

Complaint

92 F.T.C.

IN THE MATTER OF
AUSTRALIAN LAND TITLE, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2928. Complaint, Sept. 14, 1978 — Decision, Sept. 14, 1978

This consent order, among other things, would require a Los Angeles, Calif. seller of undivided interests in Australian land to cease advertising, selling, transferring, or collecting payments on such land. Additionally, the firm is required to return all payments received on or after July 1, 1977; pay property taxes and other charges levied against the tracts as they become due; and provide consumer redress to eligible parties.

Appearances

For the Commission: *Edward D. Steinman.*

For the respondents: *Foster G. Mori, Roush, Mori, Welch & Steiner*, Phoenix, Arizona for Australian Land Title, Ltd., *Miles W. Kirkpatrick, Caswell O. Hobbs, Morgan, Lewis & Bockius*, Washington, D.C. for Safeguard Industries, Inc. and *Daniel C. Smith, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C. for Morlan International, Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., corporations, (hereinafter referred to as respondents) have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its Complaint stating its charges in that respect.

PARAGRAPH 1. Respondent Australian Land Title, Ltd. (hereinafter sometimes referred to as "ALT") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, as of 1970, with its principal office and place of business located at 9060 Santa Monica Boulevard, Los Angeles, California. Prior to 1970 there was a predecessor California corporation which did business under the same name.

ALT or its predecessor until 1973 was engaged in the business of acquiring undeveloped land in Western Australia and contracting with representatives to advertise, offer for sale, and sell undivided

interests as tenancies in common in such land to purchasers in the States and Territories of the United States, and in foreign nations.

ALT, through representatives, sold such undivided interests in land by use of standard form contracts, whereby purchasers agreed to pay monthly installments over a term of years. ALT retains legal title to each such undivided interest until final payment is made on the contract of purchase. Purchasers do not have any rights or incidents of ownership, other than equitable interests, in the property until fulfillment of the obligations imposed by the installment contract.

Purchasers pay ALT substantial sums of money in consideration for such undivided interests. In most cases, purchasers also pay interest during the contract term on the unpaid balance owing on the contract. ALT continues to collect and receive monies paid on many such contracts.

In the course of its business, ALT directly or indirectly has communicated and is communicating with purchasers both orally or in writing.

PAR. 2. Respondent Safeguard Industries, Inc. (hereinafter sometimes referred to as "Safeguard"), is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 630 Park Ave., King of Prussia, Pennsylvania.

In February 1970 Safeguard acquired ALT's predecessor and formed ALT, a wholly-owned subsidiary, as a successor corporation. Effective December 27, 1972, Safeguard sold ALT to Morlan International, Inc. (hereinafter sometimes referred to as "Morlan") in return for shares of stock in Morlan and other valuable consideration.

PAR. 3. Respondent Morlan International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Philmont Ave. and Byberry Road, Philadelphia, Pennsylvania.

PAR. 4. ALT's volume of business in the sale of land in Western Australia is substantial and its acts and practices, as set forth herein, are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of its business as aforesaid, ALT sold or caused to be sold, 30 parcels of land in Western Australia by creating 77 or more undivided interests in each such parcel and, until 1973, selling such interests as tenancies in common to purchasers, whose identities for the most part were unknown to each

other, and who were located throughout the States and Territories of the United States, and in foreign nations.

PAR. 6. Under applicable Australian law, which is determinative of the rights of cotenants of this land, all incidents of ownership in land held as tenancies in common are shared communally by all cotenants. No individual or group of cotenants has the power to bind or prejudicially affect the rights of other cotenants by contracting with third persons concerning the common property, to encumber the estate, or to take any other action with regard to the subject parcel, including sale, without the unanimous agreement of the cotenants or judicial order.

PAR. 7. By creating so many tenancies in common in each parcel, and by selling the tenancies to purchasers, whose identities were often unknown to each other, in different states, territories and countries without providing a means of managing, developing or disposing of the land, ALT made it virtually impossible for the land to be sold, or beneficially used, regardless of its value or the existence of an interested buyer. Nevertheless, ALT has collected and is continuing to collect and receive payments from such purchasers.

Therefore, the creation and sale of, and the collection and receipt of payments for such undivided interests, as alleged in Paragraphs Five through Seven, were and are unfair acts or practices.

PAR. 8. In the further course and conduct of the aforesaid business, purchasers of undivided interests in land in Western Australia have been induced to pay substantial sums of money without disclosure having been made to such purchasers of the aforesaid detrimental legal and practical effects of purchasing undivided interests in real property. Such undisclosed material facts, if known, would have affected, in many instances, the purchasers' decisions to enter into or continue to perform under their contracts for purchase.

The failure to disclose such material facts as alleged above is unfair or deceptive.

PAR. 9. In the further course and conduct of its aforesaid business, ALT has used contractual provisions which provided that (1) defaulting purchasers forfeit all payments previously paid to ALT under the contract and (2) upon default ALT is released from all obligations.

Upon default, ALT has received payments in excess of its actual damages and has in most instances refused to refund such excess payments. Therefore, ALT's collection and retention of payments in excess of its actual damages imposes a penalty upon defaulting purchasers and such acts or practices as alleged were and are unfair.

