

MEMORANDUM

TO: REF ATTORNEYS AND PARALEGALS

FROM: NANCY KRAMER and GARY BROWN

RE: DISCLOSURE OF NEGOTIABLE TERMS OF
PURCHASE PRICE

DATE: 4/6/90
(replaces memo
of 3/30/90)

Under our regulations, sponsors must disclose if prices are negotiable. Part 18.3(f)(3)(iii) provides: "If applicable, state that prices are negotiable". See also Part 23.3(k)(2) for similar language; Part 20.3(k); Part 21.3(h).

Questions have arisen recently about whether certain negotiated terms are covered by disclosure that "prices" are negotiable. For example, a sponsor may agree to give a purchaser a decorating allowance or a credit toward closing costs. It may agree to apply interim lease payments toward the purchase price. It may extend the period in which to obtain financing. It may agree to install a new bathroom, or substitute a new bathroom for the offer of a new kitchen contained in the plan. Or, a sponsor may agree to pay maintenance or common charges for a certain period of time. (Please note that maintenance rebates or subsidies require the posting of collateral by the sponsor.)

In order to ensure that prospective purchasers understand the full range of terms that may be negotiable, an offering plan should state not only that "prices" are negotiable, but should specify other price-related negotiable terms such as the ones set forth above. Please require such fuller disclosure in the plans that you review.

NK:sg