

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

<p>IN THE MATTER OF DETERMINING Whether there has been a violation of the Securities Act of Washington by:</p> <p>David Gintz; Joe Toner; John Griffith; Deb Townsend; Jenning Development, LLC; Jenning Investment One, LLC; Jenning Investment Two, LLC and Gintz & Toner, LLC,</p> <p style="text-align: right; border-top: 1px solid black; padding-top: 5px;">Respondents.</p>	<p>))))))))))</p>	<p>Order No.: S-11-0620-13-SC02</p> <p>STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, TO IMPOSE FINES AND TO CHARGE COSTS</p>
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THE STATE OF WASHINGTON TO:

- David Gintz**
- Joe Toner**
- John Griffith**
- Deb Townsend**
- Jenning Development, LLC**
- Jenning Investment One, LLC**
- Jenning Investment Two, LLC**
- Gintz & Toner, LLC**

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents, David Gintz, Joe Toner, John Griffith, Deb Townsend, Jenning Development, LLC, Jenning Investment One, LLC, Jenning Investment Two, LLC and Gintz & Toner, LLC, have each violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order against the Respondents to cease and desist from such violations and to charge costs pursuant to RCW 21.20.390 and to impose a fine pursuant to RCW 21.20.395. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Parties

1. Gintz & Toner, LLC (“GT”) was a Washington limited liability company organized on August 4, 2010. It became inactive on October 18, 2012. It was managed by Joe Toner and David Gintz. GT was conceived as a “vertically integrated real estate investment boutique,” incorporating its own real estate brokerage and general contractor. GT also operated a branch of Sound Mortgage, a mortgage origination company, for a short time in 2012.

1 2. Jenning Investment One, LLC (“Jenning Investment One”) was a Washington limited liability company
2 organized on October 25, 2010. It became inactive on February 1, 2013. It was managed by Jennings Development,
3 LLC.

4 3. Jennings Investment Two, LLC (“Jenning Investment Two”) is a Washington limited liability company
5 organized on March 4, 2011, and still active. It is managed by Jennings Development, LLC.

6 4. Jennings Development, LLC (“Jenning Development”) is a Washington limited liability company organized
7 on February 11, 2010, and still active. It is managed by David Gintz.

8 5. David Gintz is a resident of the state of Washington and
9 was a resident of the state of Washington at all times relevant to this Statement of Charges. David Gintz was the
10 principal of a real estate development company known as the “Gintz Group” from about 2006 to 2010. The Gintz
11 Group raised approximately \$15,000,000 from investors, the vast majority of which was lost due to business failure.
12 David Gintz declared personal bankruptcy in connection with this business failure. See Statement of Charges S-11-
13 0620-13-SC01 for background related to the Gintz Group. He was discharged in bankruptcy in December of 2010.

14 6. Joe Toner is a resident of the state of Washington and was a resident of the state of Washington at all times
15 relevant to this Statement of Charges.

16 7. Deb Townsend is a resident of the state of Washington and was a resident of the state of Washington at all
17 times relevant to this Statement of Charges. Deb Townsend was employed by Jennings Development to sell LLC
18 interests in Jennings Investment One and Jennings Investment Two.

19 8. John Griffith is a resident of the state of Washington and was a resident of the state of Washington at all times
20 relevant to this Statement of Charges. John Griffith was employed by Jennings Development to sell LLC interests in
21 Jennings Investment One and Jennings Investment Two, as well as promissory notes as described in this Statement of
22 Charges.

23 Related Entities

24 9. Sound Mortgage, Inc. (“Sound Mortgage”) is a Washington corporation engaged in the sale of mortgage loans
25 to consumers. It operated a branch of Sound Mortgage in conjunction with Gintz and Toner during a short time in
26 2012. Its chairman is William Widmer.

