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STATE OF NEW YORK

DEPARTMENT OF LAW

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REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

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**Re: Disclosure Requirements Regarding  
Projected Real Estate Taxes  
After the First Year of Operation**

**Date: January 24, 2020**

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The New York State Department of Law (“DOL”) publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act § 102(14).

**I. INTRODUCTION**

Section 352-e of the New York General Business Law (“GBL”) and the DOL’s governing regulations mandate that an offering plan contain detailed disclosure of the terms of a proposed transaction, as well as “such additional information [. . .] as will afford potential investors, purchasers and participants an adequate basis upon which to found their judgment and shall not omit any material fact or contain any untrue statement of a material fact.” GBL § 352-e(1)(b). Further, “[a]ll advertising in connection with an offering of securities described in this subdivision shall be consistent with the representations and information required to be set forth as hereinbefore in this subdivision provided.” GBL § 352-e(1)(c).

The DOL’s governing regulations require sponsors to disclose “[p]rojected monthly and annual real estate taxes for the first year of operation” in the offering plan’s Schedule A. *See e.g.*, 13 NYCRR § 20.3(g)(1)(ix).<sup>1</sup> Additionally, an offering plan must include a footnote to Schedule A that “[s]tate[s] the projected assessed valuation, after completion of construction or rehabilitation, the approximate date of completion and reassessment, and the tax rate used to calculate the projected real estate taxes.” 13 NYCRR § 20.3(g)(2)(vi).

However, the projected real estate taxes for the first year of operation disclosed in the offering plan’s Schedule A and in advertisements often are not based on the projected assessed valuation after

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<sup>1</sup> For purposes of this guidance document, only the regulations governing condominiums pursuant to Part 20 of Title 13 of the New York Codes, Rules and Regulations are cited. Nonetheless, this guidance document applies equally to all other Parts of Title 13, Chapter II, Subchapter B.

completion of construction or rehabilitation. Rather, first year projections often are based on an assessment of a building still under construction or rehabilitation. Once construction is complete, a building is usually reassessed, at which point the real estate taxes may be significantly higher than the projected real estate taxes for the first year of operation included in Schedule A. Prospective purchasers thus may be left with the impression that first year projections represent what a purchaser will pay every year, without realizing that a new assessment after the completion of construction or rehabilitation may result in materially higher real estate taxes.

To avoid such confusion and provide purchasers with an adequate basis upon which to found their judgement, if the projected real estate taxes included in the offering plan's Schedule A and/or in an advertisement are based on pre-completion assessments of the property, sponsors must disclose that the real estate taxes may increase once construction or rehabilitation is complete.

This guidance document is intended to clarify sponsors' disclosure requirements regarding projected real estate taxes in offering plans and advertisements. The disclosure requirements detailed herein are effective immediately and apply to all offering plans submitted to the DOL on or after the date of this guidance document as well as all offering plans that the DOL has accepted for submission but not yet accepted for filing as of the date of this guidance document.

## **II. OFFERING PLAN DISCLOSURE REQUIREMENTS REGARDING PROJECTED REAL ESTATE TAXES AFTER THE FIRST YEAR OF OPERATION**

If the sponsor anticipates that construction or rehabilitation will be completed during the first year of operation, the sponsor should include projected real estate taxes based on post-completion assessments in the offering plan's Schedule A.

If the sponsor does not anticipate that construction or rehabilitation will be completed during the first year of operation (i.e., if the projected real estate taxes included in the offering plan's Schedule A are based on pre-completion assessments of the property), the sponsor must include the following model language in the offering plan as a prominent special risk and as a footer on the face of Schedule A:<sup>2</sup>

The projected real estate taxes for the first year of operation contained on Schedule A are based on an assessment of the building before [construction/rehabilitation] is complete. Purchasers are advised that real estate taxes may increase materially when the building is reassessed after [construction/rehabilitation] is complete. See Footnote \_\_\_ to Schedule A for more information regarding the projected assessed valuation after completion of [construction/rehabilitation].

As previously noted herein, an offering plan must include a footnote to Schedule A that "[s]tate[s] the projected assessed valuation, after completion of construction or rehabilitation, the approximate date of completion and reassessment, and the tax rate used to calculate the projected real estate taxes." 13 NYCRR § 20.3(g)(2)(vi). The above model language should cite, in the blank above, the specific

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<sup>2</sup> A footer to Schedule A must be on the same page as Schedule A and not merely in a list of footnotes to Schedule A contained on a separate page.

footnote to Schedule A discussing this required information. If other section(s) of the offering plan discuss projected post-completion real estate taxes, the relevant footnote to Schedule A should cross-reference any such section(s).

Please note, however, that sponsors should not include projected real estate taxes based on post-completion assessments in the offering plan's Schedule A unless the sponsor anticipates that construction or rehabilitation will be completed within the first year of operation. If sponsor does not anticipate that construction or rehabilitation will be completed within the first year of operation, the sponsor should list the projected pre-completion real estate taxes in Schedule A and include the disclosures previously detailed herein as a footer to Schedule A and as a prominent special risk.

**III. ADVERTISEMENT DISCLOSURE REQUIREMENTS REGARDING PROJECTED REAL ESTATE TAXES AFTER THE FIRST YEAR OF OPERATION**

As previously noted herein, all advertising in connection with an offering plan must be consistent with the representations and information required to be set forth in said offering plan. *See* GBL § 352-e(1)(c). Therefore, if the projected real estate taxes included in an advertisement (including any online advertisement) are based on pre-completion assessments of the property, the advertisement must include the following model language:

The projected real estate taxes for the first year of operation contained in this advertisement are based on an assessment of the building before [construction/rehabilitation] is complete. Purchasers are advised that real estate taxes may increase materially when the building is reassessed after [construction/rehabilitation] is complete.

Additionally, pursuant to the DOL's governing regulations any advertisements for units offered in an offering plan must refer prospective purchasers to the building's offering plan for further details. 13 NYCRR §§ 20.6(a)-(b).

**IV. FAILURE TO COMPLY WITH DISCLOSURE REQUIREMENTS REGARDING PROJECTED REAL ESTATE TAXES AFTER THE FIRST YEAR OF OPERATION**

The DOL reserves the right to reject offering plans and amendments that do not comply with the disclosure requirements described herein. Additionally, the Attorney General has the authority under Article 23-A of the General Business Law to investigate and strictly enforce violations of the statutes and regulations governing disclosure requirements. Nothing contained in this guidance document shall be construed to be a waiver of or a limitation on the Attorney General's authority to take enforcement action pursuant to Article 23-A of the General Business Law and other applicable provisions of law, except as expressly stated herein.