

### 13 NYCRR Section 23.9.

#### Applications for No-Action Letters

(a) *Applicability.* Upon application made in accordance with the requirements of this section, the Department of Law may, in its discretion, issue a “no-action letter” stating that it will not take enforcement action based on the transaction described in the application occurring without the filing of an offering plan pursuant to [section 352-e of the G.B.L.](#)

(1) A no-action letter may be issued where the Department of Law determines that:

(i) the relationship between the offerors and all the offerees is of such a nature that the offerees do not require the protection of an offering plan; and

(ii) the relationship between all offerees and the condominium units being offered is such that all the offerees are aware of the condition of the property which is the subject of the offering; and

(iii) the filing of an offering plan pursuant to [G.B.L. section 352-e](#) is not necessary to effectuate the purpose of G.B.L., article 23-A or to protect the public interest.

(2) The following transactions may qualify for a no-action letter:

(i) Unsold space in an existing condominium. The offering and sale by a condominium established pursuant to an offering made in compliance with [section 352-e of the G.B.L.](#) and the New York Condominium Act, of one or more units consisting of space that was not sold under the original offering. Such space may include, but shall not be limited to, a superintendent's apartment, parking spaces, commercial space or professional offices (see subdivision [c] of this section for specific requirements).

(ii) De facto situation. The offering and sale of units in residential or commercial property which is owned and occupied solely by the offerors as joint tenants, tenants by the entirety, tenants-in-common, sole shareholders of a corporate owner or sole partners in a partnership. All of the offerors must have acquired title in one of the above forms at least two years prior to submission of the application for the no-action letter; there must be no vacant or sublet units of any kind in the building; and the proposed offerees must be identical to the offerors (see subdivision [d] of this section for specific requirements).

(iii) Tenant-sponsored condominium. The offering and sale of units in commercial or residential property proposed to be acquired by all tenants of a building under a tenant-sponsored or promoted proposal. All tenants must join in the application for a no-action letter; and there must be no vacant or sublet units of any kind in the building (see subdivision [e] of this section for specific requirements).

(3) A no-action letter shall not be issued where the property was acquired by all the offerees as tenants in common, sole shareholders of the corporate owner or sole partners in a partnership holding title to the property less than two years prior to submission of the application.

(b) *Application procedure.*

(1) An application for a no-action letter shall be submitted to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, NY 10271.

(2) The application shall include a transmittal letter signed by the attorney who prepared the application, which states:

(i) the reasons why the transaction described in the application meets the standards set forth in paragraph

(a)(1) of this section;

(ii) that the attorney has no actual knowledge of any omission or untrue statement of a material fact included in the application; and

(iii) that the attorney has prepared or reviewed all legal documents necessary to form the condominium and believes it to be a valid condominium under the New York Condominium Act (or the laws regulating condominiums in the state where the property is located). If the condominium is not in existence at the time the application is submitted, the attorney will cause the condominium to be formed in conformity with applicable law, including the New York Condominium Act (or the laws regulating condominiums in the state where the property is located).

(3) An application must be accompanied by a check in the amount required by [G.B.L., section 352-e\(7\)\(a\)](#) made payable to the Department of Law.

(c) If unsold space in an existing condominium, as described by subparagraph (a)(2)(i) of this section, is being offered, the following requirements must be met:

(1) If the sale of unsold space results in an alteration of the common interest appurtenant to each unit as expressed in the declaration, written consent of all unit owners affected and holders of all mortgages must be submitted with this application.