27 10. Fairplay Funding NW, LLC (“Fairplay Funding”) is a Washington limited liability company organized on
28 January 28, 2008, and still active. Fairplay Funding entered into several loan agreements with Gintz and Toner,
29 including an unsecured \$100,000 line of credit to fund Gintz and Toner’s business. It is managed by Fairplay
30 Financial, Inc.

31 11. Fairplay Realty, LLC (“Fairplay Realty”) is a Washington limited liability company organized on November
32 9, 2010, and still active. It is engaged in the sale of real estate to consumers. Fairplay Realty entered into a “franchise

1 agreement” with David Gintz and Joe Toner whereby they could use the trademarks owned by Fairplay Realty in
2 order to market their real estate brokerage services. It is managed by Fairplay Financial, Inc.

3 12. Fairplay Financial, Inc. (“Fairplay Financial”) is a Washington corporation first incorporated on November
4 10, 2009, and still active. It is a holding company which manages Fairplay Funding and Fairplay Realty. Its president
5 and chairman is William Widmer.

6 13. William Widmer is a resident of the state of Washington and was a resident of the state of Washington at all
7 times relevant to this Statement of Charges. He is a principal of Fairplay Financial which manages Fairplay Realty
8 and Fairplay Funding. He is also a principal of Sound Mortgage.

9 14. Real Estate Association of Puget Sound (“REAPS”) is a Washington professional association catering to real
10 estate investors. It holds meetings open to the general public and maintains lists of businesses and individuals in the
11 Puget Sound region doing business in the real estate industry.

12 Nature of the Offering

13 15. Jenning Development and GT collectively raised at least \$907,999 from at least 24 investors via four separate
14 offerings in order to fund the purchase, remodel and sale of single family residences. They sold LLC interests issued
15 by Jenning Investment One and Jenning Investment Two, they sold promissory notes issued by GT in somewhat
16 complicated transactions involving Fairplay Funding, and they sold promissory notes issued by GT when it was
17 apparent that the Jenning Investment One and Jenning Investment Two businesses had failed.

18 *Jenning Investment Offerings*

19 16. Jenning Development raised \$498,000 from 16 investors from approximately December of 2010 to March of
20 2011, by selling LLC membership interests in Jenning Investment One. Investments ranged from \$1,200 to \$100,000.
21 At least eight of the investors were residents of the state of Washington. At least one of the investors was
22 unaccredited.

23 17. Jenning Development raised \$227,999 from seven investors from approximately April to May of 2011, by
24 selling LLC membership interests in Jenning Investment Two. Investments ranged from \$10,000 to \$70,000. All of
25 the investors were residents of the state of Washington. At least one of the investors was unaccredited.

18 These LLC investment vehicles were substantially identical. The LLC would use investor funds to purchase a
21 portfolio of “distressed” single family residences, remodel them, and sell them. Investors were promised an annual
22 return of at least 12% on their investment, paid monthly, in addition to a pro-rata share of 50% of the profits that the
23 LLC earned by selling real estate. Jenning Development represented that monthly payments were to be funded from
24 the sale of real estate in the portfolio, except for the first month or two of payments, which would come directly from
25 invested money. Jenning Development characterized these monthly payments as “interest” despite the fact that
investors purchased LLC interests, not debt instruments. Jenning Development took a management fee of 3% of the

1 tax-assessed value of the properties it acquired on behalf of the LLC at the time the LLC acquired the property, and
2 the balance of the profits.

3 19. In order to locate potential investors for LLC interests, Jennings Development hired two salespeople, Deb
4 Townsend and John Griffith. To advertise for the LLC interests, Deb Townsend and John Griffith would host a
5 display booth in the lobby outside of a REAPS meeting. The booth would contain promotional materials for Jennings
6 Development. In addition to hosting such a booth, John Griffith would occasionally cold call potential investors in
7 order to solicit purchases of LLC interests. In order to solicit investors, John Griffith and Deb Townsend represented
8 that investors could earn guaranteed "12% interest" through "medium-risk" investments with Jennings Investment One
9 and Jennings Investment Two.

