

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING ) Order Number S-06-131-07-SC01  
Whether there has been a violation of the )  
Securities Act of Washington by: ) STATEMENT OF CHARGES AND NOTICE  
 ) OF INTENT TO ENTER AN ORDER TO  
Boyd Real Estate Investments, Inc.; Kevin G. ) CEASE AND DESIST, TO REVOKE  
Boyd; Marc A. Boyd, ) EXEMPTIONS, TO IMPOSE FINES AND  
 ) TO CHARGE COSTS  
Respondents )

THE STATE OF WASHINGTON TO: Boyd Real Estate Investments, Inc.  
Kevin G. Boyd  
Marc A. Boyd

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Boyd Real Estate Investments, Inc.; Kevin G. Boyd; and Marc A. Boyd, have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations, to revoke exemptions pursuant to RCW 21.20.325, to impose fines pursuant to RCW 21.20.395 and to charge costs pursuant to RCW 21.20.390. The Securities Administrator finds as follows:

**TENTATIVE FINDINGS OF FACT**

Respondents

1. Boyd Real Estate Investments, Inc. (“BREI”) is a Washington corporation that was incorporated in 1990 and has its principal place of business at 3645 Wallingford Avenue in Seattle, Washington. BREI is in the business of brokering loans secured by deeds of trust

1 against real property. The loans are financed by investors and are evidenced by promissory  
2 notes from borrowers.

3 2. Kevin G. Boyd is president of Boyd Real Estate Investments, Inc.

4 3. Marc A. Boyd is vice president of Boyd Real Estate Investments, Inc. Kevin Boyd  
5 and Marc Boyd are the only corporate shareholders, officers and directors of BREI.

6 Registration Status

7 4. During 1994 and 1995, Boyd Mortgage Security Company Inc., a company that was  
8 partly owned by Kevin G. Boyd and that had Kevin G. Boyd and Marc A. Boyd as corporate  
9 officers and directors, was registered with the Securities Division to sell its mortgage paper  
10 securities in the State of Washington.

11 5. Boyd Real Estate Investments, Inc. has never been registered to sell its securities in  
12 the State of Washington. There is no notification for claim of exemption on file for BREI with  
13 the Securities Division.

14 6. Boyd Real Estate Investments, Inc. has never been registered as a securities broker-  
15 dealer in the State of Washington.

16 7. During 1994 and 1995, Kevin G. Boyd was registered as a mortgage paper securities  
17 salesperson for Boyd Mortgage Security Company Inc. in the State of Washington. Kevin G.  
18 Boyd was never subsequently registered as a securities salesperson and he has never been  
19 registered as a securities broker-dealer in the State of Washington.

20 8. Marc A. Boyd has never been registered as a securities broker-dealer or as a securities  
21 salesperson in the State of Washington.  
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1 9. During November 2006, the Securities Division sent Kevin G. Boyd and BREI a letter  
2 advising them that they might be offering and selling unregistered securities and acting as an  
3 unregistered securities salesperson.  
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5 Offer and Sale of Promissory Notes

6 10. From at least 2001 through 2007, Respondents have offered and sold more than \$30  
7 million worth of promissory notes to more than 90 investors. The notes generally had a term of  
8 one year or less, with an annual interest rate of 12%. Some of the notes were secured by deeds  
9 of trust that were in second position or lower. As of March 1, 2007, BREI had more than \$3  
10 million of outstanding notes that were secured by subordinated deeds of trust, with security  
11 interests that were in second position or lower.

12 11. From at least 2002 through 2007, Respondents offered and sold fractionalized notes  
13 that were funded by more than one investor. In 2002, Respondents offered and sold more than  
14 \$700,000 of fractionalized notes. In 2003, Respondents offered and sold more than \$800,000  
15 of fractionalized notes. In 2004, Respondents offered and sold more than \$500,000 of  
16 fractionalized notes. In 2005, Respondents offered and sold more than \$2,600,000 of  
17 fractionalized notes. In 2006, Respondents offered and sold more than \$1,300,000 of  
18 fractionalized notes. As of March 1, 2007, BREI had offered and sold more than \$6 million of  
19 outstanding fractionalized notes.

