

13 NYCRR Section 17.2.

Contents of Offering Plan

(a) *Cover.* ~~(1) The lower portion of the outside front cover of every offering plan shall contain the following statement in capital letters printed in boldface roman type of at least 10-point modern type and at least two points leaded:~~

~~(1) The lower portion of the outside front cover of every offering plan shall contain the following statement in capital letters printed in boldface roman type of at least 10-point modern type and at least two points leaded:~~

THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL THESE COOPERATIVE APARTMENTS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION CONCERNING THE COOPERATIVE APARTMENTS IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY APARTMENT. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.

Formatted: Indent: Left: 36 pt

(2) There shall be set forth on the outside front cover page of every plan of cooperative organization the following information:

- (i) the amount of money to be raised if all apartments are sold;
- (ii) the name and address of the cooperative corporation (which shall not be a general name for several co-ops, but the specific name of the corporation whose stock is being offered);
- (iii) the approximate date of the proposed first offer to the public. The term of the initial offer is 12 months, commencing on the filing date indicated in the letter from the Department of Law;
- (iv) a listing of the names and addresses of the actual promoters (whether they be builders, general contractors, landowners, etc.), which shall include dummy corporations only at the bottom of such listing (unless such listing is included on the face of the first inside leaf); and
- (v) the names and addresses of the selling agents.

(3) On the inside front cover, or the next immediate page, there shall be printed a table of contents.

(b) *Body of offering plan; informational content.*

(1)(i) If there is no undertaking contained in the offering plan by the offerors or others to return all moneys invested in the offering in the event of the failure or discontinuance of the promotion, the following language shall be employed in the offering plan in italics:

If insufficient funds are raised to complete this offering, or if the offering is not completed for any other reason, you may receive back only part of your investment, not your full investment.

(ii) If the promoters reserve the right to change the price of any apartment without substantial limitation, then such fact and the effects thereof shall be set forth within the plan and such fact must be included in easily readable, bold print on the front cover of the offering plan. And in such case, the front page statement shall be as follows:

“The prices for these apartments may be changed from time to time during this offering, so that prior or subsequent purchasers may pay or may have paid less or more than present subscribers for similar apart-

ments. The effect of such is set forth on page [indicate page].”

(iii) And above the price schedule, in such case, there shall be the statement:

“See page [indicate page] for conditions applicable to these prices.”

(2) Each offering should contain a fair summary of material relevant to the particular offering. Each offering plan should be viewed with respect to the special nature of that particular offering. The following factors, in addition to those facts and representations required by subdivision (1)(b) of section 352-e of the New York Real Estate Syndicate Act, should be considered with respect to every offering of cooperative apartments. However, the necessary addition of other factors shall depend on the nature of the particular offering. Thus, for example, type of “landfill” should be included in developments on swamp or other marginal lands, or where existing buildings in the area have been troubled by excessive settling, etc.

(i) A description of the premises and locality, including but not limited to:

(a) The surrounding neighborhood, growth and changing phases. The aforesaid shall include, for example, in new developments or in outlying areas: shopping facilities in actual existence; schools actually existing or under actual construction; transportation facilities in actual existence; the zoning of the immediate adjacent areas surrounding the existing building or the building to be constructed.

(b) With reference to any swimming pools which are not to be owned by the cooperative organization, but to which residents of the cooperative are to be given access under the terms of any proposed or existing agreement with the builder, etc.: the size of the pool in existence or to be constructed; the type of construction; the name of the contractor who built or will build such pool; the proposed fee to be charged for the use thereof; residence restriction or priority on use of pool; and the date set forth for final completion and the availability of the finished pool.

(ii) The assessed valuation and tax rate for the past two years, also indicating the approximate date for each assessment; if new construction, the fact that the assessment is open for determination by the government units involved, and will affect any projection now made of real estate taxes.

(iii) Attached to and made a part of the plan of cooperative organization, there shall be a concise separate schedule of the description of the land, buildings, apartments and equipment to be owned by the cooperative corporation, which shall include detailed information concerning those factors pertinent to the particular type of offering. Examples of factors to be considered, where relevant are: type of landfill; the general nature of structure (concrete, steel, etc.); exterior and interior walls and facing; floors and ceilings; bathrooms; painting and papering; roof; insulation and heating; windows and doors; kitchen equipment; patios, sun decks, terraces, etc.; hardware and lighting fixtures; ventilators and air conditioning; basement; water supply (including name of company servicing area); sanitary sewage system, plumbing and storm water disposal; swimming pool, boat mooring and other recreational facilities (if such facilities are to be owned by cooperative organization, full information as to the size, type of construction, name of contractor and scheduled date of completion); TV antenna; landscaping; parking and garaging; laundry facilities; public halls, stairways, entrances and exits; elevators; disposal facilities; service personnel and duties; storage space per apartment and general storage facilities; special sources of income for the cooperative organization. Irrespective of above, where all or most of the prospective purchasers have been in actual residence in the premises for several years (as in the case of rent-controlled conversions), emphasis should be on present condition of premises, including deficiencies probably unknown to occupants, rather than description of material make-up visually obvious to each resident.