10 20. Deb Townsend and John Griffith earned commissions of about 3.5% for investors that they referred to
11 Jennings Development who decided to purchase LLC interests. John Griffith referred at least four investors who
12 purchased LLC interests in Jennings Investment One or Jennings Investment Two, at least two of whom were cold
13 called by Griffith. Deb Townsend referred at least three such investors.

14 21. Jennings Development also advertised through a REAPS publication distributed to its members. Jennings
15 Development was listed in a REAPS "business directory" under the category "investment and finance." Deb
16 Townsend's contact information was listed in a row together with a statement that Jennings Development was offering
17 "opportunities to make 12% annual interest." Jennings Development continued to list itself in this way in the REAPS
18 business directory even after it had missed monthly payments to investors in Jennings Investment One and Jennings
19 Investment Two.

20 22. After their initial contact, investors would talk with David Gintz and/or Joe Toner in face to face meetings or
21 over the telephone to discuss the terms of their investment. David Gintz and Joe Toner told investors that their money
22 would be used to purchase real estate at below market value, to remodel that real estate and to sell it for a substantial
23 mark up. David Gintz and Joe Toner characterized investments in Jennings Investment One and Jennings Investment
24 Two as lower risk than other real estate related investments, because the risks would be distributed over many single
25 family residences. David Gintz and Joe Toner did not disclose any particular risks to investors.

26 23. To evidence their investments, investors received an LLC operating agreement. Investors did not receive a
27 certificate or other evidence of investment besides the operating agreement. David Gintz signed all LLC operating
28 agreements on behalf of Jennings Investment One and Jennings Investment Two. Joe Toner met personally with at least
29 two such LLC interest investors. Jennings Investment One and Jennings Investment Two generally did not provide to
30 investors a copy of the agreement until after they had agreed to invest.

31 24. Jennings Investment One and Jennings Investment Two made sporadic monthly payments to investors, with
32 many payments being late or not being made at all. By approximately fall of 2012, David Gintz informed investors
33 that they would not recoup their investments because Jennings Investment One and Jennings Investment Two were

1 failed businesses. He offered to investors the opportunity to roll their investments into promissory notes issued by GT,
discussed below.

2 25. Jenning Investment One and Jenning Investment Two did not give investors any written document
3 comprehensively describing the risks of the investment, audited financial statements, or a copy of the LLC operating
4 agreement prior to their investment. David Gintz did not fully disclose his prior failures in the real estate industry, nor
5 did he disclose his 2010 bankruptcy. In advertisements and promotional materials the investment was described as an
6 investment in Jenning Development, when in fact the investments were issued by Jenning Investment One and
Jenning Investment Two.

7 *GT Promissory Notes*

8 26. In approximately fall of 2012, GT, through David Gintz, approached the Jenning Investment One and Jenning
9 Investment Two investors and explained to them that the investment LLCs were failures and that they would not be
10 able to recover their investment through the business of the LLCs. GT offered to replace the investors' LLC interests
11 with promissory notes made out by GT in a face amount equal to the investors' initial capital contribution to the LLC.
The notes had terms of three years and interest of 12% per annum, payable in a single lump sum. David Gintz told
investors that this was the only way they were going to be paid back.

12 27. At least two LLC investors, both of whom were unaccredited, agreed to replace their LLC interests with GT
13 promissory notes.

14 28. In November of 2012, Joe Toner informed at least one investor that GT did not have the funds to pay
15 investors back and that GT had no plans to pay investors back under the notes. GT became inactive with the
Washington Secretary of State's office on October 18, 2012.

16 29. GT gave the promissory note investors a private placement memorandum which purported to
17 comprehensively disclose the risks associated with the investment. That memorandum, however, did not disclose
18 David Gintz's prior real estate failure associated with the Gintz Group, nor did it disclose his personal bankruptcy. GT
19 did not deliver audited financial statements to these investors. GT did not disclose to these investors the current
liabilities then due from GT.