PAR. 10. The aforementioned failure to disclose material facts, and

the unfair practices have had the tendency and capacity to induce a substantial portion of the purchasing public into purchasing a substantial number of undivided interests in land in Western Australia and into continuing to make payments for such undivided interests.

PAR. 11. The aforementioned acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Australian Land Title, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 9060 Santa Monica Boulevard, Los Angeles, California.

Respondent Safeguard Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, and with its office and principal place of business located at 630 Park Ave., King of Prussia, Pennsylvania.

Respondent Morlan International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Philmont Ave. and Byberry Road, Philadelphia, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For the purpose of this order, the following definitions apply, unless otherwise specified herein:

A. "Respondents" mean Australian Land Title, Ltd. ("ALT"), Morlan International, Inc., ("Morlan") and Safeguard Industries, Inc., ("Safeguard") and include their successors and assigns.

B. "Tract" means each parcel of land located in Western Australia identified in Appendix A.

C. "Sales Agreement" means any agreement entered into by ALT or any agent, representative or subsidiary of ALT for the sale of any undivided interest (tenancy in common) in any Tract.

D. "Purchaser" means any person or entity that entered into any Sales Agreement, or the person or entity that received the purchaser's interest in any Sales Agreement by transfer, assignment, inheritance, or otherwise, or the person or entity, that purchased an interest in a Tract other than from any respondent or its representatives or agents, but shall not include any person or entity, other than one has made all Purchase Payments, whose last Purchase Payment pursuant to any Sales Agreement was received by ALT prior to January 1, 1977, or who has arbitrated, settled, released or litigated to final judgment all claims and rights relating to the purchase of an interest in a Tract.

E. "Defaulter" means any person or entity that entered into any Sales Agreement, or the person or entity that received the purchaser's interest in any Sales Agreement by transfer, assignment, inheritance, or otherwise, or the person or entity that purchased an interest in a Tract other than from any respondent or its representatives or agents, whose last Purchase Payment pursuant to any Sales Agreement was received by ALT on or after

January 1, 1974, but before January 1, 1977, but does not include any person or entity who has made all purchase payments or any Defaulter who has arbitrated, settled, released or litigated to final judgment all claims and rights relating to purchase of an interest in a Tract.

F. "Net Sales Price" means the gross sales price of any Tract less the seller's customary share of state or local sales or transfer taxes, transfer of title fees, and brokerage fees (provided that a broker has in fact been used and that his fees are not more than the prevailing rate for comparable services in Western Australia); no deduction from gross sales price shall be made for attorneys' fees, sellers' pro rata share of property taxes, payoff of mortgages or other liens or charges against the land, cost of appraisal, advertising costs or court costs associated with a judicial proceeding, or other costs of sale.

G. "Purchase Payments" means all sums including downpayments, and periodic payments of principal and interest paid pursuant to any Sales Agreement and dated and received by ALT prior to July 1, 1977.

H. "Purchase Price" means the total purchase price (including interest or finance charges if any) stated in any Sales Agreement.

The acts and practices, prohibitions, affirmative undertakings, requirements and activities subject to this order are those in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

I. *It is ordered*, That ALT, Morlan and Safeguard, directly or indirectly, through any corporation, subsidiary, division, or other device, do forthwith cease and desist from advertising, offering for sale, selling, or transferring any undivided interest in land in Australia to any consumer in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, except as permitted by this order or as otherwise may be permitted by written approval of the Commission. For the purposes of this part, "consumer" shall mean a natural person to whom respondents offer to sell any undivided interest in land or other real property; *provided, however*, that the term "consumer" shall not include a natural person who purchases an interest in land in a single transaction for a sum in excess of \$50,000.

II. *It is further ordered*, That ALT:

A. Cease and desist from collecting, directly or indirectly, payments, including principal and interest, due from any Purchaser pursuant to any Sales Agreement and return to any Purchaser, within five (5) days of receipt, any payment received from such Purchaser on or after the date this order becomes final.

B. Return to each Purchaser all payments, including principal and interest, made by such Purchaser pursuant to any Sales Agreement, that were dated and received by ALT, or its representatives or agents, on or after July 1, 1977, but before the date this order becomes final.

C. Cease and desist from cancelling any Sales Agreement of any Purchaser except where permitted or required by Part III of this order.

D. Cease and desist from failing to pay all property taxes, mortgages, liens or charges against any Tract on a timely basis as each becomes due.

III. *It is further ordered*, That ALT, consistent with the procedures set forth below and the laws of Western Australia, sell each Tract and distribute the proceeds. For the purposes of this part, the definition of Purchaser shall not include any person or entity who has sold, devised, assigned, or otherwise transferred his interest in a Tract.

A. Each Tract may be sold by consent of the Purchasers of that Tract or partition and judicial sale pursuant to the laws of Western Australia; *provided, however*, that any sale other than by partition and judicial sale shall be made only with the express consent of the Purchasers whose Sales Agreements account for a majority of the undivided interests in that Tract.