(iv) Date of construction or scheduled completion of construction.

(v) Date present owner acquired property.

(vi) Type of deed to be conveyed.

(vii) The financial details: the terms of all institutional and other financing, including rate of interest, method of amortization (and whether self-liquidating), amount of each mortgage, rights pertaining to prepayment, the names and addresses of all present and prospective holders of relevant mortgages and the status of all commitments, a description of any governmental mortgage, insurance or guaranty; the necessity for future refinancing of “balloon-type” mortgages, if applicable, and the concurrent problem of additional assessments.

(viii) A separate schedule including: identification of each apartment; number of rooms and baths in each; the allocation of shares; the stock price per apartment; the estimated annual expense and maintenance per share, per apartment and per total of all apartments.

(ix) Miscellaneous expenses incurred or to be incurred in effecting the offering, including a breakdown of selling commissions, realty brokerage fees, legal expenses, accounting fees, mortgage placement and processing fees, advertising expenses, special payments to any person or firm for any services, counsel or other reason relating to the offering and not otherwise covered by this Part. Insofar as legal and accounting fees are concerned, the aforesaid relates only to amounts paid by the cooperative corporation, which fees may be grouped together with other expenses, in a reasonable manner, where the individual fees are not paid to any of the promoters or firms associated with them. A “promoter” for this purpose is not meant to include members of any law firm merely used to fill cooperative corporation offices on a temporary basis.

(x) The names of the recipients of the expenditures set forth in the preceding subparagraph and the relationship, if any, directly or indirectly, to any of the promoters.

(xi) The approximate amount of any inspection fee to be paid to any government agency for physical inspection or appraisal of the property (FHA, NYS Retirement Fund, etc.).

(xii) A breakdown of projected maintenance (including labor) charges, including: the projected totals for itemized expenses and the basis thereof (whether based on the figures of the previous owner, promoter's estimate, etc.) indicating the specific qualification of all persons making such projections and the basis upon which the projections are made; specific coverage of “maintenance charges”, and whether it includes utilities, telephone, garage, rights to recreational facilities (such as swimming pools); whether the projection is based on joint contracting not obligatory by proprietary lease agreement; if the cooperative corporation is only one of several in the same development area, whether the projected charges are based on projections made for prior offerings; and if so, whether such prior projections have proved accurate; whether the applicable tax assessment has been made, and if not, how the real estate taxes and other relevant taxes have been projected; and whether the projection is the work of, or has been approved by any government agency (such as FHA).

(xiii) Promoters' (including builders') profits are specifically required by [section 352-e of the General Business Law](#). The profits of each promoter (including all dummy entities, nominees, agencies, or other intermediaries subject to his control, directly or indirectly) shall be given or projected with conditioning language where the exact profit cannot be given. In the latter case, the maximum possible profit should be projected with a summary of the many conditions that may affect the eventual profit or loss. Where, however, part or all of the promoters' profits come solely from the sale or other transfer of land, building or interest therein, the original cost thereof and resulting profit need not be given if the particular promoter has held continuous control of such ownership or interest for three years prior to the proposed first offering of cooperative apartments.

(xiv) Provisions made for units unsold at the time the cooperative takes title (including the name of the person to whom such reserved units may be transferred, whether or not they will be held by a nominee, the obligations assumed by such holder, any rights and restrictions which have been imposed on the selling price of reserved units, and the voting position relative to such reserved units).

(xv) The description of major concessions to commercial tenants or purchasers or other transferees of apartments. For all conversions of existing rent controlled buildings in New York State, there shall be included a general summary in a short paragraph of essential provisions of state or local statutes and regulations which

govern the rights of the tenants in occupancy not wishing to participate in the cooperative venture and the procedures necessary for the cooperative or nonoccupant purchaser to acquire possession from such tenants.

(xvi) The nature of any contractual obligations or bonds, whether in writing or otherwise, and conditions or limitations attached thereto. The word "guarantee" should be avoided, because of its misleading nature.

(xvii) A projected statement of income and expenses for the first full year of operation by the cooperative organization with identification of the source of such projection and the basis thereof. If any such figures are expected to change in the following year or years, it shall be so stated.

(xviii) Whether or not a letter of adequacy for the projected maintenance charges has been issued by the selling agent, managing agent or any other source.

(xix) If the cooperative organization itself has contracted new construction, a schedule of payments to the builder or contractor and indication whether there will be any certification prior to the disbursement of money at various stages of completion.