20 *GT Promissory Notes Involving Fairplay Funding as a Third-Party Lender*

21 30. Around the time that Jenning Development was soliciting investors for Jenning Investment Two, GT
22 proposed and entered into two arrangements with investors whereby the investor borrowed money in order to invest
23 with GT. GT referred the investors to Fairplay Funding, which loaned the investors money secured by real estate that
the investors owned. The investors then gave the money to GT in exchange for a promissory note.

24 31. For example, on April 7, 2011, one such investor borrowed \$78,000 from Fairplay Funding at a 12% per
25 annum rate of interest, and delivered to William Widmer of Fairplay Funding a deed of trust on a single family

1 residence that the investor owned. The investor's loan required the investor to pay Fairplay Funding \$780 per month
2 in interest payments, and to pay off the principal of the note on January 7, 2012.

3 32. GT issued a promissory note to the investor for the amount of the loan, \$78,000. The promissory note
4 included interest of 24% per annum, and required GT to make monthly interest payments of \$1,560, \$780 going to the
5 investor and \$780 going to Fairplay Funding. GT would also be responsible for paying off the investor's loan when
6 the principal came due. The investor received a personal guaranty from David Gintz guarantying payment on his
7 promissory note.

8 33. A separate investor invested \$104,000 with GT in a similar transaction. Both investors were referred to GT by
9 John Griffith, who initially contacted them via cold calls. They then met with David Gintz to discuss the terms of their
10 investments and sign the paperwork. David Gintz told the investors that their money would be used to fund the
11 acquisition and remodeling of real estate, which would be then be sold for a profit. He represented to the investors that
12 these arrangements were a good way to invest in the recovering real estate market and to convert home equity into an
13 income stream.

14 34. GT failed to fulfill its obligations to either investor under the notes. Fairplay Funding initiated foreclosure
15 proceedings on both of the investors' real estate. Both investors have since sued GT and Fairplay Funding, among
16 others, in efforts to stop the foreclosure actions.

17 35. GT did not deliver to these two investors any written document comprehensively describing the risks of the
18 investment, audited financial statements, or the current liabilities due from GT. David Gintz did not deliver to the
19 investor who received a personal guaranty a personal financial statement disclosing whether David Gintz's personal
20 assets were sufficient to guaranty the investment. David Gintz did not disclose to this investor David Gintz's past
21 management experience or that David Gintz had declared personal bankruptcy in connection with his past real estate
22 business failures.

23 36. GT did not disclose to either investor the extent of the relationship between GT and the family of entities
24 related to William Widmer, namely that David Gintz and Joe Toner entered into a franchise agreement with Fairplay
25 Realty, that GT operated a branch of Sound Mortgage and that Fairplay Funding had entered into several loan
arrangements with GT in the past, including a \$100,000 line of credit extended to GT.

Misrepresentations and Omissions

37. In order to advertise the LLC interests available through Jennings Investment One and Jennings Investment
Two, Jennings Development created a flyer which promised "12% guaranteed interest." The flyer directed the reader to
John Griffith, and included his telephone number. The flyer was distributed widely, and was received by at least three
investors in Jennings Investment One and Jennings Investment Two. In fact, the interest that investors were to receive

1 was not guaranteed, but was contingent on the successful purchase, remodeling and sale of real estate by Jennings
2 Development.

3 38. Jennings Development also delivered profit projections to prospective investors in Jennings Investment One
4 and Jennings Investment Two. One such projection promised that Jennings Development would be able to deliver
5 investors a return on investment of 108% after fifteen months. Another profit projection illustrated the return
6 anticipated for a \$50,000 investment, showing the investor receiving a return of 104,000 after fifteen months. The
7 projection included assumptions such as the number of single family residences purchased and sold and the prices for
8 which these transactions would be accomplished, but did not disclose the underlying reasons that those particular
9 figures were thought reasonable by management. Jennings Development also failed to disclose risks that could affect
such assumptions and bases, such as a slowing real estate market, changing tax incentives or inadequate
capitalization. At least one investor in Jennings Investment One received these profit projections, as did at least one
investor in Jennings Investment Two.

