



---

**REAL ESTATE FINANCE BUREAU  
MEMORANDUM**

---

To: Sponsors of HDFC Cooperatives  
Under the Third Party Transfer Program ("TPT")

REVISED

Date: November 20, 2009

From: Erica Buckley, AAG

Re: Model No-Action Letter Application

---

---

Introduction:

The Real Estate Finance Bureau of the Department of Law ("DOL") has developed a model TPT no-action letter application in conjunction with the City of New York Department of Housing Preservation and Development ("HPD") to assist sponsors in completing the conversion process in an efficient and expedient manner, while ensuring that prospective purchasers are given fair and adequate disclosure. The model documents assume that all sponsors under the program will be using the same Regulatory Agreement and form of Certificate of Incorporation. Furthermore, the model no-action information package assumes that the sponsor will utilize a contract of exchange to transfer the building to the Apartment Corporation in exchange for the shares of stock. This transaction has been structured as such to ensure that the HDFC cooperative and shareholders will meet the requirements of §216 of the Internal Revenue Code, and a discussion of Reasonable Relationship under §216 has been provided courtesy of Joel E. Miller, Esq.

Procedure for Submission:

When submitting a no-action letter application for a TPT conversion, the sponsor should submit the following documents with their application:

- M-10 Form
- One set of the no-action application including all exhibits in Part I and Part II
- One black-lined copy of the Cooperative Information Package Narrative if using Microsoft Word format
- President's (Sponsor) Affidavit in compliance with 13 N.Y.C.R.R. §18.9
- Transmittal Letter in compliance with 13 N.Y.C.R.R. §18.4

Once the DOL has received all of the above information, an attorney will be assigned to review the no-action letter application within 30 days of receipt.

The filing fee required for the submission of a no-action application seeking permission to convert a building or group of buildings or development to a cooperative pursuant to Article eleven of the New York Private Housing Finance Law shall be waived by the DOL.

An acceptance letter will be issued by the DOL. The sponsor will be prohibited from distributing the no-action information package until the application has been accepted for filing.

In the event of any material change to the no-action information package provided to the DOL in the no-action letter application, the sponsor must file an amendment in compliance with 13 N.Y.C.R.R. §18.5. Any changes to the budget, sales price or regulatory agreement must be submitted with a letter of approval from HPD as well. The filing fee for amendments shall be waived.

The sponsor shall be required to submit an effectiveness amendment prior to setting the effective date and prior to having the first apartment closing in compliance with 13 N.Y.C.R.R. §18.5(e). The effectiveness amendment shall be filed once the sponsor has entered into purchase agreements with 80% of the tenants in occupancy and when 80% of the total units in the building are under contract. A model effectiveness amendment has been provided by the DOL. Copies of the purchasing tenant affidavits and the non-purchasing tenant affidavits (models of which are provided by the DOL) must be submitted along with the effectiveness amendment.

The sponsor shall also be required to submit a post-closing amendment in compliance with 13 N.Y.C.R.R. §18.5(f) once the building has been transferred to the HDFC and all tenants in occupancy and required outside purchasers have closed.

The following required model documents are available on the New York State Attorney General Website at [www.ag.ny.gov](http://www.ag.ny.gov):

- Model Cooperative Information Package Narrative in PDF format\*
- Purchasing Tenant Affidavit
- Non-Purchasing Tenant Affidavit
- Effectiveness Amendment

The following additional documents are available through Lawyers Alliance for New York on the probono.net Website at <http://www.probono.net/ny/nonprofit/>:

- Model Cooperative Information Package Narrative in Microsoft Word format
- Model Stock Certificate
- Certificate of Incorporation\*
- Model By-Laws
- Model Proprietary Lease
- Model President's (Sponsor) Affidavit
- Model Sponsor Certification (To be included as an Exhibit in Part II)
- Model Discussion of Reasonable Relationship courtesy of Joel E. Miller, Esq.
- HPD Regulatory Agreement\*
- Model Purchase Agreement
- Model Contract of Exchange

\*It is assumed that all sponsors will use these documents in the form as provided. Minor deviations to the Cooperative Information Package Narrative are subject to the review and approval of the DOL. The Certificate of Incorporation and HPD Regulatory Agreement are subject to the review and approval of HPD. Any deviations from the models referenced herein will be deemed acceptable to the DOL if approved by HPD.