

13 NYCRR Section 18.5.

Amendments

(a) *General.* Documents to supplement or amend an offering plan (collectively, “amendments”) shall be deemed part of the offering plan and shall meet the following requirements:

(1) If the offering plan does not comply with [G.B.L. section 352-e\(1\)\(b\)](#) or section 18.1(b) of this Part due to change of circumstances, the passage of time or any other reason, the offering plan must be amended promptly.

(2) An amendment must include a representation that all material changes of facts or circumstances affecting the property or the offering are included, unless the changes were described in prior amendment(s) submitted to but not yet filed with the Department of Law.

(3) Except as provided in subdivision (d) of this section, an amendment to an offering plan shall be filed on the date indicated in the letter issued by the Department of Law stating that the amendment has been filed, and not sooner.

(4) Amendments that have been filed with the Department of Law must be attached to the inside front cover of the offering plan before the amended plan is distributed to the public. The cover of the offering plan must be stamped: “This plan has been amended. See inside cover.” Any revisions, additions or deletions of specific language in the offering plan should reprint a sufficient portion of the paragraph from the offering plan as revised, so that the revised portion of the offering plan may be understood easily. An offering plan that has been amended extensively may be rewritten to incorporate the amendments into the body of the plan, and must be rewritten if required by the Department of Law.

(5) If there is a substantial amendment to the offering plan that adversely affects the purchasers, sponsor must grant subscribers a right of rescission and a reasonable period of time, that is not less than 15 days after the date of presentation to exercise the right. Sponsor must return any deposit or downpayment promptly to subscribers who rescind. This section shall not limit sponsor's obligation to comply with provisions in applicable laws or regulations that grant tenants broader rights.

(6) If an offering plan is substantially amended prior to the initial closing of title to shares to tenants, the exclusive right to purchase time periods shall be extended, as follows:

(i) If the presentation of the substantial amendment occurs during the initial exclusive right to purchase period, such period shall terminate at the later of 30 days after presentation of the substantial amendment or the expiration of the original exclusive right to purchase period.

(ii) If the presentation of the substantial amendment occurs after the expiration of the initial exclusive right to purchase period, the substantial amendment must grant to all tenants who had the right to purchase during the initial period a new exclusive right to purchase on the terms offered in the amendment for a period of not less than 30 days from the date of presentation.

(7) For the purposes of this section, substantial amendment shall include, but not be limited to: an increase or decrease in the mortgage amount or cash purchase price, an increase or decrease in the working capital or reserve fund, agreement by the sponsor to make additional repairs or improvements, or to repurchase apartments, or the offer of new or better terms for financing the purchase price of an apartment.

(8) Amendments must be served on offerees in accordance with section 18.1(d) of this Part, unless the Department of Law consents to service on a specified class or classes of offerees.

(b) *Procedure for submission of amendments.* Amendments must be mailed to or submitted during business hours to

the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, N.Y. 10271. Include the following when submitting an amendment to the Department of Law:

- (1) A transmittal letter, signed by the attorney who prepared the amendment, that:
 - (i) states the date the offering plan was filed and the Department of Law file number;
 - (ii) identifies the subject amendment in numerical order;
 - (iii) states whether prior amendments had been submitted to but not yet filed with the Department of Law; and
 - (iv) identifies, if possible, the attorney in the Department of Law who reviewed the most recent submission; and
 - (v) gives the current status of the offering plan:

(a) identifies it as either an eviction or a noneviction plan; and

(b) states whether or not the plan has been declared effective or if the closing has occurred; and

(c) states if there are any outstanding exclusive purchase periods or rescission periods.

(2) Three copies of the amendment to the offering plan.

(3) Check(s) (certified or uncertified) for filing fee(s) under [G.B.L. section 352-e\(7\)](#), payable to New York State Department of Law, stapled or clipped to the transmittal letter.

(4) One copy of the offering plan, including all filed amendments.

(5) One form RS-2. If the amendment is submitted before the closing, or if the amendment discloses the events that took place at the closing, the form must be signed by the sponsor. If the amendment is submitted after the closing, the form must be signed by one or more holders of unsold shares, and must include the sponsor or principals of sponsor if the sponsor or principals are holders of unsold shares.

(c) *Amendments extending term of offering plan.* Pursuant to section 18.3(a)(9) of this Part, the term of the initial offer is 12 months, commencing on the date indicated in the letter issued by the Department of Law stating that the plan is filed. Prior to the filing of a post-closing amendment pursuant to subdivision (f) of this section, an amendment other than a price change amendment extends the term of the offering for an additional six-month term from the date of filing of the amendment, unless the term is shorter under [G.B.L. section 352-eee](#) or [352-eeee](#) which limits the aggregate offering period prior to effectiveness, or by the provisions of the amendment. After the post-closing amendment is filed pursuant to subdivision (f) of this section, any subsequent amendment other than a price change amendment extends the term of the offering for an additional 12-month term from the date of filing of the amendment. A price change amendment submitted pursuant to subdivision (d) of this section does not extend the term of the offering. In the absence of any amendments, an extension of the term must be made by amendment before the end of the then current term and must comply with the provisions of this section and the requirements set forth below.

