STATE OF NEW YORK DEPARTMENT OF LAW | OFFICE OF ATTORNEY GENERAL DENNIS C. VACCO

MEMORANDUM

TO: REF Attorneys, Legal Assistants and Law Students

DATE: 3/1/95

FROM: Mary Sabatini DiStephan MSD

RE: Who Can Sign as Escrow Agent Under 352-e(2-b) and as Counsel for Income Tax Opinion Under 13 NYCRR 18.3(k) (Replaces memo dated 1/15/86)

Questions have arisen about which attorneys may sign as escrow agent to release funds held pursuant to GBL §352-e(2-b) and which attorneys may sign the income tax opinion required to be in all offering plans.

In neither case may a principal of the sponsor, who is clearly an interested party, qualify as a signatory.

An attorney who is the partner of the sponsor or principal may be the signatory on the escrow account provided that such attorney has no participating interest in the sponsor. The attorney must be independent of the sponsor. The account must be a "special" escrow account, not commingled with the general escrow funds of the firm. See 13 NYCRR 18.3(p)(2)(ii) and (iv).

13 NYCRR 18.3 (k)(1) provides that "counsel for sponsor or for the apartment corporation, or independent counsel, must render in affirmative unqualified language the opinion....". An attorney who is a partner or an employee of the sponsor or of a principal of the sponsor may sign the opinion. An independent counsel would be preferable. If the counsel's opinion is on the law firm letterhead of sponsor or a principal of sponsor, a member of the firm other than a principal of the sponsor, one with no participating interest in sponsor, must sign.

MSD/fj