B. On or before two years from the date this order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for partition and judicial sale with respect to ten (10) Tracts less the number of Tracts which have been previously sold, or which are already the subjects of partition actions, or which have been excluded pursuant to Paragraph L of this part.

C. On or before three years from the date this order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for partition and judicial sale with respect to twenty (20) Tracts less the number of Tracts which have been previously sold, or which are already the subjects of partition actions under Paragraph B of this part as of that date, or which have been excluded under Paragraph L of this part.

D. On or before four years from the date this order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for the partition and judicial sale of all Tracts which remain unsold and which are not already the subjects of partition actions under Paragraphs B and C of this part as of that date, or which have not been excluded under Paragraph L of this part.

E. ALT shall pursue all such actions for partition and judicial

sale pursuant to Paragraphs B-D of this Part as expeditiously as possible consistent with the laws and judicial procedures of Western Australia. ALT shall inform the court of the provisions of Part III of this order at the time any proceeding for partition and judicial sale of a Tract is commenced, and shall provide a copy of Part III of this order if the court agrees to accept the order *in camera*.

F. All Tracts shall be sold and the proceeds distributed within five (5) years from the date this order becomes final. *Provided, however,* the Commission shall extend the period as to any particular Tract where ALT can establish to the satisfaction of the Commission that a partition action with respect to such Tract was brought and pursued as provided by this part, but that sale and distribution of proceeds cannot reasonably be expected to occur within the period. Upon the granting of such an extension, ALT shall file reports with the Commission every six months until sale and distribution of proceeds have been completed, describing the status of such pending proceeding and any measures taken by ALT to conclude such proceeding. ALT shall bear the costs of the sale of any Tract except such costs as may be deducted from the gross sales price as provided in the definition of Net Sales Price.

G. Except as otherwise provided herein, a share of the Net Sales Price of each Tract shall be distributed to each Purchaser of such Tract in proportion to the percentage interest in the Tract set forth in such Purchaser's Sales Agreement. Each Defaulter who, prior to January 1, 1977, paid one-third or more of the Purchase Price set forth in such Defaulter's Sales Agreement shall receive a cash payment, to be distributed from the remaining proceeds of the Net Sales Price, such payment to be based on the proportion of the Net Sales Price allocable to the percentage interest in the Tract set forth in such Defaulter's Sales Agreement multiplied by the percentage of the Purchase Price actually paid by such Defaulter. *Provided, however,* that any distribution to a Purchaser who is not a citizen or resident of the United States, its territories, or the District of Columbia shall be paid to such Purchaser in an amount equal to the total of his Purchase Payments, and any remainder shall be paid to ALT in an amount equal to the unpaid balance of the Purchase Price, and thereafter any remainder shall be paid to such Purchaser. Provided further that no Defaulter shall receive from the distribution provided for herein an amount in excess of the total of his Purchase Payments less the distribution provided for in Paragraph B of Part IV of this order. ALT shall be entitled to the balance of the Net Sales Price remaining after distribution of proceeds to Purchasers and Defaulters under this part.

H. Distributions from the Net Sales Price resulting from the sale of each Tract shall be made to the Purchasers and Defaulters of that Tract within sixty (60) days after the receipt of such proceeds by ALT, except at such other time as the Purchasers may consent to in accordance with Paragraph I(ii) of this part or as may be ordered by a court in a proceeding for partition and judicial sale of any Tract.

I. Any Tract may be sold on terms which provide that the buyer will pay the purchase price in installments, or that any payment by the buyer will be deferred for a period in excess of 120 days after the date the sale is consummated, provided that (i) ALT shall nevertheless distribute to the Purchasers and Defaulters of the Tract, as provided in Paragraph G of this part, an amount equal to the Net Sales Price (not including interest) within sixty (60) days after the sales transaction is consummated, or (ii) ALT shall have first obtained the express consent of the Purchasers whose Sales Agreements account for a majority of the undivided interests in the Tract to the terms of the sale and to distribution of the proceeds of the sale within a specified period exceeding 120 days after the date the sale is consummated; *provided, however*, ALT shall distribute proceeds received from the installment sale of any Tract in accordance with Paragraph G of this part within sixty (60) days of the receipt of each installment, and *provided further* that in the event of any default by any buyer, ALT will notify the Commission and promptly initiate proceedings for partition and judicial sale of such Tract.

J. ALT shall not solicit the consent of any Purchaser to any sale of a Tract or any terms of sale without first having obtained, within six (6) months prior to the solicitation, an appraisal from an appraiser licensed in Western Australia who, prior to December 31, 1977, shall not have been employed, retained or otherwise associated with any Respondent, and without having adequately and accurately disclosed to all Purchasers of the Tract whose current addresses have been identified pursuant to the procedures set forth in Part V of this order (i) the name, address and business of a proposed buyer or buyers; (ii) the nature and extent of any prior or existing relationship—including overlapping ownership interests or business dealings—between the buyers and any of the Respondents; (iii) what efforts, if any, have been made to sell the Tract on cash terms or more favorable terms of sale (including efforts to obtain a higher price or shorter pay-out) than that offered by the buyers; (iv) what other offers have been made for the Tract; (v) any appraised value of the Tract made within the six month period, and the date of each such appraisal; (vi) the minimum price and conditions upon which

the Tract would be sold to any buyer; (vii) that if the Purchasers whose Sales Agreements account for a majority of the undivided interests in the Tract do not consent to such sale, ALT remains obligated to sell the Tract, by partition and judicial sale or otherwise, within five (5) years of the date this order becomes final.

