



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Frequently Asked Questions
Regarding Digital
Submission Requirements**

Date: February 4, 2016

Department of Law publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act § 102(14).

GENERAL

Q: What is a digital copy of an offering plan, amendment, or exhibit?

A: “Digital Copy” means a copy that is identical in content to a paper copy except that it is recorded electronically in read-only .pdf format or other electronic format that the Department of Law (“DOL”) determines to be acceptable. Digital Copies of the plan shall include all the supporting documents included in Part II of the plan. Digital Copies of the exhibits to the offering plan shall include all documents referenced in 13 N.Y.C.R.R. §§ 18.2(c)(4), 20.2(c)(5), 21.2(c)(3), 22.2(c)(6), 23.2(c)(5), 24.2(c)(4), or 25.2(c)(5), as applicable. Digital Copies of an amendment shall include all exhibits, backup documents, and other supplemental documents annexed to the amendment, as applicable.

Q: Why are sponsors now required to submit a Digital Copy *and* a paper copy of offering plans and amendments?

A: The DOL expects that the use of Digital Copies (in lieu of numerous paper copies) will increase the efficacy and efficiency of the Agency, which will, in turn, benefit prospective purchasers, sponsors, and the environment. However, the DOL is not yet in a position to accept only Digital Copies. The DOL is currently developing an agency-wide

e-filing and case management system; however, this system likely will not take effect for several years. In the meantime, the current requirement of submitting both a Digital Copy and a paper copy acts as an important interim step towards creating a permanent comprehensive digital submission and storage framework.

Q: Do the new digital submission requirements apply to holders of unsold shares?

A: Yes. The digital submission requirements apply to all submitters of offering plans and amendments, including holders of unsold shares.

Q: Do the new digital submission requirements apply to cooperatives, condominiums, timeshares, homeowners associations, and senior residential communities?

A: Yes. The DOL has revised Parts 18, 20, 21, 22, 23, 24, and 25 of Title 13 of the Official Compilation of Codes, Rules, and Regulations of the State of New York to require sponsors of cooperative interests in realty to submit to the DOL fewer paper copies of their offering plans and amendments. Therefore, the new digital submission requirements apply to all cooperative interests in realty regulated by the New York DOL, including cooperatives, condominiums, timeshares, homeowners associations, and senior residential communities.

GENERAL SUBMISSION PROCEDURES

Q: Must the Digital Copy of the offering plan or amendment be submitted at the same time as the paper copy of the offering plan or amendment?

A: Yes. Digital Copies of offering plans and amendments must be submitted *simultaneously* with the paper copies. The DOL's guidance document entitled "Digital Submission Requirements for Cooperative Interests in Realty" details the process for doing so.

Q: Will my submission be returned if it does not include paper copies and Digital Copies of all exhibits, backup documents, offering plan, or amendments?

A: Yes. The DOL reserves the right to reject the package for submission if it does not include all required documents.

Q: How should I save and name the Digital Copies of the offering plan and/or amendments?

A: Please refer to DOL's guidance document entitled "Digital Submission Requirements for Cooperative Interests in Realty" for specific submission and saving requirements. The DOL reserves the right to reject offering plan and amendment submissions that are not saved and named in the manner prescribed in the guidance document.

Q: In what medium must Digital Copies be submitted to the DOL?

A: All Digital Copies must be submitted on a CD-ROM, DVD, USB flash drive, or external hard drive. All CD-ROMs, DVDs, USB flash drives, or external hard drives containing Digital Copies must be submitted in a jewel case, sleeve, or other similar container. All such containers must bear a label either using the form provided by the DOL or strictly reflecting all the information listed on the form. Digital Copies submitted to the DOL in

any other medium *will be rejected* for submission. Moreover, the DOL reserves the right, in its sole discretion, to update which electronic media it determines to be acceptable for the submission of Digital Copies.

Q: Can I submit the Digital Copy of the offering plan and/or amendment to the DOL via email?

A: With the exception of redlined revisions to offering plans and amendments (*see* below for information), all Digital Copies of offering plans and amendments must be submitted to the DOL on a CD-ROM, DVD, USB flash drive, or external hard drive. At this time, the DOL will reject Digital Copies of initial and final submissions of offering plans and amendments received via email.

Q: Where should I affix the label on the CD-ROM, DVD, USB flash drive, or external hard drive containing the Digital Copy?

