



**STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
REAL ESTATE FINANCE BUREAU**

TESTING THE MARKET

COOPERATIVE POLICY STATEMENT #11

**(Applicable To Conversion of Occupied Rental Buildings in New York State to Cooperative
or Condominium Status)**

WITH SUGGESTED FORMS

Effective January 22, 2016

COOPERATIVE POLICY STATEMENT #11

(APPLICABLE TO THE CONVERSION OF OCCUPIED RESIDENTIAL RENTAL BUILDINGS IN NEW YORK STATE TO COOPERATIVE AND CONDOMINIUM STATUS)

Cooperative Policy Statement #1 permits Sponsors of new construction (or rehabilitation) projects to “test the market” prior to submitting an offering plan for filing with the New York State Department of Law (the “Department”) pursuant to 13 N.Y.C.R.R. Parts 20, 21, 22, or 24. This tool has been used successfully by developers to gauge interest in a project before expending the time and resources to undertake development, while assisting with obtaining relevant pricing and demand.

Cooperative Policy Statement #11 provides a similar mechanism for owners of occupied residential rental buildings in New York to gauge interest in a potential conversion of an existing building to cooperative (Part 18) or condominium (Part 23) status. This Policy Statement permits Sponsors to: 1) solicit interest and potential pricing of vacant units in an occupied residential rental building prior to submission of an offering plan; 2) solicit interest from market-rate tenants in purchasing units currently occupied by such market-rate tenant(s) during the period of time that the initial offering plan is pending review (the “red herring”); and 3) foster the use of reservation agreements between a Sponsor and market rate tenants once an offering plan has been accepted for submission by the Department, subject to compliance with agency guidance.

The solicitation of interest in occupied residential rental buildings will not be construed by the Department as constituting the offer of a cooperative interest in realty, as that term is used in Section 352-e of the General Business Law, so long as such solicitation of interest (“market-testing”) meets all of the following criteria:

1. The Sponsor must file an Application to Test the Market (the “Application”) with the Department’s Real Estate Finance Bureau.
2. Market testing may begin only after receipt by the Sponsor of a written correspondence, which may be an email, from the Department stating that the Application has been granted.
3. No reservations, binding or non-binding, may be accepted at any time from any outside purchaser or rent regulated tenant until an offering plan has been accepted for filing by the Department.
4. Market-rate tenants may only enter into reservation agreements after the presentation date of the initial offering plan, so long as the offering plan has been accepted for submission by the

Department and includes the required disclosures set forth in the July 9, 2015 guidance document entitled “Tenant Buyouts.”¹

5. No deposits for the purchase of a unit may be accepted until an offering plan has been accepted for filing by the Department.

6. All advertisements and advertising literature utilized by the Sponsor shall conform to this Policy Statement, including the Advertising Guidelines. All advertisements and advertising literature to be utilized by Sponsor must be submitted to the Department at least five (5) business days before use or publication. The Sponsor shall not utilize such advertisements or advertising literature until the Department indicates in writing, which may be in an email, that it has no objection to the use thereof, provided, however, that such non-objection shall not constitute and shall in no way be construed as approval of the contents of said advertisement or advertising literature.

Within five (5) business days of the submission of proposed advertisements and advertising literature, the Department will notify the Sponsor of the Department’s determination. After the written determination of the Department that it does not object to the advertisement, Sponsor must serve copies of the advertisements on tenants within five (5) business days of receipt of sign-off from the Department on the advertisement in compliance with the service requirements set forth in 13 N.Y.C.R.R. Parts 18 or 23, respectively. Sponsor shall also post copies of any such advertisement in a common area within the building for the tenants’ inspection.

7. The Application shall be effective for twelve (12) months after issuance. The Department may extend this period upon the submission to the Department of an Application for Extension of Application to Test the Market (“Extension Application”), a copy of which is annexed to this Cooperative Policy Statement, provided that as of the date of submission of the Extension Application, an offering plan has been submitted for filing to the Department. An Extension Application should be made no less than twenty (20) days before the expiration of the underlying Application. Such Extension Application, if granted, shall extend the term of the Extension Application until the offering plan is either accepted or finally rejected for filing (excluding preliminary rejections of the plan based on deficiencies noted during the regulatory review process).