K. Respondents shall not, directly or indirectly, purchase or acquire any Tract, from any Purchaser, except as follows:

1. In disposing of any Tract through partition and judicial sale, any Respondent may purchase such Tract only if (i) both the Court administering such sale and the Commission are notified at least thirty (30) days in advance of sale of such Respondent's intention to purchase and the terms of the purchase and (ii) such Respondent reports to the Commission, within sixty (60) days after any such purchase, the amount paid by the Respondent and provides the Commission with such other relevant information concerning the sale as the Commission may request.

2. In disposing of any Tract by consent of the Purchasers of the Tract, any Respondent may purchase such Tract only if (i) within six (6) months prior to such purchase an appraisal shall have been obtained from an appraiser licensed in Western Australia who, prior to December 31, 1977, shall not have been employed, retained or otherwise associated with any Respondent, (ii) the purchase price paid by the Respondent is not less than the appraised value of the Tract, (iii) the Respondent shall have disclosed to the Purchasers the information set forth in Paragraph J of this part, (iv) the Respondent, at least thirty (30) days in advance notifies the Commission of its intention to purchase and provides to the Commission a copy of the appraisal, (v) the Respondent reports to the Commission within sixty (60) days after sale the amount paid by the Respondent and furnishes such other relevant information regarding the sale as the Commission may request.

3. Except as otherwise may be permitted by written approval of the Commission, no Respondent may purchase the individual interest of a Purchaser in a Tract unless such Purchaser

(a) has executed a written document acknowledging receipt of the letter required by Paragraph A of Part IV of this order and declining to dispose of his interest in the manner provided therein, or

(b) is represented by legal counsel, either individually or as a member of a class in a class action which has been filed in state or federal court.

L. Notwithstanding Paragraphs A-K of this part, if the Purchasers whose Sales Agreements account for a majority of the undivided interests in a Tract expressly consent to retain their interests in the

Tract and to forego permanently disposition of the Tract pursuant to Part III of this order, the Commission shall entertain a petition to that end. Such a petition shall set forth sufficient information to demonstrate:

1. The procedure used to ascertain that Purchasers whose Sales Agreements account for a majority of the undivided interests in the Tract have expressly consented to forego disposition of the Tract pursuant to Part III of this order, and the results of such procedure.

2. The risks, benefits, and burdens of such continued ownership in the Tract and the procedures used to ensure that Purchasers were adequately and accurately informed of such information prior to expressing their consent.

3. That prior to any Purchaser's expression of consent, an appraisal of the Tract was obtained from an appraiser (licensed in Western Australia and who, prior to December 31, 1977, had not been employed, retained or otherwise associated with any Respondent) and such appraisal was provided to the Purchasers in the Tract;

4. That adequate provision has been made for Purchasers to dispose of the Tract in the future;

5. That any Purchaser who does not concur in the majority decision was informed of such Purchaser's right to institute, and the required procedure for instituting, an action for judicial partition or sale;

6. That, for the purposes of Parts 4 and 5 of this paragraph, adequate provision has been made to enable Purchasers who hold only equitable rights in the Tract to exercise full rights of ownership in the Tract.

If the Commission is satisfied that the prerequisites of this paragraph have been met, and that there is no countervailing public interest to be served by rejection of the petition, the Commission shall grant the petition.

M. The provisions of this Part regarding sale of the Tracts and distribution of the proceeds are subject to the laws of Western Australia, and to any judicial decrees or orders thereunder; *provided, however*, that to the extent that any Respondent might otherwise have rights in connection with the sale of any Tract, or to the proceeds thereof, different from those provided herein, it has waived such rights and shall proceed according to the terms of this order.

IV. *It is further ordered*, That ALT make cash payments to Purchasers and Defaulters who are citizens or residents of the

United States, its territories, or the District of Columbia, in accordance with the following procedures:

A. Within sixty (60) days after this order becomes final, ALT shall mail, in accordance with the procedures set forth in Part V of this order, two (2) copies of the letter set forth in Appendix B to all such Purchasers and two (2) copies of the letter set forth in Appendix C to all such Defaulters. *Provided, however*, with prior approval of the Commission, appropriate modifications or deletions may be made in letters to be sent to Purchasers or Defaulters whose rights under this order are different from those delineated in the letters set forth in Appendices B and C. Enclosed with each pair of letters shall be a postage-prepaid return envelope for the return of the release form.

