

1 **STATE OF WASHINGTON**  
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**  
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING ) Order Number S-04-220-05-TO01  
5 Whether there has been a violation of the )  
6 Securities Act of Washington by: ) SUMMARY ORDER TO CEASE AND  
7 Able Mortgage & Investments, Inc. and Barry ) DESIST AND NOTICE OF INTENT TO  
8 A. Hammer; ) IMPOSE FINES AND RECOVER COSTS  
9 Respondents. )  
10 \_\_\_\_\_ )

11 THE STATE OF WASHINGTON TO: Able Mortgage & Investments, Inc.  
12 Barry A. Hammer

13 **STATEMENT OF CHARGES**

14 Please take notice that the Securities Administrator of the State of Washington has reason  
15 to believe that Respondents, Able Mortgage & Investments, Inc. and Barry A. Hammer, have  
16 each violated the Securities Act of Washington and that their violations justify the entry of an  
17 order of the Securities Administrator under RCW 21.20.390 and RCW 21.20.395 against each to  
18 cease and desist from such violations and to impose fines and recover costs. The Securities  
19 Administrator finds that delay in ordering the Respondents to cease and desist from such  
20 violations would be hazardous to the investors and to the public and that a Summary Order to  
21 Cease and Desist should be entered immediately. The Securities Administrator finds as follows:  
22  
23  
24  
25

SUMMARY ORDER TO CEASE AND DESIST AND 1  
NOTICE OF INTENT TO IMPOSE FINES AND  
RECOVER COSTS

DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

1 **TENTATIVE FINDINGS OF FACT**

2 **I. RESPONDENTS**

3 1. Able Mortgage & Investments, Inc. (“Able Mortgage”) is a Washington corporation  
4 that had its principal place of business at 1802 Pacific Avenue in Everett, Washington from 1987  
5 until 2004. Able Mortgage purportedly was in the business of buying and selling real properties.  
6

7 2. Barry A. Hammer (“Hammer”) is the president and sole shareholder of Able Mortgage  
8 & Investments, Inc. Hammer is also a licensed attorney in the State of Washington. On  
9 September 17, 2004, Hammer filed a Chapter 7 petition for personal bankruptcy in the Western  
10 District of Washington. The assets of Able Mortgage were later consolidated into Hammer’s  
11 bankruptcy estate.

12 **II. OFFER AND SALE OF PROMISSORY NOTES**

13 From 1987 through 2004, Hammer and Able Mortgage offered and sold to at least 40  
14 investors more than \$3.5 million worth of promissory notes issued by Able Mortgage &  
15 Investments, Inc. and personally guaranteed by Hammer. During the same time, Hammer  
16 offered and sold to at least 25 investors more than \$5 million worth of personal promissory  
17 notes. The notes had annual interest rates of 7% to 12% and one-year to six-year terms. Most of  
18 the investors were clients of Hammer and many of the investors were elderly.  
19

20 When offering and selling the notes, Hammer told some investors that he would use their  
21 funds to make high-interest, short-term loans to borrowers. He told other investors that he would  
22 use their funds to improve or purchase real properties.

23 **III. MISREPRESENTATIONS AND OMISSIONS**

24 When offering and selling notes to certain investors, Hammer and Able Mortgage each  
25 represented that the investments were safe and had little or no risk. Hammer and Able Mortgage

1 each failed to disclose the risks of the investments, including personal and corporate insolvency.  
2 Hammer and Able Mortgage each failed to give investors material information including  
3 financial statements for Hammer or for Able Mortgage.

4 When offering and selling notes to three investors, who were also Hammer's clients,  
5 Hammer represented that their notes would be secured by deeds of trust against property located  
6 at 32802 138<sup>th</sup> Street SE in Sultan, Washington. However, Hammer did not own that property.

#### 7 IV. UNREGISTERED SECURITIES

8 Able Mortgage & Investments, Inc. and Barry A. Hammer are not currently registered to  
9 offer or sell securities in the State of Washington and have not previously been so registered.

#### 10 V. UNREGISTERED BROKER/DEALER/SALESPERSON

11 Barry A. Hammer is not currently registered as a broker-dealer or securities salesperson  
12 in the state of Washington and has not previously been so registered.

#### 14 VI. THREAT TO THE INVESTING PUBLIC

15 The Securities Administrator finds that the continued offering of promissory notes by  
16 Barry A. Hammer presents a threat to the investing public because, as described in Tentative  
17 Findings of Fact, Hammer engaged in dishonest and fraudulent conduct in the offer and sale of  
18 the notes.