8. If the nature of the proposed project substantially changes (*e.g.*, changes in form of ownership, any substantial changes in the number of units, substantial changes in proposed prices, etc.), the Sponsor must file a new Application.

The Application shall be accompanied by the following:

1. A filing fee of \$225, in the form of a check payable to the “Department of Law.”
2. A transmittal letter signed by the attorney who prepared the Application, identifying the following information:

¹ http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/Effective-memos/Tenant_Buyouts_7.9.2015.pdf

(i) street address and zip code of the Development that is the subject of the Application;

and

(ii) a representation that the attorney has no actual knowledge of either a violation of Article 23-A of the General Business Law or the rules and regulations promulgated thereunder, or of any material fact omitted or any untrue statement of a material fact included in the Application.

3. A true copy of the Sponsor's deed, option or contract, if any, to purchase the property.
4. A copy of the floor plans for the building, if available.
5. A completed statistical information card (available from the Department).
6. An Application in the form annexed to this Cooperative Policy Statement, with appropriate modifications, together with a Certification signed by the Sponsor and each of its principals, also in the form annexed to this Cooperative Policy Statement. A fully completed and edited Application and Certification must be prepared.
7. A certified rent roll, including the status of each unit in the development (*i.e.*, rent regulated, market-rate, or vacant) at the time of the Application's submission.

An Extension Application shall be accompanied by the following:

1. A filing fee of \$225, in the form of a check payable to the "Department of Law."
2. The model Extension Application, together with a Certification signed by the Sponsor and each of its principals, in the form annexed to this Cooperative Policy Statement.
3. A transmittal letter signed by the attorney who prepared the Extension Application, identifying the following information:
 - (i) that an offering plan has been accepted for submission by the Department along with the Department file number and date of submission; and
 - (ii) a representation that the attorney has no actual knowledge of either a violation of Article 23-A of the General Business Law or the rules and regulations promulgated thereunder, or of any material fact omitted or any untrue statement of a material fact included in the Application.
4. A certified rent roll, including the status of each unit in the development (*i.e.*, rent regulated, market-rate, or vacant) at the time of submission of the Extension Application.

THE ABOVE SHOULD NOT BE CONSTRUED AS A LIMITATION ON THE PROVISIONS OF ARTICLE 23-A OF THE GENERAL BUSINESS LAW AND REGULATIONS ISSUED THEREUNDER.

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK MAY GRANT OR DENY THE APPLICATION TO TEST THE MARKET, IN HIS SOLE DISCRETION.

Applications may be submitted by Sponsor any time prior to the offering plan being accepted for filing. Extension Applications will only be granted if Sponsor has submitted an offering plan to the Department prior to the date of submission of the Extension Application. Within thirty (30) days of the submission of a complete Application or Extension Application, the Department will notify the applicant of the Department's determination.

APPLICATION TO TEST THE MARKET

1. _____ [insert name of Sponsor], a [state the type of entity, *e.g.*, LLC], incorporated in [state of formation] ("Sponsor") [is the owner of/has entered into a contract to purchase/has an option to purchase] the land and building located in the State of New York, County of _____ (the "Development"), being more particularly described as follows: [Insert description of exact location of the building or buildings, including street address(s) and zip code. If sponsor has an option or contract to purchase add "annexed hereto is a true copy or contract to purchase the land."]
2. Sponsor intends to convert the existing Development to cooperative or condominium status under the laws of the State of New York [if a condominium, add "and to submit same to the provisions of N.Y. Real Prop. Law § 339 *et. seq.* (or Article 9-B of the New York Real Property Law known as the Condominium Act.)"] Said Development currently consists of [number and type of units] units located in _____ [number of structures]. [If major renovations are contemplated, state such and estimate the number of units planned as a part of the offering. If exact number cannot be given, state such]. The Development is anticipated to include _____ [set forth details concerning common elements, including parking spaces, swimming pool or other recreational facilities, etc. and any other noteworthy features of the project including the status of construction].
3. The Development is currently operated as an occupied residential rental building. The building is currently occupied by [insert number of rent regulated and number of market-rate tenants] tenants and [insert number of vacant units].
4. Sponsor anticipates that an offering plan, if ultimately submitted for filing to the Attorney General of the State of New York (the "Attorney General"), will be submitted pursuant to 13 N.Y.C.R.R. Part _____ [Specify Part 18 or 23].
5. [if applicable] Sponsor has received a financing commitment of \$_____ from _____ to finance the acquisition and/or renovations of the Development.
6. The estimated purchase price for each vacant unit [if offering plan has been submitted, include estimated prices for units that are occupied by market-rate tenants], the number of rooms in each vacant unit [if the offering plan has been submitted, number of rooms in each unit occupied by market-rate tenants], and the estimated monthly carrying costs (or maintenance) for each unit are as follows:

Unit Designation	Unit Status Market-Rate, Rent Regulated, or Vacant	Estimated Purchase Price	Number of Rooms	Estimated Monthly Maintenance Costs, Common Charges, or Association Dues

7. Sponsor requests permission to solicit, for a period of twelve (12) months, indications of interest in the above Development. No apartment subject to rent regulation will be advertised or offered for sale under this Application. No deposits will be accepted by Sponsor until an offering plan has been accepted for filing.
8. If an offering plan is submitted to the Department for filing, and such offering plan includes the disclosures required by the Department in the July 9, 2015 guidance document entitled "Tenant Buyouts," for a period of twelve (12) months Sponsor requests permission to advertise and solicit reservations, binding or non-binding, from market-rate tenants in the Development.
9. The tenants of the building shall have all the rights afforded to them under General Business Law § 352-e, *et. seq.* and the Part [18/23] governing regulations promulgated by the Attorney General of the State of New York, including, but not limited to, the exclusive 90 day purchase period after an offering plan is accepted for filing.
10. Sponsor intends to solicit interest in the above Development in the following manner:
_____ (newspaper advertisement, brochure, etc.).
11. All advertisements and advertising literature utilized by Sponsor shall comply with this Cooperative Policy Statement # 11, the General Business Law, and with the regulations promulgated by the Department. All advertisements and advertising literature to be utilized by Sponsor must be submitted to the Department at least five (5) business days before use or publication, as set forth in the advertising guidelines. The Sponsor shall not utilize such advertisements or advertising literature until the Department indicates in writing, which may be an email, that it has no objection to the use thereof, provided, however, that such non-objection shall not constitute and shall in no way be construed as approval of the contents of said advertisement or advertising literature. The Department shall, within at least five (5) business days after the submission of proposed advertisements and advertising literature, notify the applicant of the Department's determination.

All advertisements or advertising literature, including, but not limited to, classified advertisements, advertisements in electronic, radio or television media and signs exhibited at the site, shall contain the legend required by this Cooperative Policy Statement #11. No advertisement by Sponsor shall make a representation that any particular unit may be available for purchase.

12. If Sponsor submits an offering plan for submission to the Department, the Sponsor's assets, together with the proceeds of firmly committed financing, as applicable, are or will be sufficient to meet Sponsor's obligations under an offering plan to complete all work and meet Sponsor's obligations for unsold units and to provide the necessary services to the current tenants of the building.
13. If Sponsor or any of its principals are not residents of, and are not organized under the laws of the State of New York, include the following: "Annexed hereto is the irrevocable designation by the [Specify whether designation is for Sponsor and/or any of its

principals] of the Secretary of State as its agent to receive the service of process in any action or proceeding in connection with this application, as the same may be extended, or the offering or sale of the aforementioned.”

14. Sponsor will file with the Attorney General, within twenty (20) business days after the expiration of the Application, an affidavit stating the following: (i) that Sponsor has accepted no purchase agreements prior to the acceptance for filing of an offering plan by the Attorney General; and (ii) if Sponsor submitted an offering plan for submission to the Department, and such offering plan included the disclosures required by the July 9, 2015 guidance document entitled “Tenant Buyouts,” that sponsor [has or has not] accepted reservation agreements from market-rate tenants. [If Sponsor has accepted reservation agreements, the affidavit must include the unit designation and name of tenant who entered into such reservation agreement].
15. The Sponsor and its principals understand that any violations of the New York General Business Law may subject them, jointly and severally, to civil or criminal penalties under that statute.
16. Sponsor requests permission to test the market in the manner set forth above for a period of twelve (12) months pursuant to this Cooperative Policy Statement.

CERTIFICATION OF SPONSOR AND PRINCIPALS

We are the Sponsor and the principals of Sponsor of the Application to Test the Market for the captioned Development (the “Application”).

