

**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
REAL ESTATE FINANCE BUREAU**

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*In the Matter of the*

Investigation by ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York, of

AOD No. 15-065

Peter Moore,

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

Pursuant to the Martin Act, New York General Business Law (“GBL”) § 352 *et seq.*, and New York Executive Law (“Executive Law”) § 63(12), ERIC T. SCHNEIDERMAN, Attorney General of the State of New York (the “NYAG”) investigated the conduct of Respondent Peter Moore, in connection with an offering of securities constituting participation interests in real estate and cooperative interests in realty.

This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation and the relief agreed to by the NYAG and the Respondent.

**FINDINGS**

**I. The Respondent**

1. Respondent Peter Moore (“Moore”) is an individual who resides in New York State. Moore is the former manager and principal of Respondent 39 Lisperard Project, LLC and continues to act as a promoter of other participation interests in real estate, as defined herein. Moore is also an architect licensed by the State of New York.

## II. Respondent's Legal Obligations Under the Martin Act

2. Pursuant to the Martin Act, securities constituting participation interests in real estate—whether in an undeveloped plot of land, in a previously existing building, or an investment company or fund—are known as “real estate syndications.” *See* GBL § 352-e.

3. Before the promoter of a real estate syndication (or his or her agent, including a licensed real estate broker or salesperson) publically solicits, offers, advertises, or sells to investors interests in a syndicate, such syndication offerings must be registered with the NYAG pursuant to GBL § 352-e, unless the promoter seeks an exemption from filing pursuant to GBL § 352-g and such exemption is granted. *See id.*

4. The proposed syndication is registered with the NYAG by the filing of a written statement or prospectus concerning the anticipated offering containing a full and fair summary of all material aspects of the offering pursuant to GBL § 352-e and the Part 16 Regulations.

5. Exemptions from filing with the NYAG are permitted by GBL § 352-g under certain circumstances, as delineated in Real Estate Policy Statements published by the NYAG's Real Estate Finance Bureau numbered 100 through 105. For example, where the syndication or transaction involves an offering pursuant to Regulation D, Rule 506 of the U.S. Securities and Exchange Commission, a “notification filing” with the NYAG (using NY Form 99) is required in lieu of a full offering statement or prospectus. *See* REFB Policy Statement 100; *see also* 17 C.F.R. § 230.501 *et seq.*

6. An offeror, or “sponsor,” of an offering of real estate securities involving cooperative interests in realty, including condominiums, in or from the State of New York is

required to file with the NYAG an offering plan that must disclose the detailed terms of the transaction to prospective purchasers. *See* GBL § 352-e(1)(b).

7. If a syndication offering involves the offering of condominium units, the filing of a written statement or prospectus or an exemption relating to the offering of interests in the syndication itself does not relieve the promoter from the statutory and regulatory prerequisites to a condominium offering. A syndication filing is a distinct and separate regulatory filing; it must not include an offer of condominium units. Such offers must be made in a separate filing with the NYAG. *See* REFB Memorandum *Real Estate Syndication Offerings That Include Rights to Acquire Condominium Units* (June 19, 2013).

8. It is “illegal and prohibited” for a sponsor of a condominium offering plan to sell, or offer to sell, condominium units to the public prior to the acceptance for filing of the offering plan by the NYAG. *See* GBL § 352-e(2).

9. It is also “unlawful” for a sponsor of a condominium offering plan to sell, or offer to sell, condominiums to the public in or from New York without first having filed a broker-dealer registration statement with the NYAG. *See* GBL § 359-e(3).

10. A syndicate who is required to file an offering statement or prospectus pursuant to GBL § 352-e is also required to file with the NYAG an annual report of the syndicate’s operations, including an annual balance sheet and profit and loss statement certified by an independent certified public accountant, within four months after the end of its fiscal year. *See* GBL § 352-e(8).

### **III. Respondent’s Plan to Develop the Clark Building at 39 Lispenard Street**

11. Moore formed 39 Lispenard Project, LLC (“39 Lispenard” or the “Company”) in order to develop the real estate venture involving the two conjoined buildings located at 39-41 Lispenard Street and 326-332 Canal Street in TriBeCa, Manhattan, NY (the “Clark Building”).

