Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: **RES CAPITOL, LLC** **DAVID ALAN HEAPS** **Respondents.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-08-0052 **Docket No.** SD-08-0053

It appears to the Director of the Utah Division of Securities (Director) that RES Capitol, LLC and David Alan Heaps may have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over the Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) of the Act, while engaged in the offer and sale of a security in or from Utah.

STATEMENT OF FACTS

THE RESPONDENT

2. RES Capitol, LLC (RES Capitol) is a Utah limited liability company. RES was registered on February 25, 2007, but its entity status is currently "delinquent." David Alan Heaps is the registered agent of RES Capitol, and one of three members. The other two members of RES Capitol are Scott Cole (S. Cole) and Todd Cole (T. Cole).

3. David Alan Heaps (Heaps) is a resident of Salt Lake County, Utah.

GENERAL ALLEGATIONS

4. In early April 2007, Heaps offered an investment opportunity in real estate to DF, a Texas resident. The offer was made at a meeting in Dallas, Texas and during several subsequent telephone calls with DF to and from Utah. DF was introduced to Heaps by a friend who had invested with Heaps.

5. While in Texas, Heaps showed DF the business plan for RES Capitol and a slide show on how RES Capitol invested in real estate, including how to find real estate at a good price and then "flip" the property.

6. Heaps told DF the following:

   a. Heaps taught individuals how to invest in real estate;

   b. Heaps needed capital to invest in real estate;

   c. Heaps accepted investment funds and typically paid the money back within six months;

d. The minimum investment was $75,000;

e. An investor would receive interest of 14% over six months;

f. DF would earn interest through profits Heaps made from "flipping" real estate;

g. The investment carried no risk because Heaps would give DF a trust deed on real estate purchased.

7. DF asked Heaps if he had any legal trouble in the past. Heaps said no.

8. Heaps failed to tell DF that, in Utah, Heaps had in excess of $47,000 in unpaid civil judgments against him, that he filed for bankruptcy in 1998 and 2001, that he had misdemeanor convictions for retail theft in 2002, and that he was charged with issuing a bad check in 2004, a third degree felony.

9. In early April 2007, DF contacted the other two members of RES Capitol, S. Cole and T. Cole, in West Virginia, to discuss the investment opportunity. S. Cole and T. Cole told DF they assisted Heaps with finding real estate, that Heaps did not "cut corners," and "goes by the book" when it comes to business and real estate transactions. S. Cole and T. Cole assured DF the real estate investment was safe, and that DF would receive a deed of trust on the property.

10. On or about April 19, 2007, DF invested $25,000 with Heaps and RES via wire transfer to Heaps' bank account at Washington Mutual.

11. On or about April 27, 2007, DF invested another $50,000 with Heaps and RES via wire transfer to Heaps' bank account at Washington Mutual.

12. In return for DF's investments, Heaps sent DF a promissory note for $75,000, via e-mail and regular mail, promising to pay back DF's principal and interest in six months. The note also states that RES Capitol "has the right to pre-pay this note before the 6 months." Heaps appears to have signed the note.

13. In addition to the promissory note, Heaps gave DF copies of RES Capitol's Articles of Organization, business name registration, and its application for an Employer Identification Number.

14. After investing, DF received three or four monthly interest payments of $1,750 from Heaps.

15. When the monthly interest payments stopped, DF tried to contact Heaps via telephone, but was unsuccessful.

16. DF called T. Cole and T. Cole apologized for the missed payment. T. Cole told DF that T. Cole would take over the responsibility of paying DF the last few monthly payments.

17. T. Cole paid DF approximately $6,000 in interest payments in October and November 2007.

18. Sometime in October or November 2007, DF asked T. Cole what happened to DF's investment. T. Cole said he had received $5,000 of DF's funds, and would find out what happened the rest.

19. On or about December 16, 2007, DF mailed a letter to Heaps, requesting the return of DF's $75,000 investment.

20. DF received no response from Heaps. Heaps and RES still owe DF $75,000 in principal alone.

CAUSES OF ACTION

COUNT I
Securities Fraud under § 61-1-1 of the Act

21. The Division incorporates and re-alleges paragraphs 1 through 20.

22. The promissory note offered and sold by RES Capitol and Heaps to DL is a security under § 61-1-13 of the Act.

23. In connection with the offer and sale of a security to DF, RES Capitol and Heaps, directly or indirectly, made false statements, including, but not limited to, the following:

    a. The minimum investment was $75,000;

    b. The investment carried no risk because DF would receive a trust deed on real estate purchased; and

    c. Heaps had no past legal trouble.

