



MEMORANDUM

November 12, 1997

TO: REF Attorneys, Paralegals and Law Students
FROM: Mary Sabatini DiStephan *MSD*
RE: Assurance of discontinuance when sales have taken place after offering plan expired (Replaces memorandum of 6/4/85)

Attached please find a memo dated April 28, 1995 from Gary Connor concerning the form for assurances of discontinuance when sponsors sell on stale plans. Plans are "stale" one year after the initial filing or six months after the filing of the last amendment up to and including the post-closing amendment and thereafter twelve months after the filing of the last amendment or at any time after a material change has occurred and sales have taken place without amendment of the plan disclosing the material term. I also attach form letters which you may find helpful.

To determine the costs associated with the assurance, please request an affidavit from the sponsor setting forth the facts surrounding the illegal sales and reasons, if any, why the plan was permitted to expire. We assess costs to be \$500 per contract or per closing of sale.

Rescission should be offered in cases where the pending amendment discloses material facts adverse to the purchasers.

When plans are stale, we are often asked **by the purchasers** who are already in contract or by the sponsor **at the behest of the purchasers** who are in a rush to close (often because their mortgage commitments are expiring) if they can close even though the sponsor or holder of unsold shares tells them that the extension amendment has not been accepted for filing and, therefore, the closing cannot occur. In your discretion, such permission can be granted if it is clearly the purchaser who is requesting this special treatment, he or she is already in contract, and the sponsor represents in writing that it will hold all proceeds from the sale in escrow pursuant to our escrow trust fund regulatory requirements pending filing of the update amendment, granting rescission where necessary. Under no circumstance would a purchaser be **required** to close prior to the filing of an amendment updating a plan so that the plan is no longer stale.

If you have any questions, see Gary or Mary.

Attachments

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF REAL ESTATE FINANCING

-----X
In the Matter of _____ :
of _____ :
(NAME OF SPONSOR, PRINCIPALS OF SPONSOR
and ANY OTHER OFFENDER) _____ :
-----X

ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW §63(15)

DENNIS C. VACCO, Attorney General of the State of New York, having caused an inquiry to be made, pursuant to Article 23-A of the General Business Law, into an offering of real estate securities in (name of cooperative corporation, or condominium association or home owners association), located at _____, New York, for which an offering plan was accepted for filing on _____ and subsequently last amended on _____, and sponsored by (name of sponsor), and its principals (John Doe, Mary Doe, etc.) (hereinafter collectively referred to as "respondents"), and upon inquiry the Real Estate Financing Bureau of the Department of Law having found that the respondents offered said securities and took purchase agreements from New York State residents after the date that the offering plan expired, as detailed in the annexed affidavit of _____, sworn to the _____ day of _____, 1996 and incorporated herein; and

IT NOW APPEARING that the respondents, while admitting the truth of the facts set forth above, but neither admitting nor denying that respondents have violated any

law, rule or regulation with respect to the offering real estate securities without having filed a current offering plan with the Department of Law, nevertheless voluntarily agree to enter into this Assurance of Discontinuance, subject to the acceptance hereof on behalf of the Attorney General pursuant to Executive Law §63(15) in lieu of the commencement of a statutory action or proceeding for the enforcement of a law of this State;

NOW, THEREFORE, IT IS HEREBY AGREED, that the respondents shall not hereafter make or take part in a public offering or sale in or from the State of New York of any securities or commodities, as governed by Article 23-A of the General Business Law, unless and until there shall have been filed with the Department of Law, an offering statement or prospectus which is filed and is kept current in conformity with law and with the Department of Law regulations; and it is further

AGREED, that the respondents shall cease and desist from violating Article 23-A of the General Business Law and any other law, regulation or rule relating to the public offer of real estate securities within and from the State of New York; and it is further

AGREED, pursuant to the terms of Executive Law §63(15), that in the event this Assurance of Discontinuance is violated, evidence of such violation shall constitute prima facie proof of violation of Article 23-A of the General Business Law in any civil action or proceeding thereafter commenced by the Attorney General; and it is further

AGREED, that this Assurance of Discontinuance shall not operate to restrict, limit or prevent the Attorney General from investigating or commencing any action or proceeding against the respondents or any other person or persons, partnership, corporation, company, trust, entity or association regarding any act or practice in connection with the issuance, advertisement or distribution within or from this State of real estate securities in (name of cooperative corporation, condominium association or homeowners association) which is fraudulent, unlawful, prohibited or otherwise in violation of General Business Law Article 23-A or other applicable law, rules or regulations, which act or practice was engaged in prior to the execution of this Assurance of Discontinuance (except with respect to the afore-described alleged illegal offers and sales) or any such act or practice hereafter engaged in; and it is further

AGREED, that the respondents shall pay to the New York State Department of Law, prior to the acceptance of this Assurance of Discontinuance on behalf of the Attorney General, the sum of (\$500.00 per offer, sale or closing) as costs of investigation pursuant to Executive Law §63(15).

WHEREFORE, the following signatures were affixed hereto this _____ day of _____ 199__.

STATE OF _____)
 : ss.:
COUNTY OF _____)

On this _____ day of _____, 199 , before me personally came (name of individual respondent) to me known, who being by me duly sworn, did depose and say that he or she resides at (address of principal) _____, that he or she is a principal of the sponsor (or sponsor), described in, and which executed, the above instrument and that he or she has executed the within Assurance in his or her individual capacity.

NOTARY PUBLIC

Accepted this _____ day of _____, 199

DENNIS C. VACCO
Attorney General of the
State of New York

By: _____
Assistant Attorney General

By: _____
Chief of Enforcement



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

DENNIS C. VACCO
Attorney General

PAMELA JONES HARBOUR
Deputy Attorney General

Date

Addressee

Re:
File No.:

Dear _____ :

Enclosed please find an original and three copies of an assurance of discontinuance in the above-captioned matter.

If the enclosed meets with your approval, please have them signed and return them to me together with a check in the amount of \$ _____ made payable to the New York State Department of Law which represents costs of investigation.

As soon as I am in receipt of the same I shall return to you a fully executed copy.

Please call me immediately if there will be any problem or delay.

Very truly yours,

Assistant Attorney General

Enclosure



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

DENNIS C. VACCO
Attorney General

PAMELA JONES HARBOUR
Deputy Attorney General

Date

Addressee

Re:
File No.

Dear _____ :

Enclosed please find a fully executed copy of the Assurance of Discontinuance in the above-captioned matter dated _____.

Thank you for your cooperation.

Very truly yours,

Assistant Attorney General

Enclosure