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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
whether there has been a violation of the  
Securities Act of Washington by:

BB&A Properties VIII, LLC;  
Francis Bertholic, Jr.; and  
Marcia J. Martin,

Respondents

Order Number S-10-375-11-SC01

STATEMENT OF CHARGES AND NOTICE  
OF INTENT TO ENTER AN ORDER TO  
CEASE AND DESIST, TO REVOKE  
EXEMPTIONS, TO IMPOSE A FINE, AND  
TO CHARGE COSTS

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**THE STATE OF WASHINGTON TO:**

BB&A Properties VIII, LLC  
Francis Bertholic, Jr., a/k/a Bart Bertholic  
Marcia Johanna Martin

**STATEMENT OF CHARGES**

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Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, BB&A Properties VIII, LLC; Francis Bertholic, Jr.; and Marcia J. Martin, 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 and to charge costs; under RCW 21.20.325 to revoke the exemptions set forth in RCW 21.20.320 (1), (5), (9), (11), and (17); and under RCW 21.20.395 to impose a fine. The Securities Administrator finds as follows:

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**TENTATIVE FINDINGS OF FACT**

Respondents

1. BB&A Properties VIII, LLC (“BB&A”) is a Washington limited liability company that was formed on November 9, 2005 and was administratively dissolved on March 1, 2010. During 2007 and 2008, BB&A’s primary asset was a mobile home park facility

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

1 located in Spokane, Washington. In March 2010, the mobile home park was transferred by  
2 a quit claim deed back to its former owner.

3  
4 2. Francis Bertholic, Jr. (“Bertholic”) is a Washington resident who goes by the name  
5 of “Bart” Bertholic. Bertholic was the sole member and the manager of BB&A. From June  
6 1990 until July 2009, Bertholic was a licensed insurance agent in the state of Washington.  
7 From September 1990 until September 1993, Bertholic was a licensed real estate broker in  
8 the state of Washington. From December 2000 until February 2006, Bertholic was a  
9 registered securities salesperson in the state of Washington. From September 2002 until  
10 February 2006, Bertholic was a registered investment adviser representative in the state of  
11 Washington.  
12

13 3. Marcia J. Martin (“Martin”) is a Washington resident. From January 2007 until  
14 December 2007, Martin was a licensed loan originator in the state of Washington.  
15

#### 16 Background

17 4. On December 27, 2006, the Washington Securities Division entered a Statement of  
18 Charges against Bertholic. The Statement of Charges alleged that during 2005 and 2006,  
19 Bertholic raised \$682,000 from four investors through the sale of promissory note  
20 investments that were issued by Bertholic and by BB& A Properties I, LLC; BB&A  
21 Properties V, LLC; BB&A Properties VII, LLC; and BB&A Properties X, LLC, which were  
22 limited liability companies that were solely owned and managed by Bertholic. The  
23 Statement of Charges alleged that Bertholic had violated the Securities Act of Washington  
24 by failing to disclose material information about those investments, including the risks of  
25

1 the investments, the value of the real property that purportedly secured the investments, and  
2 the financial status and experience of Bertholic and his companies.

3 Offering of Promissory Note Investments Issued by BB&A and Bertholic

4  
5 5. During 2007 and 2008, BB&A, Bertholic, and Martin (“Respondents”) each  
6 offered and sold approximately \$965,000 worth of promissory note investments to at least  
7 thirteen Washington investors. The promissory notes were issued by BB&A and Bertholic.  
8 The principal amount of the investments has never been repaid.

9  
10 6. Respondent Martin personally solicited investors to purchase the promissory notes.  
11 Martin met with investors and presented the investment to them. Martin represented to  
12 investors that Bertholic was a “great borrower” and that she recommended the investment.  
13 Martin received a 5% sales commission when the notes were sold. Martin completed the  
14 promissory notes and deeds of trust for investors. Martin was also responsible for recording  
15 deeds of trust that were supposed to secure the promissory notes.

16  
17 7. When offering and selling the investments, Respondents generally represented to  
18 investors that the promissory notes would pay an annual interest rate of 13% and would  
19 have a term ranging from five to eleven years. Respondents also represented to investors  
20 that the proceeds from the sale of the promissory notes would be used by Bertholic for  
21 business and investment purposes.

