

### **13 NYCRR Section 21.3: Format and content**

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Plans submitted pursuant to this Part must comply with the format and minimal disclosure requirements set forth in subdivisions (a) through (bb) of this section in addition to the requirements of article 23-A of the General Business Law.

(a) *Cover.* The outside front cover of the offering plan shall contain the following information:

- (1) the title in bold face type: COOPERATIVE OFFERING PLAN followed by the address of the property and the number of units being offered;
- (2) the cash amount of the offering which shall be based on the aggregate price at which the shares are initially offered. State the number of shares and the approximate number of units;
- (3) amount of the outstanding mortgage(s) which shall be based on the projected unpaid balance of all mortgages encumbering the property at the time it is acquired by the apartment corporation;
- (4) the total offering price which shall include the reserve fund (if any) and the working capital fund (if any);
- (5) the name and principal business address of the sponsor and selling agent. Telephone numbers may also be included;
- (6) the approximate date of first offering which shall not be earlier than the date the Department of Law files the plan. The term of the initial offer is 12 months commencing on the date indicated in the letter from the Department of Law stating that the plan is filed. The term may be extended by an amendment to the offering plan. The dates should be left blank at printing and completed after the plan is filed;
- (7) the following statement in capital letters, printed in bold face common type at least as large as 10-point modern type and at least 2 points leaded:

**THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL THESE COOPERATIVE UNITS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY UNIT. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING;**

- (8) if the plan contains any special risks, as defined in subdivision (c) of this section, the following statement in capital letters printed in bold face common type at least as large as 10-point modern type and at least 2 points leaded:

**THIS PLAN CONTAINS SPECIAL RISKS TO PURCHASERS SEE PAGE \_\_\_\_\_.**

(b) *Table of contents.* The format and order set forth in this subdivision must be followed in the table of contents. Include headings for the subjects not marked with an asterisk except that:

- (1) a limited number of headings may be added to the plan; and

(2) headings for subjects that are marked with an asterisk may be omitted if the subject matter is not applicable to the offering.

Omissions and additions should be expressly noted and explained in the transmittal letter. Alternative wording for headings to meet particular facts are set forth in parentheses.

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(c) *Special risks.* This section, if applicable, must be on a separate page, immediately following the table of contents. All fea-

tures of a plan which involve significant risk or will disproportionately or unusually affect maintenance charges or obligations of shareholders in future years of cooperative operation must be conspicuously disclosed and highlighted. A brief description of the risk should be given in this section and a more thorough description should be given in a referenced later section. Questions as to whether a risk should be highlighted in this section should be resolved in favor of inclusion.

(1) Disclose whether sponsor is reserving the right to rent rather than sell units appurtenant to its unsold shares (hereinafter “units”) and whether there are any limits placed on sponsor's right rent rather than sell under the terms of the construction loan for the project or whether sponsor is limiting its right to rent rather than sell based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions upon which the sponsor would resume sales. If sponsor is reserving an unconditional right to rent without committing itself to sell at least 51 percent of the units, the cover of the plan must state in bold print:

**BECAUSE SPONSOR IS RETAINING THE RIGHT TO RENT MORE THAN 49 PERCENT OF THE UNITS IN THE BUILDING OR BUILDINGS BEING CONSTRUCTED FOR COOPERATIVE OWNERSHIP, FUTURE MARKETABILITY OF THE UNITS MAY BE ADVERSELY AFFECTED AND PURCHASERS MAY NEVER GAIN EFFECTIVE CONTROL OF THE COOP BOARD. (SEE SPECIAL RISKS SECTION.)**

Disclose that as a result of sponsor retaining more than 49 percent of the units, marketability of the units may be adversely affected. Explain that certain institutional lenders may be unwilling to make loans for the purchase of units in a cooperative in which the sponsor and/or holders of unsold shares retain more than 49 percent of the units and that purchasers may therefore be unable to obtain institutional financing for their own purchase. Disclose that if they do close title and subsequently seek to sell their apartments, prospective purchasers may be unable to obtain institutional financing solely on the basis of sponsor's holding more than 49 percent of the units in the cooperative corporation, regardless of the credit worthiness of the prospective purchaser. If the sponsor is able to demonstrate that an institutional lender has approved the project for coop loans to qualified purchasers, a disclosure identifying the lender, the terms of the loans to be offered, eligibility criteria and other material aspects of the lender's commitment to the project should be included.

(2) If sponsor represents that it will set 51 percent of the units, to purchasers for personal occupancy, disclose whether sponsor further represents that it will endeavor in good faith to sell, in a reasonably timely manner, all remaining unsold units to purchasers for personal occupancy, in the building or building being converted to cooperative ownership. If sponsor intends to sell fewer than all of the units, disclose this fact and the number and percentage which sponsor does intend to sell, in bold print as the first special risk. Disclose that the units reserved by sponsor may remain unsold indefinitely and sponsor may dispose of such units as it chooses, including selling to investors, renting to tenants, permitting occupancy by relatives or others, allowing them to remain vacant or selling to purchasers for personal occupancy. If the sponsor later chooses to sell a greater number and percentage of units to the public for personal occupancy than disclosed in the initial offering plan, the plan must be amended to disclose that fact.

If sponsor makes a bulk sale of all or some of its unsold shares, the transferee is bound by sponsor's representations regarding its commitment to sell units.

(3) If the bylaws of the cooperative do not include a provision that after the initial sponsor voting control period, a majority of the Board of Directors must be owner-occupants or members of owner-occupants' households, who are unrelated to the sponsor and its principals, this fact must be disclosed as a special risk and the following warning must be placed on the cover:

**THIS PLAN DOES NOT GUARANTEE THAT OWNER-OCCUPANTS WILL EVER CONSTITUTE A MAJORITY OF THE COOP BOARD OF DIRECTORS. (SEE SPECIAL RISKS SECTION OF PLAN.)**

Disclose that unless and until a majority of the Board are residents of the building unrelated to the sponsor, owner-occupants will not gain effective control and management of the cooperative. Disclose that owner-occupants and non-resident shareholders, including sponsor, may have inherent conflicts on how the cooperative should be managed because of their different reasons for purchasing, i.e. purchase as a home as opposed to as an investment.

(d) *Definitions.* Important terms, terms that are not likely to be understood by the general public, and terms that have special

meaning or are used as proper nouns should be defined and explained. Such terms include but are not limited to: closing; closing date; tenant-shareholder; sponsor; selling agent; cooperative apartment or unit; maintenance charges; filing; proprietary lease; effective date; assessments; and holder of unsold shares. Terms must be used consistently throughout the offering plan.

(e) *Introduction.* The introduction should:

(1) explain that the purpose of the offering plan is to set forth all the terms of the offer. Explain that the plan may be amended from time to time when an amendment is filed with the New York State Department of Law. State that amendments will be served on purchasers and shareholders;

(2) describe the type of interest that the apartment corporation is to acquire in the land and building(s) and appurtenances thereto;

(3) identify the sponsor, state when the sponsor acquired the property or sponsor's interest as a contract vendee;

(4) disclose sponsor's intent with regard to the sale of apartments offered in the plan. Disclose whether sponsor represents that it will endeavor in good faith to sell, in a reasonably timely manner, all residential units to purchasers for personal occupancy in the building or buildings being constructed for cooperative ownership. If sponsor has obtained construction financing, disclose the terms of the construction loan as they apply to the sponsor's obligation to market the units for sale, including any minimum number or percentage of units which must be under contract before the plan can be declared effective, the existence of either a minimum release price set by the lender or a required minimum payment per sale which must be made to the lender and limits or requirements imposed by the lender for sponsor to rent rather than sell under specified market conditions. If sponsor has not obtained construction financing or if the construction loan agreement does not include provisions on the terms set forth in the previous sentence, disclose the conditions under which sponsor reserves the right to rent rather than sell based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions under which sponsor would resume sales. If sponsor represents an intent to sell fewer than all of the units in the building or buildings being constructed for cooperative ownership, disclose the number and percentage which sponsor does intend to sell. Disclose whether sponsor represents that it will decline to rent apartments, until it has sold at least 51 percent of the units to purchasers for personal occupancy. If sponsor reserves the right to rent rather than sell after reaching the 51 percent sales level, disclose the conditions under which sponsor would rent rather than sell based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions under which

sponsor would resume its good faith efforts to sell rather than rent. If sponsor does not represent its good faith intent to sell and to obtain sales of 51 percent of the units prior to renting, include on the cover of the plan the warning set forth in paragraph (c)(1) of this section and discuss as a special risk.

(5) summarize the number of shares and units being offered in this offering plan, whether the units are residential or otherwise, any parking and recreational facilities and refer to schedule A for prices. Identify any units or property interests that are not being offered. If the building is an existing building, state whether it is being rehabilitated;

(6) state that the prices were approved by the sponsor and are not subject to approval by the Department of Law or any other government agency;

(7) state that the plan, including all schedules and parts A, B and C of the exhibits, constitute the entire offer and that copies of the plan and parts A, B and C of the exhibits will be available for inspection without charge to prospectus purchasers at the site whenever the on-site sales office is open and at the office of the selling agent or sponsor;

(8) if the plan involves new construction or rehabilitation, state the approximate construction timetable for completion of the cooperative;

(9) outline the basic aspects of cooperative ownership, including the following:

(i) that the apartment corporation will purchase the property and will sell shares to purchasers to raise funds;

(ii) each shareholder will enter into a proprietary lease;

(iii) any restrictions on using, transferring, leasing or mortgaging the units and shares;

(iv) control of the apartment corporation will be in the hands of the board of directors; disclose whether sponsor represents and provides in the bylaws, that a majority of the apartment corporation board must be owner-occupants of the building or members of an owner-occupant's household, who are unrelated to the sponsor or its principals, after the end of the sponsor control period. If sponsor does not make this representation, include the warning set forth in paragraph (c)(3) of this section and discuss as a special risk.

