

13 NYCRR Section 21.5. Amendments

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(a) *General.* Documents filed with the Department of Law to supplement or amend an offering plan previously filed pursuant to this Part and new or amended literature to be employed in connection with an offering (collectively, “amendment[s]”) shall be deemed part of the offering statement and shall meet the following requirements:

- (1) Any amendment submitted for filing to the Department of Law which would be in derogation of purchaser's rights in the offering plan or would abrogate sponsor's obligations under the offering plan must be expressly noted in the transmittal letter accompanying the amendment.
- (2) Except as provided in subdivision (d) of this section, an amendment to an offering plan shall become effective on the date indicated in the letter issued by the Department of Law stating that the amendment has been filed, and not sooner.
- (3) If the offering plan does not comply with section 21.1(b) of this Part due to change of events, the passage of time or any other reason, the offering plan must be amended promptly.
- (4) An amendment must include all material changes of facts or circumstances affecting the property, or the offering unless the changes of fact were described in a prior amendment submitted to but not yet filed with the Department of Law.
- (5) Amendments to offering plans 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 with the revisions to be understood easily.
- (6) Sponsor must grant purchasers a right of rescission and a reasonable period of time to exercise the right and sponsor must return any deposit or downpayment promptly if there is a material amendment to the offering plan that adversely affects the purchasers.
- (7) Amendments must be served on offerees in accordance with section 21.1(e) of this Part.

(b) *Procedure for submission of amendments.* Amendments should be submitted during business hours to the [New York State Department of Law](#), Real Estate ~~Financing Finance~~ Bureau, ~~Department of Law, Two World Trade Center, Room 48-64-120 Broadway, 23rd Floor~~, New York, N.Y. ~~4004710271~~. Each amendment to an offering plan must contain the following components and be in the format below:

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- (1) A transmittal letter, signed by the attorney, who prepared the amendment that:
 - (i) states the date the offering plan was filed;
 - (ii) identifies the subject amendment in numerical order; and
 - (iii) states whether the sponsor had submitted prior amendments that were not yet filed with the Department of Law.
- (2) Three copies of the amendment to the offering plan.
- (3) Personal or certified check(s) for filing fees under [General Business Law, section 352-e\(7\)](#) payable to New York State Department of Law and placed within an envelope together with three copies of the form of receipt issued by the Department of Law.

(4) One copy of the offering plan.

(5) One form RS-2, signed by sponsor.

(c) *Extensions of offering plans.* Pursuant to section 21.3(a)(8) 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. Requests for extensions of time must be made by amendment and must comply with the provisions of this section and the requirements set forth in this subdivision. Prior to the filing of a post-closing amendment, extensions of time may be granted for additional terms, each of which shall be six months. After the post-closing amendment is filed, 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 other 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.

(2) The amendment must state:

(i) the number of unsold shares remaining;

(ii) the status of construction, if any, including a general description of the major work remaining to complete the cooperative; and

(iii) the extent to which the sponsor controls the board of directors if the closing has occurred. 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) In addition, 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 number of units appurtenant to unsold shares owned by the sponsor or holder(s) of unsold shares which are occupied by tenants, if any, and the aggregate of the monthly rents currently payable for such units, or a reasonable approximation thereof;

(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 projected 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 commitments 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; and

(viii) a statement as to whether the sponsor and all principals of the sponsor, and all holders of unsold shares, as individuals or as general partners or principals of the sponsor or holder of unsold shares, 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.

(4) An offering plan must be amended immediately if any delinquency required to be disclosed by section 18.5(c)(3)(vi) or (viii) of this Title 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.* Amendments proposing to change any offering price in an offering plan that was filed pursuant to this Part are subject to the requirements set forth below and must be consistent with section 21.3(h) of this Part.

(1) Notwithstanding paragraph (a)(2) of this section, if the amendment is limited solely to price changes and no prior amendment has been submitted 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 become effective on the date indicated in the letter issued by the Department of Law stating that the amendment has been filed.

(3) If the sponsor has offered or procured financing for purchasers, the sponsor must disclose the effect the change in price will have on the mortgage amount, the monthly mortgage charge and the amount projected as the annual deduction in schedule A.

(4) The transmittal letter for a price change amendment must state:

- (i) the total offering price prior to filing the subject amendment;
- (ii) the amount of fees paid to the Department of Law prior to filing the subject amendment;
- (iii) the total offering price as changed by the subject amendment; and
- (iv) the amount of fees enclosed, if any.

(e) *Amendments declaring a plan effective.* In addition to the submissions required by subdivision (b) of this section, an amendment declaring a plan effective or an amendment disclosing that a notice has been sent to all purchasers

declaring the plan effective shall also be accompanied by a list setting forth the name and address of each purchaser, the unit(s) purchased, the purchase price; and the date the subscription agreement was signed by the purchaser.