

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

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

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

10 Respondents

Order Number S-10-375-12-FOO1

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL  
ORDER TO CEASE AND DESIST, TO  
REVOKE EXEMPTIONS, TO IMPOSE A  
FINE, AND TO CHARGE COSTS, AS TO  
BB&A PROPERTIES VIII, LLC AND  
FRANCIS BERTHOLIC, JR.

11 **INTRODUCTION**

12 On May 29, 2012, the Securities Administrator of the State of Washington issued Statement of  
13 Charges and Notice of Intent to Enter an Order to Cease and Desist, to Revoke Exemptions, to Impose a  
14 Fine, and to Charge Costs (“Statement of Charges”), Order Number S-10-375-11-SC01, against  
15 Respondents. The Statement of Charges, together with a Notice of Opportunity to Defend and  
16 Opportunity for Hearing (“Notice”) and an Application for Adjudicative Hearing (“Application for  
17 Hearing”) were served on Respondents BB&A Properties VIII, LLC and Francis Bertholic, Jr. on June 1,  
18 2012.

19 The Notice advised that a written application for an administrative hearing on the Statement of  
20 Charges must be received within twenty days from the date of receipt of the notice. Respondents BB&A  
21 Properties VIII, LLC and Francis Bertholic, Jr. failed to request an administrative hearing within twenty  
22 days of receipt of the Statement of Charges and Notice of Opportunity for Hearing, either on the  
23 Application for Hearing provided or otherwise.

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1 The Securities Administrator therefore will adopt as final the Findings of Fact and Conclusions of  
2 Law as set forth in the Statement of Charges and enter a final order against Respondents BB&A Properties  
3 VIII, LLC and Francis Bertholic, Jr. to cease and desist from violations of the Securities Act, to revoke  
4 exemptions, to impose a fine, and to charge costs.

5 The Securities Administrator makes the following Findings of Fact and Conclusions of Law:

6 **FINDINGS OF FACT**

7 Respondents

8 1. BB&A Properties VIII, LLC (“BB&A”) is a Washington limited liability company that was  
9 formed on November 9, 2005 and was administratively dissolved on March 1, 2010. During 2007  
10 and 2008, BB&A’s primary asset was a mobile home park facility located in Spokane, Washington.  
11 In March 2010, the mobile home park was transferred by a quit claim deed back to its former owner.

12 2. Francis Bertholic, Jr. (“Bertholic”) is a Washington resident who goes by the name of  
13 “Bart” Bertholic. Bertholic was the sole member and the manager of BB&A. From June 1990 until  
14 July 2009, Bertholic was a licensed insurance agent in the state of Washington. From September  
15 1990 until September 1993, Bertholic was a licensed real estate broker in the state of Washington.  
16 From December 2000 until February 2006, Bertholic was a registered securities salesperson in the  
17 state of Washington. From September 2002 until February 2006, Bertholic was a registered  
18 investment adviser representative in the state of Washington.

19 3. Marcia J. Martin (“Martin”) is a Washington resident. From January 2007 until December  
20 2007, Martin was a licensed loan originator in the state of Washington.

1 Background

2 4. On December 27, 2006, the Washington Securities Division entered a Statement of Charges  
3 against Bertholic. The Statement of Charges alleged that during 2005 and 2006, Bertholic raised  
4 \$682,000 from four investors through the sale of promissory note investments that were issued by  
5 Bertholic and by BB& A Properties I, LLC; BB&A Properties V, LLC; BB&A Properties VII, LLC;  
6 and BB&A Properties X, LLC, which were limited liability companies that were solely owned and  
7 managed by Bertholic. The Statement of Charges alleged that Bertholic had violated the Securities  
8 Act of Washington by failing to disclose material information about those investments, including the  
9 risks of the investments, the value of the real property that purportedly secured the investments, and  
10 the financial status and experience of Bertholic and his companies.

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

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

16 6. Respondent Martin personally solicited investors to purchase the promissory notes. She met  
17 with investors and presented the investment to them. Martin represented to investors that Bertholic  
18 was a “great borrower” and that she recommended the investment. Martin received a 5% sales  
19 commission when the notes were sold. Martin completed the promissory notes and deeds of trust for  
20 investors. Martin was also responsible for recording deeds of trust that were supposed to secure the  
21 promissory notes.

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

5 Misrepresentations and Omissions

6 *A. Failure to Disclose Other Obligations Owed by Bertholic*

7 8. When offering and selling the investments, Respondents each failed to disclose to the  
8 investors that Bertholic had issued other promissory note investments that had never been registered  
9 and had never been repaid. Respondents each failed to disclose that Bertholic would use proceeds  
10 from the sale of the promissory note investments to benefit other limited liability companies that  
11 were owned and operated by Bertholic.

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

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

18 10. When offering and selling the promissory note investments, Respondents, BB&A,  
19 Bertholic, and Martin, each failed to disclose to investors that Bertholic was barred by the National  
20 Association of Securities Dealers ("NASD"), which is now known as the Financial Industry  
21 Regulatory Authority ("FINRA"), on April 27, 2007 from associating with any NASD member firm  
22 in any capacity. Respondents each failed to disclose to investors that the NASD found that Bertholic

1 had promised a customer that he would invest \$435,000 from the sale of a promissory note in order  
2 to acquire real estate or to maintain and improve real estate, but instead Bertholic deposited the funds  
3 in his personal bank account and withdrew funds to pay his personal expenses.