B. The amount to be offered to each eligible Purchaser and Defaulter, as indicated in the letter to such Purchaser or Defaulter, shall be the percentage of \$2,000,000 equal to the percentage that the total Purchase Payments made by that Purchaser or Defaulter is of the total Purchase Payments made by all eligible Purchasers and Defaulters. Moreover, any Purchaser who purchased an interest in a Tract other than from ALT or its representatives or agents (transferee Purchaser), shall participate in the foregoing payment provided, in calculating the amount of the payment to be made, any consideration paid by a transferee Purchaser to a transferor Purchaser shall, if the transferee Purchaser has first furnished to ALT adequate documentation of such Purchaser's purchase of the interest and the amount paid therefor, be treated as a deduction from the Purchase Payments of the transferor Purchaser and treated as an addition to the Purchase Payments of the transferee Purchaser (in no event, however shall a transferee Purchaser be credited with total Purchase Payments in excess of the total Purchase Payments paid to ALT for such interest.)

C. In calculating Purchase Payments, ALT shall attempt to reconcile with its records any response to the letters required by Paragraph A of this part that contest the accuracy of those records.

D. ALT shall make payments to each such Purchaser and Defaulter who shall have elected to participate by tendering the release set forth in Appendices B and C in a total amount equal to the amount calculated pursuant to Paragraphs B and C of this Part. The first payment shall be made no later than two-hundred and forty (240) days after the date this order becomes final, with subsequent payments to be made at least annually over a period not to exceed forty-eight (48) months from the date of the first payment. The payments will be made to each such Purchaser or Defaulter in equal installments, except that the first payment may be larger than

the succeeding payments and the last payment will include any additional amounts due by reason of the recalculation provided for in Paragraph C of this Part.

E. Seven years after the date on which the letters required by Paragraph A of this part shall have been mailed, ALT shall distribute an additional payment in the following circumstance. If, as of such date, less than \$1,500,000 shall have been distributed pursuant to this part, and if as of such date no class action litigation against any of the Respondents shall be pending on behalf of any eligible Purchaser or Defaulter, ALT shall distribute to all Purchasers and Defaulters who shall have tendered the release provided in Appendices B and C the balance of \$1,500,000 less such amounts as, subsequent to the date this order becomes final, shall have been paid pursuant to any arbitration, settlement, release, litigation, or judgment relating to the purchase of any interest in a Tract. In the event that any class action litigation is pending on such date, this distribution shall be deferred until ninety (90) days after such action is dismissed or settled, or any judgment thereon is satisfied, and the amount of such distribution shall be reduced by such amounts as may have been paid pursuant to such settlement, litigation or judgment. Payment of the amounts to be paid under this paragraph shall be made to each Purchaser and Defaulter in the same proportion as payments under Paragraph B of this part; *provided, however*, that no Purchaser or Defaulter shall receive from this distribution an amount in excess of the total of his Purchase Payments less the distributions provided for in this part.

V. *It is further ordered*, That:

A. Any mailings or communications required by Parts III and IV of this order shall be by first-class mail, postage-prepaid and address correction requested, directed to each Purchaser and Defaulter at the most recent address for such Purchaser or Defaulter contained in ALT's files.

B. Sixty (60) days after the mailing required by Paragraph A of Part IV of this order, ALT shall make a second mailing of such letters by certified first-class mail, postage-prepaid, address correction requested, return-receipt requested with delivery to addressee only, to all Purchasers and Defaulters, directed to their most recent addresses contained in the ALT files, except those Purchasers and Defaulters whose first mailing was returned undelivered or who have tendered either the release or the election not to participate.

C. Within twenty (20) days after return to ALT of any undelivered letter mailed pursuant to Paragraphs A or B or within thirty (30) days after mailing any letter mailed pursuant to Paragraph B of

this part for which no return receipt has been received, ALT shall attempt to obtain a current or more recent address for the Purchaser or Defaulter to whom such letter was addressed by requesting the Purchaser's or Defaulter's current mailing address from any relative or representative of the Purchaser or Defaulter whose address appears in ALT's files by sending a communication by first-class mail, postage-prepaid and address correction requested, directed to the most recent address for such relative or representative appearing in ALT's files, and by requesting a current address for the Purchaser or Defaulter from a credit reporting agency located nearby the most recent address for the Purchaser or Defaulter appearing in ALT's files, the current or more recent address to be provided by the credit reporting agency within a reasonable time after the request. If a current or more recent address is received through these procedures, a copy of the appropriate letter required by Paragraph A of Part IV of this order shall be sent within ten (10) days after receipt of the new address to the Purchaser or Defaulter at the new address by certified first-class mail, postage-prepaid, address correction requested, return-receipt requested and delivery to addressee only.

D. After completion of the procedures set forth in Paragraphs A-C of this part, ALT shall maintain such records as will disclose as to each Purchaser and Defaulter, whether such Purchaser or Defaulter (i) signed a release, (ii) elected not to participate, (iii) did not respond to the letter, but received it as evidenced by a signed certified mail return-receipt, (iv) was not reached by any mailing; and the most recent address in ALT's files or obtained through the procedures set forth in Paragraph C of this part.

E. If at any time prior to the fulfillment of the obligations imposed by this order, ALT learns of the current address of any Purchaser or Defaulter whose letters were returned undelivered or from whom a record of receipt was not obtained, ALT shall send such Purchaser or Defaulter the letters required by certified first class mail, postage-prepaid, address correction requested, return-receipt requested and delivery to addressee only, and such Purchaser or Defaulter shall be entitled to the benefits provided under Parts III and IV of this order under the terms and conditions provided therein. Except as provided in Paragraph F of this part, ALT shall not thereafter bear any affirmative duty to seek out Purchasers or Defaulters.

