



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

MEMORANDUM

**Re: Supplemental Memo Regarding
Compliance with Revised Escrow
Trust Fund Regulations**

Date: 12/20/2012

This memorandum shall serve to supplement and replace certain information set forth in the memorandum dated December 6, 2012, regarding changes to 13 NYCRR Parts 18-25 regulations concerning escrowed funds.

The Department of Law has decided to extend the final date for compliance with the new escrow trust fund regulations for existing offering plans to December 31, 2013. Instead of submitting a separate amendment to the Department of Law to solely amend the offering plan to comply with the revised escrow trust fund regulations, Sponsors shall incorporate the changes into an amendment to the offering plan on or before December 31, 2013. Notwithstanding the foregoing, offering plans that are submitted to the Department of Law for filing after December 6, 2012 will be expected to comply with the regulations.

In an effort to assist attorneys for Sponsor in complying with the revised regulations, the Department of Law has provided escrow trust fund model language for amendments and new offering plans. The Department of Law has also provided model language for insertion into a purchase agreement, and a model escrow agreement¹. Sponsors should note that the models do not fit every scenario contemplated by the regulations, (e.g. IOLA Accounts or out of state attorneys acting as escrow agent). Therefore, Sponsors should make necessary changes to reflect the terms of the offering.

Sponsors should note that the regulations require a trilateral agreement. Therefore, Sponsors must either use a trilateral escrow agreement, or require the escrow agent sign the purchase agreement. Incorporating the mandatory escrow provisions by reference shall be unacceptable.

¹ Notwithstanding the reference to a bi-lateral agreement in the memo dated December 6, 2012, the Department of Law shall only accept a trilateral agreement among the parties.

The escrow trust fund model language for amendments and offering plans and the model escrow agreement shall be available at the Department of Law's website under Forms at the following web address: <http://www.ag.ny.gov/real-estate-finance-bureau/forms>.