(v) each shareholder will have the right to vote for members of the board of directors;

(vi) each shareholder will be responsible for the payment of maintenance charges and assessments;

(vii) the apartment corporation, as the fee owner of the entire building, is assessed for the real estate taxes on the property and may be the mortgagor on a mortgage encumbering the entire property. As a result, shareholders are co-dependent on each other and on the sponsor for payment of the mortgage and taxes, default on which will jeopardize each shareholder's equity in his/her shares and unit. Where the sponsor owns a substantial percentage of the units, a default in payment of maintenance by sponsor jeopardizes the equity interest of other shareholders.

(10) state any limitations on who may purchase units provided that such limitations do not violate applicable laws;

(11) include the following paragraph printed in bold face common type at least as large as 10-point modern type and at least 2 points leaded:

**THE PURCHASE OF A COOPERATIVE HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A SUBSCRIPTION AGREEMENT.**

(f) *Purchase prices and share allocation (schedule A).*

(1) Schedule A must appear on a separate page entitled schedule A and list the following information for each unit in columnar form. Include a footnote on schedule A indicating that all projected charges are for a stated 12-month period, *e.g.*, January 1, 20\_\_ to December 31, 20\_\_:

(i) unit identification;

(ii) number of rooms and baths or usable space in square feet;

(iii) share allocation;

(iv) cash purchase price;

(v) approximate amount of mortgage applicable to a block of shares (if applicable);

(vi) projected maintenance charges for the first year of operation at \$\_\_\_\_\_ per share (annual and monthly); and

(vii) projected annual income tax deduction at \$\_\_\_\_\_ per share for the first year of operation (if applicable).

(2) Shares must be allocated in whole shares.

(3) Detailed footnotes must support and explain the information in schedule A. These footnotes should include but are not limited to the following:

(i) for the number of rooms and baths, state the method of calculating the number of rooms or area of each unit. If rooms or area are calculated in accordance with an industry standard, it is sufficient to refer to the industry standard employed;

(ii) for the number of rooms and baths, identify the rooms or area within each unit or model (*e.g.*, line G:2 BR, LR, K. 1 1/2 B, balcony);

(iii) for the share allocation, disclose the basis for calculating the share allocation;

(iv) for the cash purchase price, refer to the portion of the plan that discloses and explains any closing costs or adjustments that a purchaser may have to pay and project approximate amount due for closing costs;

(v) for cash purchase price, refer to the portion of the plan that discloses and explains any closing costs or adjustments that a purchaser may have to pay and project approximate amount due for closing costs;

(vi) for approximate amount of mortgage applicable to shares, explain that although shareholders will not be personally liable to pay the mortgage(s), the apartment corporation will be responsible and shareholders' maintenance charges include amounts to pay debt service;

(vii) for projected maintenance charges, disclose, that if the purchaser obtains financing, debt service will be an additional expense. Disclose that projected maintenance charges do not include certain costs for which the shareholder is responsible such as (where applicable) repairs to the interior of the unit, separately metered gas, electricity, hot water, heat and air conditioning. Disclose any built-in increases in future years resulting from a fixed amount increase in mortgage debt service and state the dollar per share impact;

(viii) for projected income tax deduction, explain that the projected tax deduction may vary in future years (where applicable) due to changes in the interest rate on the existing mortgage (if any) or on a refinanced mortgage, due to the allocation of constant debt service payments to interest and principal, due to the expiration of real estate tax benefits or due to changes in the assessed value, the tax rate or in the method of assessing real property which result in a change in real property taxes. State the percentage of the budget for the first year of operation represented by the deductible items.

(g) *Projected budget for first year of operation of cooperative (schedule B).* The plan must describe all projected income and expenses for the first year of cooperative operation in schedule B. The budget must be based upon a specified 12-month period which should be a realistic projection of when cooperative operations will begin. If the projected commencement of the budget year in the offering plan differs by six months or more from the anticipated date of closing, the plan must be amended to include a revised budget disclosing current projections. If such amended projections exceed the original projections by 25 percent or more, the sponsor must offer all purchasers the right, for a specified reasonable period of time, to rescind their offer to purchase and have their deposits refunded. Sponsor's guaranty of the budget will not avoid an offer of rescission. The budget for the cooperative must be in the following format. Headings marked with an asterisk may be omitted if not applicable to the offering. Additional income, expense or cost items unique to a building should be added whenever appropriate to reflect additional sources of income, expense, cost or unique circumstances.

SCHEDULE B  
Projected Budget for First Year of Operation  
Beginning \_\_\_\_\_ 1, 20\_\_

Income  
Maintenance Charges

(_____ shares at \$_____ per share) .....	\$_____
* Commercial .....	\$_____
* Laundry .....	\$_____
* Other (explain) .....	\$_____
TOTAL .....	\$_____

Expenses

* Salaries and wages .....	\$_____
Heating .....	\$_____
Electricity and gas .....	\$_____
Water charge and sewer rent .....	\$_____
* Telephone .....	\$_____
Repairs and maintenance .....	\$_____
Services and supplies .....	\$_____
Insurance .....	\$_____
* Management fees .....	\$_____
Legal fees and audit fees .....	\$_____
Franchise and corporate taxes .....	\$_____
* Contingency .....	\$_____
* Other (explain) .....	\$_____
Real estate taxes .....	\$_____
* Mortgage interest and amortization .....	\$_____
TOTAL .....	\$_____

(1) Detailed footnotes must support and explain the information in schedule B. The footnotes must set forth the basis or assumptions for each projection.

(i) Commercial income. Describe any contracts or leases, other than proprietary leases, that will be binding on the apartment corporation and refer to the section of the plan on management agreements and other contractual arrangements.

(ii) Labor costs. State the number of full- and part-time staff projected for the cooperative and whether the staff will be union members.

(a) State whether such level of staffing complies with all applicable housing and labor laws.

(b) The labor budget must include benefits required by Federal, State, or local law or required by contract such as workers' compensation, disability insurance, welfare and pension contributions by employers, unemployment insurance and payroll taxes. The budget must reflect current wage rates and reasonably anticipated increases.

(iii) Heating, cooling and hot water costs. State the type and quantity of energy estimated to be used during the year and the cost per gallon or other measure, inclusive of sales tax, for all energy costs for providing heat, air conditioning and hot water for the building. Explain any energy costs that are shared between the shareholders and the apartment corporation. The Department of Law may, from time to time, issue pricing guidelines to reflect minimum fuel and utility costs.

(iv) Utilities. State the basis for the projected cost-consumption and unit cost for utilities. Unit cost should be based on the current tariff plus a reasonably anticipated increase which should be set forth (*e.g.*, estimates based on current tariffs plus 12 percent increase).

(v) Insurance. The budget for insurance must provide for fire and casualty insurance under an agreed amount replace-

ment value policy or under a policy including an 80 percent coinsurance provision so that the insured shall not be a co-insurer. Discuss the adequacy of the insurance to replace the building in the event of total loss and/or to avoid being a co-insurer in the event of partial loss.

(a) State whether the insurance coverage satisfies the requirements of any mortgage lender procured by sponsor or any requirements of a managing agent contract.

(b) Fire, casualty and general liability insurance must provide that there will be no cancellation without notice to the board of directors and waive subrogation.

(c) If the following items are not covered and are applicable to the offering, state that coverage for them is not included and may be available at extra cost: officers and directors liability, rent insurance, water damage; elevator collision; boiler and machinery; excess liability; auto liability, fidelity bond and garage keeper's liability. The plan must alert shareholders to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to unit contents, replacements, additions, upgraded fixtures and improvements; and liability coverage for occurrences within the unit.

(vi) Real estate taxes. State the projected assessed valuation after completion of construction and the projected tax rate used to calculate the budget item. Include the present assessed valuation if the cooperative is an existing building being sold without rehabilitation or is undergoing minimum rehabilitation.

(vii) Tax exemption/tax abatement benefits. If the plan represents that the cooperative may or will receive tax benefits, the plan must state that the sponsor will use best efforts to obtain the benefits, and project the amount, commencement and duration of the benefits.

(a) Highlight as a special risk if the plan states that the apartment corporation may or will receive tax benefits, and the sponsor does not anticipate obtaining the benefits before the closing. Describe the effect on the budget and maintenance charges with and without the tax benefits. If full tax benefits may be available for only part of the first year of operation, the budget may either reflect:

(1) partial benefits and footnote to explain the timing of full benefits; or

(2) full benefits and footnote to explain that the sponsor agrees to pay all taxes in excess of the budgeted figure for the first year of operation and project approximately when full benefits will be available.

(viii) Management and service contracts. State the basis for projected management fees and service contracts. Conspicuously disclose in the footnotes and highlight as a special risk if the cost of the management contract or any other contract which will be binding on the apartment corporation exceeds or is substantially less than the prevailing cost for similar services.

(ix) State that the contingency fund (if any) is intended to provide for any unanticipated expenses or unanticipated increases in the projected expenses.

(x) Mortgage interest and amortization. Describe how the mortgage is payable during the budget year and the allocation of payments to interest and principal. Refer to the "Terms of Mortgages" section for further explanation of all mortgage terms.

(2) If units are individually heated so that shareholders must pay heating costs directly to the supplier, projections for heat, hot water and electricity should be set forth and explained in Schedule B-1. Each item in Schedule B-1 must be supported by detailed footnotes containing information similar to the corresponding footnotes described in this Part for Schedule B.

(h) *Changes in prices and units.*

(1) The offering prices set forth in schedule A must be decreased or increased by a duly filed amendment to the plan



when the change in price is an across-the-board change affecting one or more lines of units or unit models or is to be advertised. However, the sponsor may enter into an agreement with a purchaser to sell one or more units at prices different from those set forth in Schedule A without filing an amendment before entering the agreement if the plan discloses in the footnotes to schedule A and in this section that the prices are negotiable. Sponsor must file an amendment to the plan that reflects any changes in price negotiated with individual purchasers within 10 days after entering into such agreements. State whether the sponsor will obtain a further opinion as to reasonable relationship prior to the closing.

