



**STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
REAL ESTATE FINANCE BUREAU
120 BROADWAY, 23RD FLOOR
NEW YORK, N.Y. 10271**

EXEMPTION FROM FILING UPDATE AMENDMENTS

**COOPERATIVE POLICY STATEMENT #5
(Applicable to Cooperatives, Condominiums, and Homeowners Associations)
WITH REQUIRED FORMS¹**

¹ Updated May 22, 2015

COOPERATIVE POLICY STATEMENT #5
**(APPLICABLE TO COOPERATIVES, CONDOMINIUMS,
AND HOMEOWNERS ASSOCIATIONS)**
EXEMPTION FROM FILING UPDATE AMENDMENTS

Applicability: A sponsor may apply for an exemption from filing further amendments to a cooperative, condominium or homeowners association offering plan if either (i) five or more years have elapsed since the acceptance of the post-closing amendment for filing or (ii) three or more years have elapsed since the sponsor relinquished control of the Board of Directors or Board of Managers; and the sponsor and/or all holders of unsold shares in the aggregate, own ten percent or less of the shares in the cooperative, or units in the condominium or homeowners association. In addition, the sponsor must have procured a Permanent Certificate of Occupancy.

Procedure: A sponsor that meets all of the above criteria may apply for an exemption from the requirement that it file update amendments annually by submitting an affidavit stating:

(a) that it will provide each subsequent offeree with the following information:

- (1) the purchase price and maintenance charges or common charges of the unit or lot;
- (2) a copy of the financial statements of the apartment corporation, condominium or homeowners association for the two most recent fiscal years of operation, unless not provided by the non-sponsor-controlled Board to owners;
- (3) a copy of the most recent budget of projected expenses, unless not provided by the non-sponsor-controlled Board to owners;
- (4) a copy of the offering plan with all amendments;
- (5) information known to the sponsor which may in reasonable likelihood result in an increase of 15% or more in expenses for shareholders, unit owners or lot owners or for the apartment corporation, condominium, or homeowners association, including, but not limited to, planned, projected or reasonably anticipated increases in maintenance charges, assessments, planned major capital improvements or repairs, refinancing of a mortgage, or the correction of code violations or dangerous and hazardous building conditions;

(6) summaries of any material pending litigation or administrative proceedings and, if requested, copies of pleadings in such litigation or proceedings, or any orders and judgments, the outcome of which may materially affect the apartment corporation, condominium, or homeowners association or the rights of an existing tenant of the unit;

(7) if the unit is occupied, a copy of the tenant's lease and a representation of the tenant's status under applicable rent laws and, if applicable, as an "eligible senior citizen" or "eligible disabled person" under an eviction plan;

(8) a copy of the notice of any uncured violations of record in the unit that are the responsibility of the proprietary lessee or unit owner to cure;

(9) a copy of the letter conferring an exemption from amendment filings;

(10) that the actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements and improvements) of the building or development did not exceed its income by more than 15% for the most recently concluded fiscal year; and

(b) that if after an exemption from filing amendments is granted:

(1) the sponsor learns that the actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements and improvements) of the building for a fiscal year exceed its income by more than 15%;

(2) litigation is filed which may adversely affect the sponsor's capacity to perform all of its obligations;

(3) the apartment corporation, condominium, homeowners association or the sponsor is not meeting its current obligations;

(4) the sponsor is subjected to a judgment in any civil or criminal action or proceeding which adversely affects the offering plan or the sponsor's fitness as an offeror of real estate securities; or

(5) there are facts or circumstances known to the sponsor which may in reasonable likelihood result in increases in maintenance charges or common charges of 15% or more because of extraordinary expenses to the apartment corporation, condominium, or homeowners association, including, but not limited to, assessments or liabilities, outstanding uncured violations of record or dangerous and hazardous building conditions, or pending litigation, the sponsor shall submit a proposed amendment to the Department of Law before offering for sale or entering into a contract for sale of any remaining shares, units or lots. The requirement to file an amendment disclosing the circumstance(s) listed above shall not automatically terminate the exemption from filing future amendments -- the exemption shall continue after the filing of such amendments, unless otherwise provided by the Department of Law.

Conditions:

- (a) The granting of an exemption is on such terms and conditions as the Department of Law may impose, in its discretion, in order to protect the public interest. It may be revoked summarily if the Department of Law determines that the filing of amendments should be required.
- (b) The granting of an exemption is based solely upon the information provided by the sponsor in its application. Any material misstatement or omission of a material fact in the application may render the exemption void **ab initio**.
- (c) The granting of an exemption shall not be construed to be a waiver of or a limitation on the Department of Law's authority to take enforcement action pursuant to Article 23-A of the General Business Law and any other applicable provisions of law, except as expressly stated in the letter granting such exemption.
- (d) Department of Law reserves the right to request an affidavit of compliance with the terms of the exemption, along with any supporting documents, at any time.

Fee: As the exemption is being granted in lieu of the filing of an amendment, the statutory filing fee for an amendment shall be required with an exemption application which shall be retained whether the exemption is granted or denied.

Effective Date: Applications for exemptions may be made on or after July 1, 1989.

Note: The following model Application for Exemption from Filing Update Amendments, with appropriate modifications, must be used in applying for an exemption from filing update amendments. However, applicants should **not** fill in the blanks on a copy of the model; a fully completed and edited Application for Exemption from Filing Update Amendments should be prepared and typed by the applicant.