F. All payments or distributions to Purchasers or Defaulters pursuant to Parts III or IV of this order shall be sent by first-class mail, postage-prepaid, address correction requested to the most

recent address for each Purchaser or Defaulter appearing in ALT's files. If any such payment is returned undelivered, ALT shall employ the procedures set forth in Paragraph C of this part in an effort to obtain a current address for such Purchaser or Defaulter.

G. If, at the time of the last payment to eligible Purchasers and Defaulters pursuant to paragraph D of Part IV of this order, less than \$1,500,000 shall have been distributed pursuant to Part IV of this order, ALT shall inform such Purchasers and Defaulters that they may receive an additional payment pursuant to paragraph E of Part IV of this order and request such Purchasers and Defaulters to advise ALT of any change of address.

VI. *It is further ordered*, That Respondents shall, subsequent to the date this order becomes final, for a period of six (6) years or until one year after Respondents have complied fully with all parts of this order, whichever is later, or such shorter period as the Commission may approve in writing:

A. Grant any duly authorized representative of the Federal Trade Commission access to and the right to copy any records required to be maintained by this order.

B. Maintain records which show the efforts taken to insure continuing compliance with the terms and provisions of this order, including but not limited to the following:

1. All records used by any Respondent in determining whether any person or entity is a Purchaser or Defaulter, as each term is defined in this order.

2. All records used by any Respondent in determining the amount of money due any Purchaser or Defaulter pursuant to Parts II, III, and IV of this order.

3. All records evidencing that any Purchaser or Defaulter has arbitrated, settled, released or litigated to final judgment all claims and rights relating to the purchase of an interest in a Tract and that such Purchaser or Defaulter has received payment pursuant to such arbitration, settlement, release or litigation.

4. All records relating to the purchase or transfer of any Purchaser's undivided interest in a Tract, including all documents filed with or issued by any Australian court pursuant to Part III of this order.

5. Copies of all written communications between any Respondent and any Purchaser or Defaulter, including any communication which is returned to any Respondent as nondeliverable by the U.S. Postal Service, except those between counsel for a Respondent and counsel for such Purchaser or Defaulter.

C. Obtain prior approval by the Commission of any written

communication to any Purchaser or Defaulter which is initiated by any Respondent pursuant to Paragraphs I or K of Part III of this order, except for any communication written pursuant to Paragraph K(3)(b). Such Respondent shall provide to the Commission such relevant information within its possession, custody or control as the Commission may request to evaluate any such communication. If, within 20 days after mailing such communication to the Commission, the Respondent has received no written notice that the Commission has determined that the communication fails to conform with the provisions of this order or that the Commission needs additional time to evaluate the communication, the Respondent may send the communication. Otherwise the Commission shall approve the communication or indicate the changes necessary for such approval within 30 days after the submission of such correspondence or as soon thereafter as possible.

D. Send, within 3 days after mailing, copies to the Commission of any written communication, the substance of which has not previously been approved or authorized by the Commission, to any Purchaser or Defaulter which (a) interprets or defines the obligations imposed by this order, or (b) is written in response to any inquiry from any Purchaser or Defaulter relating to a written communication from any Respondent initiated pursuant to Paragraphs I, K or L of Part III of this order.

VII. *It is further ordered, That:*

A. Morlan shall be responsible for ALT's compliance with the provisions of this order and shall be liable for any final judgment against ALT for violating any provision of this order.

B. Safeguard shall provide such funds on a timely basis as are required for compliance with the provisions of this order.

C. In the event that ALT is sold, assigned or otherwise disposed of, the agreement for such disposition shall contain a provision requiring the purchaser or assignee to assume the obligations imposed on ALT under this order.

D. In the event that the Commission determines that ALT has failed to comply, or has become incapable of complying, with any provision of this order, and if the required action is not taken within 30 days after written notice to ALT and Safeguard of such determination, or in the event that the Commission is enjoined, stayed or otherwise prohibited from enforcing any provision of this order against ALT or Morlan by a bankruptcy court, Safeguard shall assume all obligations (including obligations that have become due, but have not been fulfilled by ALT) remaining to be fulfilled by ALT under this order; *provided, however,* that Safeguard shall not be

liable for civil penalties by reason of ALT's failure to fulfill such obligations prior to the date of such written notice; and provided further that, in any event, Safeguard shall fulfill the obligations remaining unfulfilled under Part III of this order either on the dates set forth in such part or twelve (12) months from the date of such written notice, whichever time period is longer. After Safeguard assumes the unfulfilled obligations under this order by operation of this paragraph, and upon submission of a petition by Safeguard, the Commission will review each deadline for any unfulfilled obligation and will extend, where appropriate, any deadline which has been established by Safeguard as imposing, under the prevailing circumstances, an unreasonable hardship or burden in its application to Safeguard; *provided, however*, the Commission need not extend any deadline when extension of the deadline would be contrary to the public interest. The Commission will respond to such petition within 45 days of its submission by Safeguard or as soon thereafter as is possible. Nothing contained in this paragraph shall be construed as otherwise limiting the Commission's authority to pursue against any noncomplying Respondent any action for such noncompliance with this order.

