

13 NYCRR Section 25.2.

Procedure for Submission

(a) The proposed offering plan and the exhibits described below shall be submitted to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, N.Y. 10271.

(b) The exhibits shall accompany the proposed offering plan submitted to the Office of the Attorney General and shall be subject to the sanctions of article 23-A of the GBL. A notation of “*orig*” on the list below means that at least one document must be a duly executed, original document.

Comment [JK1]: Corrected

(c) The following are to be included when submitting a proposed offering plan pursuant to this Part.

(1) A transmittal letter addressed to the Office of the Attorney General that is signed and affirmed by the individual attorney who prepared the plan, or by the person or persons who prepared the plan if not an attorney, containing the statements required by section 25.4(a) of this Part without qualification or alteration in substance. As specified in section paragraph (5) of this subdivision, the transmittal letter must expressly indicate any exhibit that is not included (apart from those noted) and set forth the reasons for the omission and list any documents submitted as exhibit B-13. Exemption applications submitted pursuant to section 25.1(h) of this Part must be annexed to and submitted with the transmittal letter. Omissions and additions to the table of contents must be noted and explained. The transmittal letter must note whether the offering plan is for a building or development which is newly constructed, vacant or non-residential and to what extent any existing structures are being rehabilitated. Pursuant to section 25.3(i)(4) of this Part, the transmittal letter must note any commercial units and whether they are being offered for sale. Pursuant to section 25.3(m)(3) of this Part the transmittal letter must note financing offered to prospective residents which contains any unusual risks. Pursuant to section 25.1(i) of this Part, the transmittal letter must note if the plan is an out-of-state plan. The transmittal letter must also note if there is currently an investigation pending by the Office of the Attorney General of the sponsor, a principal of the sponsor or of the property to be constructed or to be converted to a senior residential community.

(2) Checks (certified or uncertified) for the filing fee under [GBL, section 352-e\(7\)\(a\)](#) payable to “New York State Office of the Attorney General” and stapled or clipped to the transmittal letter, with form of receipt issued by the Office of the Attorney General. The filing fee is based on the number of units offered multiplied by the entrance fee per unit. For out-of-state senior residential communities the appraised valuation represents the total appraised valuation of all unoccupied units at the date of submission to the Office of the Attorney General. To expedite processing, the sponsor should submit two checks, each in the amount of one-half of the total fee. One of the two checks will be a non-refundable deposit. One check will be returned if the Office of the Attorney General issues a final deficiency letter.

(3) Signed originals of the following forms:

(i) M-2 and M-10 forms, if new forms are submitted as exhibits D-1 and D-2, with a check for the filing fee under [GBL, section 359-e\(5\)](#) attached.

(4) Three copies of a typed or printed, bound offering plan.

(5) Two sets of exhibits. Each set is to be in binders, from which documents can be removed easily, and be indexed with tabs. The cover of each binder must be labeled with the name and the address of the senior residential community and the name, address and telephone number of the attorney who prepared the plan. One of the binders must be marked “original” and contain the original documents required below. Each binder must contain an index of the documents. The transmittal letter required by paragraph (1) of this subdivision must note the omission of any exhibit, other than the exceptions stated below and the reason for the omission. If exhibits B-3, B-4, B-9, B-10, B-11, B-12, B-14, B-15, B-16, B-17 are omitted solely because the exhibit is not applicable to the offering, the omission need not be noted in the transmittal letter.

(i) Part A of the exhibits (certifications) shall consist of the following documents. Photocopies or conformed copies of the certifications must appear in the offering plan.

(a) (A-1) Certification by the sponsor and the sponsor's principals signed by "sponsors" and "principals" as defined in section 25.1(c) of this Part; see section 25.4(b) of this Part.

(b) (A-2) Certification by the sponsor's engineer or architect concerning the description of the property and building condition in Part II of the plan and at exhibit C-1 (orig); see section 25.4(c) of this Part.

(c) (A-3) Certification by expert on adequacy of budget for the first year of senior residential community operation (orig); see section 25.4(d) of this Part.

