



---

STATE OF NEW YORK

DEPARTMENT OF LAW

---

REAL ESTATE FINANCE BUREAU

MEMORANDUM

---

**Re: Procedure for Submitting a Price  
Change Only Amendment for  
Consideration Prior to Acceptance  
of a Pending Substantive Amendment**

**Dated: February 4, 2016<sup>1</sup>**

---

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

**Introduction**

The Real Estate Finance Bureau's ("REF") Record Room is charged with the responsibility of processing all incoming offering plan and amendment submissions to the Department of Law. Often, sponsors' attorneys submit price change only amendments when a substantive amendment is pending. This guidance document provides guidelines for addressing such requests. The following procedures are effective as of the date of this guidance document.

**Procedure for Submitting a Price Change Only Amendment for Consideration While a Substantive Amendment is Pending**

A price change only amendment to be considered prior to a substantive amendment must be mailed to:

New York Department of Law  
Real Estate Finance Bureau  
120 Broadway, 23rd Floor  
New York, NY 10271

Materials, including documentation and checks, from the substantive amendment cannot be used or

---

<sup>1</sup> This guidance document supersedes and replaces the previous version dated September 16, 2015.

duplicated for submission of the price change only amendment. In addition, sponsors must include the following when submitting a price change only amendment to be considered prior to the proposed amendment pending review:

- (1) One digital copy<sup>2</sup> and one paper copy<sup>3</sup> of the transmittal letter, signed by the individual attorney who prepared the price change only amendment that:
  - (i) States the date the offering plan was filed and the Department of Law file number;
  - (ii) Identifies the subject price change amendment in numerical order (the price change only amendment will be numbered before the pending substantive amendment);
  - (iii) States whether prior amendments have been submitted to, but not yet filed by the Department of Law, and that the price change amendment shall be numbered prior to the pending substantive amendment;
  - (iv) Identifies, if possible, the attorney in the Department of Law who is currently reviewing the pending substantive amendment; and
  - (v) Identifies in the subject line of the letter that this is a price change only amendment by including the following language in bold font: **PRICE CHANGE ONLY AMENDMENT SUBSTITUTION**;
- (2) One digital copy and one paper copy of the proposed price change only amendment;
- (3) One digital copy and one paper copy of the completed form C-11/CD-11 Price Change Form as promulgated by the Department of Law;
- (4) One digital copy and one paper copy of the revised cover pages to replace those of the amendment pending review displaying the next sequential amendment number;
- (5) One digital copy and one paper copy of form CD-2/RS-2 Amendment Filing Form, signed by the sponsor and notarized. For digital signatures, the signatory must utilize the “Certify with Digital Signature” option to sign the form electronically. If this option is used, the form does not need to be separately notarized;
- (6) Check(s) (certified or uncertified) for filing fee(s) pursuant to General Business Law § 352-e(7) payable to New York State Department of Law, dated no more than 90 days from date of submission, stapled or clipped to the transmittal letter. A digital copy of the

---

<sup>2</sup> A “digital copy” is a copy of the amendment 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 determines to be acceptable. For further information on the submission of digital copies, please refer The Department of Law’s guidance document entitled “*Digital Submission Requirements for Cooperative Interests in Realty*.”

<sup>3</sup> “Paper Copy” means a copy of the amendment that is thereto that is printed on paper.

check(s) must also be included;<sup>4</sup>

- (7) One digital copy and one paper copy of the Notice of Appearance, pursuant to Executive Law § 166, signed by the individual attorney who prepared the amendment;
- (8) One digital copy of the offering plan and all previously filed amendments (if any), if the price change only amendment is the first amendment submitted to the Department of Law subsequent to May 1, 2016.
  - (i) 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.

For further details regarding digital submission requirements, please refer to the Department of Law's guidance document entitled "*Digital Submissions Requirements for Cooperative Interests in Realty.*"

If there are any deficiencies in the price change only amendment submission, the Department of Law will not assign it for review until the deficiencies are cured. The Department of Law will notify sponsor's attorney of the deficiencies. Sponsor's attorney will then have two business days to cure the deficiencies, or the price change only amendment will be returned without being accepted for submission. The submission date of the price change only amendment will be the date it was received by the Department of Law, unless returned to sponsor's attorney for failure to remedy any deficiencies.

---

<sup>4</sup> If the maximum filing fee has not been paid by sponsor, then a separate check must be submitted to the Department of Law to cover any increase in the offering price. Sponsor must continue to pay filing fees until the maximum amount of \$30,000 has been paid at a rate of 4/10 of 1% of the total offering price.

