

**QUESTIONNAIRE ON LEASEHOLD COOPERATIVE OFFERING PLANS**

All offering plans which purport to convey a leasehold interest to the Apartment Corporation must contain adequate disclosure to answer each of the following questions. Please indicate on this questionnaire the page number in the plan where such disclosure is made, cross-referencing the pages to the lease or mortgage where applicable.

**A. LEASEHOLD - TERMS OF THE GROUND LEASE.**

1. When was the original leasehold created?
2. What is the chain of assignment of the leasehold from the original ground lessee to the sponsor? Indicate date of each assignment.
3. Is the sponsor related to the fee owner (the ground lessor) or the original ground lessee?
4. Can the present lessee trace ownership of the building on leased land back to construction of the building?
5. If the answer to question 4 is no, how does the present lessee justify ownership of the building for real estate tax purposes? See Rev. Rul. 62-178. 1962-2 Cum. Bul. 91; Rev. Rul. 62-177, 1962-2, Cum. Bul. 89.
6. What are the major obligations of the ground lessee? (These would be the obligations assumed by the Apartment Corporation as the ground lessee.) Discuss obligations to maintain and repair, to pay rent, taxes and other charges, to keep premises insured to comply with all applicable laws, etc.
7. What are the material terms of default under the ground lease?
8. Are there any restrictions against the ground lessee making any structural or non-structural alterations? Whose consents are required?

9. **Is there a non-disturbance clause which allows lease to survive a foreclosure on fee mortgage(s), bankruptcy of the fee owner or other proceedings by lien judgment holders or taxing authorities? If not, does the ground lessee have the right to make payments in default and be subrogated to the rights of the lienor?**
10. **Does the lease provide for survival in the event of substantial destruction and provide /a right to rebuild? What is the disposition of insurance proceeds in the event of destruction? Does the insurance budgeted in Schedule B meet the requirements of the lease?**
11. **Does condemnation clause result in compensation to the leaseholder and no unjust enrichment to the fee holder?**
12. **Does the ground lessee have an option to purchase the fee or a right of first refusal? What are the terms?**
13. **Can the lease be renewed and if so, on what terms? Are there conditions to the renewal option so as to jeopardize the possibility of exercising the option to renew?**
14. **Is the wasting asset nature of the leasehold discussed in the special risk section and in the financial features section?**
15. **If any space covered by the lease is carved out by the sponsor (for example, commercial space), is there a reciprocal agreement detailing the relationship between the carved out space and the remaining space? Are the terms of such agreement reasonable? Does the carve-out result in an 80/20 problem under IRC Section 216 because of the income generated by the carved out space? See Alstores Realty Corporation, 46 T.C. 363 (1966), acq. 1967-2 C.B. 1; and Rev. Rul. 77-413, 1977-2 C.B. 298.**

**B. LEASEHOLD MORTGAGES**

16. **Does the plan disclose the terms of each leasehold mortgage in compliance with 13 N.Y.C.R.R. Section 18.3(s)? Include mortgages which will be assumed by the Apartment Corporation and any proposed new leasehold mortgages to be placed on the building when the lease is assigned to the Apartment Corporation. Disclose any relationship between the leasehold mortgagee and the sponsor.**
17. **Could the Apartment Corporation secure additional leasehold mortgages so as to refinance the existing mortgages or to fund repairs, replacements, improvements or reconstruction of the building? Discuss any restrictions on such refinancing. Would such financing be available from conventional mortgage financing sources?**

**C. FEE MORTGAGES**

- 18. Does the plan disclose the terms of each mortgage on the fee in compliance with 13 N.Y.C.R.R. Section 18.3(s)? Disclose any relationship between the fee mortgagee and the sponsor.**
- 19. Would all fee mortgages and any replacement or extensions of such mortgages be subordinate to a refinancing by the Apartment Corporation to fund repairs or replacements or reconstruction of the building?**
- 20. Could the assignment of the leasehold to the Apartment Corporation trigger a due on sale clause in a fee mortgage?**

**All submissions of the offering plans which purport to convey a leasehold interest to the Apartment Corporation should include the following documents in the Exhibit B binder.**

- 1. Ground Lease.**
- 2. All existing and proposed leasehold mortgages.**
- 3. All existing and proposed fee mortgages.**
- 4. Title report which must be in an appropriate form to insure Apartment Corporation's prospective status as an assignee of the lessee under the ground lease.**
- 5. Agreement to Assign Lease.**