(2) State that no change will be made in the size or number of units, the share allocations, the total number of shares or in the size or quality of public areas except by amendment to the plan. Holders of unsold shares must comply with this provision.

(3) State that unless an affected purchaser consents, no change will be made in unit size, layout, or share allocation if a subscription agreement has been executed and delivered to the sponsor for that unit and the purchaser is not in default.

(4) State that no change will be made in the total number of shares or in the size or quality of public areas unless purchasers who executed and delivered subscription agreements to the sponsor and are not in default receive a right to rescind and a reasonable and specified period in which to exercise the right.

(i) *Opinion of reasonable relationship.* Include an opinion from a licensed real estate broker or appraiser stating whether the cash purchase price to be paid for each unit is not less than an amount which bears a reasonable relationship to the portion of the value of the apartment corporation's equity in the property which is attributable to each such unit.

(1) The opinion must be signed by a duly authorized signatory or by the firm.

(2) The opinion must include consent to copy the opinion in the plan.

(j) *Attorney's income tax opinion.* Discuss in easily understandable language the specific requirements of Internal Revenue Code section 216 for the apartment corporation to qualify as a cooperative housing corporation and for tenant-shareholders to deduct real estate taxes and interest.

(1) Unless highlighted as a special risk, counsel for sponsor or independent counsel must render an affirmative, unqualified opinion that under present law, regulations, rulings and decisional law and based on the terms of the offering plan:

(i) the apartment corporation will qualify at closing as a cooperative housing corporation under Internal Revenue Code section 216; and

(ii) tenant stockholders will be entitled to deduct for income tax purpose their proportionate share of the interest and real estate taxes paid by the apartment corporation. Highlight as a special risk if there are unusual features of the plan which may jeopardize the apartment corporation's qualification or the deductability of interest and taxes by tenant-stockholders who itemize deductions in the first year of cooperative operation or thereafter.

(2) If a permanent, temporary or partial certificate of occupancy has not been issued prior to closing for offering plans subject to the provisions of General Business Law section 352-ee, discuss whether the apartment corporation is a cooperative corporation within the meaning of Internal Revenue Code section 216, including whether tenant-stockholders are entitled to occupy units for dwelling purposes.

(3) Tax counsel's opinion may not contain a general disclaimer of liability. It may limit liability if the facts represented by sponsor and sponsor's experts are not true or if there are changes in the applicable law and regulations, decisional law or Internal Revenue Service rulings. It may state that it is an opinion, not a guarantee that the apartment corporation will qualify as a cooperative corporation or that deductions will be available to stockholders.

(4) Suggested language for the disclaimer of liability is set forth below.

(i) This is an opinion, not a guarantee, that the apartment corporation will qualify as a cooperative corporation and that tenant-stockholders will be entitled to income tax deduction. This opinion is based solely on the facts and documents referred to above. No warranties are made that the tax laws upon which counsel base this opinion will not change. In no event will the sponsor, the sponsor's counsel, the apartment corporation, counsel to the apartment corporation, the selling agent or any other person be liable if the apartment corporation ceases to meet the requirements of section 216 of the Internal Revenue Code of 1986, as amended, or the New York State Tax Law, as amended, by reason of future changes in fact or applicable law, regulations, decisional law or Internal Revenue Service rulings.

(5) The opinion should be signed by a duly authorized signatory or by counsel's firm.

(6) The opinion must include counsel's consent to include a copy of the opinion in the plan.

(k) *Real estate tax benefits.* If the plan represents that the apartment corporation may or will receive tax benefits, state that the sponsor will use best efforts to obtain the benefits and project the amount, commencement and duration of the benefits and describe the benefits. Highlight as a special risk if the plan states that the apartment corporation may or will receive tax benefits and the sponsor does not anticipate obtaining the tax benefits before the closing. Describe the efforts the sponsor will make to obtain the tax benefits after closing and the approximate timetable for obtaining the benefits. Highlight as a special risk if any construction or rehabilitation to the interior of units is the responsibility of shareholders and failure to complete such work may have an adverse impact on the availability of tax benefits.

(1) An opinion from sponsor's counsel or independent counsel must support sponsor's representations.

(2) Counsel's opinion may not contain a general disclaimer of liability. It may limit liability if the facts represented by sponsor and sponsor's experts are not true or if there are changes in the applicable law, regulations or decisional law.

(3) The opinion must include counsel's consent to include a copy of the opinion in the plan.

(4) The opinion must be signed by a duly authorized signatory or by counsel's firm.

(l) *Procedure to purchase.* Describe the essential terms of the subscription agreement which must comply with this Part and contain the following provisions.

(1) State the amount or the percentage of the deposit.

(2) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of GBL sections 352-e(2-b) and 352-h and these regulations, and all funds paid by subscribers or purchasers shall be handled in accordance with these statutes and regulations.

(3) Escrow, trust fund. The following requirements shall apply to all offerings and shall be fully disclosed in all offering plans subject to this Part:

(i) Mandatory escrow agreement. All deposits, down payments, or advances made by subscribers or purchasers prior to closing of each individual transaction shall be held pursuant to a written agreement entered into between the sponsor, the subscriber or purchaser, and the escrow agent. Said provisions may be included in a separate escrow agreement or in the subscription or purchase agreement, and are referred to in this paragraph (3) as the "escrow agreement." The plan must set forth the material terms of the escrow agreement. The sponsor shall specify the exhibit in Part II of the plan that contains the escrow agreement. If a separate escrow agreement is used, a copy of the full agreement must be contained as a separate exhibit to the plan in Part II. Disclose, without limitation, any indemnity by the sponsor in favor of the escrow agent, provision for discharge of the escrow agent's obligations by the sponsor upon payment of the deposit and interest in accordance with these regulations, any right of the escrow agent to represent the sponsor in any lawsuit, any compensation by the sponsor to the depository bank, any provision for

payments by the sponsor under an indemnity in favor of the escrow agent and whether the sponsor will compensate the escrow agent for acting as such. The plan and escrow agreement must include language conforming to subsections (v)--(vii), below. However, the failure to include such language in the plan or escrow agreement shall not excuse the sponsor and the escrow agent from compliance with said subsections.

(ii) Payments. All funds received from subscribers or purchasers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the subscriber or purchaser to the order of the attorney or law firm as escrow agent.

(iii) The escrow agent. The escrow agent must be an attorney or firm of attorneys admitted to practice in the State of New York or an attorney admitted in a foreign jurisdiction who submits to the jurisdiction of the State of New York for any cause of action arising out of the escrow provisions set forth in the escrow agreement. The authorized signatories on the escrow account must be attorneys admitted to practice in the State of New York or admitted in a foreign jurisdiction who submit to the jurisdiction of the State of New York for any cause of action arising out of the escrow provisions set forth in the escrow agreement. Neither the escrow agent nor any authorized signatory on any account may be the sponsor, the selling agent, the managing agent, or a principal thereof. However, a law firm that has a member who is a principal may be the escrow agent provided that members of the firm who are signatories on any account are not themselves principals. Only an attorney or a member of a firm acting as escrow agent shall be a signatory on any account and only such attorney shall be authorized to release funds. The name, address and telephone number of the escrow agent and of each attorney who is a signatory must be stated in the plan.

(iv) The account(s): All deposits, down payments, or advances made by subscribers or purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, must be placed within five business days after the escrow agreement is signed by all necessary parties in an attorney's segregated special escrow account or accounts in a bank or banks doing business in the State of New York which account(s) is/are insured by the Federal Deposit Insurance Corporation ("FDIC"). Sponsor shall state the applicable limits for federal deposit insurance, whether and to what extent the deposits, down payments, or advances are insured, and whether sponsor may utilize more than one segregated special escrow account for each deposit, down payment, or advance. Include as a special risk that deposits in excess of said limits will not be federally insured. An attorney shall open and maintain such account in his or her own name, or in the name of a firm of attorneys of which he or she is a member, or in the name of the attorney or firm of attorneys by whom he or she is employed, separate from such attorney's personal accounts or from any accounts in which assets belonging to the firm are deposited, and separate from any accounts maintained in the capacity of executor, guardian, trustee or receiver. A master escrow account with a sub-account for each subscriber or purchaser is acceptable. The name of any account, the bank, and the bank address must be stated in the plan. The word "escrow" must be included as part of the name of any account. Funds from any account may be released only by signature of the attorney who is named as escrow agent. Neither the sponsor nor any principal of the sponsor may be a signatory on any account. Funds must be placed in an interest-bearing account or accounts, with all interest credited to the subscriber or purchaser, unless either the subscriber or purchaser defaults and the plan is

consummated, or the sponsor elects to place the funds in a separate Interest-On-Lawyer's-Account ("IOLA") for each plan pursuant to Judiciary Law section 497. The plan shall indicate whether the interest rate to be earned will be the prevailing rate for such accounts. State the current prevailing rate and when interest will begin to accrue. No fees of any kind may be deducted from e account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of any account.

(v) Notification to purchaser. Within 10 business days after the escrow agreement is signed by all necessary parties, the escrow agent shall notify the subscriber or purchaser that such funds have been deposited in the bank indicated in the plan, and shall provide any account number and the initial interest rate. If the subscriber or purchaser does not receive notice of such deposit within 15 business days after tender of the deposit, he or she may cancel the subscription or purchase and rescind within 90 days after tender of the deposit. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, New York, NY, 10005. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the subscriber or purchaser.

(vi) Escrow revisions. Before funds are transferred to any new escrow account, or if the escrow agent is replaced, the plan must be amended to provide the same full disclosure with respect to any new account, the escrow agent and the escrow agreement as was originally provided. A bond, letter of credit or other security may be substituted for any escrow account only after the Department of Law approves in writing the use of such alternate form of security, pursuant to the provisions of paragraph (l)(4) of this section.

