

13 NYCRR Section 22.2.

Procedure for Submission

- (a) The proposed offering plan and the exhibits described below shall be submitted to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, N.Y. 10271.
- (b) The exhibits shall accompany the proposed offering plan submitted to the Department of Law and shall be subject to the sanctions of article 23-A of the General Business Law. A notation of “Orig” on the list below means that at least one document must be a duly executed, original document.
- (c) The following are to be included when submitting a proposed offering plan pursuant to this Part:
- (1) A transmittal letter addressed to the Department of Law that is signed and affirmed by the individual attorney who prepared the plan containing the statements required by section 22.4(a) of this Part without qualification or alteration in substance. As specified in paragraph (4) of this subdivision, the transmittal letter must expressly indicate any exhibit that is not included and set forth the reasons for the omission and list any documents submitted as exhibit B-24. Exemption applications submitted pursuant to section 22.1(i) of this Part must be annexed to and submitted with the transmittal letter. Omissions and additions to the table of contents must be noted and explained. Indicate if provisions of Part 20 of this Title pursuant to section 22.1(a)(5) of this Part are applicable to this offering. The transmittal letter must note whether the offering plan is for a building or development which is newly constructed, vacant or nonresidential and to what extent any existing structures are being rehabilitated. Pursuant to section 22.3(i) of this Part the transmittal letter must note any commercial units and whether they are being offered for sale. Pursuant to section 22.3(l) of this Part the transmittal letter must note financing offered to purchasers which contains any unusual risks. Pursuant to section 22.1(j) of this Part the transmittal letter must note if it is an out-of-state plan. The transmittal letter must also note if sponsor is aware of any investigation currently pending by the Department of Law of the sponsor, a principal of the sponsor or of the property to be constructed or to be converted to HOA ownership.
 - (2) Checks (certified or uncertified) for filing fees under [General Business Law section 352-e\(7\)\(a\)](#) payable to “New York State Department of Law”, and stapled or clipped to the transmittal letter. The filing fee is based on the total value of the fully improved common property to be owned and maintained by the HOA. Such value will not include the effect of the filing of the declaration of covenants, restrictions, easements and liens against the property. Such valuation may be based upon construction costs or an expert's appraisal. If no property is to be owned by the association or is of minimal value, the filing fee will be the minimum fee specified in [General Business Law section 352-e\(7\)\(a\)](#). If additional phases increase the value of the common area, such additional fee associated with the increase in value must be paid when an amendment disclosing the additional phase is filed. To expedite processing, the sponsor should submit two checks, each in the amount of one-half of the total fee. One of the two checks will be a nonrefundable deposit. The other check will be returned if the Department of Law issues a final deficiency letter.
 - (3) Signed originals of the following forms:
 - (i) M-2 and M-10 forms, if new forms are submitted as Exhibits D-1 and D-2, with a check for the filing fee under [General Business Law section 359-e\(5\)](#) attached; and
 - (ii) R-1 forms, submitted as Exhibit D-3.
 - (4) Three copies of a typed or printed, bound offering plan. Loose leaf binders and rings are not acceptable.
 - (5) A questionnaire in a form prescribed by the Department of Law, completed and signed by the individual attorney who prepared the offering plan.
 - (6) Two sets of exhibits. Each set is to be in binders from which documents can be removed easily and be in-

dexed with tabs. The cover of each binder must be labeled with the name and address of the HOA and the name, address and telephone number of the attorney who prepared the plan. One of the binders must be marked "Orig" and contain the original documents required below. Each binder must contain an index of the documents. The transmittal letter required by paragraph (1) of this subdivision must note the omission of any exhibit and the reason for the omission.

(i) Part A of the exhibits (certifications) shall consist of the following documents. Photocopies or conformed copies of the certifications must appear in the offering plan.

(a) (A-1) Certification by the sponsor and the sponsor's principals signed by "sponsor" and "principals" as defined in section 22.1(c) of this Part (Orig); see section 22.4(b) of this Part.

(b) (A-2) If the HOA includes any common property other than (1) unimproved land, (2) landscaped areas, playgrounds, park areas or picnic areas, (3) roads constructed in accordance with local government specifications for public roads, or (4) sewers and/or water lines constructed in accordance with local government specifications, a certification by sponsor's engineer or architect concerning the description of the common property in Part II of the plan and at Exhibit C-2 (Orig); see section 22.4(c) of this Part.

(c) (A-3) Certification by expert on adequacy of budget for the first year of HOA operation (Orig); see section 22.4(d) of this Part.

(ii) Part B of the exhibits (general) shall consist of the following documents:

(a) (B-1) Title company report including a report on housing or building code violations of record, if applicable, for HOA property dated or updated within 30 days of submission.

(b) (B-2) If applicable, projection from a qualified expert or local supplier of the consumption, rate and total cost for furnishing heat, hot water, electricity and other utilities to HOA property.

