

### 13 NYCRR Section 23.5.

#### Amendments

(a) *General.* Documents to supplement or amend an offering plan (collectively, “amendment[s]”) 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 23.1(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 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 material amendment to the offering plan that adversely affects the purchasers, sponsor must grant purchasers 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 to purchasers who rescind. Sponsor may condition return of deposit to interim lessees upon their vacating the apartment. 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 first closing of title to a purchaser, 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* is an amendment materially beneficial to any tenant-purchasers. It shall include, but not be limited to: a change from an eviction to a noneviction plan, a decrease in the offering price to tenants, a significant increase 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 to tenants for financing the purchase price of an apartment.

(8) Amendments must be served on offerees in accordance with section 23.1(d) of this Part, unless the Department of Law consents to service on a specified class or classes of offerees.

(9) Amendments served on offerees must be dated on the date of the letter of the Department of Law accepting the amendment for filing. Proposed amendments shall be submitted undated.

(10) Amendments filed by the Department of Law must be served in accordance with section 23.1(d) of this Part by personal delivery or mailing no later than five days after receipt of the letter accepting the amendment for filing.

(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, 23<sup>rd</sup> Floor, New York, N.Y. 10271. Include the following when submitting an amendment:

(1) a transmittal letter, signed by the individual 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 have been submitted to but not yet filed by the Department of Law;

(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 noneviction plan; and

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

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

(vi) notes if there is currently an investigation pending by the Department of Law of the sponsor, a principal of sponsor, or of the proposed condominium property.

(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; and

(5) one form CD-2, signed by the sponsor.

(c) *Amendments extending term of the offering plan.* Pursuant to section 23.3(a)(7) 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 closing of the first unit, an amendment other than a price change amendment extends the term of the offering for an additional six-month term, unless the term is shorter by the provisions of the amendment. After the filing of the amendment disclosing post-closing information, 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. An amendment extending the term of the offer must be submitted before the end of the then current term if sales ac-

tivity is continuing and must comply with the provisions of this section and the requirements set forth below.

(1) The amendment must disclose all material changes including, but not limited to, material decreases or increases in common charges or individual expenses; an updated budget, if adopted by the board of managers; the most recent financial statement, certified if the sponsor is still in control of the board; and any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, the rights of existing tenants, sponsor's capacity to perform all of its obligations under the plan, the condominium or the operation of the condominium.

(2) In addition, all amendments submitted after the closing of the first unit has occurred must state:

(i) the number and identification of unsold units remaining; and

(ii) the extent to which the sponsor controls the board of managers. 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 owns in the aggregate more than 10 percent of the units, the amendment must disclose:

(i) the aggregate monthly common charge payments for units held by the sponsor;

(ii) the aggregate monthly real estate taxes payable for units held by the sponsor;

(iii) the aggregate of the monthly rents currently payable from tenants of units owned by the sponsor, 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;

(iv) financial obligations to the condominium which will become due within 12 months from the date of the amendment (other than payment of common charges) including, but not limited to, reserve and working capital fund payments and payments for repair and improvement obligations;

(v) a list of all unsold units which are subject to mortgages or otherwise represent security for financing arrangements; the identity and address of the lender(s); the amount of the loan(s); the maturity date of the loan(s); and payment obligations under the loan(s), stated on a monthly basis where possible;

(vi) the means by which any payments or obligations set forth pursuant to subparagraphs (i), (ii), (iv) and (v) 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;

(vii) a statement as to whether the sponsor is current on all financial obligations to the condominium, including, but not limited to, payment of common charges, reserve or working capital fund payments, assessments, and payments for repairs or improvements promised in the offering plan. In addition, state whether the sponsor is current on all payment obligations under mortgages or other financing arrangements relating to unsold units. If the sponsor is not current on its obligations, state the date and amount of each delinquency and discuss the effect of such delinquency on the condominium. Also state whether the sponsor 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;

(viii) 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 owner of unsold units, 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

(xi) a statement as to whether the sponsor and all principals of the sponsor, as individuals, general partners or principals of the sponsor or holder of unsold shares, are current in all obligations set forth in subparagraph (vii) of this paragraph in other cooperatives, condominiums or 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 subparagraph (3)(vii) or (ix) of this subdivision has existed for 15 days, or if there has been a material change in the financial position of the sponsor which may jeopardize its ability to meet its obligations to the condominium.

(d) *Price change amendments.* An amendment proposing to change any offering price is subject to the requirements set forth below and must be consistent with section 23.3(k) of this Part.

(1) Notwithstanding paragraph (a)(3) of this section, if the amendment is solely limited to price changes, and no prior amendment has been submitted to but not yet filed by 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 purchase before the plan may be declared effective, the amendment must state the percentage of bona fide tenants in occupancy who have purchased and are being counted for purposes of declaring the plan effective. The amendment must 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 unit numbers.