We understand that we have primary responsibility for compliance with the requirements set forth in Cooperative Policy Statement #11 of the Department of Law and the provisions of Article 23-A of General Business Law, and such laws and regulations as may be applicable.

We have read the entire Application. We have investigated the facts set forth in the Application and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the Application does, and that documents submitted hereafter by us which amend or supplement the Application, will:

(i) be a complete, current and accurate representation of the proposed cooperative interest in realty for which Sponsor wishes to test the market to determine interest therein;

(ii) not contain any untrue statement of a material fact;

(iii) not contain any fraud, deception, concealment, suppression, or false pretense;

(iv) not contain any promise or representation as to the future that is beyond reasonable expectation or unwarranted by existing circumstances;

(v) not contain any representation or statement that is false, where I/we:

(a) knew the truth;

(b) with reasonable effort could have known the truth;

(c) made no reasonable effort to ascertain the truth; or

(d) did not have knowledge concerning the representation or statement made. We agree to file with the Attorney General, within twenty (20) business days after the expiration of the Application, an affidavit stating the following: (i) that Sponsor has accepted no purchase agreements prior to the acceptance for filing of an offering plan by the Attorney General; and (ii) if Sponsor submitted an offering plan for submission to the Department, and such offering plan included the disclosures required by the July 9, 2015 guidance document entitled “Tenant Buyouts,” that sponsor [has or has not] accepted reservation agreements from market-rate tenants [If Sponsor has accepted reservation agreements, the affidavit must include the unit designation and name of tenant who entered into such reservation agreement].

This certification is made under penalty of perjury for the benefit of all persons from whom interest is solicited. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

[insert name of Sponsor]

By:

[name and office of signatory]

[Principal of Sponsor]

[Principal of Sponsor]

Subscribed and sworn to before me,

this ___ day of _____, 20____.

Notary

CPS #11 ADVERTISING GUIDELINES

The following list includes some of the more important factors that the Attorney General requires be included in advertising literature pursuant to Cooperative Policy Statement #11.

1. Legends:

- a. The following legend shall appear at the bottom of all printed advertisements or promotional literature, including, but not limited to, advertisements in electronic, radio or television media, signs exhibited at the site, brochures, and questionnaires to be completed by prospective purchasers:

This advertisement is not an offering. It is a solicitation of interest in the advertised residential rental building. No offering of the advertised units can be made and no deposits can be accepted, binding or non-binding, until an offering plan is filed with the New York State Department of Law, subject to all the rights of the existing tenants of the building, including the exclusive 90 day purchase period for tenants after the offering plan is accepted for filing. No rent regulated units are offered for sale. Market-rate tenants may have the right to enter into a reservation agreement upon submission of the offering plan to the Department of Law. Market-rate tenants should refer to the offering plan for further information. This advertisement is made pursuant to Cooperative Policy Statement #11, issued by the New York State Department of Law.

- b. All legends in printed advertisements or promotional literature shall be printed in at least 10-point size, two points leaded.
- c. All legends on signs exhibited at the site shall be clearly legible from street level.
- d. There should be no line or marking separating the legend from the body of the advertisement, brochure, or sign.
- e. All advertisements shall contain the registration number assigned by the Attorney General.

2. Selling Price and Cost Figures:

- a. The word “estimated” should appear in the same size and type immediately following any price, maintenance or other cost figures shown.
- b. No mortgage rates or representations that a mortgage commitment has been obtained should be contained in an advertisement unless Sponsor has a firm written mortgage commitment.

- c. No tax figures should be included or implied unless Sponsor has supplied the Attorney General with a backup letter from the relevant taxing authorities.

3. Other Comments and Procedures:

- a. Footnotes must be avoided.
- b. No units currently occupied by a rent regulated tenant may be advertised.
- c. No units currently occupied by a market-rate tenant may be advertised prior to the submission of the initial offering plan to the Department, and only if such offering plan includes the required disclosures of the July 9, 2015 guidance document entitled "Tenant Buyouts."
- d. No advertisement may claim that particular units are currently available or will become available after a tenant's lease expires.
- e. All claims must be substantiated in the body of the advertisement.
- f. All statutes referred to (*e.g.*, tax abatement) must be explained and substantiated in the body of the advertisement.
- g. An artist's rendering must be clearly labeled as such and must accurately depict the dimensions of the advertised property.
- h. No abbreviations should be employed unless the meaning is unmistakably clear.
- i. Sponsor's name and address should appear in every advertisement.
- j. The name and location of the advertised property must appear in every advertisement.
- k. All representations must be consistent with the Application. All assertions of fact must be provably true.
- l. All advertising must be submitted with the original Application, if available; any additional advertising must be submitted at least five (5) business days before use and cleared by the Attorney General before use.
- m. Advertisements shall not contain language that urges the reader to "rush" to "buy" a unit. The advertisements must clearly state that tenants have an exclusive purchase period for 90 days after an offering plan is accepted for filing.

