



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Changes to 13 NYCRR Parts 18-25:
Regulations Concerning Escrowed Funds**

December 6, 2012

On November 14, 2012, amendments to the New York State Department of Law's regulations concerning funds escrowed in connection with the public offering of cooperative interests in realty (13 NYCRR Sections 18.3, 20.3, 21.3, 22.3, 23.3, 24.3, and 25.3) were published in the New York State Register and are now in effect. Unofficial copies of the revised regulations are available on the website of the Attorney General of the State of New York at: <http://www.ag.ny.gov/real-estate-finance-bureau/revised-escrow-regulations>.¹

The following memorandum summarizes the obligations of offerors to conform their offering plans to the new regulations.

Changes in the Regulations

In brief, the revised revisions to the regulations prospectively eliminate the Attorney General's role in adjudicating disputes concerning the disposition of funds escrowed in connection with the sale of a cooperative interest in realty by an offeror. However, the revised regulations also contain other changes, as follows:

1. The purchaser must become a party to the escrow agreement by some means (either by having a trilateral escrow agreement or by having the purchaser become a party to the escrow agreement between offeror and escrowee when s/he signs a purchase agreement). 13 NYCRR § 20.3(o)(3)(i).²

¹ These online regulations are an unofficial version and are provided for informational purposes only. No representation is made as to their accuracy, nor may they be read into evidence in New York courts. Because of the timing of the publication process, the regulations posted on the Department of State website may not be current.

² This memorandum contains citations to Part 20, governing newly-constructed or vacant condominiums, but similar changes exist in Parts 18, 21, 22, 23, 24, and 25.

2. The revised regulations clarify the circumstances under which out-of-state attorneys may serve as escrowee. Id. § 20.3(o)(3)(iii).
3. The revised regulations clarify what it means for the escrowee and authorized signatories to be independent of offeror. Id.
4. The revised regulations clarify that the Department of Law will entertain complaints concerning improper notice of the deposit of escrowed funds. Id. § 20.3(o)(3)(v).
5. The revised regulations change the circumstances in which the escrowee may release the escrowed funds, require 30 days written notice before release of such funds except in certain specified situations, and require further written notice that the funds have been released. Id. § 20.3(o)(3)(vii).
6. The revised regulations require a final, non-appealable order of a court or, where applicable, a final, non-reviewable determination of the Attorney General before release of escrowed funds that are the subject of litigation or determination by the Attorney General. Id. § 20.3(o)(3)(viii).
7. For Parts of the Department of Law's regulations where an offeror may substitute a letter of credit or surety bond for escrowed funds (13 NYCRR Parts 20, 21, 22, 24, and 25), the revised regulations make similar changes to the subsections governing such alternative forms of security. Id. § 20.3(o)(5-6).

Counsel should review these changes carefully.

New Offerings

The regulations distinguish between new offerings and existing offerings containing the old dispute resolution function. Offering plans not yet accepted for filing must contain disclosures concerning escrow arrangements that comply with the revised regulations. As part of these disclosures, offeror must specify if the escrow agreement is separate from the purchase agreement. If it is, a copy of the escrow agreement must be included in Part II of the offering plan.

Existing Offerings

As the Notice of Adoption published in the New York State Register indicates, the revised proposed regulations do not apply to existing purchase agreements.

For offerings accepted for filing before the date of this memorandum, offerors have until March 1, 2013 to update their offering plans, escrow agreements, and, as necessary, purchase agreements, to conform to the new escrow language. As part of these updates, offeror must specify if the escrow agreement is separate from the purchase agreement. If it is, a copy of the escrow agreement must be included in Part II of the offering plan. Offeror must explicitly state that the Attorney General will continue to adjudicate disputes arising in connection with

purchase agreements that provide for dispute resolution by the Attorney General and were signed before the offering plan (and, as needed, the escrow and form purchase agreements) were updated to conform to the new escrow provisions.

Until offeror updates its offering plan in this manner, the old escrow determination regulations apply. Once offeror updates the offering plan (and, as needed, the escrow and form purchase agreements), the revised regulations will apply to purchase agreements signed after the update.

The Department of Law strongly encourages offerors to update such plans to conform to the revised escrow requirements as part of their next substantive update amendment.

The revised regulations do not require amendment of previously-signed purchase agreements to conform to the regulatory revisions.

If the offering plan has not been updated by March 1, 2013, offeror should not sign any new purchase agreements until it updates the offering plan (and, as needed, the escrow and form purchase agreements) to conform to the new regulations.