

Section 17.1.

General Provisions

(a) This Part shall be applicable to offering statements and “offering plans” required by [section 352-e of the General Business Law](#) (G.B.L.) for cooperatives, other than offering plans for the conversion of buildings occupied in whole or in part for residential purposes which shall be subject to Part 18 of this Subchapter and other than offering plans for vacant buildings which are subject to Part 21 of this Subchapter. The offering statement or “offering plan” required by [section 352-e of the General Business Law](#) (G.B.L.) shall be submitted in bound booklet form to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, N.Y. 10271. The offering plan may be submitted for filing (hereinafter sometimes referred to as “final filing”) or submitted pursuant to the optional prefiling procedure described in section 17.3 of this Part. All offering plans submitted to the Department of Law shall be deemed submitted pursuant to the optional prefiling procedure described in section 17.3 of this Part unless the sponsor or the attorney for the sponsor specifically notifies the Department of Law in writing concurrently with such submission of the sponsor's election to submit for final filing.

(b) An offering plan must, at a minimum:

- (1) contain in detail the terms of the transaction and be complete, current and accurate;
- (2) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (3) not omit any material fact;
- (4) not contain any untrue statement of a material fact;
- (5) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (6) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
- (7) not contain any representation or statement which is false, where the sponsor or the person who made such representation or statement:
 - (i) knew the truth;
 - (ii) with reasonable effort could have known the truth;
 - (iii) made no reasonable effort to ascertain the truth; or
 - (iv) did not have knowledge concerning the representation or statement made.

(c) As used in this Part, the word *sponsor(s)* or *promoter(s)* means any person, partnership, joint venture, corporation, company, trust or other entity or any agent or employee thereof who makes or takes part in a public offering or sale in or from the State of New York of securities consisting primarily of shares or participation interests or investments in entities that own and operate realty as a cooperative.

(d) If the offering plan is submitted for final filing pursuant to [General Business Law section 352-e\(2\)](#), the submission must include six copies of the bound offering plan and two copies of the exhibits described in section 17.2(c) of this Part.

(e) On the date the offering plan is submitted to the Department of Law for final filing, the sponsor shall serve each offeree, as defined in subdivision (f) of this section, of any occupied building with a copy of the offering plan together with the following notice. This notice shall not apply to offering plans that have completed the prefiling procedure set forth in section 17.3 of this Part.

Date of Notice: _____

We have submitted to the New York State Department of Law, Real Estate Finance Bureau, an offering plan for the conversion of [insert address and name of building, if any] to a cooperative. The law requires us to disclose all material information concerning the building and the conversion process in an offering plan. A copy of the offering plan is enclosed for you to retain. Additional copies of the offering plan are available for inspection and copying at the office of sponsor (or sponsor's selling agent) located at [insert name and address of sponsor or sponsor's selling agent] and the Department of Law. The Attorney General strongly urges you to read this offering plan carefully and to consult with an attorney to advise you as to the meaning and consequences of this plan.

We have submitted the offering plan to the Department of Law under [section 352-e of the General Business Law](#). That law requires that the Department of Law, within not less than 120 days or more than 180 days from the date of submission of the offering plan, must either file the offering plan or indicate how the offering plan is deficient. You may send written comments to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, N.Y. 10271. You may also send your written comments to the sponsor (or sponsor's selling agent). No apartments may be sold or offered for sale, no subscription agreements may be executed, and no down payments may be accepted unless and until the Department of Law files the offering plan and a copy of the final plan is served on each tenant.

(f) Unless otherwise provided by statute or regulation, any documents required to be served by these regulations shall be served on tenants, purchasers who have executed and delivered subscription agreements to the sponsor and who are not in default, shareholders and any other person entitled to service pursuant to local law or regulations (collectively, "offerees") in the following manner:

(1) personal delivery; or

(2) mailing by regular mail or registered or certified mail, with or without return receipt requested, addressed to the offeree at the building or group of buildings or development ("building") being converted. If such building is not the place of residence of such offeree and sponsor has written information of the residence address of such offeree, the mailing shall be addressed to such last residence address. If sponsor has no such information but has written information of the place of business or employment of such offeree, the mailing shall be addressed to such last business or employment address. Service shall be complete upon completion of personal delivery on all offerees or three days after mailing to all offerees not personally served.

(g) After submission of the offering plan for final filing, the Department of Law shall issue a letter to the sponsor or sponsor's attorney stating that the plan is filed, or indicating deficiencies. The Department of Law shall issue such a letter for a final offering plan submitted for a building occupied in whole or in part for residential purposes no sooner than 120 days and no later than 180 days after the date of submission of the final offering plan. For all other buildings, the Department of Law shall issue such a letter not later than 30 days after the date of submission of the final offering plan. The Department of Law may issue a deficiency letter whenever it appears that the department cannot make any finding mandated by law or that the offering plan is deficient in one or more respects.

(h) Offering literature and advertising to be employed in connection with the offering may accompany the submission for filing.

(i) Unless otherwise provided by regulation, documents filed with the Department of Law to supplement or amend an offering plan previously filed, and new or amended literature to be employed in connection with an offering, shall be deemed part of the offering statement, shall be signed by the sponsor and shall be accompanied by one executed copy of form RS-2 issued by the Attorney General with the appropriate filing fees. Such

form, together with three copies of the supplemental, amended, or new literature, shall be submitted for filing with the Department of Law and shall not be used in the offering or sale unless and until filed.

(j) If any offering is abandoned or not consummated for any reason, the sponsor shall file two executed copies of form RS-3 issued by the Attorney General within 48 hours after such abandonment. Form RS-3 requires an explanation of the disposition of the funds raised, as well as an explanation for the failure to consummate the transaction.