(3) If the plan is *not* presented pursuant to a law that requires that a specific percentage of tenants purchase 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 sponsor has accepted purchase agreements;

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

(iii) the number of purchases by 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) Purchase 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 purchasers of dwelling units for which purchase 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 statements required pursuant to [G.B.L., section 352-eee](#) or [352-eeee](#) have been posted;

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

(a) are bona fide purchasers; and

(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 purchase agreements and have paid the full “downpayment” as required in the *procedure to purchase* section of the offering plan;

(v) a representation that only purchase agreements assigned or transferred in compliance with section 23.3(r) of this Part have been counted for purposes of declaring the plan effective;

(vi) a representation that there are no material changes to the projected budget for the first year's operation which have not been disclosed in a duly filed amendment to the offering plan;

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

(a) the identity of the purchaser;

(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;

(viii) if the plan is *not* presented pursuant to a law that requires a specific percentage of tenants to purchase 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 purchasers 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 purchaser, indicate the identity of the unit to be purchased; the date of the purchase agreement; the amount of the deposit paid if for any reason it is less than the amount or per-

centage 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 purchase agreement; and whether the purchaser 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 or subsequently became vacant, state whether the purchaser has taken physical occupancy;

(b) a representation that all purchase 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; and

(c) a representation that no purchaser counted for purposes of declaring the plan effective is the sponsor, the selling agent or the managing agent, or is a principal of the sponsor, the selling agent, or the managing agent or is related to the sponsor, the selling agent or the managing agent or any principal of the sponsor, the selling agent or the managing agent by blood, marriage, or adoption, or as a business associate, an employee, a shareholder, or a limited partner. Such a purchaser, 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 purchaser is a bona fide tenant in occupancy or is a bona fide purchaser who intends 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;

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

(a) a list of purchasers who purchased 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 purchaser indicate the identity of the unit to be purchased; the date of the purchase 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-purchaser 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 purchase agreement. If the purchaser's tenancy commenced within the preceding three years, state the approximate date that the tenant actually took physical occupancy;

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

(1) signed purchase agreements obtained in good faith, without fraud and with no discriminatory repurchase agreements or other discriminatory inducements; and

(2) do not include any purchaser who is the sponsor, the selling agent or the managing agent, or is a principal of the sponsor, the selling agent or the managing agent or is related to the sponsor, the selling agent or the managing agent or any principal of the sponsor, the selling agent or the managing agent by blood, marriage or adoption, or as a business associate, an employee, a shareholder or a limited partner. Such a purchaser, 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 purchaser is a bona fide tenant in occupancy; and

(x) 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 purchase agreements for dwelling units occupied by nonpurchasing tenants together with agreements by purchasers to comply with the requirements of section 23.3(o)(3) and (4) of this Part, if applicable.

(iii) If the plan is *not* presented pursuant to a law that requires a specific percentage of tenants purchase 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 purchase agreements being counted towards effectiveness. If purchase agreements of nontenant purchasers are being counted towards effectiveness, submit an affidavit by each nontenant purchaser which must include:

(a) a representation by the purchaser 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; and

(b) a statement identifying the individuals who intend to occupy the dwelling unit when it becomes vacant and their relationship to the purchaser; and

(c) a listing by the purchasers of any other purchase agreements in which they made similar representations of intent to occupy.

(iv) If sponsor has granted permission to assign or transfer a purchase agreement, a copy of each assignee's notarized affidavit as described in section 23.3(r) of this Part that the assignee was not procured by the sponsor, the selling agent or the managing 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 purchase before the plan may be declared effective include a copy of the first page and the signature page of each purchase agreement and any additional pages that contain any additions, deletions or modifications of the purchase agreement as it appears in the offering plan.

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

(f) *Post-closing amendment.* This amendment extends the term of the offering for six months. Sponsor must amend the plan within 45 days following the closing of the first unit, to include the following information. These facts need not be presented in the same amendment:

(1) the date and place of the title closing to the first unit;

(2) the date of filing of the declaration and whether separate real estate tax assessments have been made, and if so, as of what date;

(3) 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);

(4) the amount of the working capital fund, if any, and the account into which the fund was 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;

(5) a list of all of the unsold units held by the sponsor; and

(6) the names of the members of the board of managers and the names and the business addresses of the presi-

dent, secretary and treasurer.

(g) *Amendment abandoning the plan.*

- (1) The amendment abandoning the plan must conform with representations disclosed in the offering plan concerning how and when a plan may be abandoned.
- (2) If payments under purchase agreements have been received sponsor must disclose the amount of such funds and the manner and time when these funds will be returned to purchasers.
- (3) Funds may be returned to purchasers together with interest earned, if any, only after the amendment abandoning the plan has been accepted for filing by the Department of Law.
- (4) For purposes of [G.B.L., sections 352-eee\(2\)\(a\)](#) and [352-eeee\(2\)\(a\)](#) an offering plan will be considered abandoned upon acceptance for filing by the Department of Law of the amendment abandoning the plan.
- (5) The transmittal letter for an amendment abandoning the plan must be accompanied by a completed copy of form RS-3 as promulgated by the Department of Law.