(1) The amendment must disclose all material changes such as decreases or increases in maintenance charges or a material increase in an expense such as labor, utilities and real estate taxes.

(2) If the closing has occurred, the amendment:

(i) must state the number of unsold shares remaining and identify the appurtenant dwelling units; and

(ii) must state the extent to which the sponsor controls the board of directors. If the sponsor is still in control, state the requirements of the offering plan regarding the relinquishment of control. If the sponsor has relinquished control, state the date when control was relinquished.

(3) For all offering plans in which the sponsor or holder(s) of unsold shares owns in the aggregate more than 10 percent of the shares, the amendment must disclose:

(i) The aggregate monthly maintenance payments for the units appurtenant to the unsold shares;

(ii) The aggregate of the monthly rents currently payable from tenants of units appurtenant to unsold shares, or a reasonable approximation thereof. A current rent roll (as of a date within 60 days prior to submission) must be submitted with the amendment as a back-up document;

(iii) Financial obligations to the cooperative which will become due within 12 months from the date of the amendment (other than payment of maintenance) including, but not limited to, reserve and working capital fund payments and payments for repair and improvement obligations;

(iv) A list of all unsold shares which have been pledged as collateral for loan(s) or otherwise represent security for financing arrangements; the identity and address of the lender(s); the maturity date of the loan(s); and payment obligations under the loan(s), stated on a monthly basis where possible;

(v) The means by which any payments or obligations set forth pursuant to subparagraphs (i), (iii) and (iv) of this paragraph will be funded. If the funding source is stated as income from protected sales, disclose other sources of funding, if any, that will be utilized if such projected sales are not made;

(vi) A statement as to whether the sponsor or holder(s) of unsold shares is current on all financial obligations to the cooperative, including, but not limited to, payment of maintenance, reserve or working capital fund payments, assessments, and payments for repairs or improvements promised in the offering plan. In addition, state whether the sponsor or holder(s) of unsold shares is current on payments of underlying mortgages and all obligations under financing arrangements for which unsold shares have been pledged as collateral. If the sponsor or holder(s) of unsold shares is not current on its obligations, state the date and amount of each delinquency and discuss the effect of such delinquency on the cooperative. Also state whether the sponsor or holder(s) of unsold shares was current on all such obligations (*i.e.*, had satisfied the obligation by the expiration of any grace period) during the 12 months prior to the filing of the amendment, and if not, state the details of any delinquency;

(vii) A list of all other cooperatives, condominiums and homeowners associations, by the Department of Law file number and address, in which the sponsor, general partner or principal of the sponsor, or holder(s) of unsold shares, as an individual or as general partner or principal of the sponsor or holder, owns more than 10 percent of the shares or units. Disclose that offering plans for these buildings are on file with the Department of Law and are available for public inspection;

(viii) A statement as to whether the sponsor and all principals of the sponsor, and all holders of unsold shares, as individuals, general partners or principals of the sponsor or holder, are current in all obligations set forth in subparagraph (vi) of this paragraph in other cooperatives, condominiums and homeowners associations in which they own more than 10 percent of the units as individuals, general partners or principals. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(ix) If the sponsor or holder(s) of unsold shares own in the aggregate 49 percent or more of the shares, the

percentage of such ownership and the consequences on the ability of purchasers to obtain institutional financing for their purchase and on any future resale of their apartment. The following model language may be used:

Certain banks and other institutional lenders are imposing various restrictions on extending loans for the purchase of shares and units in cooperatives in which unsold shares constitute 49 percent or more of the total share and/or units. Such restrictions include requiring that a certain percentage of shares/units, usually 51 percent or more, be sold to owner-occupants before a lender will consider making a loan, regardless of the purchaser's credit worthiness. Thus, a purchaser may experience difficulty obtaining a loan in a building where the percentage of shares/units held by the sponsor or holders is 49 percent or greater. It may also be difficult for a purchaser to resell a unit if prospective purchasers are unable to obtain a loan because of the same minimum sales and occupancy requirements.

(4) An offering plan must be amended immediately if any delinquency required to be disclosed by subparagraph (3)(vi) or (viii) of this subdivision has existed for 15 days, or if there has been a material change in the financial position of the sponsor or holder of unsold shares which may jeopardize its ability to meet its obligations to the cooperative.