20 Services Provided by BREI

21 12. When offering and selling notes, BREI screened the borrowers, prepared loan  
22 paperwork, ordered borrower credit checks, and made property valuations. BREI also  
23 provided loan collection services and foreclosed on non-performing loans.  
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Information Provided by BREI

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2 13. When offering and selling notes, BREI generally delivered to investors a written  
3 summary sheet that briefly described the investment. The summary generally included the  
4 borrower's name; the borrower's intended use of funds; the date, term and amount of the loan;  
5 the monthly loan payment; the annual interest rate; a description of the property that was to  
6 secure the investment; the value of the property that was to secure the investment; and a loan-  
7 to-value ratio for the property that was to secure the investment.

Failure to Provide Documents to Investors

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9 14. When offering and selling notes to certain investors, Respondents each failed to  
10 deliver the following documents: an original promissory note; a property appraisal for the real  
11 property that was to secure the investment; a borrower's loan application; a borrower's credit  
12 report; a borrower's financial statement; a summary of BREI's loan underwriting guidelines; a  
13 delinquency and default history for BREI loans; a summary of the loan fees and commissions  
14 paid to BREI; financial statements for BREI; an escrow agreement; a loan participation  
15 agreement; a loan servicing agreement; and a general or specific offering circular.

Failure to Provide Disclosures to Investors

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18 15. When offering and selling notes to certain investors, Respondents each failed to  
19 disclose the risks of the investor not having an original note, such as the risk that the note could  
20 be re-sold to someone else. Respondents each failed to disclose that investors who did not  
21 have original notes might be unable to foreclose or might experience significant delays in  
22 trying to foreclose against the real property that was supposed to secure their investment.  
23 Respondents each failed to disclose that investors whose notes were held by BREI could be  
24 subject to a bankruptcy filing for BREI.

1 16. When offering and selling notes to certain investors, Respondents each failed to  
2 disclose that BREI borrowers were high-risk borrowers who might not have been able to  
3 qualify for bank financing. Respondents each failed to disclose the delinquency and default  
4 rate for BREI loans, which appeared to be more than 30% of the total dollar amount of the  
5 outstanding loans as of December 5, 2007. Respondents each failed to disclose that borrowers  
6 might have to make a “balloon” payment when the note comes due and that borrowers might  
7 be unable to obtain the cash required to make that payment. Respondents each failed to  
8 disclose that an investor might be subject to significant delays in repayment and could incur  
9 additional costs to collect borrower payments. Respondents each failed to disclose that  
10 investor recourse might be limited to the value of the real property that secured the investment,  
11 without any recourse or with only limited recourse against the borrower.  
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13 17. When offering and selling notes to certain investors, Respondents each failed to  
14 disclose that investors might have to pay additional costs in order to protect the real property  
15 security interest that was to secure the investment, including attorney’s fees, property taxes,  
16 foreclosure costs, closing costs, and property rehabilitation, marketing, and management costs.  
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18 18. When offering and selling notes to certain investors, Respondents each failed to  
19 disclose that investors were subject to general market conditions and to real property  
20 conditions that could limit the value of the property that the investor was relying upon to  
21 secure the investment. Respondents each failed to disclose regulatory risks, including zoning  
22 restrictions, building permit conditions, environmental regulations, hazardous waste  
23 regulations and land use requirements, that could affect the value of the property that was  
24 supposed to secure the investment.  
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1 19. When offering and selling notes to certain investors for remodeling and for new  
2 construction loans, which represented more than ¾ of BREI loans, Respondents each  
3 represented to investors that their investments were secured. Respondents each failed to  
4 disclose the current value of the property that was to secure the investment and the specialized  
5 risks of construction loans. Respondents each failed to disclose the tax assessed value of the  
6 property that was to secure the investment. Respondents each failed to deliver to investors a  
7 property appraisal that was prepared by a professional appraiser. As a substitute, Respondents  
8 provided an “as completed” valuation and used that valuation to calculate a loan-to-value ratio  
9 that gave investors the impression that they were secured at the time they purchased the notes.  
10 Respondents each failed to disclose that there were significant risks associated with  
11 construction projects, such as cost overruns, delays in construction, misuse of funds,  
12 environmental regulations, zoning and permit restrictions, and property setback or access  
13 requirements, and that the projects might not be completed as anticipated.

15 20. When offering and selling notes to certain investors, Respondents each failed to  
16 disclose the risks of having a subordinated deed of trust. Respondents each failed to disclose  
17 that investors might have to make payments on prior lien obligations or might have to buy out  
18 superior encumbrances in order to preserve their real property security interest. Respondents  
19 each failed to disclose that investors with a subordinated deed of trust might lose their security  
20 interest if a property was foreclosed and there were inadequate proceeds to pay off the  
21 subordinated lien.