22  
23 Misrepresentations and Omissions

24 *A. Failure to Disclose Other Debts Owed by Bertholic*

25 8. When offering and selling the investments, Respondents each failed to disclose to  
the investors that Bertholic previously issued more than \$680,000 worth of promissory note

1 investments in 2005 and 2006, and had not repaid those investments. Respondents each  
2 failed to disclose that Bertholic used proceeds from the sale of those promissory note  
3 investments to benefit other limited liability companies that were owned and operated by  
4 Bertholic.  
5

6 *B. Failure to Disclose Bertholic's Prior Disciplinary History*

7 9. When offering and selling the promissory note investments, Respondents, BB&A,  
8 Bertholic, and Martin, each failed to disclose to investors that Bertholic was terminated by  
9 Centaurus Financial, Inc., a registered securities broker-dealer, in February 2006 for  
10 offering and selling investments that were issued by Bertholic and his companies without  
11 the knowledge or approval of Centaurus Financial, Inc.  
12

13 10. When offering and selling the promissory note investments, Respondents, BB&A,  
14 Bertholic, and Martin, each failed to disclose to investors that Bertholic was barred by the  
15 National Association of Securities Dealers ("NASD"), which is now known as the Financial  
16 Industry Regulatory Authority ("FINRA"), on April 27, 2007 from associating with any  
17 NASD member firm in any capacity. Respondents each failed to disclose to investors that  
18 the NASD found that Bertholic had promised a customer that he would invest \$435,000  
19 from the sale of a promissory note in order to acquire real estate or to maintain and improve  
20 real estate, but instead Bertholic deposited the funds in his personal bank account and  
21 withdrew funds to pay his personal expenses.  
22  
23

24 *C. Misrepresentations and Omissions about the Promissory Note Investments*

25 11. When offering and selling the promissory note investments, Respondents, BB&A,  
Bertholic, and Martin, falsely represented to investors that the investments would be secured

1 by the mobile home park property that was owned by BB&A. Respondents each failed to  
2 disclose to investors that BB&A had purchased the mobile home property for \$750,000, but  
3 the tax assessed value of the property at the time of the purchase was only \$481,800.  
4 Respondents each failed to give investors a real property appraisal or other reliable method  
5 of valuation for the property that purportedly secured their investment.  
6

7 12. When offering and selling the promissory note investments, Respondents, BB&A,  
8 Bertholic, and Martin, each failed to disclose the position of the deed of trust that  
9 purportedly secured each investment. Respondents each failed to disclose to investors that  
10 the deed of trust securing their investment was subordinated to a first and second lien deed  
11 of trust that totaled more than \$650,000. Respondents also failed to disclose to investors the  
12 value of other deeds of trust that were recorded prior to their deed of trust. Respondents  
13 each failed to disclose that there were no escrow procedures to ensure that the deeds of trust  
14 were recorded on a timely basis and in the order that they were sold to investors.  
15

16 13. When offering and selling the promissory note investments, Respondents, BB&A,  
17 Bertholic, and Martin, each failed to disclose the current financial condition of BB&A and  
18 Bertholic. Respondents each failed to give investors any financial statements for BB&A or  
19 Bertholic. Respondents each failed to disclose the income and expenses associated with  
20 operating the BB&A mobile home park property. Respondents each failed to disclose that  
21 due to excessive personal debt, Bertholic had filed for personal bankruptcy in 1991.  
22

23 14. When offering and selling the promissory note investments, Respondents, BB&A,  
24 Bertholic, and Martin, each failed to identify the specific intended use of proceeds from the  
25 investments. Respondents each represented to investors that the proceeds would be used to

1 purchase, improve, or maintain real property, but Respondents each failed to disclose to  
2 investors that the funds might be used to improve other real properties in which the  
3 investors had no real property security interest.

4  
5 15. When offering and selling the promissory note investments, Respondents, BB&A,  
6 Bertholic, and Martin each failed to disclose other significant risks of the investments to  
7 investors. Respondents each failed to disclose that the investments would be illiquid and  
8 that there was no market for reselling the investments. Respondents each failed to disclose  
9 that the mobile home property had a vacancy rate of more than thirty percent. Respondents  
10 each failed to disclose that some of the existing structures located on the mobile home  
11 property were uninhabitable without significant improvements. Respondents each failed to  
12 disclose the potential costs of making such improvements.

#### 13 Registration Status of Respondents

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15 16. BB&A is not currently registered to sell its securities in the state of Washington  
16 and has not previously been so registered.

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18 17. During 2007 and 2008, Bertholic was not registered as a securities broker-dealer  
19 or as a securities salesperson in the state of Washington.

20  
21 18. Martin has never been registered as a securities broker-dealer or as a securities  
22 salesperson in the state of Washington.