(vii) Release of funds. The escrow agreement and the plan must set forth the requirements and procedures for the release of the escrowed funds. These shall include:

(a) Under no circumstances shall sponsor seek release of the escrowed funds of a defaulting subscriber or purchaser until after consummation of the plan. Consummation of the plan does not relieve the sponsor of its obligations pursuant to GBL section 352-h.

(b) The escrow agent shall release the funds in escrow if so directed:

(1) pursuant to terms and conditions set forth in the escrow agreement upon closing of the individual transaction;

(2) in a subsequent writing signed by both sponsor and subscriber or purchaser; or

(3) by a final, non-appealable order or judgment of a court; or

(4) by a final, non-reviewable determination of the Attorney General pursuant to subparagraph (viii) of this paragraph so long as the purchase agreement provides for dispute resolution by the Attorney General and was signed on or before March 1, 2013.

(c) If the escrowed funds are not released pursuant to subparagraph (b), above, and the escrow agent receives a request by either party to release the funds, the escrow agent must give both parties prior written notice of not fewer than 30 days before releasing said funds. If the escrow agent has not received notice of objection to the release of the funds at the expiration of the 30 day period, the funds shall be released and the escrow agent shall provide further written notice to both parties informing them of such release. If the escrow agent receives a written notice from either party objecting to the release of the escrowed funds within said 30 day period, the escrow agent shall continue to hold said funds until otherwise directed pursuant to subparagraph (b), above. However, the escrow agent shall also have the right at any time to deposit the funds contained in the escrow account with the clerk of a court in the county in which the interest offered pursuant to the plan is located and shall give written notice to both parties of such deposit.

(d) The sponsor shall not object to the release of the escrowed funds to:

(1) a subscriber or purchaser who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan; or

(2) all subscribers or purchasers after an amendment abandoning the plan is accepted for filing by the Department of Law.

(viii) Disputes.

(a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply and the subscriber or purchaser or the escrow agent holding the down payments in escrow may apply to the Attorney General for a determination on the disposition of the down payment and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party applying shall contemporaneously send to all other parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the subscriber or purchaser and the escrow agent shall abide by any interim directive issued by the Attorney General.

(c) If the application permitting release of funds is granted, the deposit and any interest earned thereon shall be disposed of in accordance with a final, non-reviewable determination of the Attorney General.

(d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) If the application seeking release of funds is denied, the escrow agent shall continue to hold the deposit and any interest earned thereon until:

(1) both the sponsor and subscriber or purchaser direct payment to a specified party in accordance with a written direction signed by both the sponsor and subscriber or purchaser; or

(2) a final, non-appealable order or judgment of a court is served on the escrow agent; or

(3) the escrow agent deposits the disputed amount into court.

(ix) Exhibits to plan. Copies of the forms provided by the bank for opening any escrow account and the form of escrow agreement, if separate from the subscription or purchase agreement, must be included as Exhibit B-19 of the submission.

(x) Records on file. The escrow agent shall maintain all records concerning any escrow account for seven years after release of the funds. Upon the dissolution of any law firm which was the escrow agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of them or by the successor firm and shall notify the Department of Law of such transfer.

(xi) Review and audit. The Department of Law may perform random reviews and audits of any records involving escrow accounts to determine compliance with statute and regulation.

(xii) Waiver void. Any provision of any contract or agreement, whether oral or in writing, by which a subscriber or purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of this section of the regulations shall prevail over any conflicting or inconsistent provision in the offering plan or in a subscription or purchase agreement.

(xiii) Trust obligation of sponsor. Nothing contained herein shall diminish or impair the sponsor's statutory obligation to each subscriber or purchaser pursuant to GBL section 352-h to hold in trust all deposits, advances or payments made in connection with the offer until consummation of the transaction with such subscriber or purchaser. Consummation of the plan does not relieve sponsor of its obligations pursuant to GBL section 352-h. Funds from any escrow account remain the property of the subscriber or purchaser until employed in connection with the consummation of the transaction. Such funds shall not be a part of the estate of the sponsor or the escrow agent upon any bankruptcy, incapacity or death.

(xiv) Transition. All funds required to be held pursuant to GBL sections 352-e (2-b) and 352-h on the effective date of this section shall be transferred into escrow accounts in compliance with this regulation within 60 days thereafter.

(4) Alternatives to escrow account. A sponsor may apply to the Attorney General to use security in the form of surety bonds or a letter of credit in lieu of escrow of such funds for use in newly constructed or gut rehabilitated developments upon showing of adequate insurance of such funds to the satisfaction of the Attorney General.

(i) Application for alternate security. Sponsor must submit an affidavit which contains full information as to the proposed usage of such funds, the sponsor's financing of construction or rehabilitation work, expected completion date, the terms and conditions of the proposed surety bonds or letter of credit, and required undertakings and covenants.

(ii) Documentation. The proposed form of surety bond or letter of credit, any underlying agreement or related agreement, and any undertaking or covenant required hereunder, shall be appended to the application and also filed as Exhibits to the plan in Exhibits Part B section 21.2(c)(3)(ii)(r)(B-19), or as exhibits to an amendment to the plan.

(iii) Change from escrow account. Where surety bonds are or a letter of credit is to be provided under an amendment to the plan calling for release of funds already deposited in escrow, the amendment shall provide for, and annex a form for, the written consent of each affected subscriber or purchaser and shall provide for continuation of escrow of funds of any subscriber or purchaser who does not execute and deliver such written consent to the sponsor.

(iv) Disclosure. If an application for alternate security is approved, the terms of such alternate security shall be disclosed in the plan or in an amendment to the plan promptly submitted.

(5) Surety bonds. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to subscribers or purchasers by effectuating the issuance of surety bonds to such subscribers or purchasers by a licensed insurance company which agrees to act as surety for the amount of such down payments or deposits.

(i) Deposits into escrow account. All down payments and deposits, received after the Attorney General's approval of the use of surety bonds as alternate security, shall be placed, within five business days after the escrow agreement is signed by all necessary parties, in an attorney's segregated special escrow account or accounts, established pursuant to and in compliance with paragraph (3) of this subdivision. Such funds shall be released by the escrow agent to the sponsor upon receipt by the escrow agent of a copy of the surety bond issued to the subscriber or purchaser whose funds are being released.

(ii) Payments. All funds received from subscribers or purchasers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the subscriber or purchaser to the order of the attorney or law firm as escrow agent.

(iii) Requirements to act as surety. The surety company must be licensed to write insurance in the State of New York by the New York State Department of Financial Services, whether or not the property which is the subject of the plan is located in the State of New York unless the law of the state where the property is located requires otherwise. If the property is located outside New York State and the sponsor claims that the law of such state conflicts and is controlling, the sponsor's application must specify the conflicting law. In order for the application for alternate security to be approved by the Attorney General, the applicant must show that the surety company with which the sponsor proposes to contract has a current rating for debt securities no lower than the third highest grade conferred by at least two of the national reporting services regularly evaluating insurance companies.

(iv) Agreement between sponsor and surety. The plan must fully disclose the material terms of the agreement between the insurance company as surety and the sponsor, including the premium to be paid by the sponsor, any agreement by which sponsor provides collateral to secure its obligations to the surety and any agreement by the sponsor indemnifying the surety. The agreement must provide that the surety will abide by directives in conformity with these regulations.

(v) Provisions of the bond. The surety bond must specify the name and address of the sponsor as principal; the name and address of the surety company to which claims for payment may be made; provision for the name and address of the subscriber or purchaser as obligee on the bond; provision for the amount of the down payment or deposit secured and the rate of interest, if any, to accrue on such funds; the term of the bond, and, if the bond is for a finite period, a guarantee by the surety that it will pay the amount secured to the subscriber-obligee prior to expiration of the bond or a guarantee by the sponsor that the bond will be renewed before expiration.

(vi) Term and continuation. Each surety bond and any accompanying agreement shall provide that it will continue in effect or that it will be renewed periodically until consummation and closing of the sale of the respective shares the down payment for which is secured by such surety bond or until the secured funds of a subscriber or purchaser have been returned in full, or until the funds secured by the surety bond have been placed in any escrow account pursuant to paragraph (7) of this subdivision or until there is an undisputed subscriber or purchaser default or a final, non-reviewable determination by the Attorney General or final, non-appealable order or judgment of a court that the subscriber or purchaser has defaulted and that the sponsor is entitled to the secured funds.

(vii) Delivery of the surety bond. The sponsor shall cause the surety to mail or personally deliver the surety bond to the subscriber-obligee before the funds are released to the sponsor from any escrow account. The sponsor, the escrow agent and the surety company shall each retain a copy of the surety bond.

(viii) Invoking the bond. The subscriber-obligee shall have the right to demand payment of the amount secured by the surety bond directly from the surety, without first requesting payment from the sponsor. The surety shall be obligated to pay the amount secured by the bond to the subscriber-obligee without the consent or despite the objection of the sponsor, upon the following events or circumstances:

(a) timely rescission of a subscription or purchase agreement by a subscriber or purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;

(b) acceptance for filing by the Department of Law of an amendment abandoning the plan;

(c) pursuant to terms and conditions set forth in the escrow agreement, upon closing of the individual transaction;

(d) in a subsequent writing signed by both sponsor and subscriber or purchaser;

(e) by a final, non-appealable order or judgment of a court; or

(f) for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by final, non-reviewable determinations by the Attorney General pursuant to subparagraph (x) of this paragraph that rescission or the return of funds is required;

(g) failure by the sponsor to obtain a commitment by the surety company to renew the surety bond 60 days prior to its expiration; or

(h) direction by the sponsor upon request by the subscriber or purchaser.