All such labels must be affixed to the outside of the jewel case, sleeve, or other similar container containing the CD-ROM, DVD, USB flash drive, or external hard drive. *Please do not attach the label to the actual CD-ROM, DVD, USB flash drive, or external hard drive.* The DOL reserves the right to reject for submission Digital Copies that are not labeled accordingly.

Q: Can I submit plans and/or amendments for multiple properties on the same CD-ROM, DVD, USB flash drive, or external hard drive?

A: No. Digital Copies of each new offering plan or amendment must be submitted to the DOL on a separate CD-ROM, DVD, USB flash drive, or external hard drive. A sponsor cannot submit offering plans or amendments for multiple properties on the same CD-ROM, DVD, USB flash drive, or external hard drive.

Q: Must architectural documents, such as floor plans, also be submitted as a Digital Copy?

A: Yes. Even if portions of such documents are not searchable by keyword, the documents nevertheless must be submitted to the DOL as a Digital Copy, with the attorney transmittal letter clearly denoting that certain portions of the documents may not be searchable.

Q: I realized I made a typographical error in the offering plan or amendment package. How do I correct the error?

A: If the offering plan has not yet been accepted for submission, please wait until it has been accepted for submission and then contact the assigned review attorney directly. If the offering plan or amendment has been accepted for submission but not yet accepted for filing, please contact the assigned review attorney directly. If the amendment or plan has already been accepted for filing, please submit a subsequent amendment correcting such error. All such amendments must be submitted pursuant to the new digital submission requirements.

Q: Must I submit a Digital Copy of the offering plan on a CD-ROM, DVD, USB flash drive, or external hard drive at both the initial and final submission stages?

A: Yes. A Digital Copy of the offering plan must be submitted to the DOL on a CD-ROM, DVD, USB flash drive, or external hard drive at the initial submission stage, and then, at the final submission stage a separate CD-ROM, DVD, USB flash drive, or external hard drive containing the final Digital Copy must be submitted.

Q: Must I submit a Digital Copy of the amendment on CD-ROM, DVD, USB flash drive, or external hard drive at the initial and final submission stages?

A: In most cases, a Digital Copy of the amendment must be submitted to the DOL on a CD-ROM, DVD, USB flash drive, or external hard drive at the initial submission stage, and then, at the final submission stage a separate CD-ROM, DVD, USB flash drive, or external hard drive containing the final Digital Copy must be submitted. However, the DOL recognizes that the initially submitted version of many amendments will be the final version of the amendment, especially price change only amendments. In such instances, the review attorney assigned to the amendment will inform the sponsor's attorney that submission of another CD-ROM, DVD, USB flash drive, or external hard drive containing the final amendment is not necessary.

FORMAT OF DIGITAL COPIES

Q: My firm's policy for all digital submissions is to include an encryption that requires a password to open and access the documents. Does the DOL require or permit an encrypted submission?

A: No. At this time, Digital Copies submitted to the DOL must not be encrypted.

Q: Must Digital Copies be printable?

A: Yes. All Digital Copies submitted to the DOL must be printable.

Q: Must Digital Copies be searchable?

A: All Digital Copies should be searchable to the extent technologically possible. If portions of such documents are not searchable by keyword, the documents nevertheless must be submitted to the DOL as a Digital Copy, with the attorney transmittal letter clearly denoting that certain portions of the documents may not be searchable (and, if possible, specifying which sections may not be searchable).

Q: The revised regulations require Digital Copies to be submitted in a "read-only .pdf format or other electronic format that the Department of Law determines to be acceptable," but my software allows for editing of .pdf documents. Is this permissible?

A: Yes. The DOL will not interpret an editable .pdf document as contrary to the definition of "read-only." The DOL thus will not reject for submission such Digital Copies.

SUBMISSION OF REVISIONS TO OFFERING PLANS AND AMENDMENTS

Q: How do I submit revisions to my offering plan and/or amendment?

A: Under the revised regulations, sponsors must submit their revisions to offering plans and amendments as a Digital Copy. The DOL will no longer require paper copies of these documents. Unlike the initial and final submission, Digital Copies of revisions to plans and amendments prior to their acceptance for filing do not need to be submitted on a CD-ROM, DVD, USB flash drive, or external hard drive. Rather, these documents may be submitted to the review attorney/paralegal/architect/engineer assigned to the plan or amendment via email as a .pdf document. However, the DOL reserves the right to request these documents on a CD-ROM, DVD, USB flash drive, or external hard drive. In addition, if the revisions comprise more than twenty-five pages, the review attorney assigned to the plan or amendment shall have the right to require sponsor to submit the redlined revisions as a paper copy.

