

13 NYCRR Section 23.8.

Eligible Senior Citizens and Eligible Disabled Persons

(a) *Election.* A tenant may elect not to purchase as an eligible senior citizen or eligible disabled person as defined in [G.B.L., section 352-e\(2-a\)](#) or [352-eeee](#), or as an eligible disabled person as defined in [G.B.L., section 352-eee](#), within 60 days from the presentation date by completing the applicable form, SH-1 or SH-2, prescribed by the Department of Law and included in the offering plan immediately preceding the introduction page, signing the election form and having the signature notarized and personally delivering it to the named sponsor or agent at a location specified by the sponsor in the plan, or by mailing it by certified or registered mail, return receipt requested to the named sponsor or agent at an address specified by the sponsor in the plan. [G.B.L., section 352-eee](#) does not require that a tenant file an election form in order to qualify as an eligible senior citizen. However, it is advised and requested that a tenant, who believes he or she is or will become an eligible senior citizen within 12 months from the date the plan is filed, complete the election form SH-5 promulgated by the Department of Law and included in the plan. This senior citizen election form should be completed, signed, notarized and returned to the sponsor. In the event that the plan becomes subject to [G.B.L., section 352-e\(2-a\)](#) after the plan was accepted for filing: (a) the plan must be amended immediately after the statute becomes applicable to such offering, and (b) such election may be made within 60 days of presentation of such amendment.

(1) An SH-1 or SH-2 election form is timely if it is personally delivered or postmarked before midnight of the 60th day after the presentation date subject to statutory rules of construction. An SH-5 election form may be delivered at any time.

(2) The sponsor or agent shall acknowledge receipt of the election form and promptly return an acknowledged copy to the nonpurchasing tenant.

(b) *Determination of disputed elections.* A sponsor who disputes the election by a nonpurchasing tenant to be an eligible senior citizen or an eligible disabled person must apply to the Department of Law for a determination of the person's eligibility within 30 days following receipt of the election form.

(1) The application is timely if it is personally delivered to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, N.Y. 10271, during business hours or postmarked before midnight of the 30th day following receipt by the sponsor or agent of the election form.

(2) In the absence of fraud, an untimely application will not be entertained, in which case the tenant whose eligibility is disputed will be deemed eligible under the statute.

(3) The application shall include the following:

(i) one copy of the election form;

(ii) one original and one copy of an affidavit, sworn to by a person having knowledge of the facts, setting forth the following:

(a) that the application is timely in accordance with these regulations;

(b) the specific ground(s) for disputing the election; and

(c) the basis for the affiant's statement that the tenant is not an eligible senior citizen or eligible disabled person;

(iii) two copies of all supporting information or documentation in the possession of the sponsor or the affiant bearing on eligibility.

(4) The application must be complete at submission. The Department of Law need not consider any additional or supplemental information subsequently submitted by sponsor.

(5) The Department of Law shall notify the person that the sponsor disputes his or her election to be an eligible senior citizen or eligible disabled person and shall request him or her to submit an answer to the application on a form prescribed by the Department of Law and furnish information or documentation bearing on the specific grounds raised by sponsor to dispute the election.

(i) The answer and supporting documentation must be submitted to the Department of Law within 10 days of the date of the notice from the Department of Law. Failure to submit an answer shall not preclude the Department of Law from issuing a determination.

(6) The Department of Law may, in its discretion, require the attendance and giving of testimony by witnesses and the production of papers, documents, books and other evidence concerning the issues raised. A witness shall be notified that he or she may be represented by counsel.

(7) On the basis of evidence received, the Department of Law shall issue a written determination of eligibility.

(c) *Sale of units occupied by eligible senior citizens and eligible disabled persons.*

(1) A unit occupied by an eligible senior citizen or eligible disabled person, or a person seeking exemption as an eligible senior citizen or eligible disabled person may not be offered to a third party during any exclusive purchase period granted to bona fide tenants in occupancy unless the sponsor, in writing, waives any right to challenge the eligibility of the occupant of the unit.

(2) Where the sponsor has disputed the eligibility of a person seeking an exemption, the unit may not be offered to a third party for 30 days after the Department of Law has made its determination of eligibility. If a proceeding to review such determination is commenced under article 78 of the Civil Practice Law and Rules in a court of competent jurisdiction, the unit may not be offered to a third party for 30 days after notice of entry of the final order in such proceeding. If such final determination or order finds that the person seeking the exemption is not an eligible senior citizen or eligible disabled person, such person may purchase the unit within 30 days thereafter on the most favorable terms offered to tenants in occupancy at any time prior thereto; provided, however, that if such final determination or order includes a finding that the exemption was sought fraudulently or in bad faith, such person may purchase the unit as provided in paragraph (3) of this subdivision.

(3) Notwithstanding an election not to purchase, an eligible senior citizen or eligible disabled person may purchase the unit on the terms then offered to tenants in occupancy.