23 21. When offering and selling notes to certain investors, Respondents each failed to  
24 disclose BREI’s underwriting standards for determining the value and the adequacy of the real  
25 property that secured the investment and for determining the borrower’s credit standing and

1 repayment ability. Respondents each failed to disclose whether BREI made a physical  
2 inspection of the property that was supposed to secure the loan. Respondents each failed to  
3 disclose whether BREI verified rental income information for any rental property that was  
4 supposed to secure the loan. Respondents each failed to disclose whether BREI required  
5 borrowers to maintain insurance in favor of the investor for any improved property that was  
6 supposed to secure the loan and the limits of any such coverage. Respondents each failed to  
7 disclose whether BREI verified borrower bank deposits, borrower income, borrower liabilities  
8 and borrower employment information.

9 22. When offering and selling notes to certain investors, Respondents each failed to  
10 disclose that investors who purchased an interest in a “fractionalized” note, a single note  
11 financed by multiple investors, might have to pay additional legal costs to define and to protect  
12 their real property security interest because the investors did not have a loan participation  
13 agreement. Respondents each failed to disclose that investors might have to pursue  
14 contributions from other investors who did not pay their proportionate share of any additional  
15 costs. Respondents each failed to disclose that investors with a minority interest would be  
16 subject to majority control.

17 23. When offering and selling notes to certain investors, Respondents each failed to  
18 disclose the risks of not having an escrow account for investor funds or for borrower payments.  
19 Respondents each failed to disclose that investor funds could be subject to a risk of loss from  
20 creditor claims against BREI or from BREI’s potential misuse of investor funds.

21 24. When offering and selling notes to certain investors, Respondents each failed to  
22 disclose that investors were dependent upon the managerial ability and the business judgment  
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1 of BREI's employees and the financial soundness of BREI to service outstanding loans and to  
2 foreclose on non-performing loans.

3 25. When offering and selling notes to certain investors, Respondents each failed to  
4 disclose that investors and BREI might have a conflict of interest because BREI was  
5 compensated through loan fees and commissions that were financed with investor funds.

6 Failure to Disclose Information for Specific Transactions

7 Gudgel

8 26. In 1998, when offering and selling notes totaling more than \$100,000 to three  
9 investors from a borrower named Gudgel, ostensibly to finance the operation of a restaurant,  
10 Respondents each failed to disclose the current value of the property that was supposed to  
11 secure the investments, the borrower's financial statement, BREI's financial statement and the  
12 risks of having a subordinated deed of trust. The property was foreclosed and re-sold in 2003  
13 and the three notes from Gudgel were not repaid in full.

14 Corbin

15 27. In 2001, when offering and selling notes totaling approximately \$200,000 to two  
16 investors from a borrower named Corbin, ostensibly to fund the conversion of an existing tri-  
17 plex to a four-plex property, Respondents each failed to disclose the poor condition of the  
18 property that was supposed to secure the investments, the current value of the property, the  
19 rental history of the property, the borrower's loan application, the borrower's financial  
20 statement, BREI's financial statement and the regulatory requirements for making the  
21 conversion. The conversion project was never completed and the property that was to secure  
22 the two notes was foreclosed and re-sold in 2002. The two notes from Corbin were not repaid  
23 in full.  
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Greenstamps

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2 28. In 2005, when offering and selling notes totaling more than \$500,000 to least four  
3 investors from a borrower named Greenstamps, ostensibly to fund the construction of a  
4 commercial building, Respondents each failed to disclose the risks of holding subordinated  
5 deeds of trust. Respondents each failed to disclose the current value and the tax assessed value  
6 of the property that was supposed to secure the investments. Respondents each failed to  
7 provide financial statements for BREI. Respondents each failed to disclose risks associated  
8 with construction loans, including cost overruns. Documents provided to the Securities  
9 Division by BREI as of September 2007 show that only 35% of the building was completed,  
10 although the investor funds were almost fully expended. The notes from Greenstamps have  
11 been extended and have not yet been repaid.  
12

Cashman

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14 29. In 2007, when offering and selling notes totaling approximately \$265,000 to four  
15 investors with separate notes and deeds of trust from a borrower named Cashman, BREI and  
16 Kevin G. Boyd each represented that investors with a junior lien position would have less  
17 initial risk for a construction loan because their funds would not be withdrawn until later in the  
18 project. Respondents each failed to disclose that investors with a junior lien position might  
19 have to buy out or make payments on senior encumbrances in order to protect their security  
20 interest. Respondents each failed to disclose that investors with a junior lien position might  
21 lose their security interest if the property was foreclosed and there were inadequate proceeds to  
22 pay off the junior liens. Respondents each failed to disclose the current value of the property  
23 that was to secure the investment. The notes from Cashman have not yet come due.  
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Financial Insolvency and Mismanagement