Q: I submitted my offering plan/amendment prior to February 1, 2016. Must I submit the redlined revisions in accordance with the new digital submission requirements?

A: Yes. After February 1, 2016, all redlined revisions to offering plans and amendments must be submitted pursuant to the above requirements.

SUBMISSION OF FINAL VERSIONS OF OFFERING PLANS AND AMENDMENTS

Q: The review attorney/paralegal/architect/engineer assigned to my offering plan/amendment informed me that it is acceptable for filing. How do I submit the final version of my offering plan or amendment?

A: Once final sign off is received from the review attorney and architect/engineer and/or paralegal (if applicable), the final version of any offering plan or amendment must be sent to the DOL on a CD-ROM, DVD, USB flash drive, or external hard drive with one paper copy of the same offering plan or amendment (unless the amendment was accepted for filing upon initial submission). Please refer to DOL's guidance document entitled "Digital Submission Requirements for Cooperative Interests in Realty" for more specific submission information.

Q: I submitted my offering plan or amendment before February 1, 2016, but the review attorney/paralegal/architect/engineer did not sign off until after February 1, 2016. Must I submit a Digital Copy of the final version of the offering plan/amendment?

A: Yes. If an offering plan or amendment was submitted to the DOL before February 1, 2016, but received final sign off after February 1, 2016, the final version of the offering plan or amendment must be sent to the DOL on a CD-ROM, DVD, USB flash drive, or external hard drive with one paper copy of the same offering plan or amendment.

Q: Can I just email the DOL the Digital Copy of the final offering plan or amendment?

A: No. For an offering plan or amendment to be accepted for filing, the sponsor must send the DOL one paper copy and one Digital Copy (on a CD-ROM, DVD, USB flash drive, or external hard drive) of the same offering plan or amendment.

Q: Do I still need to send the DOL a paper copy of the final version of my offering plan or amendment?

A: Yes. One paper copy of the final version of the offering plan or amendment must be sent to the DOL along with the CD-ROM, DVD, USB flash drive, or external hard drive containing the Digital Copy of the same offering plan or amendment. However, the DOL now only requires one paper copy of the final version of the offering plan and or amendment (versus numerous paper copies).

Q: How will the DOL determine the date my offering plan or amendment is accepted for filing under the revised submission requirements?

A: An offering plan or amendment will be accepted for filing once the DOL receives both the Digital Copy and the paper copy of the final version of the offering plan or amendment and the review attorney informs the sponsor's attorney that the plan or amendment has been accepted for filing. If the DOL has not received both a Digital Copy and a paper copy of the final version of the offering plan, the offering plan or amendment will not be deemed accepted for filing by the DOL.

Q: The review attorney/paralegal/architect/engineer assigned to my amendment informed me that it is acceptable for filing without any revisions. Do I need to submit another paper copy and CD-ROM, DVD, USB flash drive, or external hard drive containing the Digital Copy of the amendment?

A: No. If the initially-submitted version of the amendment is the same as the final version of the amendment, the review attorney/paralegal/architect/engineer assigned to the Amendment will inform the sponsor's attorney that submission of another CD-ROM, DVD, USB flash drive, or external hard drive containing the final amendment is not necessary.

COOPERATIVE POLICY STATEMENTS, NO ACTION LETTERS, AND EXEMPTION APPLICATIONS

Q: Does the digital submission requirement apply to existing plans granted Cooperative Policy Statement #5 treatment?

A: Yes. Although Cooperative Policy Statement #5 remains unchanged and in full effect, if an offering plan with Cooperative Policy Statement #5 treatment must be amended in accordance with the Cooperative Policy Statement, the amendment must be submitted to the DOL pursuant to the new regulations (*i.e.*, sponsors must submit one paper copy and one Digital Copy of the amendment). Otherwise, the new digital submission requirements do not affect Cooperative Policy Statement #5, and offering plans that have Cooperative Policy Statement #5 treatment are still exempt from submitting amendments. Furthermore, new applications for Cooperative Policy Statement #5 treatment, should follow the submission procedures outlined in the Cooperative Policy Statement.