(k) Unless expressly provided herein, nothing contained in this Part shall be construed as limiting the requirements of disclosure set forth in article 23-A of the General Business Law and regulations promulgated thereunder (see, e.g., Part 16 of this Subchapter), applicable to offerings of cooperative apartments.

(l) The offering plan in bound booklet form shall be delivered to prospective purchasers at least three business days before a subscription agreement is mailed or delivered to them.

(m) Within three business days following completion of service on all offerees, as defined in subdivision (f) of this section, of:

(1) a draft offering plan pursuant to the optional pre-filing procedure set forth in section 17.3 of this Part; or

(2) an offering plan submitted for final filing: sponsor shall establish by proof satisfactory to the Department of Law that there were no excessive long-term vacancies if [G.B.L. section 352-eee\(2\)\(h\)](#) or [352-eee\(3\)\(a\)](#) is applicable, and that each offeree was served with a copy of the offering plan and with the notice required by subdivision (e) of this section or section 17.3(b) of this Part, whichever is applicable.

(n) All offering plans submitted to the Department of Law for pre-filing or final filing shall:

(1) Be accompanied by a transmittal letter addressed to the Department of Law, that is signed and affirmed by the attorney who prepared the offering plan, and containing the following unqualified statements:

I/We am/are the attorney(s) who prepared the cooperative offering plan for the captioned property. Enclosed for filing pursuant to 13 NYCRR Part 17 are copies of the offering plan together with two copies of the exhibits (including filing fees).

I/We am/are fully familiar with the provisions of article 23-A of the General Business Law and the regulations promulgated by the Attorney General in 13 NYCRR Part 17.

I/We prepared the attached offering plan and exhibits based on information from the sponsor. I/We have read all the printed copy submitted to the Department of Law but expressly disclaim any responsibility to have made an independent inspection of the property or investigation of the information furnished to me/us by sponsor.

I/We have no actual knowledge of a violation of article 23-A of the General Business Law or 13 NYCRR Part 17 promulgated by the Department of Law, nor do I/we know of any material fact omitted or any untrue statement of a material fact included in the offering plan.

(2) Include in the body of the plan and in the exhibits a certification subscribed and sworn to by the sponsor and sponsor's principals, in the following form. (For purposes of this Part, unless otherwise noted, *principals* means all individual sponsors; all general partners of sponsors that are partnerships; all officers, directors and shareholders of a corporate sponsor that are actively involved in the planning and consummation of the offering; and all other individuals who both own an interest in or control sponsor and actively participate in the planning and consummation of the offering, regardless of the form of organization of sponsor.)

We are the sponsor and the principals of sponsor of the offering to convert this property to cooperative ownership.

We understand that we have primary responsibility for compliance with the provisions of article 23-A of the General Business Law, the regulations promulgated by the Attorney General in 13 NYCRR Part 17 and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for making this certification. We jointly and severally certify that the offering plan does, and that all documents submitted hereafter by us which amend or supplement the offering plan will:

- (1) set forth the detailed terms of the transaction and be complete, current and accurate;
- (2) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (3) not omit any material fact;
- (4) not contain any untrue statement of a material fact;
- (5) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (6) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
- (7) not contain any representation or statement which is false, where I/we:
 - (i) knew the truth;
 - (ii) with reasonable effort could have known the truth;
 - (iii) made no reasonable effort to ascertain the truth; or
 - (iv) did not have knowledge concerning the representation or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

(3) Include in the body of the plan and the exhibits a certification subscribed and sworn to by sponsor's engineer or architect (who must either be registered as an architect in New York State or be licensed to practice as a professional engineer in New York State) in the following form:

The undersigned, (an architect registered in New York State) *or* (an engineer licensed to practice as a professional engineer in New York State), certifies as follows:

The sponsor of the offering to convert the captioned property to a cooperative retained me/our firm to prepare a report disclosing the condition of the property (the *report*). We visually inspected the property on _____ and prepared the report dated _____, a copy of which is intended to be incorporated into the offering plan so that tenants and pro-

spective purchasers may rely on the report.

I/We understand that I/we am/are responsible for complying with article 23-A of the General Business Law and the regulations promulgated by the Attorney General in 13 NYCRR Part 17 insofar as they are applicable to this report.

I/We have read the entire report and investigated the facts set forth in the report and the facts underlying it, and conducted the visual inspection referred to above, with due diligence in order to form a basis for this certification.

I/We certify that the report and all documents prepared by me/us disclose all the material facts which were then discernible from a visual inspection of the property. This certification is made for the benefit of all persons to whom this offer is made. I/We certify that the report and all documents prepared by me/us, based on my/our visual inspection:

- (1) set forth in narrative form the physical condition of the entire property and are current and accurate as of the date of inspection;
- (2) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property;
- (3) do not omit any material fact;
- (4) do not contain any untrue statement of a material fact;
- (5) do not contain any fraud, deception, concealment or suppression;
- (6) do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
- (7) do not contain any representation or statement which is false, where I/we:
 - (i) knew the truth;
 - (ii) with reasonable effort could have known the truth;
 - (iii) made no reasonable effort to ascertain the truth; or
 - (iv) did not have knowledge concerning the representation or statement made.

I/We further certify that I/we am/are not owned or controlled by and have no beneficial interest in the sponsor and that my/our compensation for preparing this report is not contingent on the conversion of the property to a cooperative or on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.

(o) If shares in a cooperative corporation are offered for sale pursuant to an offering plan for the alteration or conversion of a building located in the city of New York to cooperative ownership, which was or was substantially used for or will be offered substantially for manufacturing, commercial or warehouse purposes, the sponsor shall send one copy of the offering plan to the New York City Loft Board, 280 Broadway, 3rd Floor, New York, N.Y. 10007.