



NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

Real Estate Finance Bureau

**28 Liberty Street
New York, NY 10005
212 416 8121**

POLICY STATEMENT 103

**EXEMPTION APPLICATION UNDER SECTIONS 359-f(1)(a)
AND 359-f(2)(c) OF THE GENERAL BUSINESS LAW FROM THE
FILING REQUIREMENTS FOR REAL ESTATE OFFERINGS UNDER
SECTION 352-e FOR CERTAIN GOVERNMENTAL ISSUERS**

POLICY STATEMENT 103

EXEMPTION APPLICATION UNDER SECTIONS 359-f(1)(a) AND 359-f(2)(c) OF THE GENERAL BUSINESS LAW FROM THE FILING REQUIREMENTS FOR REAL ESTATE OFFERINGS UNDER SECTION 352-e FOR CERTAIN GOVERNMENTAL ISSUERS

General Business Law ("GBL") §352-e provides that a real estate securities offering may be exempted from the filing requirements of §352-e if it is exempted under GBL §359-f(2) "by rule or action of the attorney general." GBL §359-f(2)(c) provides that the "attorney general may upon application, in writing, grant exemptions" from the provisions of GBL §359-e, subdivisions two through six, governing broker-dealer registration, if the offering involves securities described in GBL §359-f(1), other than securities specified in subdivisions h and k of the section. GBL §359-f(1)(a) includes securities "issued, or guaranteed by the United States or any territory or insular possession thereof, or by the District of Columbia, or by any state or political subdivision or agency thereof."

Policy Statement 103 provides an application procedure for exemption of governmental issuers described in GBL §359-f(1)(a) from the provisions of GBL §352-e and §359-e, subdivisions two through six. Such securities are automatically exempt from the Further State Notice requirement of §359-e (8) by operation of §359-f(1)(a). A special feature of applications under Policy Statement 103 is that they may be made either before or within 10 days after closing.

Policy Statement 103 may not be used by issuers of securities described in subdivisions b through n of §359-f(1). Such issuers should use Policy Statement 104. Issuers of mortgage-related securities as defined in the Secondary Mortgage Market Enhancement Act of 1984, in all respects meeting the requirements of the Act, are automatically exempt from filing and are not required to apply to the Attorney General for an exemption.

CONTENTS OF APPLICATION

The application must be in the form of an affidavit signed, or a petition verified, before a notary by an officer, trustee or other principal of the issuer having knowledge of the facts contained therein, stating in full the following information, representations and undertakings:

1. The name, address and legal nature of the issuing entity and its business or purpose.

2. The name, title and official address of the individual affiant.

3. The names and titles of all officers, directors, trustees, appointees, elected officials or other principals of the issuer and a statement that there are no other principals or controlling persons.

4. The nature of the security and the manner in which it falls within the definition of GBL §359-f(1)(a).

5. The purpose of the offering, the total dollar amount of the offering and the number of units and classes of securities to be offered, including optional units, shares underlying warrants and conversion privileges. Do not refer to the accompanying offering material; however, a separate table containing the requested information may be attached as an exhibit to the application.

6. State whether the securities are being sold by a registered broker-dealer, and if so, the basis upon which the securities are being sold (guaranteed underwriting, best efforts or other), and the name or names of the broker-dealer(s). If the securities are not being sold by a registered broker-dealer, explain how they are being sold.

7. (a) If the application is being made before the closing, state that a preliminary copy of the proposed offering literature is attached to the application and state an undertaking to file two copies of final offering material with the Attorney General within ten days of the closing.

(b) If the application is being made within ten days after the closing, state the date of the closing and that two copies of the final offering material are attached to the application.

8. State an undertaking to file with the Attorney General two copies of all amendments or supplemental materials used in connection with the offering.

The application should conclude, prior to subscription or verification, with the following clause: "WHEREFORE, it is hereby requested that the offering for sale of the securities of [the issuer] be exempted under General Business Law §359-f (1) (a) and §359-f (2) (c) from the filing provisions of §352-e and subdivisions two through six of §359-e."

SUBMISSION

The executed application, accompanied by a check in the amount of \$300 payable to the New York State Department of Law together with all relevant exhibits and offering material, should be sent to: Real Estate Finance Bureau, Syndication Section, New York State Department of Law, 28 Liberty Street, New York, NY 10005.

Applications may be made and signed by a principal of the underwriter in the event that there is no principal of the issuer able to make the required statements. In such instance paragraph 2 should state the name, title and affiliation of the affiant; his or her business or profession and business address; the reason the application could not be signed by a principal of the issuer; and the source of the information provided in the application (statute, public record or other). The application must also include a letter signed by a principal of the issuer stating that the underwriter is authorized to make the application on its behalf.

Applications for exemption made later than 10 days after closing may be submitted, but exemption is subject to the discretion of the Attorney General based on the circumstances. An explanation for the late application should be included with the representations made in paragraph 7 of the application.

Issuers submitting applications under Policy Statement 103 are not required to file a designation of the Secretary of State as agent for service of process.