19 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

#### 20 CONCLUSIONS OF LAW

##### 21 I.

22 The offer or sale of the promissory notes and guarantees described above constitute the  
23 offer or sale of a security, as defined in RCW 21.20.005(10) and (12), in the form of notes,  
24 evidences of indebtedness, or investment contracts.

1 II.

2 Able Mortgage & Investments, Inc. and Barry A. Hammer have each violated RCW  
3 21.20.140 by offering or selling said securities because there is no registration for the offering of  
4 the securities on file with the Securities Administrator.

5 III.

6 Barry A. Hammer has violated RCW 21.20.040 by offering or selling said securities  
7 while not registered as a broker-dealer or securities salesperson in the state of Washington.  
8

9 IV.

10 In connection with the offer or sale of said securities, Able Mortgage & Investments, Inc.  
11 and Barry A. Hammer have each violated RCW 21.20.010 because, as described in Tentative  
12 Findings of Fact III, Able Mortgage and Hammer each made untrue statements of material fact  
13 or omitted to state material facts necessary in order to make the statements made, in the light of  
14 the circumstances under which they were made, not misleading and/or engaged in acts and  
15 practices that operated as a fraud or deceit.

16 V.

17 The Securities Administrator finds that an emergency exists, that continued violations of  
18 RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140 constitute a threat to the investing  
19 public, and that summary orders to cease and desist from those violations is in the public interest  
20 and necessary for the protection of the investing public.  
21

22 **CONTINUING INVESTIGATION**

23 The Securities Division is continuing to investigate the offer and sale of securities by  
24 Able Mortgage & Investments, Inc. and Barry A. Hammer to determine the full extent of any  
25 securities violations.

1 **SUMMARY ORDER**

2 Based on the foregoing,

3 NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that Respondents,  
4 Able Mortgage & Investments, Inc. and Barry A. Hammer, and their agents and employees each  
5 shall cease and desist from offering or selling securities in any manner in violation of RCW  
6 21.20.140, the securities registration provision of the Securities Act of Washington.  
7

8 It is further SUMMARILY ORDERED that Barry A. Hammer and his agents and  
9 employees each shall cease and desist from violation of RCW 21.20.040, the securities  
10 salesperson registration provision of the Securities Act of Washington.

11 It is further SUMMARILY ORDERED that Respondents, Able Mortgage & Investments,  
12 Inc. and Barry A. Hammer, and their agents and employees each shall cease and desist from  
13 violation of RCW 21.20.010, the anti-fraud provision of the Securities Act of Washington.

14 **NOTICE OF INTENT TO IMPOSE FINE**

15 Based on the foregoing Tentative Findings of Fact and Conclusions of Law, the  
16 Securities Administrator finds that Respondents have knowingly and recklessly violated the  
17 registration provisions of the Securities Act, and that the imposition of fines under RCW  
18 21.20.395 is appropriate in light of the severity of violations. A fine, in an amount of  
19 \$100,000, should be imposed jointly and severally against Respondents, Able Mortgage &  
20 Investments, Inc. and Barry A. Hammer.  
21

22 **NOTICE OF INTENT TO RECOVER COSTS**

23 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities  
24 Administrator, pursuant to RCW 21.20.390 and RCW 21.20.395, intends to order that  
25 Respondents, Able Mortgage & Investments, Inc. and Barry A. Hammer, shall be liable for and

1 pay to the Securities Division the costs, fees, and other expenses incurred in the conduct of the  
2 administrative investigation and hearing of this matter, in an amount not less than \$25,000.

3 **AUTHORITY AND PROCEDURE**

4 This Order is entered pursuant to the provisions of RCW 21.20.390 and is subject to the  
5 provisions of RCW 34.05. Respondents, Able Mortgage & Investments, Inc. and Barry A.  
6 Hammer, may each make a written request for a hearing as set forth in the NOTICE OF  
7 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this  
8 order.  
9

10 If a respondent does not make a timely hearing request, the Securities Administrator  
11 intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and make  
12 the Summary Order to Cease and Desist permanent and impose the fine and costs as to that  
13 respondent.

14 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

15 Dated and Entered this 13th day of July, 2005

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17 

18 MICHAEL E. STEVENSON  
19 Securities Administrator

20 Approved by:

21  
22 

23 Martin Cordell  
24 Chief of Enforcement

20 Presented by:

21  
22 

23 Dylan Waits  
24 Financial Legal Examiner