(ix) Failure by subscriber-obligee or purchaser-obligee to produce a copy of the bond. A subscriber's or purchaser's inability to produce a copy of the surety bond shall not be a basis for the surety to reject the subscriber's or purchaser's claim. The surety shall retain a copy of the bond and shall pay the secured funds to the subscriber-obligee or purchaser-obligee without a copy of the bond as long as the subscriber or purchaser is able to provide proof of identity as the obligee on the bond.

(x) Disputes.

(a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply and the subscriber or purchaser or the surety issuing the bond may apply to the Attorney General for a determination on the disposition of the down payment secured by the bond and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party applying shall contemporaneously send to all other parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the subscriber or purchaser and the surety shall abide by any interim directive issued by the Attorney General.

(c) If the Attorney General determines:

(1) that the subscriber or purchaser is entitled to the disputed funds secured by the surety bond, the Attorney General shall direct that the surety pay the funds to the subscriber or purchaser; or

(2) that the subscriber or purchaser is not entitled to the disputed funds secured by the surety bond, the Attorney General shall direct either that the surety bond shall be continued in effect or that the surety bond shall be cancelled.

(d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) In no event shall the funds secured by the bond be paid to the subscriber or purchaser nor shall the surety bond be discharged until any dispute is finally resolved either by written agreement of the parties directing payment of the funds or discharge of the surety bond, or, for purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by a final-non-reviewable determination of the Attorney General or by a final, non-appealable order or judgment of a court.

(6) Letters of credit. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to subscribers or purchasers by effectuating the issuance of a letter of credit for the benefit of the subscribers or purchasers by an issuer qualifying hereunder.

(i) Amount. The amount of the letter of credit shall be at least 125 percent of the aggregate of all subscription deposits or down payments or payments expected to be received from subscribers or purchasers, and not retained in escrow, during such period of time as the letter of credit will be needed, as estimated by the sponsor in the application to the Department of Law. The amount of the letter of credit may be reduced or increased as warranted by circumstances and pursuant to a filed amendment to the plan.

(ii) Irrevocability. The letter of credit must be irrevocable during the stated term and any renewal term.

(iii) Beneficiary. The beneficiary must be an attorney, or firm of attorneys, acting as or qualified under paragraph (3)(iii) of this subdivision to act as escrow agent under the plan, who shall act as a fiduciary for the benefit of subscribers and purchasers under the plan.

(iv) Authority to draw. The letter of credit must provide that the beneficiary shall have sole power to draw upon the letter of credit without the consent or despite the objection of the sponsor or of any provider of underlying credit, at such times or upon such events as are set forth in subparagraph (ix) of this paragraph.

(v) Issuer. The issuer must be a bank authorized to act as a commercial bank or savings institution under supervision of the New York State Department of Financial Services or a federally supervised banking institution located in the State of New York, unless the property is located in another state and the letter of credit is issued by a bank located within such state. In order for the application for alternate security to be approved by the Attorney General the applicant must show that the issuer bank has surplus funds and net worth of at least ten times the amount of the letter of credit, and must have a current rating with respect to its debt securities that is within "investment grade" by one of the generally accepted national reporting services regularly rating the debt securities of banking institutions and that the provisions of the letter of credit include the right of the beneficiary to draw down the letter of credit in conformity with these regulations.

(vi) Term and continuation. The letter of credit and related agreement and any accompanying undertaking shall provide that it will continue in effect or that it shall be periodically renewed until consummation and closings of sales of all shares referred to in the application for alternate security pursuant to paragraph (4)(i) of this subdivision or until the cov-



ered funds of subscribers and purchasers have been returned to them in full.

(vii) Undertaking. If the letter of credit will expire prior to the latest date of closings of sales of all such shares, provision for renewal of the letter of credit without loss of irrevocability and without any change of terms shall be afforded by:

(a) an “evergreen” or automatic renewal clause, if obtainable; and

(b) the irrevocable undertaking and covenant of the sponsor and by any other provider of underlying credit to provide successive renewals thereof until consummation and closings of sales of all shares or until the covered funds of subscribers and purchasers have been returned in full.

(viii) Operative provisions. Upon approval of a sponsor's application for use of a letter of credit as alternate security:

(a) Deposits into escrow account. All down payments and deposits received shall be placed, within five business days after the escrow agreement is signed by all necessary parties, in an attorney's segregated special escrow account or accounts established pursuant to and in compliance with paragraph (3) of this subdivision. The escrow agent shall release such funds to the sponsor provided that the escrow agent has documentation showing that the letter of credit or a renewal or replacement letter of credit has been issued and is in effect. Such escrow agent shall no longer release funds from escrow if the escrow agent receives notice or information warranting draw down of the letter of credit under paragraph (6)(ix) of this subdivision.

(b) Payments. All funds received from subscribers or purchasers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the subscriber or purchaser to the order of the attorney or law firm as escrow agent.

(ix) Right to draw upon letter of credit. The escrow agent as the beneficiary of the letter of credit, acting as a fiduciary for the benefit of subscribers and purchasers under the plan whose funds were released from escrow by reason of the grant of sponsor's application, shall have the duty and the right to draw upon and collect the proceeds of the letter of credit, 10 business days after notice to the sponsor and sponsor's failure or refusal to restore such funds to the escrow agent, without the consent or despite the objection of the sponsor or the provider of the credit, upon the following events or circumstances:

(a) timely rescission of a subscription or purchase agreement by a subscriber or purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;

(b) acceptance for filing by the Department of Law of an amendment abandoning the plan;

(c) pursuant to terms and conditions set forth in the escrow agreement upon closing of title to the unit;

(d) in a subsequent writing signed by both sponsor and subscriber or purchaser;

(e) by a final, non-appealable order or judgment of a court;

(f) for purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by a final, non-reviewable determination by the Attorney General pursuant to subparagraph (x) of this paragraph mandating that rescission or the return of funds is required;

(g) failure by the sponsor to obtain a renewal or replacement letter of credit no later than 60 days prior to the expiration of the existing letter of credit;

(h) direction by the sponsor upon request of the subscriber or purchaser; or

(i) notice of impending cancellation of the letter of credit has been given or received, or the issuer has filed a bankruptcy

or insolvency petition or has been taken over by a Federal or state authority, and no proper replacement of the letter of credit has been furnished although continuation of the same in effect is required under paragraph (4)(i) of this subdivision or subparagraph (vi) of this paragraph.

(x) Disputes.

(a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply, and the subscriber or purchaser, the escrow agent or the bank issuing the letter of credit may apply to the Attorney General for a determination on the disposition of funds secured by the letter of credit, the deposit and any interest earned thereon. Forms for this purpose shall be available from the Department of Law. The party making such application shall contemporaneously send to the other three parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the subscriber or purchaser, the escrow agent and the bank shall abide by any interim directive issued by the Attorney General.

(c) If the Attorney General determines:

(1) that the subscriber or purchaser is entitled to the disputed funds secured by the letter of credit, the Attorney General shall direct that the issuer of the letter of credit pay the funds to the subscriber or purchaser; or

(2) that the subscriber or purchaser is not entitled to the disputed funds secured by the letter of credit, the Attorney General shall direct either that the letter of credit shall be continued in effect or that the letter of credit shall be cancelled.

(d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) In no event shall the disputed funds secured by the letter of credit be paid to the subscriber or purchaser nor shall the letter of credit be terminated until any dispute is finally resolved either by written agreement of the parties directing payment of the funds, or by a final, non-appealable order or judgment of a court, or, for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, a final, non-reviewable determination of the Attorney General.

(7) Change to escrow account. Where alternate security as provided under a filed offering plan is no longer needed by the sponsor, or new or additional alternate security cannot be obtained by a sponsor or its successor, sponsor shall submit an amendment for filing which provides that any future subscription or purchase deposits or down payments shall be held in any escrow account in accordance with paragraph (3) of this subdivision. Such amendment shall not affect the sponsor's obligation to account for funds previously released to the sponsor unless the funds representing all such deposits or down payments are restored to the escrow account.

(8) Highlight as a special risk any provision allowing sums in excess of 10 percent of the cash purchase price to be retained as liquidated damages other than the actual cost incurred for any special work ordered by the purchaser. Highlight as a special risk if sponsor may seek specific performance.

(9) State that the balance of the purchase price is to be paid after written demand is made and specify the minimum number of days to make the payment after sending the demand notice. If payment is due in advance of the closing, state the maximum number of days between the scheduled closing date and the date payment is due.

(10) Any "time is of the essence" provision concerning purchaser's obligations must be explained in easily understandable terms and be highlighted as a special risk.

(11) Purchasers must be given written notice of the closing date, of their obligation to pay the balance of the purchase price, and of their right to inspect the unit and property a specified number of days in advance of the closing date.

(12) Sponsor must make a written demand for payment 30 days before a purchaser is declared to be in default.

(13) Disclose whether the risk of loss from fire or other casualty remains with the sponsor unless and until either a purchaser is given the right to possession of a unit pursuant to a written agreement with the sponsor or legal title to the property has been conveyed to the apartment corporation. Highlight as a special risk and explain the need for insurance if the risk of loss passes to the purchaser before closing except where the purchaser is given the right to possession prior to closing.

(14) Purchasers must be afforded either (i) not less than three days to review the offering plan and all filed amendments prior to executing a subscription agreement; or (ii) not less than seven days after delivering an executed subscription agreement together with the required deposit to rescind the subscription agreement and have the full deposit refunded promptly.

(15) A complete copy of the subscription agreement must be inserted in the plan.

(16) Highlight as a special risk if purchaser's obligation to purchase is not contingent on obtaining financing. If purchaser's obligations are contingent upon obtaining a commitment for financing or actually obtaining financing, the details must be fully disclosed and explained. State the time the purchaser has to notify sponsor of inability to obtain financing. Include the purchaser's time to obtain financing or a commitment and the risk, if any, that the commitment may expire or that the terms of the commitment may change prior to actual closing and the purchaser's obligations in either event.