(xx) Any existing law suits or other proceedings against the cooperative organization, any promoter, the managing agent, the sales agent or any other person or firm connected with the offering, which could materially affect this offering.

(xxi) Whether or not there shall be distributed to stockholders any or all of the following annually: a tax deduction statement, an annual report of total corporate affairs, including a balance sheet and profit and loss statement certified by an independent certified public accountant (required by [section 352-e of the General Business Law](#)); and a notice of the holding of an annual stockholders meeting for the purpose of election of a board of directors.

(xxii) A summary of all contracts, appointments, agreements and binding obligations made by promoters (their nominees or dummies) that will be binding upon the cooperative organization after it is actually tenanted, setting forth the full details thereof, including the length of time of the obligations or arrangements and the reasons why binding agreements were made for the purpose involved (include garage concessions, laundry concessions, managing agent contracts, etc.), before the actual tenant stockholders could act upon these matters.

(xxiii) In a new construction, whether there will be a completion bond furnished by the builder and, if so, the relevant terms thereof; also the estimated date of beginning of construction, the estimated date of completion of construction, the estimated date when occupancy will be permitted and the method of determining when the building will be completed.

(xxiv) A summary of the major terms of the proprietary lease, including: relationship of stock rights to lease rights; the rights of possession and use of premises; voting rights; rights to sublet or assign and the conditions relative thereto; provisions in the event of default and nonpayment of maintenance charges, restrictions on the cancelability of lease; the duration of the lease. The inclusion in an offering plan of a true copy of the proprietary lease will ordinarily substantially reduce the need for greatly comprehensive detail in the summary portion of the offering plan.

(xxv) The terms governing deposits by prospective shareholders.

(xxvi) A summary of important features of ground leases involved in the cooperative venture, including an explanation of rights and obligations on the expiration date of any such leases.

(xxvii) A full description of the rights and obligations of the cooperative and management under any agreement made with a managing agent, including: the assignability and cancelability of the management agreement by either side; the duration of the agreement and renewability provisions, if any; fees paid to and other profits of the

managing agent; whether the managing agent is or will be bonded; any relationship between managing agent or any of its officers and any promoter of the cooperative venture.

(xxviii) A special risk section that, if applicable, must be on a separate page, immediately following the table of contents. All features of a plan which involve significant risk or will disproportionately or unusually affect maintenance charges or obligations of tenant shareholders in future years of cooperative operation must be conspicuously disclosed and highlighted. A brief description of the risk should be given in this section and a more thorough description should be given in a referenced later section. Questions as to whether a risk should be highlighted in this section should be resolved in favor of inclusion. Special risks include, but are not limited to, the examples set forth below:

(a) If the subscription agreement is not contingent on obtaining financing, the purchaser's obligations to pay the balance of the purchase price without regard to the availability of financing and purchaser's maximum loss upon failure to pay the balance of the purchase price must be explained.

(b) If a mortgage has a balloon payment that is due in less than 10 years after the anticipated date of closing, the risks and costs of refinancing should be discussed.

(c) If any nonresidential lease may generate less income than the *pro rata* share of expenses attributable to the leased space now or in the future, or if the ratio of income generated by the lease to the share of expenses fairly attributable to the leased space may decline in the future, the potential burden to the apartment corporation should be highlighted and estimates of expenses and income for the lease term should be fully disclosed.

(d) If any nonresidential lease does not give the apartment corporation control over the future use of the leased space, the possibility that the future use could be objectionable to the apartment corporation should be explained.

(c) *Exhibits required.* The offering plan submitted to the Department of Law must contain the exhibits described below and provide that all exhibits are part of the offering plan required by General Business Law article 23-A and subject to the requirements and sanctions of the law. Whenever an exhibit document is marked "Original" (orig.), it means that all copies must be duly executed, original documents. Whenever a document is marked "copy", it means that a true and complete copy of the document should be included. Two copies of parts A (Certifications) and B (General) of the exhibits are required, indexed with numbered tabs and secured in a folder so that documents can easily be removed. In addition, conformed or photostatic copies of the part A certifications should appear in the body of the plan. Inapplicable exhibits should be expressly noted and explained in the transmittal letter.

(1) Part A of the exhibits (Certifications) shall include:

(i) (A-1)--certification by sponsor and sponsor's principals (orig.); and

(ii) (A-2)--certification by sponsor's engineer or architect (orig.).