Q: Does the digital submission requirement apply to existing plans granted Cooperative Policy Statement #9 treatment?

A: Yes. The revised regulations require all amendments submitted to the DOL after February 1, 2016, to include “[o]ne digital copy of the offering plan including all previously filed amendments, if not already submitted to the Department of Law.” These changes have resulted in the repeal of Cooperative Policy Statement #9, which granted sponsors and holders of unsold shares an exemption from the requirement of submitting a copy of the Plan and prior Amendments with proposed qualified Amendments. Accordingly, the DOL will repeal Cooperative Policy Statement #9 as of February 1, 2016. The memorandum repealing Cooperative Policy Statement #9 will be posted on the DOL’s website.

Q: Does the digital submission requirement affect the DOL’s other Cooperative Policy Statements?

A: No. As of the date of this guidance document, all of the DOL’s Cooperative Policy Statements remain unchanged. When submitting any documents to the DOL pursuant to Cooperative Policy Statements, sponsors should follow the submission procedures outlined in the Cooperative Policy Statements.

Q: Does the digital submission requirement affect applications for no-action letters?

A: No. As of the date of the guidance document, the DOL’s submission requirements for no-action letters remain unchanged. When submitting an application for a no-action letter, sponsors should follow the submission procedures outlined in the relevant sections of 13 N.Y.C.R.R.

Q: Does the digital submission requirement affect exemption applications?

A: No. As of the date of the guidance document, the DOL’s submission requirements for exemption applications remain unchanged. When submitting an application for an exemption, sponsors should follow the submission procedures outlined in the relevant sections of 13 N.Y.C.R.R.

AMENDMENT INITIAL SUBMISSION REQUIREMENTS

Q: I do not have copies of the offering plan and all previously filed amendments. Will my submission be rejected? What if those amendments are price change only amendments?

A: Maybe. If missing the offering plan and any previously filed amendments, please submit a Freedom of Information Law (“FOIL”) request to the DOL before submitting an amendment. If a FOIL request was submitted and the offering plan and all previously filed amendments are not available through the DOL, and you cannot locate them after a diligent search, the sponsor must submit an amended and restated offering plan to the DOL. For specific information on this process, please refer to the DOL’s guidance document entitled “Submitting Amended and Restated Offering Plans when the Offering Plan and all Previously Filed Amendments are Unavailable.”

If the missing amendments are price change only amendments, the attorney transmittal letter must: (1) state that the submission contains missing price change only amendments, and (2) identify the specific price change only amendments that are missing

(e.g., amendments 3, 6, and 22). There is no need to locate or submit a FOIL request to locate price change only amendments, nor is there a requirement to submit an amended and restated offering plan.

Additionally, the Department of Law will accept a price change only amendment for filing without the requisite Digital Copy of the offering plan and previously filed amendments until **May 1, 2016**. However, if after May 1, 2016 the first amendment filed since February 1, 2016 is a price change only amendment, then the sponsor or holder of unsold shares must submit a Digital Copy of the offering plan and previously filed amendments with the price change only amendment. But, because submission of the offering plan and all previously filed amendments is a one-time requirement, if a substantive amendment is filed between February 1, 2016 and May 1, 2016, a Digital Copy of such documents are not required with any subsequent price change only amendment.

Q: Must I include all the binder exhibits to the original offering plan with my submission?

A: No. The DOL does not require submission of the exhibits to the offering plan (*i.e.*, the “binder documents”). However, the DOL will accept submissions that include the exhibits.

Q: I am only missing one previously filed amendment. Should I still submit an amended and restated offering plan?

A: In most cases, yes. If the sponsor does not have access to the offering plan and *all* previously filed *substantive* amendments, the sponsor must submit an amended and restated offering plan. However, the amended and restated plan must include a Digital Copy of all documents currently available to the sponsor or holder of unsold shares that the DOL has previously accepted for filing. If the only missing amendments are price change only amendments, the Department of Law will not reject the amendment for submission (*see* above).

Q: I need to submit a price change only amendment, but I am still in the process of getting the previously filed offering plan and amendments digitized. Can I submit a price change only amendment without the Digital Copies of the filed offering plan and amendments?

