandably angry" but that the company took every step it could to avoid that outcome.

"People in bankruptcies unfortunately lose a lot of money that's important to their livelihood," she said. "It's terrible, and there's nothing anyone can say that makes it not terrible. ... There are so many individuals who were absolutely harmed. You have to make the best out of a bad situation."

The illusion of safety

The story of LandAmerica is about the illusion of safety.

It started with the auction rate securities, a kind of long-term investment product with interest rates that constantly reset. They'd long been marketed as extremely safe, and two of the banks selling them were Citigroup Inc. and SunTrust Banks Inc.

LandAmerica was a mortgage services company that offered title insurance and other real estate banking services. It boasted of its inclusion on Fortune magazine's 2007 list of "America's most admired companies" and touted its financial stability.

A promotional sheet dated March 2008, for example -- the month after the company learned that its auction rate securities had collapsed -- was titled "The Financial Stability of LandAmerica." It said that "clients can rest assured" that LandAmerica didn't do risky things such as invest in sub-prime mortgages. A top accounting firm "regularly reviews the soundness, sufficiency and performance of the various investments of LandAmerica," the company said.

That stability was vital to customers such as Simmons and Callahan, who were executing the simplest of transactions.

A person who sells a piece of property at a profit ordinarily would owe capital gains taxes. However, by setting up a "1031 exchange" -- named for a section of the U.S. tax code -- he or she can sidestep those taxes.

LandAmerica set up such 1031 exchanges: Sell your real estate -- typically investment properties, not residences -- wire the money to LandAmerica and, within 180 days, buy another property. Meet the deadlines and you avoid capital gains taxes.

For the customers, these weren't investments; they were a safe way to park cash temporarily. That's why the language in their contracts was so important: LandAmerica, the contracts said, "unconditionally guarantees the return and availability of the exchange funds."

That safety was an illusion, however.

The auction rate securities market began to show signs of stress as early as 2003, according to the Congressional Research Service. In 2005, major accounting firms said the securities should be classified as more risky forms of "investments" rather than "cash equivalents" on corporate financial reports. By 2007, "most sophisticated investors and corporate cash managers were well aware of issues concerning" the auction-rate market, the Congressional Research Service said.

In August and September 2007, more than 60 of the auctions that set the investments' interest rates failed.

LandAmerica, however, apparently didn't know that. When the company's vice president and treasurer, Ronald Ramos, was asked in a deposition in February 2009 whether he knew that auctions for the securities had failed, he said no.

"I had never been aware of that, no," he said.

In its regulatory filings in 2008, LandAmerica said, "beginning February 2008, the auctions for ARS failed," not mentioning the red flags evident throughout 2007.

The market collapses

When the market for auction rate securities collapsed in February 2008, the securities themselves were still there, but they were frozen and couldn't be bought or sold.

LandAmerica basically had a bank account it couldn't access, but it didn't warn its customers.

In a filing with the SEC, the company said it didn't think the market collapse would have a "material adverse effect on our financial position or results of operations."

It used money from new exchangers to help satisfy old customers, a practice that South Carolina lawyer Jim Gilreath said fit the definition of a Ponzi scheme. He's sued certain LandAmerica officials as well as SunTrust in federal court on behalf of some of the exchangers.

"Instead, like the game of musical chairs, the music stopped and the current 400-plus exchangers were left standing," the suit said.

By October 2008, the music was winding down.

On Oct. 17, LandAmerica decided to stop taking new funds under its typical procedures, a move that could have spared some of the last customers from losing their money. But it also would have increased the

company's cash crisis, and right after the decision a LandAmerica official wrote in an internal memo: "I suspect we have a week, two at most, before the exchange company runs out of cash."

The decision was overturned by Monday. Business would continue as usual, Treasurer Ramos said in his deposition.

By then, Matthew Luxenberg, a dermatologist, was preparing to sell his investment property in Santa Paula, Calif., northwest of Los Angeles. He signed his contract with LandAmerica on Nov. 14, sold his property and wired \$1.4 million to LandAmerica's bank account; it was received on Friday, Nov. 21. The company had assured him that his money would be secure, and he set out to execute the second half of his exchange: buying a replacement property.

On Monday, Nov. 24 -- before LandAmerica's bankruptcy -- Luxenberg called to check on his money and grew concerned when he couldn't reach anybody. He finally spoke to someone who indicated what was going on, and he demanded his money back. After getting nowhere, he wrote Ramos an e-mail late that night. "It appears that your company, and you as treasurer, are engaged in a classic Ponzi scheme, taking new money in to pay out the 1031 exchanges on older transactions," he wrote.

"By that time, they'd already hired bankruptcy attorneys, and they still took my money," Luxenberg said. So far, he's recovered only about \$335,000 of his \$1.4 million from the bankruptcy court settlement.

The Simmonses have received \$70,000 of the \$291,000 they had at LandAmerica.

The loss of the money can't begin to compare with the loss of their daughter, but memories of the real estate deal always bring back memories of Payton.

Payton had been one of the main reasons that the family moved from big-city Houston to the farm. She loved the land, the animals, the horses, her new school. The family planned to stay there forever.

In March 2007, however, a rope got caught around Payton's waist as she was tending to her horse, and the animal got spooked and took off. The family watched the horse drag Payton, her head hitting the hard ground. Kirby Simmons, a volunteer firefighter, administered CPR before Payton was flown to a Houston hospital. She died that night, at 13.

"We loved being on the farm, but we couldn't stay there," Jean Ann Simmons said. "It was just too hard."

Her husband set up the 1031 exchange, and was working to close on four replacement properties to buy with the cash from selling the farm. One of those sales went through, and LandAmerica paid out the money as expected.

Then came the Thanksgiving week notice.

"We have a big hole in our hearts," his wife said. "We're trying to move on and honor her. But I just couldn't believe it. ... They just didn't care. We gave them cash, and they took it."