(c) (B-3) Proposed management agreement.

(d) (B-4) Copies of any contracts which (1) will be binding on the Board of Directors of the HOA for \$2,500 or more per year, (2) have a term in excess of two years, or (3) are with the sponsor, a business associate or affiliate of the sponsor or a principal of the sponsor.

(e) (B-5) Copy of certificate of incorporation and receipt from Secretary of State for the HOA, if available. If the association will not be incorporated until just prior to the first closing, the receipt should be submitted to the Department of Law before any closing occurs.

(f) (B-6) If applicable, copy of a letter from an insurance company or its authorized agent, stating proposed insurance coverage and amounts and the annual premium or premiums.

(g) (B-7) If HOA property includes any buildings, copy of an opinion from an independent, licensed insurance broker, insurance appraiser or real estate appraiser representing that the fire insurance coverage budgeted in the plan is adequate (1) so that the insured shall not be a co-insurer if the policy contains a co-insurance provision, or (2) to cover replacement cost if the policy is for an agreed amount which waives co-insurance. If the policy represents replacement cost coverage, indicate the replacement cost per square foot. If there is mandatory common fire and casualty insurance coverage required by the declaration or by the by-laws for the homes of the members of the HOA, a similar opinion regarding the adequacy of such coverage.

(h) (B-8) Copy of a fee quotation from a certified public accountant for preparing the yearly financial statements for the HOA.

(i) (B-9) Copy of sections 352-a and 352-b Designation of Secretary of State as agent for service of process (applicable only to out-of-state issuers, sponsors, principals and/or selling agents), and filing receipt.

(j) (B-10) Copy of an estimate by the local tax assessor of the assessed valuation of HOA property as fully improved in accordance with the terms of the offering plan. If not available, substitute an estimate by a real estate broker, appraiser, attorney, or other professional familiar with the tax assessment practices in the locality in which the property is located. Alternatively, an opinion by the local tax assessor or a legal opinion by sponsor's counsel that the HOA property as fully improved in accordance with the terms of the offering plan will be assessed at an amount not greater than a nominal value and that any value of the HOA property above a nominal value will be reflected in the assessed valuation of individual homes or lots. In any event, the projected tax must be reflected in the estimated budget for the first year of HOA operation.

(k) (B-11) For HOAs located outside of New York State, copy of the statutes and regulations concerning the registration and formation of HOAs, if any, and evidence of compliance with those laws or regulations.

(l) (B-12) Copy of sponsor's or present owner's recorded deed to the HOA property or a copy of the contract of sale between the owner and sponsor if sponsor is the contract vendee.

(m) (B-13) Copy of any contract between the sponsor and the HOA and a copy of the proposed deed of HOA property from sponsor to the HOA.

(n) (B-14) Copy of the form of promissory note and mortgage required by sponsor or lender if the sponsor offers or procures any type of financing together with any other document which significantly affects a purchaser's obligations for financing offered or procured by sponsor.

(o) (B-15) Copy of any mortgage financing commitment letter pertaining to end loans or to building construction loans, and amendments or extensions of the commitment letter.

(p) (B-16) For rehabilitated projects, an affidavit by sponsor stating how the premises became vacant, that there was no harassment, and whether any units were vacated pursuant to vacate orders. If so, provide copy of vacate orders.

(q) (B-17) An affidavit by sponsor stating that no money has been taken during any market test pursuant to Co-operative Policy Statement Number 1, if applicable.

(r) (B-18) Copies of all existing and proposed professional and commercial leases and subleases, and concession agreements affecting HOA property.

(s) (B-19) Rent-roll certified by sponsor, managing agent or current owner as of a date that is within 60 days prior to submission, including the name of each commercial or professional tenant, unit number, rent, term, and termination date of lease (Orig).

(t) (B-20) An appraisal by a licensed real estate broker or licensed appraiser in the area where the property is located of the fully improved HOA property to be owned and maintained by the HOA without regard to the effect of the filing of the declaration of covenants, restrictions, easements and liens on the property (Orig).

(u) (B-21) Copy of the escrow agreement between the sponsor and the attorney(s) acting as escrow agent. If the model form is used, so indicate. Copy of bank forms to be used to open ~~the~~any account.

(v) (B-22) If applicable, copy of surety bonds or letter of credit used to secure down payments and any underlying agreement or related agreement, and any undertaking.

(w) (B-23) Documentation associated with each identified footnote to the budget.

(x) (B-24) Other material documents, each of which should be described in the transmittal letter.

(iii) Part C of the exhibits (engineering) shall consist of the following documents:

(a) (C-1) If the HOA includes any property other than (1) unimproved land, (2) landscaped areas, playgrounds, park areas or picnic areas, (3) roads constructed in accordance with local government specifications for public roads, or (4) sewers and/or water lines constructed in accordance with local government specifications, an architect's or engineer's detailed description of the HOA property and building condition with the architect's or engineer's seal and original signature. The description must be dated within 90 days of submission to the Department of Law and conform to the requirements of section 22.7 of this Part; see Exhibit A-2. The Department of Law may in its discretion require a further inspection and report.