(2) The application must include an affidavit from all members of the board of managers setting forth:

(i) the name, residence and business address of each member of the board of managers;

(ii) a description of the proposed transaction, the specific unit(s) being offered, the total number of units in the building, the percentage of common interest allocated to each unit and a schedule of tenancies. If the units being offered are vacant, describe how such vacancies occurred;

(iii) the date the condominium was formed;

(iv) that the use for which the unit(s) and property are being offered will comply with the property's certificate of occupancy, zoning, building and housing laws, rules and regulations. Alternatively, if the proposed use will not comply with the legally permissible use, what steps must be taken to comply with or to change the legally permissible use and the person responsible for taking such steps;

(v) that the offeror(s) will comply with [G.B.L., sections 352-e\(2\)\(b\)](#) and [352-h](#) and hold all downpayments for the purchase of units in trust for the benefit of the purchasers and that such funds shall not be commingled with the monies of the offeror(s) until actually employed in connection with the consummation of the transaction;

(vi) that the offeror(s) will provide to each offeree the following information:

(a) the purchase price;

(b) the percentage of common interest allocated to the unit;

(c) the estimated common charges and real estate taxes and the current or proposed budget;

(d) a copy of any mortgage or ground lease on the property;

(e) a copy of the most recent financial statement of income and expenses for the operation of the property, if applicable;

(f) information known to the offeror(s) which may result in extraordinary expenses for unit owners or for the condominium including, but not limited to, assessments, liabilities, dangerous or hazardous conditions, pending litigation and administrative proceedings;

(g) a copy of the offering plan and all amendments;

(h) a copy of the certificate of occupancy for the building; and

(i) such other information as the Department of Law may require;

(vii) that the offeror will furnish a complete copy of the application for a no-action letter and a copy of the no-action letter to each offeree prior to accepting any downpayment;

(viii) that the offeror will furnish, within five days after a request by the Department of Law, copies, of executed offeree affidavits required pursuant to subparagraph (x) of this paragraph;

(ix) whether the offeror or its principals, have, within the preceding five years, participated in any other applications for a no-action letter or have made any other offerings which were not pursuant to an offering plan filed with the Department of Law and the address of any property which was the subject of such application or offering; and

(x) that an affidavit will be obtained from each proposed offeree prior to the closing on a unit that is subject to this application which will contain the following representations:

(a) the offeree's name, residence and business address and legal status (corporation, partnership, individual, etc.);

(b) that the offeree has read the affidavit of the offeror submitted as part of the application for a no-action letter and understands that no offering literature other than as required by the no-action letter will be provided;

(c) that the offeree has inspected the subject property; and

(d) that the offeree is purchasing the unit(s) for personal occupancy and does not intend to resell the unit within two years from the later of the closing or the date the no-action letter is issued by the Department of Law.

(3) The application must include a broker-dealer statement (form M-10) executed by a member of the board of managers and accompanied by a check in the amount required by [section 359-e\(5\) of the General Business Law](#).

(d) If the application is submitted in a de facto situation, as described by subparagraph (a)(2)(ii) of this section, the following requirements must be met:

(1) The application must include an affidavit signed by all unit owners setting forth:

(i) that all units are currently and have been owned and occupied by the offerors for at least two years; that there are no vacant units; and that there are no units that are occupied by subtenants;

(ii) a description of the proposed transaction;

(iii) that the condominium has complied with the requirements of [G.B.L., section 352-ee](#) (if applicable) or is an interim multiple dwelling duly registered with the New York City Loft Board or has a temporary or permanent certificate of occupancy or is otherwise legal for the proposed use;

(iv) the number of units in the building and the name, residence and business address and legal status (corporation, partnership, individual, etc.) of each unit owner;

(v) that the unit owners understand that no offering literature other than as required by the no-action letter will be provided and that they acknowledge that they have been informed that if this transaction constituted a public offering within the meaning of G.B.L., article 23-A, they would be entitled to certain rights and protections pursuant to such article;

(vi) if payment will be made for the units, that the unit owners will comply with [G.B.L., sections 352-e\(2\)\(b\) and 352-h](#) and hold all downpayments for the purchase of units in trust for the benefit of the purchasers and that such funds shall not be commingled with the monies of the offeror(s) until actually employed in connection with the consummation of the transaction;

(vii) that the unit owners will provide to all future purchasers, prior to closing, the following information:

(a) the purchase price;

(b) the percentage of common interest allocated to the unit;

(c) the estimated common charges and real estate taxes and the current or proposed budget;

(d) a copy of any mortgage or ground lease on the property;

