

13 NYCRR Section 17.8.

Determinations of Elections by Eligible Senior Citizens, Eligible Handicapped Persons and Eligible Disabled Persons

(a) *Election.* A nonpurchasing tenant may elect not to purchase as an eligible senior citizen or eligible disabled person as defined in [General Business Law section 352-eeee](#) or as an eligible handicapped person as defined in [General Business Law section 352-eee](#) within 60 days from the presentation date by completing the applicable form, SH-1, SH-2 or SH-3 prescribed by the Department of Law and included in the offering plan immediately preceding the introduction page, signing the election form and having the signature notarized and personally delivering it to the named sponsor or agent at a location specified by the sponsor in the plan or by mailing it by certified or registered mail, return receipt requested to the named sponsor or agent at an address specified by the sponsor in the plan.

(1) An election form is timely if it is personally delivered or postmarked before midnight of the 60th day after the presentation date subject to statutory rules of construction.

(2) The sponsor or agent shall acknowledge receipt of the election form and promptly return an acknowledged copy to the nonpurchasing tenant.

(b) *Determination of disputed elections.* A sponsor who disputes the election by a nonpurchasing tenant to be an eligible senior citizen, an eligible handicapped person or an eligible disabled person, must apply to the Department of Law for a determination by the Department of Law of such person's eligibility within 30 days following receipt of the election form.

(1) The application is timely if it is personally delivered to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, N.Y. 10271, during business hours or postmarked before midnight of the 30th day following receipt by the sponsor or agent of the election form.

(2) An untimely application will not be entertained, in which case the tenant whose eligibility is disputed will be deemed eligible under the statute.

(3) The application shall include the following:

(i) one copy of the election form;

(ii) one original and one copy of an affidavit, sworn to by a person having knowledge of the facts, setting forth the following:

(a) that the application is timely in accordance with this Part;

(b) the specific ground(s) for disputing the election; and

(c) the basis for the affiant's statement that the tenant is not an eligible senior citizen, eligible handicapped person or eligible disabled person; and

(iii) two copies of all supporting information or documentation in the possession of the sponsor or the affiant bearing on eligibility.

(4) The application must be complete at submission. The Department of Law need not consider any additional or supplemental information subsequently submitted by sponsor.

(5) The Department of Law shall notify the person that the sponsor disputes the person's election to be an eligible senior citizen, eligible handicapped person or eligible disabled person and shall request the person

to submit an answer to the application on a form prescribed by the Department of Law and support the answer with information or documentation bearing on the specific grounds raised by sponsor to dispute the election. The answer and supporting documentation must be submitted to the Department of Law within 10 days of the date of the notice from the Department of Law. Failure to submit an answer shall not preclude the Department of Law from issuing a determination.

(6) The Department of Law may, in its discretion, require the appearance of any witness for the purpose of obtaining oral testimony on the specific grounds for disputing the election. A witness shall be notified that he may be represented by counsel.

(7) On the basis of the information contained in the election form, the sponsor's application, the answer, if any, and oral testimony, if any, the Department of Law shall issue a determination of eligibility. The determination shall become final three days after the Department of Law mails notice of the determination to the parties.

(c) Sale of units or shares allocated to units occupied by eligible senior citizens, eligible handicapped persons and eligible disabled persons.

(1) A unit or shares allocated to a unit occupied by an eligible senior citizen, eligible handicapped person or eligible disabled person or a person seeking exemption as an eligible senior citizen, eligible handicapped person or eligible disabled person, may not be offered to a third party during the exclusive purchase period granted to tenants in occupancy in the offering plan and any amendments thereto unless the sponsor, in writing, waives any right to challenge the eligibility of the occupant of the unit.

(2) Where the sponsor has disputed the eligibility of a person seeking an exemption, the unit or shares allocated thereto may not be offered to a third party for 30 days after the Department of Law has made its determination of eligibility. If a proceeding to review such determination is commenced under article 78 of the Civil Practice Law and Rules in a court of competent jurisdiction, the unit or shares allocated thereto may not be offered to a third party for 30 days after notice of entry of the final order in such proceeding. If such final determination or order finds that the person seeking the exemption is not an eligible senior citizen, eligible handicapped person or eligible disabled person, such person may purchase the unit or shares allocated thereto for a period not to exceed 30 days following such final determination or order on the most favorable terms offered to tenants in occupancy at any time prior to such final determination or order; provided, however, that if such final determination or order includes a finding that the exemption was sought fraudulently or made in bad faith, such person may purchase the unit or shares allocated thereto as provided in paragraph (3) of this subdivision.

(3) Notwithstanding an election not to purchase, an eligible senior citizen, eligible handicapped person or eligible disabled person may purchase the unit or shares allocated thereto on the terms then offered to tenants in occupancy.