(ii) Part B of the exhibits (general) shall consist of the following documents:

(a) (B-1) Title company report, including a report on housing or building code violations of record, if applicable, dated or updated within 30 days of submission (orig).

(b) (B-2) A projection from a qualified expert or local supplier of the consumption, rate and total cost for furnishing heat, hot water and other utilities. If unit residents directly pay the cost of heating their own units, include a similar projection for heat, hot water and electricity for individual units.

(c) (B-3) Copy of proposed management agreement.

(d) (B-4) Copies of any contract which:

(1) will be binding on the senior residential community for \$10,000 or more per year; or

(2) has a term in excess of three years; or

(3) is with the sponsor, a business associate or affiliate of the sponsor, or a principal of the sponsor.

(e) (B-5) Copy of a letter from an insurance company or its authorized agent, stating proposed insurance coverage and amounts, and the annual premium or premiums.

(f) (B-6) Copy of an opinion from an independent, licensed insurance broker, insurance appraiser or real estate appraiser representing that the fire insurance coverage budgeted in the plan is adequate:

(1) so that the insured shall not be a co-insurer if the policy contains a co-insurance provision; or

(2) to cover replacement cost if the policy is for an agreed amount which waives co-insurance. If the policy represents replacement cost coverage, indicate the replacement cost per square foot.

(g) (B-7) Certified annual financial statements for the last two years for the senior residential community, if the facility is operating as of date of submission.

(h) (B-8) Certified financial statements for the last two years for the sponsoring entity.

(i) (B-9) Copy of sections 352-a/352-b Designation of Secretary of State as agent (applicable only to out-of-state issuers, sponsors, principals and/or broker), and filing receipt.

(j) (B-10) For senior residential communities located outside New York State, copy of statutes and regulations concerning the registration and formation of senior residential communities. All senior residential communities

located outside New York State must include evidence of compliance with local laws and regulations concerning the registration and formation of senior residential communities.

(k) (B-11) Copy of the form of promissory note required by sponsor if the plan offers financing, together with any other document which significantly affects a resident's obligations for financing offered by sponsor. If the documents are not available at the time of submission to the Department of Law, so indicate and forward when available.

(l) (B-12) Copy of any financing commitment letter pertaining to building construction loans, and amendments or extensions of the commitment letter, and a copy of any mortgage and note or bond that will be a lien on the property after commencement of occupancy or which presently encumbers the property. If construction financing is not available at the time of submission to the Department of Law, so indicate and forward as soon as available.

(m) (B-13) Copy of sponsor's or present owner's deed to the property, and copy of contract of sale between owner and sponsor if sponsor is contract vendee. If sponsor's interest will be a leasehold, include such leasehold in this exhibit.

(n) (B-14) Copy of any other material document(s), each of which should be described in the transmittal letter.

(o) (B-15) For rehabilitated buildings, an affidavit by sponsor stating how the building became vacant, that there was no harassment, and whether any apartments were vacated pursuant to vacate orders. If so, provide copy of vacate order.

(p) (B-16) An affidavit by sponsor stating that no money has been taken during any market test pursuant to Co-operative Policy Statement No. 1, if applicable.

(q) (B-17) Copies of all existing and proposed professional and commercial leases and subleases, and concession agreements.

(r) (B-18) Copy of the escrow agreement between the sponsor and the attorney(s) acting as escrow agent. If the model form is not used, so indicate. Copy of bank forms to be used to open ~~the any~~ escrow account.

(s) (B-19) Copy of surety bonds or letter of credit proposed to secure entrance fees and any other deposits and any underlying agreement or related agreement, and any undertaking called for in the Regulations or proposed to be furnished.

(t) (B-20) Copy of any license or operating certification from the Department of Health for services to be provided by the facility.

(u) (B-21) Copy of Certificate of Incorporation and receipt from Secretary of State, if the residence is organized as a corporation.

(iii) Part C of the exhibits (engineering) shall consist of the following documents:

(a) (C-1) Architect's or engineer's detailed description of the property and building condition with the architects or engineer's seal and original signature. The description must be dated within 90 days of submission to the Office of the Attorney General and conform to the requirements of section 25.7 of this Part; see exhibit A-2. The Office of the Attorney General may in its discretion require a further inspection and report.