Submit this application to:
Department of Law
Real Estate Finance Bureau
120 Broadway, 23rd Floor
New York, New York 10271

Decisions on applications will be made within 30 days of submission. No offeror should consider an exemption to be granted until a letter granting the exemption is received. No exemption will be granted for plans that have previously expired, and where sales have taken place during the period when the plan was expired, and where no subsequent amendment has been filed. In these cases, a new amendment should be submitted. After the amendment is accepted for filing, an application pursuant to CPS-5 may be submitted. An exemption will not be granted in phased homeowners associations until sales are taking place pursuant to filed amendments in the last phase of the development.

and the closing or first closing occurred on _____.

4. The last amendment to this plan was filed on _____.
5. The Permanent Certificate of Occupancy was procured on _____.
6. The plan is presently current and up-to-date and no sales have occurred during a period of time when the plan had expired.
7. There are _____ shares or units which are the subject of the offering plan. Sponsor and/or all holders of unsold shares own _____ shares or units.
8. Sponsor/and or all holders of unsold shares own in the aggregate ten percent or less of the shares in the cooperative, or units in the condominium or homeowners association. (Include as an exhibit a list of the shares or units owned by Sponsor and/or all holders of unsold shares.)
9. If this is a phased homeowners association, Sponsor in amendment # _____ disclosed that lots or units were being offered in the last (# _____) phase of the association offering.
10. The post-closing amendment # _____ was filed on _____. At least five years have elapsed since the acceptance of the post-closing amendment for filing.

OR

10. Sponsor and/or holders of unsold shares relinquished control of the Board of Directors or Board of Managers on _____ as disclosed in amendment # _____. At least three years have elapsed since Sponsor relinquished control of the Board of Directors or Board of Managers.
11. The actual cash operating expense (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements and improvements) of the building or development did not exceed its income by more than 15% for the most recently concluded fiscal year.
12. Sponsor and/or holders of unsold shares represent(s):
 - (a) that it/they will provide each subsequent offeree with the following information:
 - (i) the purchase price and maintenance charges or common charges of the unit;

- (ii) a copy of the financial statements of the apartment corporation, condominium or homeowners association for the two most recent fiscal years of operation, or a statement that such statements were not provided by the non-sponsor-controlled Board to owners;
- (iii) a copy of the most recent budget of projected expenses, or a statement that such budget was not provided by the non-sponsor-controlled Board to owners;
- (iv) a copy of the offering plan with all amendments;
- (v) information known to Sponsor which may in reasonable likelihood result in an increase of 15% or more in expenses for shareholders, unit owners or lot owners or for the apartment corporation, condominium, or homeowners association including, but not limited to, planned, projected or reasonably anticipated increases in maintenance charges, assessments, planned major capital improvements or repairs, refinancing of a mortgage, or the correction of code violations or dangerous and hazardous building conditions;
- (vi) summaries of any material pending litigation or administrative proceedings and, if requested, copies of pleadings in such litigation or proceedings, or any orders and judgments, the outcome of which may materially affect the apartment corporation, condominium, or homeowners association or the rights of an existing tenant of the unit;
- (vii) if the unit is occupied, a copy of the tenant's lease and representation of the tenant's status under applicable rent laws and, if applicable, as an "eligible senior citizen" or "eligible disabled person" under an eviction plan;
- (viii) a copy of the notice of any uncured violations of record in the unit that are the responsibility of the proprietary lessee or unit owners to cure; and
- (ix) a copy of the letter conferring an exemption from amendment filings.
- (x) that the actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements and improvements) of the building did not exceed its income by more than 15% for the most recently concluded fiscal year; and

- (b) that if after an exemption from filing amendments is granted:
- (i) Sponsor learns that the actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements and improvements) of the building for a fiscal year exceed its income by more than 15%;
 - (ii) litigation is filed which may adversely affect Sponsor's or holders' of unsold shares capacity to perform all of its/their obligations;
 - (iii) the apartment corporation, condominium or homeowners association or Sponsor or holders of unsold shares are not meeting their current obligations;
 - (iv) Sponsor or holder of unsold shares is subjected to a judgment in any civil or criminal action or proceeding which adversely affects the offering plan or Sponsor's or holder(s) of unsold shares' fitness as an offeror(s) of real estate securities; or
 - (v) there are facts or circumstances known to Sponsor or holder of unsold shares which may in reasonable likelihood result in increases in maintenance charges or common charges of 15% or more because of extraordinary expenses to the apartment corporation, condominium, or homeowners association including, but not limited to, assessments or liabilities, outstanding uncured violations of record or dangerous and hazardous building conditions or pending litigation, Sponsor or holders of unsold shares shall submit a proposed amendment to the Department of Law before offering for sale or entering into a contract for sale of any remaining shares, units, or lots. The requirement to file an amendment disclosing the circumstance(s) listed above shall not automatically terminate the exemption from filing future amendments -- the exemption shall continue after the filing of such amendment, unless otherwise provided by the Department of Law.

13. Sponsor and/or holders of unsold shares make the above representations knowing that the Department of Law is relying on the accuracy of these statements in granting an exemption from filing update amendments to the subject offering plan.

Holder of Unsold Shares

Signature of Principal of Sponsor or
Holder of Unsold Shares or all
Holders of Unsold Shares

Holder of Unsold Shares

Holder of Unsold Shares

Holder of Unsold Shares

Holder of Unsold Shares

Sworn to before me this

_____ day of _____, 20

Notary Public