(b) (C-2) Asbestos report for existing HOA buildings, except in the case of newly constructed buildings, dated within 90 days of submission to the Department of Law. The report must conform to the requirements of section 22.7(v) of this Part.

(c) (C-3) If HOA property includes any buildings, copy of currently valid temporary, partial or permanent certificate of occupancy or its equivalent. If a certificate of occupancy is not available because the building was constructed before the municipality began to issue certificates of occupancy, include an affidavit from the sponsor that the proposed use by the HOA is identical to the original use of the buildings. If no certificate of occupancy has yet been issued, so indicate and forward a copy of such certificate to the Department of Law when issued.

(d) (C-4) Copy of approved building plans for HOA property, if available, or if required by local law, any specifications required by governmental agencies having jurisdiction and copies of all required construction permits and use permits, *e.g.*, swimming pool permit, air resources permit.

(e) (C-5) Evidence of compliance with local zoning laws and regulations, *e.g.*, a building permit.

(f) (C-6) Copy of engineer's or architect's drawing of site plan and improvements. A survey of the site may be substituted for this item provided it clearly indicates all buildings, parking areas or other improvements. This exhibit must be easily readable and must distinguish common property from individual lots.

(iv) Part D of the exhibits (other information) shall consist of the following documents:

(a) (D-1) Signed M-10 forms, broker-dealer statement, for the selling agents (Orig), unless exempted by [General Business Law section 359-e](#) and signed M-2 form(s), salespersons' statements, for all individual employees who act as salespersons (Orig), unless exempted by [General Business Law section 359-e](#). Forms do not have to be submitted if currently valid registration forms are on file with the Department of Law from prior offerings and a copy of the form is submitted as Exhibit D-1.

(b) (D-2) Signed M-10 form(s) for the sponsoring entity which shall include all officers, directors, partners or principals who are "dealers" for purposes of [General Business Law section 359-e](#) (Orig). Forms do not have to be submitted if currently valid registration forms are on file with the Department of Law from prior offerings and a copy of the form is submitted as Exhibit D-2.

(c) (D-3) Signed RI-1 form(s) registrant information form(s), concerning prior convictions, judgments, administrative actions, bankruptcy, employment and business affiliations for all principals of the sponsor (Orig).

(d) (D-4) Sponsor's affidavit that sponsor's net worth is or will be sufficient to meet the requirements of [General Business Law section 352-k](#) and all of the unsecured obligations sponsor assumes in the offering plan including sponsor's obligations for maintenance on unsold lots or homes (Orig). If the facts sworn to in this affidavit change, sponsor shall immediately amend such affidavit and submit the amended affidavit to the Department of Law.

(e) (D-5) An affidavit from sponsor and principals of sponsor, as defined in section 22.1(c) of this Part, stating whether sponsor and/or principals of sponsor have taken part in real estate syndications of securities consisting of participation interests or investments in real estate, including limited partnership interests or private or public offerings of cooperative interests in realty, including condominiums, in or from New York, which are pending or were initially offered during the preceding five years. State the addresses of the realty, the name of the syndication or partnership and whether it received an exemption and approximate date the offering plan was filed and the date of the closing with the apartment corporation for cooperatives or the date of first unit closing for condominiums or HOAs (Orig).

(f) (D-6) Completed statistical information card (available from the Department of Law).

(d) Upon preliminary advice from the Department of Law that the offering plan may be filed, sponsor must submit:

(1) Checks (certified or uncertified) for the balance of the filing fees, if any, pursuant to [General Business Law section 352-e\(7\)\(a\)](#) and by separate check any additional filing fees pursuant to [General Business Law section 359-e\(5\)](#), payable to "New York State Department of Law."

(2) Four copies of the typed or printed, bound offering plan, with the filing date left blank. The actual filing date shall be the date of the letter from the Department of Law accepting the plan for filing. All offering plans must be dated before being presented to offerees.

(3) A new attorney transmittal letter; see section 22.4(a) of this Part. The letter may indicate that exhibits have previously been supplied.

(4) If required by the Department of Law:

(i) a new certification by sponsor and sponsor's principals; see section 22.4(b) of this Part;

(ii) a new certification by sponsor's engineer or architect; see section 22.4(c) of this Part; and

(iii) a new certification by sponsor's expert on the adequacy of the budget; see section 22.4(d) of this Part.

(e) The plan is filed on the date indicated in the letter from the Department of Law stating that the plan has been accepted for filing.

(f) If applicable, the sponsor shall submit an affidavit of service of the plan and notice on the commercial or professional tenants within five days of such service.