
REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

Re: N.Y. Real Prop. Law § 339-i
and 13 NYCRR Part 20

May 14, 2014

The Department of Law has been asked to clarify whether or not an attorney who has provided a legal opinion as to compliance with N.Y. Real Prop. Law (“RPL”) § 339-i as required by 13 NYCRR § 20.3(y)(5) can also submit the expert opinion required by 13 NYCRR § 20.3(i).

Section 20.3(i) of the regulations requires that the offering plan:

[i]nclude an opinion from a licensed real estate broker, appraiser or other expert who does not have any beneficial interest in the sponsor or in the profitability of the project. The opinion must be signed by a duly authorized signatory or by the firm and must state:

1. What experience the broker, appraiser or other expert has had with offering plans and with selling cooperative or condominium units and other relevant expertise.
2. The method selected pursuant to *Real Property Law Section 339-(i)* or applicable state law and the factual basis for calculating the percentage of common interest in the condominium under that method.

Section 20.3(y)(5) of the regulations mandates a similar opinion, specifically from counsel from sponsor or independent counsel, as to compliance with RPL § 339-i in assigning the percentage of common interest appurtenant to each unit. The regulation requires counsel to state that the opinion is based on “other expert factual determinations” as required by § 20.3(i). Typically these expert factual determinations are made by a licensed real estate broker or appraiser who drafted the § 20.3(i) letter. However, “other” does not necessarily imply another professional. Thus, the regulation does not necessarily preclude counsel from supplying both opinions.

If supplying both opinions, counsel must set forth in the RPL § 339-i opinion how the attorney meets the expert qualifications required by § 20.3(i) of the regulations. Then if the RPL § 339-i opinion adequately establishes such qualifications, the opinion of

counsel submitted pursuant to § 20.3(y)(5) of the regulations must specifically describe the other expert factual determinations upon which the opinion is based. Examples of such factual determinations may include a consultation with an architect and/or licensed real estate broker, but it may also refer to the attorney's own experience acting as a real estate broker, appraiser or other expert.