A: Yes, but only until May 1, 2016. After May 1, 2016, the DOL will require all price change only amendments to include a Digital Copy of the offering plan and all previously filed amendments, unless such documents have already been submitted to the DOL. Please refer to the DOL’s memorandum regarding price change only amendments for further information.

Q: Can I submit an amendment while the FOIL request for the offering plan and all previously filed amendments is pending?

A: No. For the DOL to accept a new amendment for submission, the sponsor must either: (1) include a Digital Copy of the offering plan and all previously filed amendments, or (2) submit an amended and restated offering plan. If any required materials are missing

from an amendment submission, the DOL reserves the right to reject the amendment for submission.

Q: Must I submit a Digital Copy of the offering plan and all previously filed amendments with each new amendment submission?

A: No. *The submission of one Digital Copy of the offering plan including all previously filed amendments is a one-time requirement.* However, the attorney transmittal letter for all subsequent amendments must include “the date on which sponsor submitted a digital copy of the offering plan and all previously filed amendments to the Department of Law or whether this is the first time sponsor is submitting a digital copy of the offering plan and previously filed amendments.” The DOL reserves the right to reject for submission amendments that do not include such information.

Q: Must I submit a Digital Copy of the offering plan and all previously filed amendments with the redlined revisions and/or final version of the amendment?

A: No. The submission of the offering plan and all previously filed amendments is only required with the first digital submission subsequent to February 1, 2016.

Q: Do previously filed offering plans and amendments need to be submitted in the same format as newly-submitted offering plans and amendments?

A: No. For submission of previously filed offering plans and amendments, the DOL requires only a Digital Copy of the offering plan and all previously filed amendments; exhibit and backup documents need not be included. Please refer to DOL’s guidance document entitled “Digital Submission Requirements for Cooperative Interests in Realty” for the specific submission requirements for these documents.

Q: Do I need to include a paper copy of the offering plan and all previously accepted amendments with new amendment submissions?

A: No. The revised regulations require only a Digital Copy of the offering plan and all previously filed amendments to be submitted with the first post-February 1, 2016 new amendment submissions.

Q: Should I submit the offering plan and all previously filed amendments on a separate CD-ROM, DVD, USB flash drive, or external hard drive from the new amendment submission?

A: No. The offering plan and all previously filed amendments should be submitted on the same CD-ROM, DVD, USB flash drive, or external hard drive as the new amendment submission. Please refer to DOL’s guidance document entitled “Digital Submission Requirements for Cooperative Interests in Realty” for the specific submission requirements for these documents.

Q: Must the offering plan and all previously filed amendments be submitted to the DOL as separate digital files, i.e., one digital file for the offering plan, and separate digital files for each amendment?

A: Yes. The offering plan and each amendments must be submitted to the DOL as separate digital files. For example, if an offering plan has two prior amendments, three digital

files must be submitted: (1) offering plan; (2) first amendment; and (3) second amendment.

Q: Must I include the DOL acceptance letter with the submission of the offering plan and previously filed amendments?

A: No. However, the DOL will accept submissions that include the acceptance letter.

CERTIFICATION CONCERNING DIGITAL COPIES

Q: When do I submit the “Certification Concerning Digital Copies” stating that the Digital Copy is identical to the included paper copy?

A: The “Certification Concerning Digital Copies” should be submitted to the DOL at the *initial* submission stage. Because the certification encompasses future revisions to the offering plan or amendment, no further certification is required upon the submission of revisions or final copies.¹ The DOL reserves the right to reject initial plan submissions that do not include the certification.

Q: Must I submit a paper copy of the “Certification Concerning Digital Copies”?

A: No. The DOL requires only a Digital Copy of the certification. However, the DOL reserves the right to request a paper copy of the certification.

Q: May the attorney sign the “Certification Concerning Digital Copies”?

A: No. The certification must be signed by the sponsor and one of its principals.

Q: Must all principals of the Sponsor sign the “Certification Concerning Digital Copies”?

A: No. The DOL only requires the sponsor and one of its principals to sign the certification.

¹ Please note that this procedure differs from that described in the DOL’s guidance document entitled “Digital Submission Requirements for Cooperative Interests in Realty” issued December 16, 2015. In that guidance document, the DOL stated sponsors must submit the certification at the final submission stage. Upon further consideration, the DOL has altered its submission procedures, and will now require the certification at the initial submission stage. The DOL’s guidance document has been updated accordingly.