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

#### 24 **CONCLUSIONS OF LAW**

25 1. As set forth in the Tentative Findings of Fact, the offer or sale of the  
promissory note investments described above constitutes the offer or sale of a security as

1 defined in RCW 21.20.005(14) and (17), whether in the form of a note, an investment  
2 contract, or an evidence of indebtedness.

3           2. As set forth in the Tentative Findings of Fact, Respondents, BB&A Properties  
4 VIII, LLC; Francis Bertholic, Jr.; and Marcia J. Martin, have each made untrue statements  
5 of material fact or omitted to state material facts necessary in order to make the statements  
6 made, in the light of the circumstances under which they are made, not misleading, in  
7 violation of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.  
8

9           3. As set forth in the Tentative Findings of Fact, Respondents, BB&A Properties  
10 VIII, LLC; Francis Bertholic, Jr.; and Marcia J. Martin, have each offered and sold  
11 unregistered securities in violation of RCW 21.20.140, the securities registration section of  
12 the Securities Act of Washington.  
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14           4. As set forth in the Tentative Findings of Fact, Francis Bertholic, Jr. and Marcia  
15 J. Martin have each offered and sold securities in violation of RCW 21.20.040, the securities  
16 broker-dealer and securities salesperson registration section of the Securities Act of  
17 Washington.  
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19           **NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST**

20           Pursuant to RCW 21.20.390, and based on the above Tentative Findings of Fact and  
21 Conclusions of Law, the Securities Administrator intends to order that Respondents, BB&A  
22 Properties VIII, LLC; Francis Bertholic, Jr.; and Marcia J. Martin, each shall cease and  
23 desist from any violation of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.  
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1 **NOTICE OF INTENT TO REVOKE EXEMPTIONS**

2 Pursuant to RCW 21.20.325, and based on the above Tentative Findings of Fact and  
3 Conclusions of Law, the Securities Administrator intends to revoke the exemptions for  
4 Francis Bertholic, Jr. under RCW 21.20.320 (1), (5), (9), (11), and (17).  
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6 **NOTICE OF INTENT TO IMPOSE A FINE**

7 Pursuant to RCW 21.20.395, and based on the above Tentative Findings of Fact and  
8 Conclusions of Law, the Securities Administrator intends to order that Francis Bertholic, Jr.  
9 shall be liable for and shall pay a fine of \$50,000.  
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11 **NOTICE OF INTENT TO CHARGE COSTS**

12 Pursuant to RCW 21.20.390, and based on the above Tentative Findings of Fact and  
13 Conclusions of Law, the Securities Administrator intends to order that Francis Bertholic, Jr.  
14 shall be liable for and shall pay investigative costs of \$5,000.  
15

16 Pursuant to RCW 21.20.390, and based on the above Tentative Findings of Fact and  
17 Conclusions of Law, the Securities Administrator intends to order that Marcia J. Martin  
18 shall be liable for and shall pay investigative costs of \$2,500.  
19

20 **AUTHORITY AND PROCEDURE**

21 This Statement of Charges is entered pursuant to the provisions of chapter 21.20 RCW  
22 and is subject to the provisions of chapter 34.05 RCW. Respondents, BB&A Properties VIII,  
23 LLC; Francis Bertholic, Jr.; and Marcia J. Martin, may each make a written request for a  
24 hearing, as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND  
25 OPPORTUNITY FOR HEARING accompanying this Statement of Charges.



1 If a Respondent does not make a hearing request in the time allowed, the Securities  
2 Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law  
3 as final, to enter a permanent cease and desist order as to that respondent, to revoke any  
4 exemptions as to that respondent, and to impose any fine and charge any costs that are sought  
5 against that respondent.  
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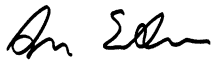
7 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

8 Signed and Entered this 29th day of May, 2012  
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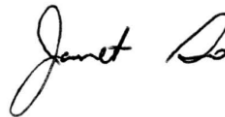
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14 WILLIAM M. BEATTY  
15 Securities Administrator

16 Approved by:

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18 \_\_\_\_\_  
19 Suzanne E. Sarason  
20 Chief of Enforcement

21 Presented by:

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23 \_\_\_\_\_  
24 Janet So  
25 Enforcement Attorney

26 Reviewed by:

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28 \_\_\_\_\_  
29 Robert Kondrat  
30 Financial Legal Examiner Supervisor

31 STATEMENT OF CHARGES AND NOTICE OF  
32 INTENT TO ENTER AN ORDER TO CEASE AND  
33 DESIST, TO REVOKE EXEMPTIONS, TO IMPOSE  
34 A FINE, AND TO CHARGE COSTS