(d) *Price change amendments.* Any amendment proposing to change any offering price is subject to the requirements set forth below and must be consistent with section 18.3(h) of this Part.

(1) Notwithstanding paragraph (a)(3) of this section, if the amendment is limited solely to price changes and no prior amendment has been submitted to but not yet filed with the Department of Law, the amendment shall be deemed filed when submitted to the Department of Law.

(2) If the amendment contains price changes and supplements or amends any other part of the offering plan, the amendment shall be filed on the date indicated in the letter issued by the Department of Law stating that the amendment has been filed, and not sooner.

(3) The transmittal letter for a price change amendment must be accompanied by a completed copy of form C-11 as promulgated by the Department of Law.

(e) *Amendment declaring a plan effective.*

(1) The amendment to declare a plan effective must conform to the effective date section of the offering plan. If the plan was declared effective by notice, the amendment must refer to the notice and the date of the notice. No closing shall be held until this amendment is accepted for filing by the Department of Law.

(2) If the plan is presented pursuant to any law that requires that a specific percentage of bona fide tenants in occupancy subscribe before the plan may be declared effective, the amendment must state the percentage of bona fide tenants in occupancy who have subscribed and are being counted for purposes of declaring the plan effective. The amendment must also state how such percentage was calculated, including the number of units in the base, the number of tenants or units subtracted from the base, the basis in law for the subtractions, and the names of tenants subtracted from the base and their apartment numbers.

(3) If the plan is not presented pursuant to a law that requires that a specific percentage of tenants subscribe before the plan may be declared effective (including noneviction plans pursuant to [G.B.L. section 352-eeee](#)) the amendment shall state:

(i) the percentage of units being offered for which the sponsor or apartment corporation has accepted subscription agreements;

(ii) the number of subscriptions from bona fide tenants in occupancy; and

(iii) the number of subscriptions from bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant.

(4) Subscription agreements that are conditional on obtaining financing or a financing commitment may be counted for purposes of declaring the plan effective.

(5) For the purpose of computing the percentage of bona fide tenants in occupancy of dwelling units for which subscription agreements have been executed, a fractional percentage shall be rounded off to the next lower whole number.

(6) The amendment shall include, as an exhibit, an affidavit from sponsor that shall set forth the following information:

(i) the date the plan was accepted for filing by the Department of Law;

(ii) the presentation date of the plan;

(iii) a representation that all subscribers who are counted for purposes of declaring the plan effective:

(a) are bona fide purchasers;

(b) are not purchasing as an accommodation to, or for the account or benefit of the sponsor or principals of sponsor; and

(c) have duly executed subscription agreements and have paid the full down payment as required in the Procedure to Purchase Section of the offering plan;

(iv) a representation that only subscription agreements assigned or transferred in compliance with section 18.3(q) of this Part have been counted for purposes of declaring the plan effective;

(v) the following information with respect to any subscriber who is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or who is related to the sponsor or the selling agent or to any principal of the sponsor or the selling agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner.

(a) the identity of the subscriber;

(b) the identity of the unit to be purchased;

(c) the nature of the relationship; and

(d) if the unit is occupied, the name of the occupant.

(vi) If the plan is not presented pursuant to a law that requires a specific percentage of tenants subscribe before the plan may be declared effective (including noneviction plans pursuant to [G.B.L., section 352-eeee](#)), include in sponsor's affidavit:

(a) a list of the subscribers who are being counted to meet the minimum percentage of units that are needed under the terms of the plan to declare the plan effective. For each subscriber, indicate the identity of the unit to be purchased; the date of the subscription agreement; the amount of the deposit paid if for any reason it is less than the amount or percentage stated in the offering plan, and an explanation of the difference; the date that the deposit was

paid if the date is different from the date of the subscription agreement; and whether the subscriber is a bona fide tenant in occupancy, or a bona fide purchaser who represents that he or she or one or more members of his or her immediate family intend to occupy the dwelling unit when it becomes vacant. If the unit was vacant on the filing date, state whether the subscriber has taken physical occupancy;

(b) a representation that all subscription agreements counted towards effectiveness were from either bona fide tenants in occupancy or bona fide purchasers who represent that they or one or more members of their immediate family intend to occupy the dwelling unit when it becomes vacant;

(c) a representation that no subscriber counted for purposes of declaring the plan effective is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or is related to the sponsor or the selling agent or to any principal of the sponsor or the selling agent by blood, marriage or adoption, or as a business associate, an employee, a shareholder or a limited partner. Such a subscriber, other than the sponsor or a principal of the sponsor, may be excepted from the foregoing representation and included in the count only if the sponsor has submitted proof satisfactory to the Department of Law establishing that the subscriber is either a bona fide tenant in occupancy or a bona fide purchaser who represents that he or she or one or more members of his or her immediate family intends to occupy the dwelling unit when it becomes vacant.

