

## 13 NYCRR Section 22.1.

### General

(a) *Applicability.* The offering statement or “offering plan” required by [section 352-e of the General Business Law](#) (GBL) for membership in a homeowners association or other property owners association (HOA) that meets the requirements set forth below is subject to this Part, Newly Constructed, Vacant or Non-Residential Homeowners Associations. Residentially occupied HOAs are subject to the disclosure requirements concerning tenants’ rights of Part 18 of this Title and the substantive disclosure requirements of this Part. Those offerings of memberships in an HOA which do not meet the requirements set forth below are subject to Part 17 of this Title if they are not subject to Part 20 or 21 of this Title. Offerings previously filed with the Department of State pursuant to article 9-A of the Real Property Law (RPL) are hereby exempted from the filing required by this Part.

(1) All homes or lots to be sold in conjunction with membership interests in the HOA are completely vacant of individuals residing in the homes or entitled to residential occupancy on the date of submission of the proposed offering plan to the Department of Law or the homes are to be newly constructed. In the case of a newly constructed out-of-state project, the homes may be partially occupied by out-of-state purchasers.

(2) The HOA and the homes or lots to be sold in conjunction with membership interests in the HOA are not organized as a timesharing arrangement.

(3) Members of the HOA will take title in fee simple to a home or lot sold in conjunction with membership interests in the HOA.

(4) The units to be sold in conjunction with membership interests in the HOA are not part of a newly constructed, vacant or non-residential condominium (subject to Part 20 of this Title) or a newly constructed, vacant or non-residential cooperative (subject to Part 21 of this Title).

(5) In the event that any major system, *i.e.*, heating or electric, is so structured that one unit cannot function independently of any other unit, the provisions of the following sections of Part 20 of this Title shall apply in addition to the disclosure requirements contained in this Part unless an exemption pursuant to section 22.1(i) has been requested and granted: section 20.2(c)(5) (exhibits required); section 20.3(a)(2) (cover to include total amount of offering based on aggregate price at which homes or lots are initially offered); section 20.3(d)(4) (pricing of homes); section 20.3(e) (description of property including description of individual homes); section 20.3(g) (Schedule A requirements concerning price and description of individual homes); section 20.3(h) (Schedule B requirements concerning budget); section 20.3(k) (changes in prices and homes); section 20.3(o) (procedure to purchase); section 20.3(q) (effectiveness provision); section 20.3(r) (terms of sale); section 20.3(s) (closing costs and adjustments); section 20.3(t) (sponsor’s obligations with respect to individual homes); section 20.3(w)(6) (insurance coverage on individual homes); section 20.7 (description of the property, including description of individual homes). In making the disclosure required by these provisions of Part 20 of this Title, ignore any references to “condominium” or to article 9-B of the Real Property Law. Also include a representation that the offering prices set forth in Schedule A may be changed only by a duly filed amendment to the plan when the change in price is an across-the-board increase or decrease affecting one or more lines of homes or home models, or is to be advertised, or is a price increase for an individual purchaser. Individually negotiated price decreases may be made without amendment to the plan. The transmittal letter and certifications required by section 22.4 of this Part must include a representation of compliance with the above sections.

(6) Conversions of residential rental developments to ownership of a home and membership in an HOA are subject to the substantive requirements of Part 18 of this Title as modified to be consistent with the disclosures required by this Part.

(b) *Standard of compliance.* An offering plan for an HOA 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;
- (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; or
  - (ii) with reasonable effort could have known the truth; or
  - (iii) made no reasonable effort to ascertain the truth; or
  - (iv) did not have knowledge concerning the representation or statement made.