12. As explained below, 39 Lispenard is a New York limited liability company that along with Moore acted as unregistered syndicators of securities constituting participation interests in real estate as defined by under GBL § 352-e and Part 16 of Title 13 of the New York Codes, Rules and Regulations (the “Part 16 Regulations”), which govern real estate syndication offerings, and also offered cooperative interests in realty in the form of newly-constructed or vacant condominiums as governed by GBL § 352-e and Part 20 of Title 13 of the New York Codes, Rules and Regulations (the “Part 20 Regulations”).

13. On or about August 19, 2011, Moore signed a contract of sale (the “Contract”) for the purchase of the residential floors (floors 2 through 6) of the Clark Building for approximately \$12 million from a separate entity known as MM Canal, LLC.

14. The Contract provided, among other things, that the Clark Building would be converted by the MM Canal and the Company (*i.e.*, Moore) into a two unit condominium—consisting of a commercial unit (the “Lower Unit”) and a residential unit (the “Upper Unit”), which in turn comprised 10 separate apartments, prior to renovations, among the two adjacent buildings that made up the Clark Building.

15. MM Canal, LLC retained the Lower Unit (the commercial unit) and Moore, on behalf of the Company, purchased and obtained title to the Upper Unit (the residential unit). The Lower Unit is not at issue here.

16. On June 8, 2012, Moore, acting through the Company, submitted to the NYAG an application for a no-action letter to create a two unit condominium (consisting of the Lower and Upper Units) in the Clark Building.

17. The supporting documents comprising the no-action letter application specified that following the purchase of the Upper Unit by the Company, a subsequent offering plan or no-action letter application would be filed with the NYAG that would combine the two apartments on each floor to create a single floor-through apartment that would be suitable for luxury condominium conversion.

18. Specifically, on August 31, 2012, Moore affirmed in an affidavit submitted to the NYAG in furtherance of the no-action application that: (i) all but one of the 10 residential units were vacant; (ii) “no offers or solicitations of interest” would be made on any of the apartments in the residential unit; and (iii) no subdividing of the apartments would occur without an amendment to the no-action application or the filing of an offering plan.

19. As a result of the representations made by Moore in his affidavit, the no-action letter was issued by the NYAG on September 20, 2012.

20. The declaration of condominium for the Upper Unit (a.k.a. “Unit 1001”) was recorded on December 20, 2012 in the New York County Registers Office.

21. On or about February 6, 2013, the Company closed on the sale of the Upper Unit.

#### **IV. The Respondent Unlawfully Offers Real Estate Securities to the Public**

22. Following the purchase of the Clark Building, but before making the requisite filings with the NYAG to offer securities constituting participation interests in real estate and cooperative interests in realty (in violation of the Martin Act and the Executive Law),

Respondent began soliciting investors to purchase an ownership interest in the Company. In exchange for investing in the Company, an investor would be a tenant in common of the property owned by the Company, and would also be allocated an apartment at the Clark Building, with allocations based on the size of the investment. The investors, taking possession of the allocated apartments, planned to then arrange for Moore (or one of the co-investors) to file an offering plan with the NYAG under Part 20 for the conversion of a vacant building to condominium ownership.

23. Neither Moore, nor the Company, nor any of the investors in the Company requested an exemption from the NYAG pursuant to GBL § 352-g or made a securities filing with the U.S. Securities and Exchange Commission.

24. Additionally, in procuring investors, Moore identified, marketed, offered and ultimately sold to members specific apartment units (each taking up an entire floor) within the Clark Building. Moore reached out to potential investors through his network of associates and acquaintances from past ventures. He also solicited investors publicly, hiring a prominent real estate firm and using their brokers and online and print advertising to reach a wide audience.

25. Moore and his agents excluded the apartment assignments to various investors from the Company's various operating agreements, but did, however, memorialize them in other non-public Company documentation, including mortgage loan documents that were ultimately obtained by the NYAG.

26. On or about February 18, 2013, Moore signed a contract with real estate brokerage firm Town Residential LLC ("Town") granting it and its associated brokers the

exclusive right for a four month term to publically sell participation interests in the Company, which included the allocation of Apartments number 2 and 3 in the Clark Building.

27. The Town contract provided that the public offering was an interest in “an LLC ‘Tenants in Common’ offering to potential purchasers until the Condominium Offering Plan is submitted and approved by the Attorney General and individual units are apportioned.”

28. The exclusive agreement with Town provided for the offering of the “(LLC) sale at a (finished) price of \$5,500,000 for Unit #2 and for \$4,200,000 for Unit #3.”