24. In connection with the offer and sale of a security to DF, RES Capitol and Heaps, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:

    a. Heaps had in excess of $47,000 in unpaid civil judgments against him;

    b. Heaps filed bankruptcy in 1988 and 2001;

    c. Heaps had misdemeanor convictions for retail theft in 2002;

d. Heaps was charged with a third degree felony for issuing a bad check in 2004 (as of today's date there is a warrant for Heaps' arrest relating to this charge);

e. Some or all of the information typically provided in an offering circular or prospectus regarding RES Capitol, such as:

i. The business and operating history for RES Capitol;

ii. Financial statements for RES Capitol;

iii. The liquidity of the investment;

iv. Discussion of pertinent suitability factors for the investment;

v. Agent commissions or compensation for selling the investment;

vi. Whether the investment is a registered security or exempt from registration; and

vii. Whether the person selling the investment is licensed.

25. Based upon the foregoing, RES Capitol, LLC and David Alan Heaps violated § 61-1-1 of the Act.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders the Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur on Tuesday, June 3rd, 2008, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of

the hearing is to establish a scheduling order and address any preliminary matters. If the Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63-46b-11. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, the Respondents may show cause, if any they have:

a. Why RES Capitol, LLC and David Alan Heaps should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;

b. Why RES Capitol, LLC and David Alan Heaps should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act;

c. Why RES Capitol, LLC should not be ordered to pay a fine of one hundred thousand dollars ($100,000) to the Division of Securities; and

d. Why David Alan Heaps should not be ordered to pay a fine of one hundred thousand dollars ($100,000) to the Division of Securities, which may be reduced by restitution paid to the victim.

DATED this 22nd day of April, 2008.

THAD LEVAR
Acting Director, Utah Division of Securities

Approved:

JEFF BUCKNER
Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:	NOTICE OF AGENCY ACTION
RES CAPITOL, LLC DAVID ALAN HEAPS Respondents.	Docket No. SD-08-0052 Docket No. SD-08-0053

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include the information required by Utah Code § 63-46b-6 (1). In addition, you are required by § 63-46b-6 (3) to state: a) by paragraph, whether

you admit or deny each allegation contained in the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission; b) any additional facts or documents which you assert are relevant in light of the allegations made; and c) any affirmative defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Order to Show Cause are not disputed in your Answer, they will be deemed admitted.

Your Answer, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:	A copy to:
Administrative Court Clerk c/o Pam Radzinski Division of Securities 160 E. 300 S., Second Floor Box 146760 Salt Lake City, UT 84114-6760 (801) 530-6600	Jeff Buckner Assistant Attorney General 160 E. 300 S., Fifth Floor Box 140872 Salt Lake City, UT 84114-0872 (801) 366-0310

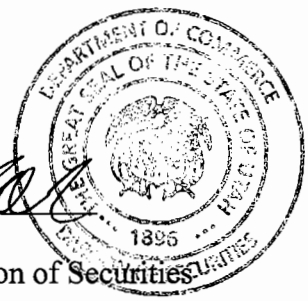
A hearing date has been set for Tuesday, June 3rd, 2008, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah.

If you fail to file an Answer, as set forth herein, or fail to appear at the hearing, the Division of Securities may hold you in default, and a fine and other sanctions may be imposed

against you in accordance with Utah Code Ann. § 63-46b-11, without the necessity of providing you with any further notice. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, you may appear and be heard and present evidence on your behalf. You may be represented by counsel during these proceedings.

The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. Pursuant to U.C.A. Subsection 63-46b-2(1)(h), Mr. Eklund is hereby designated as presiding officer for the purpose of conducting this formal administrative proceeding. Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

DATED this 22nd day of April, 2008.



THAD LEVAR
Acting Director, Division of Securities
Utah Department of Commerce

Certificate of Mailing

I certify that on the 22ND day of April, 2008, I mailed, via certified and regular mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

David Alan Heaps & RES Capitol, LLC
947 E. Creekhill Lane #20
Midvale, UT 84047

Certified Mailing # 7004 1160 0003 0195 6641

PAM RADZINSKI
Executive Secretary