(b) (C-2) Asbestos report, except in the case of newly constructed buildings, dated within 90 days of submission to the Office of the Attorney General. The report must conform to the requirements of section 25.7 of this Part.

(c) (C-3) Copy of currently valid temporary, partial or permanent certificate of occupancy or its equivalent. If a certificate of occupancy is not available because the building was constructed before the municipality began to issue certificates of occupancy, include an affidavit from the sponsor that the proposed use by the senior residential community is identical to the original use of the building. If no certificate of occupancy has yet been issued, so indicate and forward to the Office of the Attorney General when issued.

(d) (C-4) Copy of approved building plans required by local law, any specifications required by government agencies having jurisdiction, and copies of all required construction permits from government agencies having jurisdiction. If such plans have not yet been approved, provide evidence of zoning and site plan approval by the appropriate local government authority.

(iv) Part D of the exhibits (other information) shall consist of the following documents:

(a) (D-1) Signed M-10 form(s), broker-dealer statement, for the broker (orig), and signed M-2 form(s), statements for all individual employees who act as brokers (orig). Forms do not have to be submitted if currently valid registration forms are on file with the Office of the Attorney General from prior offerings and a copy of the form is submitted as exhibit D-1.

(b) (D-2) Signed M-10 form(s) for the sponsoring entity which shall include all officers, directors, partners or principals who are "dealers" for purposes of [GBL, section 359-e](#) (orig). Uncompensated directors of not-for-profit corporations need only disclose their name, a contact address and phone number. Forms do not have to be submitted if currently valid registration forms are on file with the Office of the Attorney General from prior offerings and a copy of the form is submitted as exhibit D-2.

(c) (D-4) Sponsor's affidavit that sponsor's net worth is or will be sufficient to meet the requirements of [GBL, section 352-k](#) and all of the unsecured obligations sponsor assumes in the offering plan including sponsor's obligations for unoccupied units (orig).

(d) (D-5) An affidavit from sponsor and principals of sponsor, as defined in section 25.1(c) of this Part, stating whether sponsor and principals of sponsor have taken part in real estate syndications of securities consisting of participation interests or investments in real estate, including limited partnership interests or private or public offerings of cooperative interests in realty, including senior residential communities, in or from New York, which were initially offered during the preceding five years. State the addresses of the realty, the name of the syndication or partnership and whether it received an exemption and the approximate date the offering plan was filed and the date of the closing with the apartment corporation for cooperatives or the date of commencement of occupancy for senior residential communities.

(e) (D-6) Completed statistical information card (available from the Office of the Attorney General).

(f) (D-7) Exemption application pursuant to [General Business Law, section 359-e](#).

(d) Upon preliminary advice from the Office of the Attorney General that the proposed offering plan may be filed, sponsor must submit:

(1) Checks (certified or uncertified) for the balance of the filing fees, if any, pursuant to [GBL, section 352-e\(7\)\(a\)](#) and by separate check any additional filing fees pursuant to [GBL, section 359-e\(5\)](#), payable to New York State Office of the Attorney General.

(2) Four copies of the typed or printed, bound offering plan, with the filing date left blank. The actual filing date shall be inserted after receipt of the letter from the Office of the Attorney General accepting the plan for filing. All offering plans must be dated before being presented to offerees.

(3) A new attorney transmittal letter; see section 25.4(a) of this Part. The letter may indicate that exhibits have

previously been supplied.

(4) If required by the Office of the Attorney General:

(i) a new certification by sponsor and sponsor's principals; see section 25.4(b) of this Part;

(ii) a new certification by sponsor's engineer or architect; see section 25.4(c) of this Part;

(iii) a new certification by sponsor's expert on the adequacy of the budget; see section 25.4(d) of this Part.

(e) The plan is filed on the date indicated in the letter from the Office of the Attorney General stating that the plan has been accepted for filing.

(f) The sponsor shall commence the offering within a reasonable time after the filing and if applicable shall submit an affidavit of service of the plan and notice on the commercial or professional tenants within five days of such service.