29. The signatories of the agreement were Moore on behalf of the Company and an authorized representative of Town.

30. On or about July 25, 2013, Moore and Town extended the exclusive right to sell contract previously executed, but limited it to marketing Apartment Unit #2 for an additional period of six months.

31. The signatories of this extension agreement were Moore on behalf of the Company and Wendy Maitland, Town’s then Senior Managing Director of Sales.

32. Pursuant to the exclusive agreement to sell, Town and its brokers took part in the marketing of securities constituting participation interests and cooperative interests in real estate by offering Apartment Units 2 and 3 in the Clark Building for sale to the public, despite the fact that Town and its brokers were aware that neither an offering or prospectus for the syndicate nor offering plan for the condominium had been accepted for filing by the NYAG. Town and its brokers also marketed the penthouse (6<sup>th</sup> Floor) Unit, but apparently on a non-exclusive basis.

33. Town conducted the offering through substantial online advertisements via Town’s website, other real estate websites, printed marketing materials and brochures, direct

marketing to buyers' brokers through e-mail solicitations and telephone calls, as well as walk-throughs at the premises and personal conversations and sales pitches.

34. In many instances, Moore was present during on-site "walk-throughs" with potential investors brought by Town's brokers.

35. E-mails and other documents between Moore, his agents, and Town's brokers and others reveal the extent of the marketing and solicitation campaign within the State of New York to potential investors including wealthy foreign investors and other real estate buyers' brokers.

36. In order for the development plan to succeed, the Clark Building needed to be vacant since the types of investors sought were interested in developing unoccupied luxury loft residences.

37. The Contract between Moore and MM Canal required that MM Canal use "commercially acceptable means for vacating the premises (excluding litigation)" in order to deliver a vacant building. In the period prior to closing, Moore was required to pay a sum in escrow to cover MM Canal's lost rental revenue. To cover the rental monies Moore owed to MM Canal in the interim, Moore leased several apartments to generate cash.

38. Shortly after closing on the Clark Building, Moore and the Company began to evict the remaining month-to-month tenants by cancelling their tenancies.

39. On or about, April 17, 2013, the NYAG received a complaint from tenants living in the Clark Building, apartment 4A, and facing eviction (the "4A Tenants"). The market-rate tenants, who by that time were month-to-month following expiration of their lease on February 28, 2012, were engaged in litigation in the New York Housing Court.

40. The 4A Tenants referred the NYAG to an advertisement on StreetEasy (<http://streeteasy.com>), which showed that that apartment 4A was being offered as “AN LLC ‘TENANTS IN COMMON’ OPPORTUNITY” and that the “Offering Plan [was] to be submitted Spring 2013 and work to begin this summer.” The broker listed was Town Residential.

41. Ultimately, the 4A Tenants settled their housing court matter with Moore and the tenant moved out of the unit in the late Summer or early Fall of 2013.

42. Notwithstanding, at the time Moore executed the “no action letter” affidavit, he made a false statement when he swore that, as of August 31, 2012, other than the second floor, the building was “currently vacant”—unequivocally Unit 4A was occupied by tenants, who were slated to be evicted several months later.

43. As a result of the potentially false “no action” application filing and Town’s public advertisement seeking investors in the unregistered syndication, on or about August 14, 2013, the NYAG issued subpoenas to the Company as well as Town Residential and MM Canal LLC.

44. The NYAG also requested that Town pull its public advertisements for the Clark Building pending the outcome of its Martin Act investigation.

45. Pursuant to the subpoena, the Company began its rolling production of documents to the NYAG starting on October 30, 2013 and continued until July 31, 2014.<sup>1</sup>

46. On or about February 25, 2014, Respondent 39 Lisperard, through its then attorney Lewis Kuper, Esq., filed an offering plan under 13 NYCRR Part 20 (vacant) (the “Part

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<sup>1</sup> MM Canal and Town separately produced documents to the NYAG on or about September 13, 2013.

20 Plan”) that was materially deficient. The NYAG delivered to Mr. Kuper a deficiency notice on or about March 27, 2014 detailing the numerous errors and omissions that required correction.

47. The NYAG then rejected the Part 20 Plan for filing on May 7, 2014, due to the Company’s failure to remedy the offering plan’s numerous deficiencies before the deadline for revisions had passed.

48. Additionally, the Part 20 Plan contained a number of material omissions, including nondisclosure of several principals of the Company and failing to disclose that the Company had been under investigation by the NYAG.