10 Registration Status

11 39. David Gintz, GT, Jennings Investment One and Jennings Investment Two are not currently registered to sell
12 their securities in the state of Washington and have not previously been so registered, nor have they filed a claim of
13 exemption from registration.

14 40. Jennings Development, LLC, John Griffith, Deb Townsend, David Gintz and Joe Toner are not currently
15 registered as securities salespeople or broker-dealers in the state of Washington and have not previously been so
16 registered.

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

18 **CONCLUSIONS OF LAW**

19 **I.**

20 The offer and/or sale of LLC interests, personal guaranties and promissory notes as described above constitute
21 the offer and/or sale of a security as defined in RCW 21.20.005(14) and (17) as an investment contract, a note,
evidence of indebtedness, consideration in the risk capital of a venture and/or otherwise.

22 **II.**

23 The offer and/or sale of said securities was in violation of RCW 21.20.140 because no registration for such
24 offer and/or sale is on file with the Securities Administrator.

III.

John Griffith, Deb Townsend, David Gintz and Joe Toner have each violated RCW 21.20.040 by offering and/or selling said securities while not being registered as a securities salesperson or broker-dealer in the state of Washington. Jennings Development, LLC has violated RCW 21.20.040 by offering and/or selling said securities while not being registered as a broker-dealer in the state of Washington.

IV.

The offer and/or sale of said securities was made in violation of RCW 21.20.010 because of the material misrepresentations and omissions described above.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order, pursuant to RCW 21.20.390(1), that John Griffith, Deb Townsend, David Gintz, Joe Toner, Gintz & Toner, LLC, Jennings Development, LLC, Jennings Investment One, LLC and Jennings Investment Two, LLC, their agents and employees each shall cease and desist from violations of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.390 and RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that John Griffith, Deb Townsend, David Gintz, and Joe Toner shall pay fines and costs as follows:

- John Griffith shall be liable for and shall pay a fine of \$10,000. John Griffith shall be liable for and shall pay the Securities Division the costs, fees and other expenses incurred in the conduct of the administrative investigation and hearing of this matter, in an amount not less than \$5,000.
- Deb Townsend shall be liable for and shall pay a fine of \$5,000. Deb Townsend shall be liable for and shall pay the Securities Division the costs, fees and other expenses incurred in the conduct of the administrative investigation and hearing of this matter, in an amount not less than \$5,000.
- David Gintz shall be liable for and shall pay a fine of \$15,000. David Gintz shall be liable for and shall pay the Securities Division the costs, fees and other expenses incurred in the conduct of the administrative investigation and hearing of this matter, in an amount not less than \$5,000.
- Joe Toner shall be liable for and shall pay a fine of \$5,000. Joe Toner shall be liable for and shall pay the Securities Division the costs, fees and other expenses incurred in the conduct of the administrative investigation and hearing of this matter, in an amount not less than \$5,000.

AUTHORITY AND PROCEDURE

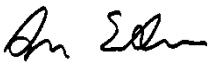
This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. The respondents, David Gintz, Joe Toner, John Griffith, Deb Townsend, Jennings Development, LLC, Jennings Investment One, LLC, Jennings Investment Two, LLC and Gintz & Toner, LLC, 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 does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and desist as to that respondent, to impose any fines sought against that respondent, and to charge any costs sought against that respondent.

Signed and Entered this 31st day of May 2013.



William M. Beatty
Securities Administrator

Approved by:



Suzanne Sarason
Chief of Enforcement

Reviewed by:



Jack McClellan
Financial Legal Examiner Supervisor

Presented by:



William McGinty
Financial Legal Examiner

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**STATEMENT OF CHARGES AND NOTICE
OF INTENT TO ENTER ORDER TO
CEASE AND DESIST TO IMPOSE FINES
AND TO CHARGE COSTS**

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