(vii) If the plan is presented pursuant to any law that requires that a specific percentage of bona fide tenants in occupancy subscribe before the plan may be declared effective, include:

(a) a list of subscribers who subscribed, prior to service on the tenants of any notice declaring the plan effective, and who are being counted to meet the minimum percentage that is needed to declare the plan effective. For each subscriber, indicate the identity of the unit to be purchased; the date of the subscription agreement; the purchase price if it differs for any reason from the price stated in the offering plan, and an explanation of the difference; the status of each tenant-subscriber under any applicable rent law; the amount of the deposit paid if for any reason it is less than the amount or the percentage stated in the offering plan, and an explanation of the difference; and the date that the deposit was paid if the date is different from the date of the subscription agreement. If the subscriber's tenancy commenced within the preceding three years, state the approximate date that the tenant actually took physical occupancy;

(b) a representation that the subscribers who are counted for purposes of declaring the plan effective:

(1) signed subscription agreements without fraud or duress, and with no discriminatory inducement; and

(2) do not include any subscriber who is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or is related to the sponsor or the selling agent or to any principal of the sponsor or selling agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner. Such a subscriber, other than the sponsor or a principal of the sponsor, may be excepted from the foregoing representation and included in the count only if the sponsor has submitted proof satisfactory to the Department of Law establishing that the subscriber is a bona fide tenant in occupancy.

(viii) Whether sponsor has any information that any tenants have executed a "no-buy" pledge with respect to the offering.

(7) In addition to the submissions required by subdivision (b) of this section, an amendment declaring a plan effective shall be accompanied by the following:

(i) If the plan was declared effective by notice, a copy of the notice and an affidavit of service of the notice on all tenants and purchasers.

(ii) Copies of all subscription agreements of purchasers of shares of dwelling units occupied by nonpurchasing tenants which shall include an agreement by the purchaser to comply with the requirements of section 18.3(n)(3)-(4) of this Part, if applicable.

(iii) If the plan is not presented pursuant to a law that requires a specific percentage of tenants subscribe before the plan may be declared effective (including noneviction plans pursuant to [G.B.L. section 352-eeee](#)) an amendment declaring the plan effective shall be accompanied by all subscription agreements being counted towards effectiveness. Subscription agreements of nontenant subscribers being counted towards effectiveness must include:

(a) a representation by the subscriber that he or she or one or more members of his or her immediate family intends to occupy the dwelling unit when it becomes vacant;

(b) a statement identifying the individual(s) who intend(s) to occupy the dwelling until when it becomes vacant; and

(c) a listing by the subscribers of all other subscription agreements in which they made similar representations of intent to occupy.

(iv) If sponsor has granted permission to assign or transfer a subscription agreement, a copy of each assignee's notarized affidavit as described in section 18.3(q) of this Part that the assignee was not procured by the sponsor or the selling agent, and that the assignee or a specified member of the assignee's immediate family intends to personally occupy the dwelling unit.

(8) If the plan is presented pursuant to any law that requires that a specific percentage of tenants subscribe before the plan may be declared effective and subscriptions have been received for less than 150 percent of the number of units necessary to declare the plan effective, include a copy of the first page and the signature page of each subscription agreement and any additional pages that contain any additions, deletions or modifications of the subscription agreement as it appears in the offering plan.

(9) Sponsor must submit to the Department of Law, if requested, copies of subscription agreements and any related documents, including, without limitation, any amendments to or modifications of subscription agreements and evidence of downpayments or other payments received, within five business days after the request is made.

(f) *Post-closing information.*

(1) Sponsor must amend the plan within a reasonable time following the closing, to include the following information. These facts need not be presented in the same amendment.

(i) The date and place of the title closing to the property.

(ii) The amount of the reserve fund, if any, and the account(s) into which the fund was deposited listing the name(s) and branch address(es) of the bank(s).

(iii) The amount of the working capital fund, if any, and the account into which the fund(s) were deposited. If the net closing adjustments are in favor of sponsor, state the amount of the closing adjustments that are in favor of sponsor and how the amount will be paid.

(iv) If any mortgage encumbers the property before closing and also will encumber the property after the closing, include the amount of the mortgage on the closing date.

(v) If there is a contract of exchange for the property between the sponsor and the apartment corporation, calculated the apartment corporation's basis in the property.

(vi) A list of all of the unsold shares held by the sponsor and by the individuals designated by the sponsor as holders of unsold shares, the names and addresses of such designated individuals, the dwelling units ap-

purtenant to their shares, and such additional information as is required for principals of the sponsor by section 18.3(cc)(1), (2), (7) and (8) of this Part.