**V. During the NYAG’s Investigation Moore Discloses Other Projects to the NYAG**

49. On or about October 24, 2014, Moore met with representatives of the NYAG to discuss the above findings.

50. Moore disclosed to the NYAG seven other real estate projects that he is associated with (the “Disclosed Projects”), in various stages of development.

51. Moore has acknowledged that two of the Disclosed Projects should already have been the subject of filings with the NYAG pursuant to the Martin Act and other relevant laws and regulations. Specifically, Moore is the managing member of an LLC that has entered into a purchase agreement for commercial real property located on Hoyt Street in Brooklyn, New York (the “Hoyt Street LLC”). Moore resigned as managing member of the Hoyt Street LLC effective on April 13, 2015. Fund-raising for the purchase of that property has consisted of soliciting investors to purchase membership in the LLC. Therefore, this project constitutes the offering and sale of a participation interest (syndication) in realty and is subject to the Martin Act and applicable regulations.

52. Moore is also involved in a real estate project located on President Street in Brooklyn, New York, but is neither a member nor owner of any limited liability company created to develop such realty. The fund-raising for the purchase of the property that is the subject of this project was also conducted pursuant to the offering and sale of LLC memberships; therefore, this project is also subject to the Martin Act and applicable regulations, though Moore avers that he has no membership interest in the LLC.

53. As for the five other Disclosed Projects, Moore disclosed to the NYAG that these other projects are at more nascent stages of development and to date have not involved the offering of either syndication interests or cooperative interests in realty. Moore acknowledges that these projects may be required to make filings pursuant to the Martin Act and applicable regulations in the future, to the extent that they involve the offering of syndications, or the offering and sale of cooperative interests in realty.

### **PROSPECTIVE RELIEF**

WHEREAS, the Respondent admits the NYAG's Findings set forth in paragraphs 49-53 above but otherwise neither admits nor denies the NYAG's Findings set forth above;

WHEREAS, the NYAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its investigation;

WHEREAS, Respondent desires to resolve his issues with the NYAG and is willing to accept the obligations imposed by this Assurance; and

WHEREAS, the NYAG and Respondent each believes that the obligations imposed by this Assurance are prudent and appropriate;

THEREFORE, IT IS HEREBY UNDERSTOOD AND AGREED by and between the Respondent and the NYAG that:

A. In consideration of the making and execution of this Assurance, Respondent Peter Moore agrees to be restrained and enjoined for six (6) months, commencing on the date this Assurance is accepted and counter-signed by the NYAG, from engaging in any securities-related business or activity, directly or indirectly, as principal, broker or agent, or otherwise, including but not limited to: marketing, selling or offering for sale to the public within the State, directly or indirectly, any securities constituting participation interests or investments in real estate, including but not limited to syndications and cooperative interests in realty, as governed by GBL § 352-e, *et seq.*, issued or to be issued;

B. Moore shall not hereafter violate any provision of Article 23-A of the New York General Business Law, the Executive Law or any other law, regulation or rule relating to the public offer of securities constituting participation interests or investments in real estate, including but not limited to syndications and cooperative interests in realty, in or from the State of New York;

C. Moore shall not conceal or in any way obscure his identity, role, investment in, or ownership interest in connection with, any securities constituting participation interests or investments in real estate, including but not limited to syndications and cooperative interests in realty;

D. With regard to the Disclosed Projects, for the duration of the six-month bar described above in paragraph A:

i. Moore's role will be limited to participation in the various projects' design and

construction; advising on construction, design, and administrative matters relating to the closings of particular properties; offering advice with regard to obtaining institutional financing; acting as a consultant for managing members in their discussions with sellers, lessors, architects, and other professionals; acting as a consultant with regard to the architectural re-design of property, preparation of property for modernization, preparation of property for subdivision, and advising on the creation of property additions.

- ii. Moore shall not: be a managing member of any company; negotiate or interact with members/owners of any company relating to the raising of funds from any investors; raise funds from any sources other than institutional investors; negotiate any compensation for his services other than monetary payment; prepare any securities offerings, discuss such offerings, or promote such offerings; participate in the transfer or creation of any membership interests in any entities related to any securities offerings or investments in real estate; promote or offer any securities or investments in real estate to the public at large or individual members of the public; provide any consulting services or advice with respect to obtaining investors or the offer or sale of securities including membership interests; enter into any written agreement about future compensation or membership interests in any entity that owns real estate.
- iii. Moore shall file all appropriate mandatory regulatory filings are made with respect to the Disclosed Projects and any other project (whether they are syndications or cooperative interests in realty), pursuant to the requirements of the

Martin Act, the Part 16 Regulations, the Part 20 Regulations, the Part 16 Regulations, and REFB Policy Statements 100–105, as appropriate.