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

5 11. When offering and selling the promissory note investments, Respondents, BB&A,  
6 Bertholic, and Martin, falsely represented to investors that the investments would be secured by the  
7 mobile home park property that was owned by BB&A. Respondents each failed to disclose to  
8 investors that BB&A had purchased the mobile home property for \$750,000, but the tax assessed  
9 value of the property at the time of the purchase was only \$481,800. Respondents each failed to give  
10 investors a real property appraisal or other reliable method of valuation for the property that  
11 purportedly secured their investment.

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

20 13. When offering and selling the promissory note investments, Respondents, BB&A,  
21 Bertholic, and Martin, each failed to disclose the current financial condition of BB&A and Bertholic.  
22 Respondents each failed to give investors any financial statements for BB&A or Bertholic.

1 Respondents each failed to disclose the income and expenses associated with operating the BB&A  
2 mobile home park property. Respondents each failed to disclose that due to excessive personal debt,  
3 Bertholic had filed for personal bankruptcy in 1991.

4 14. When offering and selling the promissory note investments, Respondents, BB&A,  
5 Bertholic, and Martin, each failed to identify the specific intended use of proceeds from the  
6 investments. Respondents each represented to investors that the proceeds would be used to purchase,  
7 improve, or maintain real property, but Respondents each failed to disclose to investors that the funds  
8 might be used to improve other real properties in which the investors had no real property security  
9 interest.

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

#### 18 Registration Status of Respondents

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

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

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

2 **CONCLUSIONS OF LAW**

3 1. As set forth in the Findings of Fact, the offer or sale of the promissory note investments  
4 described above constitutes the offer or sale of a security as defined in RCW 21.20.005(14) and (17),  
5 whether in the form of a note, an investment contract, or an evidence of indebtedness.

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

11 3. As set forth in the Findings of Fact, Respondents, BB&A Properties VIII, LLC and  
12 Francis Bertholic, Jr. have each offered and sold unregistered securities in violation of RCW  
13 21.20.140, the securities registration section of the Securities Act of Washington.

14 4. As set forth in the Findings of Fact, Francis Bertholic, Jr. has offered and sold securities  
15 in violation of RCW 21.20.040, the securities broker-dealer and securities salesperson registration  
16 section of the Securities Act of Washington.

17 **FINAL ORDER**

18 Based upon the foregoing and finding it in the public interest:

19 It is hereby ORDERED that Respondents BB&A Properties VIII, LLC and Francis Bertholic, Jr.  
20 and their agents and employees each shall cease and desist from offering or selling securities in  
21 violation of RCW 21.20.140, the securities registration section of the Securities Act of Washington.

1 It is further ORDERED that Respondents BB&A Properties VIII, LLC and Francis Bertholic, Jr.  
2 and their agents and employees each shall cease and desist from acting as an unregistered securities  
3 broker-dealer or salesperson in violation of RCW 21.20.040, the securities broker-dealer and securities  
4 salesperson registration section of the Securities Act of Washington.

5 It is further ORDERED that Respondents BB&A Properties VIII, LLC and Francis Bertholic, Jr.  
6 and their agents and employees each shall cease and desist from violating RCW 21.20.010, the anti-  
7 fraud section of the Securities Act of Washington.

8 It is further ORDERED, under the authority of RCW 21.20.325, that the exemptions available to  
9 Respondent Francis Bertholic, Jr. under RCW 21.20.320(1), (5), (9), (11), and (17) are hereby revoked.

10 It is further ORDERED that Respondent Francis Bertholic, Jr. shall be liable for and shall pay a  
11 fine in the amount of \$50,000.

12 It is further ORDERED that Respondent Francis Bertholic, Jr. shall be liable for and shall pay  
13 investigative costs of \$5,000.

#### 14 **AUTHORITY AND PROCEDURE**

15 This Final Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395, and  
16 is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. Respondents BB&A Properties  
17 VIII, LLC and Francis Bertholic, Jr. have the right to petition the superior court for judicial review of this  
18 agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for  
19 Judicial Review, see RCW 34.05.510 and sections following. Pursuant to RCW 21.20.395, a certified  
20 copy of this order may be filed in Superior Court. If so filed, the clerk shall treat the order in the same  
21 manner as a Superior Court judgment as to the fine, and the fine may be recorded, enforced, or satisfied in  
22 like manner.

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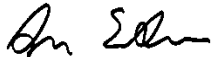
1 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

2 DATED and ENTERED this 28th day of June, 2012

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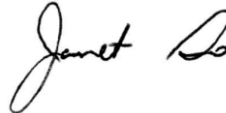
5 WILLIAM M. BEATTY  
6 Securities Administrator

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8 Approved by:

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10 Suzanne E. Sarason  
11 Chief of Enforcement

Presented by:

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10 Janet So  
11 Enforcement Attorney

12 Reviewed by:

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15 Robert Kondrat  
16 Financial Legal Examiner Supervisor

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