(2) Part B of the exhibits (General) shall include:

(i) (B-1)--copy of title company report, dated within 30 days of submission;

(ii) (B-2)--copy of proposed management agreement;

(iii) (B-3)--copies of all contracts which will become binding on the apartment corporation, for \$2,500 or more per year, such as service, union, washing machine, television antennae, cable television, snow removal, landscaping, security, exterminating, elevator, heating and air conditioning contracts;

(iv) (B-4)--copy of letter from insurance company or its authorized agent, stating proposed insurance coverage [including fire liability and officers' and directors' liability (if any)] and amounts, the applicable tariff classifica-

tions and the annual premium or premiums and a copy of an opinion from a licensed insurance broker appraiser concerning adequacy of coverage to avoid being a coinsurer and/or the adequacy of coverage to replace the building;

(v) (B-5)--copies of [G.B.L. section 352-b](#) designations of Secretary of State as agent (for out-of-state issuers, sponsors, principals and selling agents);

(vi) (B-6)--worksheets which set forth bases for projections and method and calculations used to prepare first-year operating budget;

(vii) (B-7)--copy of certificate of incorporation and receipt from Secretary of State;

(viii) (B-8)--copy of specimen stock certificate;

(ix) (B-9)--copy of mortgage commitment (if any);

(x) (B-10)--copy of any mortgage and bond or note that will be a lien after closing;

(xi) (B-11)--copy of proposed purchase money mortgage and note (if any);

(xii) (B-12)--copies of all professional and commercial leases;

(xiii) (B-13)--certified rent roll including the name of each tenant, apartment number, rent, term and termination date of lease, and status under any rent regulatory laws for the month in which the offering plan was submitted to the Department of Law. Indicate vacant apartments and the date on which each such apartment first became vacant. Include an affidavit setting forth the identity of any tenants who are related by blood, marriage or adoption to the sponsor or selling agent, or who are principals, employees, shareholders, limited partners or business associates of the sponsor or selling agent;

(xiv) (B-14)--copy of contract to acquire property if not currently owned by sponsor;

(xv) (B-15)--copy of the mortgage and note or bond required by a sponsor if sponsor is offering financing, or required by a mortgage lender procured by sponsor, together with any other document which significantly affects a purchaser's obligations for financing offered or procured by sponsor. If the documents are not available at the time of submission to the Department of Law, so indicate and forward when available;

(xvi) (B-16)--for cooperatives located outside of New York, copy of statutes and regulations governing cooperatives and evidence of compliance with that law;

(xvii) (B-17)--copy of contract of sale or exchange between the sponsor and the apartment corporation that conforms to the contract described in the offering plan; and

(xviii) (B-18)--other material document(s), each of which should be described in the transmittal letter, *e.g.*, copy of regulatory agreement with a government agency.

(3) Two copies of part C (Engineering) of the exhibits in a separate folder similarly secured and indexed. Part C of the exhibits shall include:

(i) (C-1)--architect's or engineer's detailed description of the physical aspects of the cooperative with the architect's or engineer's stamp and original signature; and

(ii) (C-2)--copy of certificate of occupancy, if available.

(4) Two copies of the exhibits, part D (Fees, and other information) in a separate folder similarly secured and indexed. Part D of the exhibits shall include:

(i) (D-1)--personal or certified checks for one half the filing fees due under [G.B.L. section 352-e\(7\)\(a\)](#) and the entire amount of the fees due under [G.B.L. section 359-e\(5\)](#), both payable to the New York State Department of Law and placed within an envelope together with the form of receipt issued by the Department of Law;

(ii) (D-2)--signed M-10 forms, registration for broker-dealer, for the selling agent(s) (orig.), and signed M-2 forms, salesman statement, for all individual employees who act as salesmen for selling agents (orig.). Forms do not have to be submitted if currently valid registration forms are on file with the Department of Law from prior public offerings;

(iii) (D-3)--signed M-10 form(s), registration for broker-dealer, for all principals of the sponsor (orig.). Forms do not have to be submitted if currently valid registration forms are on file with the Department of Law from prior public offerings;

(iv) (D-4)--signed RI-1 form, registrant information form(s) concerning prior convictions, judgments, administrative actions, bankruptcy, employment and business affiliations for all principals of the sponsor (orig.);

(v) (D-5)--proof of financial responsibility of sponsor (certified sponsor's statement or affidavit of sponsor's net worth) and sponsor's certification that its net worth is sufficient to meet sponsor's unsecured obligations under the plan including sponsor's obligations for unsold shares (orig.);

(vi) (D-6)--an affidavit from sponsor and principals of sponsor, as defined in section 21.1(c) and (d) of this Chapter, stating whether sponsor and principals of sponsor have taken part in public offerings of cooperative interests in realty including condominiums in or from New York which were initially offered during the preceding five years. State the address of the realty and approximate date of the closing for cooperatives and the first closing for condominiums;

(vii) (D-7)--exemption application pursuant to [G.B.L. section 359-e](#); and

(viii) (D-8)--completed statistical information card(s) available from the Department of Law.