E. ALT shall immediately transfer to Safeguard ownership of one undivided interest in each Tract.

F. Each Respondent herein shall, within ninety (90) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the applicable provisions of this order and, commencing 180 days after filing the initial report, shall file semiannual reports thereafter until it has complied fully with all parts of this order.

G. For the purposes of this order, the "Commission" shall include, and all notices, reports, and requests for approval shall be directed to, the Director of the Bureau of Consumer Protection, or his designee, or successor.

H. Should any duty required to be performed on a day certain under this order fall upon a non-business day, such duty may be performed on the next following business day.

I. The Commission may extend any deadline contained in this order for good cause shown, and such extension shall not be unreasonably withheld.

J. Each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary

362

Decision and Order

corporation or any other change in the corporation which may affect compliance obligations arising out of this order.

APPENDIX A

Listing of parcels of land in Western Australia owned by ALT in which consumers currently hold undivided interests.

Tract Number	Consisting of Victoria Location or Portions of Victoria Locations			Also Identified as Lot No.
I	10293			
II	10295			
III	10144			
IV	10609			
V	10574			
VI	10148			
VII	9907			
VIII	10006			
IX	4484			
X	4485			
XI	4584			
XII	3511			
XIII	10001			
XIV	2718			
XV	2545,	2709		9
XVI	9790			13
XVII	1924,	952,	1458	14
XVIII	2798,	1924,	1458	
	2317,	9721		15
XIX	2798,	9791,	2737	16
XX	755,	9791,	2737,	
	8348,	2798		17
XXI	755,	695,	2798	18
XXII	956,	476,	1258,	
	2170			19
XXIII	1258,	2169		20
XXIV	1258,	2169,	907	21
XXV	907,	2169		22
XXVI	2169,	2718		23
XXVII	2169,	2170,	2718	
	476			24
XXVIII	476,	2170,	2718	25
XXIX	2718,	2170		26
XXX	2718			27

APPENDIX B

[ALT Letterhead]

(Name) (Address) (City and State)

Re: Sale of Land in Western Australia and Cash Payments

Dear (Name):

Australian Land Title, Ltd., ("ALT") has entered into an Agreement with the

Decision and Order

92 F.T.C.

Federal Trade Commission which provides certain benefits for which you are eligible. The Agreement basically provides (a) for the sale of the tract of land in which you hold an interest within five years, (b) that no further payments need be made by you, (c) that those payments dated and received by the company on or after July 1, 1977, will be returned to you, (d) that your sales agreement will be treated as paid in full—you will receive a full share in the proceeds of the sale of the land in accord with your sales agreement, and (e) a cash payment will be made to you each year for the next five years upon your signing the Release set forth below agreeing to release any claims that you may have arising out of your acquisition of the undivided interest in land located in Western Australia.

Our records show that you hold a _____ % interest in [description of land], and that as of June 30, 1977, \$ _____ was paid to ALT on your contract. If your records conflict with any of this information please notify us at once, and provide copies of whatever documents you may have which will help in resolving any conflicts. As mentioned above, all payments you made to ALT after July 1, 1977, are being returned to you.

Sale of Land. ALT will, within the next five years, arrange for the sale of the land in Australia in which you hold an interest. You will receive a share of the net sales price of the land based upon the percentage interest set forth in your sales agreement. It is not possible at this time to estimate the price for which the land will be sold. Before this happens, however, you will be sent complete details concerning how the land will be sold.

Discontinue Payments. ALT is not collecting any further payments due under your contract for the purchase of an undivided interest in land in Western Australia. Accordingly, do not send any additional payments to ALT. ALT will send back to you any payments you made which were dated and received by ALT on or after July 1, 1977. This will not affect your right to participate in the proceeds from the sale of the land in which you hold an undivided interest. You will receive the full share set forth in your sales agreement.

Eligibility for Cash Payment. You are eligible to receive a cash payment from ALT. Cash payments will be made only to purchasers who agree in writing to release any claims they may have arising out of the sale of undivided interests in land in Western Australia. A copy of this letter containing the Release is being provided for your signature. If you sign the Release, you will receive \$ _____ which will be paid in five installments. The first payment will be made by [date], and will be in the amount of \$ _____. The four subsequent payments will be made annually. In order to receive the cash payment you must sign the Release and return it in the enclosed postage-paid envelope. You may wish to consult an attorney to determine your rights before signing the Release, and you should be aware that the Federal Trade Commission has expressed no opinion as to whether you should sign the Release.

Even if you do not wish to sign the Release and receive the cash payment, you will still receive your share of the proceeds of the sale of the land in which you have purchased an interest. You should not make any additional payments to ALT and ALT will return any payments you have made since July 1, 1977. If you do not wish to release all claims and participate in the cash payment, sign the statement "I DO NOT WISH TO PARTICIPATE IN THE CASH PAYMENT" and return the copy in the enclosed postage-paid envelope.