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2           30. When offering and selling notes to investors, Respondents each failed to disclose  
3 the unsound financial condition and financial management of BREI. BREI's unaudited  
4 balance sheet for the year ended December 31, 2006 showed that BREI had negative retained  
5 earnings of more than \$1.7 million and a negative net worth of approximately \$1.8 million.  
6 During his testimony before the Securities Division in November 2007, Marc A. Boyd, who  
7 was responsible for maintaining BREI's accounting records, was unable to explain how  
8 BREI's retained earnings for December 31, 2006 were calculated. Respondents also  
9 commingled investor funds with borrower payoff funds in a single bank account, without  
10 reconciling the account each month.

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

**CONCLUSIONS OF LAW**

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14           1. The offer or sale of notes described in the Tentative Findings of Fact constitutes the  
15 offer or sale of a security as defined in RCW 21.20.005(10) and (12), whether in the form of a  
16 note, an evidence of indebtedness, or an investment contract.

17           2. As set forth in the Tentative Findings of Fact, Boyd Real Estate Investments, Inc. ;  
18 Kevin G. Boyd; and Marc A. Boyd have each violated RCW 21.20.140 because no registration  
19 or notification of claim of exemption for such offer or sale is on file with the Securities  
20 Administrator.

21           3. As set forth in the Tentative Findings of Fact, Boyd Real Estate Investments, Inc. ;  
22 Kevin G. Boyd; and Marc A. Boyd have each violated RCW 21.20.040 by offering or selling  
23 said securities while not registered as a securities salesperson or securities broker-dealer in the  
24 state of Washington.

1 4. As set forth in the Tentative Findings of Fact, Boyd Real Estate Investments, Inc. ;  
2 Kevin G. Boyd; and Marc A. Boyd have each violated RCW 21.20.010, in connection with the  
3 offer or sale of said securities, by making untrue statements of a material fact or by omitting to  
4 state a material fact necessary in order to make the statements made, in the light of the  
5 circumstances under which they were made, not misleading.

6 **NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST**

7 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and  
8 Conclusions of Law, the Securities Administrator intends to order that Boyd Real Estate  
9 Investments, Inc.; Kevin G. Boyd; and Marc A. Boyd, and their agents and employees, each  
10 shall cease and desist from violations of RCW 21.20.010, RCW 21.20.040 and RCW  
11 21.20.140.

12 **NOTICE OF INTENT TO REVOKE EXEMPTIONS**

13 Pursuant to RCW 21.20.325, and based upon the Tentative Findings of Fact and  
14 Conclusions of Law, the Securities Administrator intends to revoke the exemptions for the  
15 offer or sale of notes and evidences of indebtedness for Boyd Real Estate Investments, Inc. ;  
16 Kevin G. Boyd; and Marc A. Boyd under RCW 21.20.320(1), RCW 21.20.320(5), RCW  
17 21.20.320(9) and RCW 21.20.320(17).

18 **NOTICE OF INTENT TO IMPOSE FINES**

19 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and  
20 Conclusions of Law and upon Kevin G. Boyd's knowing or reckless violations of the  
21 Securities Act of Washington, the Securities Administrator intends to order that Kevin G. Boyd  
22 shall be liable for and shall pay a fine of \$100,000 and that Marc A. Boyd shall be liable for  
23 and shall pay a fine of \$15,000.

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**NOTICE OF INTENT TO CHARGE COSTS**

Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Boyd Real Estate Investments, Inc.; Kevin G. Boyd; and Marc A. Boyd, shall jointly and severally pay investigative costs of \$25,000.

**AUTHORITY AND PROCEDURE**

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. The respondents, Boyd Real Estate Investments, Inc.; Kevin G. Boyd; and Marc A. Boyd, may each make a written request for a hearing, as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

If a respondent fails to make a timely hearing request, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a final order to cease and desist, to revoke exemptions, to impose fines and to charge costs against that respondent.

DATED AND ENTERED this 29th day of February, 2008

*Michael E. Stevenson*

MICHAEL E. STEVENSON  
Securities Administrator

Approved by:

*Martin Cordell*

Presented by:

*Janet S.*