(17) The plan and subscription agreement must provide that any conflict between the plan and the subscription agreement will be resolved in favor of the plan.

(18) Within a specified number of days after the purchaser delivers an executed subscription agreement together with the required deposit, the sponsor must either accept the subscription agreement and return a fully executed counterpart to the purchaser or reject the subscription agreement and refund the full deposit previously tendered.

(19) The subscription agreement may not contain, or be modified to contain, a provision waiving purchaser's rights or abrogating sponsor's obligations under the offering plan or under article 23-A of the General Business Law.

(m) *Financing that may be available to purchasers.* Fully disclose the terms of any commitment by sponsor or a lender procured by sponsor to finance the purchase of shares allocated to units. If any of the terms of the financing are not known at the time the offering plan is submitted to the Department of Law, sponsor must agree to amend the plan promptly when the terms are firm. The terms shall include but are not limited to:

(1) Name and address of lender.

(2) Amount and term. State the maximum amount (which may be expressed as a percentage of the cash purchase price) available for shares allocated to a unit and the minimum term of the loan. If the financing offered is not self-liquidating over the term, project the amount of the balance or "balloon" due on maturity, and set forth and explain the risk that refinancing may not be available on the same or better terms. State the maximum amount of financing available to purchasers generally through a bulk commitment. If sponsor is not making financing available to all purchasers who qualify, the limitations and the method of allocation must be fully explained. If sponsor procures financing with an institutional lender, it is sufficient to refer to the institution's credit standards.

(3) Interest rate. State the annual interest rate over the term of the loan. If the loan has a variable or adjustable rate, indicate the initial interest rate or (if not a fixed rate) explain how it will be established, the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact adjustments will have on debt service payments and the principal balance. If sponsor structures the financial terms of the transaction in such a manner as to result in taxable income to a purchaser, the financial and legal implications of such structuring must be disclosed and explained. If the sponsor procures cooperative financing at an interest rate that is below the prevailing rate of-

ferred by the lender, disclose the interest rate to the sponsor and the interest rate offered to purchasers and disclose any income tax consequences and any limitation on the ability of the purchasers to refinance on the same or better terms.

(4) Payments. State the amount of each payment, when payments are due, and how payments are applied to interest and principal. For variable rate or adjustable rate loans, disclose how initial payments are allocated to interest and principal, disclose and explain the affect of interest rate changes on the allocation of payments to interest and principal and affect on itemized deductions available to shareholders.

(5) Prepayment. State whether the unpaid principal balance may be prepaid in whole or in part, the number of days of prior notice that must be given, and any charges for prepayment. Disclose any restrictions on the ability of a purchaser to prepay the entire unpaid principal at any time.

(6) Term of commitment. State when the financing commitment expires.

(7) Late charges. Describe the amount of late charges and how they are assessed.

(8) Additional financing costs. Disclose the amount of additional costs or charges to purchasers in connection with such financing including, for example, points, origination fees, lender's legal fees, processing fees, application fees, insurance and appraisal fees.

(9) Restrictions. Describe all restrictions on a shareholder's right to alter, improve, sell, sublease, purchase, own, occupy, finance or otherwise acquire, use or dispose of a unit.

(10) Events of default. Describe the events of default entitling the lender to accelerate the principal indebtedness and describe grace periods granted to purchasers. Sponsor must either state affirmatively that there is not a due-on-sale clause or disclose the existence of a due-on-sale clause and explain the consequences to a purchaser.

(n) *Effective date.* The plan must explain that the offer to sell is contingent upon the plan being declared effective and compliance with the relevant conditions and time periods. Sponsor must conform with the following provisions in determining whether, when and how the plan will be declared effective:

(1) The plan may not be declared effective until executed subscription agreements of bona fide purchasers for occupancy have been accepted by sponsor for not less than 15 percent of the units offered under the plan.

(2) The plan must be declared effective when subscription agreements are accepted for the sale of 80 percent or more of the units offered under the plan.

(3) The plan may be abandoned by sponsor, at its option, before it is declared effective or before 80 percent of the units have been purchased. Within a specified number of days after abandonment, all monies paid by purchasers shall be refunded to them in full with interest earned if the plan provides for interest. Sponsor promptly shall file a notice of abandonment on form RS-3 or such other form as the Department of Law may require and explain the reasons for the abandonment and disposition of all funds received.

(4) The plan must explain under what limited circumstances the plan may be abandoned after the plan has been declared effective or 80 percent of the units have been purchased.

(5) Highlight as a special risk if sponsor may abandon the plan after it is declared effective for any reasons other than:

(i) a defect in title which cannot be cured without litigation or cannot be cured for less than a stated amount;

(ii) substantial damage or destruction of the building by fire or other casualty which cannot be cured for less than a stated amount; or

- (iii) the taking of any material portion of the property by condemnation or eminent domain.
- (6) The plan may be declared effective by duly filed amendment or by service of written notice to all purchasers.
- (7) If the plan is declared effective by notice, sponsor must submit an amendment to the Department of Law within three business days after service of the notice.
- (8) Conveyance of the property to the apartment corporation may not occur before the amendment declaring the plan effective or reflecting it has been declared effective is filed with the Department of Law.
- (9) Sponsor must submit to the Department of Law, if requested, copies of subscription agreements (and any amendments or modifications) within five business days after the request is made.
- (10) On the closing date, and not sooner, title to the property will be conveyed to the apartment corporation. Certificates for the shares of the apartment corporation and the accompanying proprietary leases will be delivered promptly thereafter to each purchaser who has paid the cash purchase price and complied with all of purchaser's obligations under the subscription agreement.
- (o) *Unsold shares.* Unsold shares (including those subscribed but not fully paid at closing) must be purchased or acquired by sponsor or financially responsible individuals produced by sponsor at the closing.
- (1) Sponsor must guarantee payment of all maintenance charges and assessments due from a holder of unsold shares, regardless of transfer, until purchased by a bona fide purchaser for occupancy. If the holder of unsold shares or a person related by blood or marriage to the holder of unsold shares takes occupancy as a bona fide resident, the sponsor will be relieved of further obligations. The apartment corporation will have a lien upon the shares to secure performance of all obligations of sponsor and holders of unsold shares under the proprietary lease.
- (2) Sponsor must represent that it has the financial resources to enable it to meet its obligations with respect to unsold shares and state the means by which it will fund its financial obligations to the cooperative. If the funding source is stated as income from projected sales, disclose other sources of funding, if any, that will be utilized if such projected sales are not made. Disclose whether any bond or security has been furnished to secure sponsor's obligations.
- (3) If not indicated in the opinion of reasonable relationship, state whether the consideration for the unsold shares at closing will be approved by a qualified expert as meeting the reasonable relationship standard of Internal Revenue Code section 216.
- (4) State whether unsold shares will be sold only to persons who purchase for their own account and whether the holder will pool profits or losses with other holders of unsold shares.
- (5) State whether unsold shares will be sold only to persons who purchase for their own account and whether the holder will pool profits or losses with other holders of unsold shares.
- (p) *Financial features.* Set forth the basic outline of the major financial features of the plan.
- (q) *Terms of mortgages.* Fully disclose the terms of all mortgages that will encumber the property on the closing date including:
- (1) Name and address of mortgagee and the current holder of the mortgage if different.
- (2) Amount and term. State the date of the mortgage, original principal amount, estimated balance at date of closing, maturity date, total scheduled unpaid balance at maturity and amount per share. If any mortgage has been extended, consolidated or otherwise modified or changed, explain the present terms of the mortgage as modified. If the mortgage is not self-liquidating over the term, project the amount of the balance or "balloon" due on maturity, and set forth and explain

the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the term is for less than five years.

(3) Interest rate. State the annual interest rate over the term of the loan. If the loan has a variable or adjustable rate, indicate the initial interest rate or (if not a fixed rate) explain how it will be established, the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact adjustments will have on payments and the principal balance. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the interest rate to the sponsor and the interest on the loan to the apartment corporation and disclose the limitations on the ability of the apartment corporation to refinance on the same or better terms.

(4) Payments. State the amount of each payment, when payments are due, and how payments are applied to interest and principal. For variable rate or adjustable rate mortgages, disclose how initial payments are allocated to interest and principal, disclose and explain the affect of interest rate changes on the allocation of payments to interest and principal and affect on itemized deductions available to shareholders. Highlight as a special risk if payments will increase in future years due to a fixed amount increase.

(5) Prepayment. State whether the unpaid principal balance may be prepaid in whole or in part, the number of days of prior notice that must be given, and any charges for prepayment. Disclose any restrictions on the ability of the apartment corporation to prepay the entire unpaid principal at any time.

(6) Insurance. State the amount and type of any insurance required to be carried for the benefit of the mortgagee. The insurance coverage reflected in schedule B must be sufficient to satisfy the requirements of the mortgagee.

(7) Escrow and reserve requirements. Describe all requirements for escrow and reserve deposits including any for taxes, water and sewer charges, insurance, capital reserves or otherwise and whether and how such requirements may be increased or modified.

(8) Late charges. Describe the amount of late charges and how they are assessed.

(9) Additional financing costs. Disclose the amount of additional costs or charges to the apartment corporation including, for example, points, origination fees, lender's legal fees and insurance fees.

(10) Refinancing and subordinate mortgages. Discuss whether junior mortgages are subordinate to refinancing if prior mortgages come due first in time and fully disclose any limitations on refinancing.

(11) Subordinate mortgages. State whether subordinate mortgages are permitted. Describe and explain the lien priority of all subordinate mortgages. If any mortgage is a "wraparound" mortgage, explain fully the meaning of a "wraparound" mortgage and all additional risks and costs as a result of such wraparound mortgage. Any wraparound mortgage must be specifically noted in the transmittal letter from the attorney who prepared the offering plan to the Department of Law.