Please sign and return the copy of this letter as soon as possible and in no event later than 60 days. Please note your current address and keep us advised of any future change of address, so that we may send you further information, as well as future payments. If you have any questions about this letter, please write to us at once.

362

Decision and Order

Sincerely,

[Title]

Australian Land Title, Ltd.

RELEASE

In consideration of the cash payments described above, totaling \$ _____, I hereby release Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., their subsidiaries, predecessors, and affiliates, and their officers, directors, employees, and agents from any and all claims, known or unknown, that I may have against any of them in connection with my purchase of an interest in land as described above.

[Date]

[Signature]

Remember, you must sign and date the above Release and return this letter to receive the Cash Payments.

I DO NOT WISH TO PARTICIPATE IN THE CASH PAYMENT.

[Date]

[Signature]

APPENDIX C

[ALT Letterhead]

(Name)

(Address)

(City and State)

Re: Eligibility for Cash Payments

Dear (Name):

Australian Land Title, Ltd., ("ALT") has entered into an Agreement with the Federal Trade Commission which provides certain benefits for which you are eligible.

Cash Payments. Cash payments will be made to persons whose last payment on their contracts was received by ALT on or after January 1, 1974, but not later than December 31, 1976. According to our records, your last payment to ALT was made on [date]. At this time you had paid \$ _____ on your contract for a _____ % interest in the following land: [description of land]. If your records conflict with any of this information, please notify us at once, and provide copies of whatever documents you may have which will help in resolving any conflicts.

Based on the foregoing, you are eligible for a cash payment of \$ _____ from ALT. You can receive this amount only if you agree to release any claims you may have arising out of the sale of undivided interests in land in Western Australia. A copy of this letter containing the Release is being provided for your signature.

The payment will be made in five installments. The first payment will be made by [date], and will be in the amount of \$ _____. The four subsequent payments will be made annually. In order to receive the cash payment you must sign the RELEASE and return it in the enclosed postage-paid envelope. You may wish to

Decision and Order

92 F.T.C.

consult an attorney to determine your rights before signing the Release, and you should be aware that the Federal Trade Commission has expressed no opinion as to whether you should sign the Release.

If you do not wish to release all claims and participate in the cash payment, sign the statement "I DO NOT WISH TO PARTICIPATE IN THE CASH PAYMENT" and return the copy in the enclosed postage-paid envelope.

Sale of Land. Even if you do not agree to release all claims and participate in the cash payment described above, you will still be eligible to receive a payment from the proceeds of the sale of the land in which you contracted to purchase an interest. The amount of this payment cannot now be estimated, since it will be based on the sales price of the land, as well as the amount you paid on your contract.

Whether or not you choose to participate in the cash payments, the amount you will receive is limited to the amount that you have paid to ALT. In no event will you receive more than the amount you paid.

Please sign and return the copy of this letter as soon as possible and in no event later than 60 days. Please note your current address, and advise us of any future change of address, so that we may send you further information, as well as future payments.

If you have any questions about this letter, please write us at once.

Sincerely,

Australian Land Title, Ltd.

By

RELEASE

In consideration of the cash payments described above, totaling \$ _____, I hereby release Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., their subsidiaries, predecessors, and affiliates, and their officers, directors, employees, and agents from any and all claims, known or unknown, that I may have against any of them in connection with my purchase of an interest in land as described above.

[Date]

[Signature]

Remember, you must sign and date the above Release and return this letter to receive the Cash Payments.

I DO NOT WISH TO PARTICIPATE IN THE CASH PAYMENT.

[Cash]

[Signature]

IN THE MATTER OF

JOHN HANCOCK MUTUAL LIFE INSURANCE CO., ET
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS*Docket C-2930. Complaint, Sept. 19, 1978 — Decision, Sept. 19, 1978*

These four (4) consent orders, among other things, require four (4) Boston, Massachusetts insurance companies to cease interlocking directors by allowing any individual to sit on their boards who is simultaneously sitting on the board of any of the other boards or of any other competitive firms. The consent orders additionally require the companies to initiate prescribed procedures designed to eliminate interlocking directorates, and to submit detailed compliance reports to the Commission annually for a five-year period.

Appearances

For the Commission: *Patrick J. Quinlan* and *Alan Proctor*.

For the respondents: *Andrew C. Hartzell, Jr.* for John Hancock Mutual Life Insurance Co., *John S. Kingdon* for New England Mutual Life Insurance Co. and *Edwin M. Zimmerman* for State Mutual Life Assurance Co. and Liberty Mutual Insurance Co., Boston, Mass.

COMPLAINT

The Federal Trade Commission having reason to believe that the above-named respondents have violated Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof, would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. The following definitions apply in this complaint:

(a) "John Hancock" means John Hancock Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Liberty Mutual" means Liberty Mutual Insurance Company, the respondent, Liberty Mutual Fire Insurance Company and all of their insurance company subsidiaries.

(c) "New England Mutual" means New England Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(d) "State Mutual" means State Mutual Life Assurance Company of America, the respondent, and all insurance company members of