APPLICATION TO EXTEND APPLICATION TO TEST THE MARKET

1. An Application to Test the Market for the proposed [condominium/cooperative development] (the "Development") at _____ was granted on ____ __, 20__ and issued registration no. ____ (the "Application"). The Application will expire on ____ __, 20__.
2. On [date], Sponsor submitted to the Attorney General of the State of New York (the "Attorney General") an offering plan for the proposed Development on [date] (the "Plan").
3. All advertisements and advertising literature utilized by Sponsor have complied and will continue to comply with Cooperative Policy Statement #11 Advertising Guidelines, the New York General Business Law, and with the Rules and Regulations of the Attorney General.
4. Sponsor has not offered any of the advertised units for sale. No deposits have been accepted by Sponsor.
5. [If the offering plan has been submitted to the Department, state whether Sponsor offered market-rate tenants the right to enter into a reservation agreement, and if so, state how many market-rate tenants have entered into reservation agreements. Include the unit designation and tenant name.]
6. State that no apartment subject to rent regulation has been advertised or offered for sale under the Application and will not be advertised or offered for sale under the Extension Application.
7. State the total number of units in the Development, and state how many units are market-rate, rent regulated, or vacant.
8. [State that Sponsor requests an extension of the Application until the Plan is either accepted or rejected for filing pursuant to Cooperative Policy Statement #11 of the Attorney General.
9. [State the reasons for the Sponsor's request for an extension of the Application.]

CERTIFICATION OF SPONSOR AND PRINCIPALS

We are the Sponsor and the principals² of Sponsor of the Application for Extension (the "Extension Application") of the Application to Test the Market (the "Application") for the captioned Development.

We understand that we have primary responsibility for compliance with the requirements set forth in Cooperative Policy Statement # 11 of the Department of Law and the provisions of Article 23-A of General Business Law, and such laws and regulations as may be applicable.

We have read the entire Extension Application and Application. We have investigated the facts set forth in the Extension Application, Application, and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the Extension Application and Application does, and that documents submitted hereafter by us which amend or supplement the Extension Application and Application, will:

- (i) be a complete, current and accurate representation of the proposed cooperative interest in realty for which sponsor wishes to test the market to determine interest therein;
- (ii) not contain any untrue statement of a material fact;
- (iii) not contain any fraud, deception, concealment, suppression, or false pretense;
- (iv) not contain any promise or representation as to the future that is beyond reasonable expectation or unwarranted by existing circumstances;
- (v) not contain any representation or statement that is false, where I/we:
 - (a) knew the truth;
 - (b) with reasonable effort could have known the truth;
 - (c) made no reasonable effort to ascertain the truth; or
 - (d) did not have knowledge concerning the representation or statement made.

We agree to file with the Attorney General, within twenty (20) business days of the expiration of the Extension Application, an affidavit stating the following: (i) that Sponsor has accepted no purchase agreements prior to the acceptance for filing of an offering plan by the Attorney General; and (ii) if Sponsor submitted an offering plan for submission to the Department, and such offering plan included the disclosures required by the guidance document dated July 9, 2015 entitled "Tenant Buyouts," that sponsor [has or has not] accepted reservation agreements from market-rate tenants [If Sponsor has accepted reservation agreements, the affidavit must include the unit designation and name of tenant who entered into such reservation agreement].

² Sponsor and principal are defined in accordance with the regulations promulgated by the New York State Department of Law governing the offer and sale of cooperative interests in realty, *i.e.*, Part 18 or Part 23, respectively.

This certification is made under penalty of perjury for the benefit of all persons from whom interest is solicited. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

[insert name of Sponsor]

By:

[name and office of signatory]

[Principal of Sponsor]

[Principal of Sponsor]

Subscribed and sworn to before me,

this ___ day of _____, 20____.

Notary Public