(c) *Definitions.* As used in this Part:

- (1) *Sponsor* means any person, partnership, joint venture, corporation, company, trust, association or other entity which 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 real estate including interests in an HOA and other cooperative interests in realty. "Sponsor" shall not be deemed to include a selling agent who has complied with [section 359-e of the General Business Law](#) or an attorney or other expert retained by the sponsor solely to render professional advice or opinions in connection with the offering. "Sponsor" shall also be deemed to include offerors of at least three homes or lots which are not purchased for occupancy by the offeror or one or more members of his or her immediate family; such sponsor will be deemed, however, to be a sponsor only in relationship to the homes or lots which such offeror owns and offers for sale.
- (2) *Principal* means each individual sponsor, each general partner of sponsor that is a partnership, each officer, director and shareholder of a corporate sponsor that is actively involved in the planning and consummation of the offering, and every other individual who both (i) owns an interest in or controls sponsor and (ii) actively participates in the planning and consummation of the offering, regardless of the form of organization of sponsor.
- (3) *Purchase agreement* means any written agreement executed by both parties for the purchase of a home or lot associated with membership in an HOA or other cooperative interest in realty. *Purchaser* means any person, partnership, joint venture, corporation, company, trust, association or other entity which executes and delivers to the sponsor or selling agent a purchase agreement.
- (4) *Presentation date* means the date of completion of service, as defined in subdivision (d) of this section, of a copy of the plan or amendment filed with the Department of Law.
- (5) *Filing* means the issuance of a letter from the Attorney General stating that an offering plan or amendment has been accepted for filing.

(d) *Service.*

(1) Unless otherwise provided by statute or regulation or by exemption granted pursuant to subdivision (i) of this section, any document required to be served by this Part shall be served on:

(i) commercial or professional tenants;

(ii) purchasers who have executed and delivered purchase agreements to the sponsor or selling agent and whose purchase agreements are in effect;

(iii) members of the HOA;

(iv) any other person entitled to service pursuant to local law or regulation (collectively “offerees”), in the following manner:

(a) personal delivery; or

(b) mailing by regular mail or registered or certified mail with or without return receipt requested, addressed to the offeree at the last known residence of such offeree or, if the offeree has provided written information of an alternative address for notices, at the alternative address. If sponsor has no information of the last residence address, 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.

(2) Service by personal delivery shall be deemed complete upon delivery. Service by mailing shall be presumed complete on the fifth day after mailing. An affidavit of service identifying the offerees served, stating the manner of service and the date of service is a document required to be retained by section 22.3(w) of this Part. The completion of service shall be the latest date on which service upon all offerees is deemed or presumed complete.

(e) *Notice to commercial or professional tenants and affidavit of service.* Within three business days from the date the proposed offering plan is first submitted to the Department of Law, sponsor shall serve each commercial or professional tenant with a copy of the following notice:

Date of Notice: \_\_\_\_\_

“We have submitted to the ~~New York State Department of Law, Real Estate Finance Bureau~~~~Department of Law of the State of New York, Real Estate Financing Bureau~~, a proposed offering plan for the conversion of (insert address and name of development, if any) to a commercial or professional homeowners or property owners association. The final offering plan has not yet been filed with the Department of Law. The law requires us to disclose all material information concerning the building and the conversion process in this proposed offering plan. A copy of the proposed offering plan is available for inspection and copying at a reasonable charge at the office of sponsor (or selling agent) located at (insert address of sponsor or selling agent) and the Department of Law. The law requires the Department of Law, within 30 days from the date of submission of the proposed offering plan, either to file the offering plan or to indicate how the offering plan is deficient. No units may be sold or offered for sale and no purchase agreements may be executed unless and until the Department of Law files the final offering plan. A copy of the filed plan will then be served on each commercial or professional tenant. You may send written comments on the proposed offering plan to the ~~New York State~~ Department of Law, Real Estate ~~Financing Finance~~ Bureau, 120 Broadway, 23<sup>rd</sup> Floor, New York, ~~New York~~ 10271. You may also send your written comments to (insert name and address of sponsor or selling agent).”

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An affidavit of service of the notice must be submitted to the Department of Law within three business days following completion of service on all commercial or professional tenants.

(f) *Time of review.* After submission of the proposed offering plan, 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 a letter for an offering plan no later than 30 days after its submission. The Department of Law may issue a deficiency letter whenever it appears that the proposed offering plan is deficient in one or more respects. The Department of Law may, in its discretion, deem an offering plan not submitted if the proposed offering plan and exhibits are incomplete and therefore do not meet the requirements of section 22.2 of this Part, procedure for submission.

(g) *Statutory compliance.* Unless expressly provided herein, nothing contained in this Part shall be construed as limiting the requirements set forth in article 23-A of the General Business Law.