(12) Events of default. Describe the important events of default entitling the lender to accelerate the mortgage indebtedness and describe grace periods granted to the apartment corporation. Sponsor must either state affirmatively that there is not a due on sale clause in the mortgage and that it is not a default under the mortgage to alter the building or disclose the existence of such clauses, and explain the consequences to the apartment corporation and state that the sponsor has obtained the necessary consents or that sponsor will satisfy the mortgage at closing if the consents are not obtained.

(13) Restrictions. Describe all restrictions on the apartment corporation's right to alter, improve, sell, occupy or mortgage the property.

(r) *Summary of proprietary lease.* Summarize the important provisions of the proprietary lease including:

(1) greater rights or exceptions for the benefit of holders of unsold shares;

- (2) restrictions on the shareholder's right to use, sell, lease or mortgage a unit;
- (3) the events of default under the lease;
- (4) the procedure to modify the terms of the proprietary lease; and
- (5) highlight as a special risk if the following provision or a provision of the same substance is not part of the proprietary lease. Holders of unsold shares may not cancel their proprietary leases unless:

- (i) shareholders owning a majority of the apartment corporation's outstanding shares (other than unsold shares) shall have given notice of intent to cancel; or

- (ii) all unsold shares constitute 15 percent or less of the apartment corporation's outstanding shares, at least five years have elapsed since the apartment corporation acquired title to the building and on the effective date of cancellation holders of unsold shares shall pay to the apartment corporation a sum equal to the product of the then current monthly rent (maintenance charges) payable under the proprietary lease multiplied by 24.

- (s) *Apartment corporation.* Describe the manner in which the apartment corporation will be organized and how its affairs will be governed. Summarize the important sections of the bylaws and other relevant documents.

- (1) Among the topics that must be disclosed and explained are:

- (i) the date and statutory authority under which the apartment corporation was incorporated and the number of shares authorized and issued;

- (ii) the composition of the board of directors, eligibility requirements, elections, and removal of members;

- (iii) the powers, duties and potential personal liability of the board of directors and officers;

- (iv) the allocation of responsibility between shareholders and the board of directors for repairs, replacement and maintenance;

- (v) repair or restoration after fire or other casualty and whether insurance proceeds are dedicated to repair restoration;

- (vi) insurance provided by the apartment corporation;

- (vii) reports to shareholders including notice of meetings and availability of books and records;

- (viii) how to amend the apartment corporation's certificate of incorporation, bylaws and other relevant documents;

- (ix) termination of apartment corporation;

- (x) the right to accumulate reserves for capital replacements or otherwise and any restrictions imposed on such right;

- (xi) the names of the officers and directors and their relationship, if any, to sponsor, sponsor's principals and sponsor's agents;

- (xii) the extent to which sponsor will or may control the board of directors after closing and the consequences to purchasers of such reservation of control;

- (a) sponsor and sponsor's designees may not retain voting control of the board of directors or veto power over

expenditures for more than two years after closing or whenever 50 percent of the units have been closed, whichever is sooner. Disclose whether sponsor represents and provides in the bylaws, that a majority of the apartment corporation board must be owner-occupants of the building or members of an owner-occupant's household, who are unrelated to the sponsor or its principals, after the end of the sponsor control period. If sponsor does not make this representation, include the warning set forth paragraph (c)(3) of this section and discuss as a special risk;

(b) sponsor and sponsor's designees may not exercise veto power over expenses described in schedule B, capital repairs, or over expenses required to comply with applicable laws or regulations;

(c) state whether officers and members of the board of directors serve with or without compensation; and

(d) state whether and under what circumstances officers and any manager or managing agent may be removed by the board of directors or shareholders;

(xiii) disclose and explain the manner in which the apartment secures a lien on each block of shares to secure payments of maintenance charges and assessments and the consequences of such lien;

(xiv) rights and procedure of the apartment corporation upon the sale of shares including right to approve or impose a charge or fee on such approval of sale or lease. Disclose whether corporate documents impose greater fees or charges (however denominated on shareholders than on sponsor or holders of unsold shares). If the plan or bylaws grant sponsor or holders of unsold shares greater freedom in selling shares or leasing units, such fact must be specifically disclosed and explained;

(xv) state that a copy of the bylaws is set forth in part II of the plan;

(xvi) if any construction or rehabilitation to the interior of units is the responsibility of shareholders, state whether the shareholder's obligation to perform that work is an obligation under the proprietary lease, state whether and when the apartment corporation may enter the unit to complete the work and whether the apartment corporation may place a lien on shares for the cost of completing work.

(t) *Reserve fund and working capital fund.* The offering plan must state whether there is a working capital fund and whether there is a reserve fund to be used by the apartment corporation. If funds are provided, state the amount of the funds; whether the sponsor and purchasers contribute to the funds; what restrictions are on the use of each fund; and when the funds will be available to the apartment corporation. Discuss whether the reserve fund (if any) will be sufficient to pay for major capital repairs or replacement items likely to be needed within the first five years of operation.

(1) Unless highlighted as a special risk, while the sponsor is in control of the board of directors, the working capital fund may not be used to reduce maintenance charges.

(2) If the offering plan provides for a reserve fund or a working capital fund, the plan must state that neither the Department of Law nor any other government agency has passed upon the adequacy of the funds.

(3) Closing costs and adjustments must be deducted from the working capital fund. Disclose how the net closing adjustments, if in favor of the sponsor, are to be paid. State whether the working capital fund will not be reduced below a stated amount.

(u) *Contract of sale (or exchange).*

(1) State the material terms of the contract of sale or exchange between the sponsor and the apartment corporation, including (unless stated elsewhere in the plan):



- (i) state the date of the agreement, purchase price of the property and how and when it is to be paid;
- (ii) describe any leases, mortgages and other liens, encumbrances and title exceptions affecting the property. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey would show, provided that the title exceptions do not render title uninsurable if the building remains standing. Highlight as a special risk if any title exception impairs the mortgagability of the property;
- (iii) state that the sponsor will procure title insurance, identify the title company, state the amount of the coverage, and whether the sponsor or the apartment corporation will pay for the insurance;
- (iv) list the personal property included in the conveyance;
- (v) describe fully all estimated costs, fees, and charges to be paid or apportioned in connection with the closing and specify whether they will be paid by the apartment corporation or sponsor. Include fee and mortgage title insurance charges, state and local transfer taxes, mortgage recording taxes, recording fees for the deed and any mortgage, power of attorney and any other documents, apportionment of taxes, water and sewer charges, contributions to working capital fund or reserve fund, brokerage commissions, attorneys fees and all other closing costs or adjustments. For all items to be apportioned, set forth the basis for apportionment;
- (vi) describe the type of deed. Highlight as a special risk if the deed is not a bargain and sale deed with covenants against grantors acts or with full warranties;
- (vii) describe whether the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the closing and the rights and obligations of purchasers of damaged units;
- (viii) the plan and contract of sale or exchange must provide that any conflict between the plan and the contract will be resolved in favor of the plan;
- (ix) the plan and contract of sale or exchange must provide that any conflict between the plan and the contract will be resolved in favor of the plan;
- (x) state those obligations under the offering plan to be performed subsequent to closing that survive delivery of the deed;
- (xi) sponsor must assign any manufacturer's warranties with respect to equipment and appliances installed in a unit to the purchaser of the shares for that unit and assign any warranties with respect to equipment and appliances installed in public areas to the apartment corporation; and
- (xii) for a contract of exchange, disclose the approximate amount of the sponsor's tax basis and discuss the tax consequences of the exchange to the apartment corporation.

(v) *Management agreement and other contractual arrangements.*

(1) Summarize the important terms of the management agreement including:

- (i) the name and address of the managing agent;
- (ii) the term of the management agreement;
- (iii) all fees and other compensation for services;
- (iv) the major duties and services to be performed by the managing agent;

(v) the obligation (if any) of the apartment corporation to reimburse the agent for expenses incurred or to indemnify the agent against liability for acts properly performed by it pursuant to the agreement; and

(vi) whether the management agreement is assignable by the agent and what restrictions are imposed or assignability.

(2) Summarize all agreements that will be binding on the apartment corporation such as labor union contracts, laundry contracts, and extermination services.

(3) Highlight as a special risk if any contract is binding on the apartment corporation for more than three years following the closing.

(4) Describe the apartment corporation's right to cancel any contract including the notice needed.

(5) Disclose material terms of all leases other than proprietary leases including the following:

(i) State the date and term of each lease, the identity of the lessee and sublessee(s), if any, and the rent and any additional rent payable thereunder, the present and permitted use for the space, the security deposited, and the space leased.

(ii) State whether the present and future rent payable by the lessee is sufficient to cover the expenses fairly attributable to the leased space.

(iii) Highlight as a special risk if (a) any lease has a term exceeding 10 years; (b) if the lease generates less income than the *pro rata* share of expenses attributable to the leased space now or in the future; or (c) if the ratio of income generated by the lease to the share of expenses fairly attributable to the leased space may decline in the future. Describe the potential burden to the apartment corporation of these risks, disclose the basis for projecting the share of expenses attributable to the leased space, and estimate the income and expenses for the lease term.

(iv) Explain the apartment corporation's rights and obligations under the lease with regard to making ordinary or structural repairs, rebuilding after a casualty, retaining insurance or condemnation proceeds, limiting use to those compatible with a first class residential building, barring offensive uses, and whether consent of the apartment corporation is required before the lessee can assign or sublet space or change the current use.

(v) If the offering plan is subject to the provisions of General Business Law section 352-ee, disclose whether units are offered subject to the rights of existing commercial tenants and whether existing tenants could impair the completion of any rehabilitation.

(w) *Identity of parties.*

(1) State the names and business address, background and experience of sponsors, and principals of sponsor. Describe any prior convictions, injunctions and judgments against sponsor and or principals of sponsor which may be relevant or material to the offering plan or an offering of securities generally.