- iv. The Hoyt Street project made a syndication filing with the Department of Law on March 30, 2015.
- v. The President Street project made a syndication filing with the Department of Law on April 10, 2015.
- vi. Nothing in this Assurance may be construed as limiting the NYAG's authority to investigate and take appropriate enforcement action in any matter where it is discovered that Moore has taken part in a securities offering without first having made the required regulatory filings and disclosures.

E. Simultaneous with the execution of this Assurance, Moore agrees to pay to the Department of Law the sum of \$50,000.00 in civil penalties, costs and fees;

F. Following the expiration of the 6 month bar provided by paragraph A above, Moore shall not hereafter make or take part in a public offering or sale in or from the State of New York of any securities constituting participation interests or investments in real estate, including but not limited to syndications and cooperative interests in realty, as governed by GBL § 352-e, *et seq.*, unless and until there shall have been an offering plan accepted for filing with the NYAG, an offering statement or prospectus that is kept current in conformity with law and with the NYAG's regulations, or the Respondent has requested and received an exemption from filing an offering plan or prospectus with the NYAG pursuant to GBL § 352-g; and

G. If a court of competent jurisdiction finds that Moore has breached any of the terms or conditions of this Assurance, particularly described in paragraphs A-F above, Moore

agrees that he shall be permanently enjoined from making or taking part in the offering or sale in or from the State of New York of any securities, as governed by GBL § 352-e, *et seq.*

### MISCELLANEOUS

H. All correspondence related to this Assurance must reference Assurance No. 15-065;

I. The NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to the NYAG by Respondent and his counsel and the NYAG's own factual investigation as set forth in the Findings above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in his sole discretion.

J. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

K. Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondent shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Respondent's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

L. This Assurance may not be amended except by an instrument in writing signed on

behalf of the Respondent and the NYAG and any purported amendment of this Assurance that is not memorialized in a writing signed by all signatories to this Assurance shall be deemed null and void.

M. This Assurance shall be binding on and inure to the benefit of the Respondent and the NYAG and their respective successors and assigns, provided that no party, other than the NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the NYAG.

N. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

O. To the extent not already provided under this Assurance, Respondent shall, upon request by the NYAG, provide reasonable documentation and information necessary for the NYAG to verify compliance with this Assurance.

P. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

*If to the Respondent:*

Peter Moore  
515 Canal Street  
New York, NY 10013

*With a copy to:*

Richard M. Newman, Esq.  
Marans Weisz & Newman LLC  
29 Broadway, Suite 2400  
New York, NY 10006

Direct Line: (212) 968-0725

*If to the NYAG:*

Bureau Chief  
Real Estate Finance Bureau  
Office of the Attorney General  
120 Broadway, 23rd Floor  
New York, New York 10271  
(212) 416-8100

Q. Acceptance of this Assurance by the NYAG shall not be deemed approval by the NYAG of any of the practices or procedures referenced herein, and Respondent shall make no representation to the contrary.

R. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the NYAG.

S. If a court of competent jurisdiction determines that the Respondent has breached this Assurance, Respondent shall pay to the NYAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

T. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to New York Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

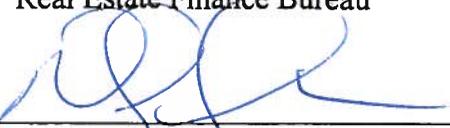
U. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

V. This Assurance may be executed in one or more counterparts, by either original signature or signature transmitted by facsimile transmission or electronic mail, and each copy so executed shall be deemed an original.

IN WITNESS WHEREOF, this Assurance is executed by the Respondent and the NYAG  
as of April 13, 2015.

**ERIC T. SCHNEIDERMAN**  
Attorney General of the  
State of New York

By:   
Erica F. Buckley  
Bureau Chief  
Real Estate Finance Bureau

By:   
Nicholas J. Minella  
Assistant Attorney General  
Real Estate Finance Bureau

  
PETER MOORE

Notary: 

[Seal]

Date: 4/13/15

NICHOLAS J. MINELLA  
NOTARY PUBLIC, State of New York  
No. 02M16137743  
Qualified in Kings County  
Commission Expires Dec. 5, 2009  
7/02/2017