(h) *Waiver.* In the interests of justice, the Department of Law may waive compliance with any provision of these regulations and can permit variation of regulations so long as the variation is consistent with the purpose and intent of the regulation and statute or unless prohibited from doing so by final court order.

(i) *Exemptions.* Upon written application of the sponsor, or sponsor's attorney, the Department of Law, in its discretion, may exempt a plan from the application of any provision of this Part where it is found that enforcement of the provision is not necessary to effectuate the purposes of the General Business Law or to protect the investing public. The application shall:

- (1) be annexed to and be submitted with the attorney's transmittal letter;
- (2) set forth the provisions for which the exemption is sought and the grounds for the exemption; and
- (3) be signed by sponsor or the sponsor's attorney.

The transmittal letter and certifications required by section 22.4 of this Part shall be in the form required by this Part, without modification, and shall be based on the assumption that any exemption sought pursuant to this section has been granted. In the event that the Department of Law denies the application for exemption, the Department of Law may issue a deficiency letter as provided in subdivision (f) of this section. No additional fee is required for an exemption application.

(j) *Out-of-state homeowners associations.* A sponsor of an HOA located outside of New York State which makes or takes part in a public offering or sale in or from the State of New York of membership interests in an HOA must file an offering plan with the Department of Law. To comply with this requirement, the sponsor may file a complete offering plan drafted in accordance with New York law and this Part. In the alternative, the Department of Law may, in its discretion, allow the sponsor to file the offering plan approved by or filed with the State or jurisdiction in which the HOA is located or a property report filed by the Department of Housing and Urban Development under the Interstate Land Sales Full Disclosure Act ([15 USC section 1702](#)) and an addendum with such additional information as is required by the Department of Law. Sponsor must represent that the plan complies with all applicable local laws.

(k) *Exemption from [General Business Law section 359-e](#).* An HOA whose membership interests or other securities are to be sold pursuant to an offering plan filed with the Department of Law is deemed exempted from the registration requirements of [General Business Law section 359-e](#), provided that all offering activities are engaged in exclusively by persons duly registered under the filing requirements of [General Business Law section 359-e](#).

(l) *Effectiveness of regulations.* The effective date of these regulations is the date of filing with the Secretary of State. As of such date:

- (1) This Part is effective immediately for offering plans that meet the requirements of subdivision (a) of this

Part.

(2) Section 22.5 of this Part is effective for amendments to plans submitted after the effective date of these regulations that meet the requirements of subdivision (a) of this section, regardless of when such plans were filed.

(3) Section 22.6 of this Part is effective for advertisements appearing on or after the effective date of these regulations, for offering plans that meet the requirements of subdivision (a) of this section, regardless of when such plans were filed.

(m) *Withdrawals, abandonments and rejections.*

(1) If the offering plan is withdrawn prior to filing, written notice thereof shall be served simultaneously by the sponsor on the Department of Law and on all commercial or professional tenants, if any, in the manner specified by paragraph (d)(1) of this section.

(2) The offering plan may be abandoned after filing if there are no outstanding purchase agreements. The sponsor need not submit an amendment but shall submit a form RS-3 to the Department of Law and serve it simultaneously on any commercial or professional tenants, in the manner specified by paragraph (d)(1) of this section. The plan may not be abandoned if sponsor has entered into purchase agreements, unless the plan provides for an escape clause or an effectiveness contingency which is highlighted as a special risk. In such case, the provisions of section 20.1(1)(2) of this Title apply, if the plan has not become effective.

(3) If the offering plan is finally rejected by the Department of Law and there is no outstanding right to cure defects, the sponsor shall promptly serve notice of such rejection on any commercial or professional tenants in the manner specified by paragraph (d)(1) of this section.

(n) *Disclaimers.* The requirements set forth in section 22.3 of this Part apply to the offering plan generally and shall not be negated or contradicted by inconsistent provisions in other portions of the offering plan, or by provisions purporting to discharge liability or to terminate the continuing effect of representations in the offering plan upon an event such as the closing or the delivery of the deed. Disclaimer provisions, either direct or indirect, through stated reliance on an expert with respect to factual matters required to be represented or set forth in the offering plan, may not be included except as and to the extent permitted in these regulations.