(2) List all properties offered for sale by sponsor or sponsor's principals as cooperatives, condominiums or planned unit developments homes within the past five years by address and the date they first became available for occupancy. If the number of such properties or projects exceeds 10 for the sponsor or a principal, the 10 most recent properties may be listed.

(3) Identify each cooperative, condominium or homeowners association, other than the subject building(s), where the sponsor, general partner or principal of the sponsor, or the holder of unsold shares, owns 10 percent or more of the unsold shares or units as an individual, general partner or principal, and state whether the sponsor, general partner, principal

or holder of unsold shares is current in its financial obligations, including, but not limited to, payment of maintenance or common charges, taxes, reserve or working capital fund payments, assessments, payments for repairs and improvements promised in the plan, payment of underlying mortgages, and payment of loans for which shares or units have been pledged as collateral or mortgaged. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(4) State the name and address of sponsor's attorney and the apartment corporation's attorney, if any. The same attorney may not represent both the sponsor and the apartment corporation. If an attorney represents the apartment corporation, describe the scope of the attorney's responsibilities. If there is or will be a managing agent or manager for the property, include the name, address and experience of the managing agent or manager and a representative list of other properties being managed by the managing agent or manager.

(5) State the relationship (if any) between the sponsor or its principals and (i) the selling agent, (ii) the managing agent, and (iii) any person or firm who will provide service to the apartment corporation subsequent to the commencement of cooperative operation.

(x) *Obligations of sponsor.* Describe the rights and obligations of sponsor under the plan and applicable law with respect to the offering including the following elements:

(1) Disclose sponsor's intent with regard to the sale of apartments offered in the plan. Disclose whether sponsor represents that it will endeavor in good faith to sell, in a reasonably timely manner, all residential units to purchasers for personal occupancy in the building or buildings being constructed for cooperative ownership. If sponsor has obtained construction financing, disclose the terms of the construction loan as they apply to the sponsor's obligation to market the units for sale, including any minimum number or percentage of units which must be under contract before the plan can be declared effective, the existence of either a minimum release price set by the lender or a required minimum payment per sale which must be made to the lender and limits or requirements imposed by the lender for sponsor to rent rather than sell under specified market conditions. If sponsor has not obtained construction financing or if the construction loan agreement does not include provisions on the terms set forth in the previous sentence, disclose the conditions under which sponsor reserves the right to rent rather than sell based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions under which sponsor would resume sales. If sponsor represents an intent to sell fewer than all of the units in the building or buildings being constructed for cooperative ownership, disclose the number and percentage which sponsor does intend to sell. Disclose whether sponsor represents that it will decline to rent apartments, until it has sold at least 51 percent of the units to purchasers for personal occupancy. If sponsor reserves the right to rent rather than sell after reaching the 51 percent sales level, disclose the conditions under which sponsor would rent rather than sell based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions under which

sponsor would resume its good faith efforts to sell rather than rent. If sponsor does not represent its good faith intent to sell and to obtain sales of 51 percent of the units prior to renting, include on the cover of the plan the warning set forth in paragraph (c)(1) of this section and discuss as a special risk.

(2) For offering plans involving construction or rehabilitation, the sponsor must state whether construction financing is firmly committed at the time of submission of the offering plan to the Department of Law. Disclose any conditions placed on the availability of the construction financing and highlight as a special risk if the sponsor may not be able to complete construction of the units offered. Project the timetable for procuring a firm commitment of construction financing. If sponsor has obtained construction financing, disclose the terms of the construction loan as they apply to the sponsor's obligation to market the units for sale, including a minimum number or percentage of units which must be under contract before the plan can be declared effective, the existence of either a minimum release price set by the lender or a required minimum payment per sale which must be made to the lender, and limits or requirements imposed by the lender for sponsor to rent rather than sell under specified market conditions. If sponsor has not obtained construction financing at the time the plan is submitted for filing, the plan must state that the construction lender may impose requirements regarding sales by sponsor and the plan must be amended to disclose the relevant terms of the construction loan agreement when financing is obtained.

(3) For offering plans involving construction or rehabilitation, state the sponsor's obligation to build and complete the property in accordance with the building plans and specifications identified in the plan and sponsor's right to substitute equipment or materials and make modifications of layout or design; provided, however, that sponsor may not:

(i) substitute equipment or materials of lesser quality or design; or

(ii) change the size, location or value of any units, or of other improvements or public areas if such changes adversely affect public areas or adversely affect the value of any unit to which title has closed or for which a subscription agreement has been executed and is in effect unless all affected shareholders consent in writing to such change and all affected contract vendees are given the right to rescind and receive any deposit or downpayment.

(4) Except as provided in paragraph (4) of this subdivision, prior to the closing the sponsor must obtain a permanent certificate of occupancy for all units for which stock is offered or, alternatively, obtain a temporary or partial certificate of occupancy for all units for which stock is offered. The sponsor and its principals must agree to obtain a permanent certificate of occupancy for the property within a projected timetable after closing. Sponsor must obtain the permanent certificate of occupancy before the partial or temporary certificate of occupancy expires, unless extended. Highlight as a special risk if the sponsor does not anticipate obtaining a permanent certificate of occupancy until two years or more after closing.

(5) Notwithstanding paragraph (2) of this subdivision, if the offering plan is subject to the provisions of General Business Law section 352-ee, sponsor must state what alterations and improvements to the public areas of the property will be completed before closing.

(6) This provision shall apply if the closing may take place prior to the issuance of a permanent certificate of occupancy for the property.

(i) Sponsor is required to maintain all deposits and funds in any special escrow account required by General Business Law section 352-e(2)(b) unless the sponsor's engineer or architect certifies that a lesser amount will be reasonably necessary to complete the work needed to obtain a permanent certificate of occupancy, in which case the sum exceeding the amount so certified by the sponsor's engineer or architect may be released from any special escrow account. Alternatively, sponsor must deposit with an escrow agent an unconditional, irrevocable letter of credit or post a surety bond in the amount so certified.

(ii) Notwithstanding subparagraph (i) of this paragraph, if the offering plan is subject to the provisions of General Business Law section 352-ee, sponsor is required to maintain all deposits and funds in any special escrow account required by General Business Law section 352-e(2)(b) unless the sponsor's engineer or architect certifies that a lesser amount will be reasonably necessary to complete all alterations and improvements to the public areas of the property, in which case the sum exceeding the amount so certified by the sponsor's engineer or architect may be released from any special escrow account. Alternatively, sponsor must deposit with an escrow agent an unconditional, irrevocable letter of credit or post a surety bond in the amount so certified.

(7) State whether the sponsor agrees to warrant the materials or workmanship of each unit or public areas. Fully disclose the terms of the warranties.

(8) State that the sponsor agrees to pay for the authorized and proper work involved in the construction and establishment and sale of the cooperative that sponsor is obligated to complete under the plan and cause all mechanics liens with respect to such construction to be promptly discharged or bonded.

(9) State whether sponsor has an obligation to defend any suits or proceedings arising out of sponsor's acts or omissions and to indemnify the apartment corporation.

(10) State those obligations under the offering plan to be performed subsequent to closing that survive delivery of the deed.

(11) For offering plans involving construction or rehabilitation, the sponsor must agree to deliver a set of “as-built” plans to the apartment corporation.

(12) Sponsor must disclose whether any bond or other security other than those required by this Part has been furnished to secure sponsor's obligations including sponsor's obligations to complete construction of the property.

(13) Sponsor must guarantee payment of all maintenance charges and assessments with respect to unsold shares.

(14) Sponsor must agree to initially procure, and the budget must reflect, fire and casualty insurance pursuant to an agreed amount replacement value policy or in an amount sufficient to avoid coinsurance.

(15) Disclose when sponsor can dissolve or liquidate the sponsor and whether dissolution or liquidation will have an effect on sponsor's obligations under the plan.

(16) If the sponsor has a right of access to complete construction of the property, describe sponsor's obligation to repair damages and the extent to which sponsor can interfere with the shareholders' use.

(17) If the plan represents that the apartment corporation may or will receive tax benefits, the plan must state that sponsor will use best efforts to obtain the tax benefits.

(18) The sponsor must convey the property free of all liens other than the mortgages and liens described in the plan.

(y) *Reports to shareholders.* State that it is the obligation of the apartment corporation to give all shareholders annually:

(1) a statement of the amount deductible for income tax purposes by a specified date;

(2) an audited financial statement prepared by a certified public accountant or public accountant by a specified date; and

(3) prior notice of the annual shareholders meeting.

(z) *Documents on file.* Sponsor must keep copies of the plan, parts A, B and C of the exhibits and documents referred to in the plan on file and available for inspection and copying at a specified location for six years from the date the plan was filed.

(aa) *General.* Describe any other material facts concerning the sponsor and its principals, the property, the offering and a prospective purchaser's right and obligations including:

(1) Disclose any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, sponsor's capacity to perform all of its obligations under the plan, the apartment corporation or the operation of the cooperative.

(2) Disclose whether the property is the subject of any prior public offerings.

(3) Represent that the sponsor and its agents will not discriminate against any person because of race, creed, color, sex, disability, marital status or national origin.

(bb) *Sponsor's statement of building condition.* Include the following provisions for existing buildings:

(1) Sponsor must adopt the description of property set forth in part II of the plan and state that there are no defects or need for major repairs to the property, except as set forth in the description of property.

(2) If not fully reported in the description of property, sponsor must describe the rehabilitation, if any, to be completed by sponsor; state whether major systems such as plumbing, heating, electrical, roof and windows have been partially or fully replaced or improved and the extend of improvement; and describe cosmetic renovations such as painting, plastering and furnishing the floors.

(3) State whether, prior to closing, sponsor will cause to be cured all violations of record, eliminate all dangerous and hazardous conditions and comply with all work orders from mortgagees.

(4) Disclose the existence of any applicable Federal, State or local laws concerning lead- based paint and whether the sponsor will comply with such laws and regulations promulgated thereunder.