(e) a copy of the most recent financial statement of income and expenses for the operation of the property, if applicable;

(f) information known to the unit owners which may result in extraordinary expenses for purchasers or the condominium, including but not limited to assessments, liabilities, dangerous or hazardous conditions, pending litigation and administrative proceedings; and

(g) such other information as the Department of Law may require to be presented to such purchaser;

(viii) that the unit owners agree to furnish a complete copy of the application for a no-action letter and a copy of the no-action letter to each future purchaser prior to accepting any downpayment; and

(ix) whether any unit owner has, within the preceding five years, participated in any other application for a no-action letter or has made any other offerings which were not pursuant to an offering plan filed with the Department of Law and the address of any property which was the subject of such application or offering.

(2) If requested, the application must include a separate broker-dealer statement (form M-10) submitted by each unit owner and accompanied by a check in the amount required by [section 359-e\(5\) of the General Business Law](#).

(e) If the condominium proposal is tenant-sponsored, as described by subparagraph (a)(2)(iii) of this section, the following requirements must be met:

(1) The application must include an affidavit from the owner of the building setting forth the following information:

(i) that the proposal was initiated by the tenants; that a contract of sale has been executed by the affiant and all tenants; and that there are no vacant or sublet units in the building. The contract of sale should be annexed to the

affidavit as an exhibit;

(ii) the building has complied with the requirements of [G.B.L., section 352-ee](#) (if applicable) or is an interim multiple dwelling duly registered with the New York City Loft Board or has a temporary or permanent certificate of occupancy or is otherwise legal for the proposed use;

(iii) a description of the proposed transaction;

(iv) that the owner will comply with [G.B.L., sections 352-e\(2\)\(b\)](#) and [352-h](#) and hold all downpayments for the purchase of units in trust for the benefit of the purchasers and that such funds shall not be commingled with the monies of the owner until actually employed in connection with the consummation of the transaction;

(v) whether the owner, within the preceding five years, has participated in any other application for a no-action letter or has made any other offering which was not pursuant to an offering plan filed with the Department of Law and the address of the property which was the subject of such application or offering; and

(vi) that the owner will provide to each tenant the following information:

(a) the purchase price;

(b) the percentage of common interest in the unit;

(c) the estimated common charges and real estate taxes and the current or proposed budget;

(d) a copy of any mortgage or ground lease on the property;

(e) a copy of the most recent financial statement of income and expenses for the operation of the property, if applicable;

(f) information known to the owner which may result in extraordinary expenses for unit owners or for the condominium, including but not limited to assessments, liabilities, dangerous or hazardous conditions, pending litigation and administrative proceedings; and

(g) such other information as the Department of Law may require to be presented to each tenant.

(2) The application must also include an affidavit signed by all tenants setting forth the following information:

(i) a statement that they join in the application for a no-action letter and that this proposal was initiated by the tenants;

(ii) the name, residence and business address of each tenant;

(iii) a schedule setting forth how long each tenant has been in occupancy;

(iv) that the tenants have read the affidavit of the owner submitted as part of the application for a no-action letter;

(v) that the tenants understand that no offering literature other than as required by the no-action letter will be provided and that they acknowledge that they have been informed that if this transaction constituted a public offering within the meaning of G.B.L., article 23-A, they would be entitled to certain rights and protections pursuant to such article;

(vi) that the tenants have inspected the subject property; and

(vii) that each tenant is purchasing the unit for personal occupancy and does not have the intention of re-selling the unit within two years from the later of the closing or the date the no-action letter is issued by the Department of Law.

(3) The application must include a broker-dealer statement (form M-10) submitted on behalf of the sponsoring entity, signed by each tenant-sponsor and accompanied by a check in the amount required by [section 359-e\(5\) of the General Business Law](#). If no sponsoring entity exists, a separate broker-dealer statement must be submitted and signed by each tenant-sponsor.

(f) *Conditions to the granting of a no-action letter.*

(1) The granting of a no-action letter shall be on such terms and conditions as the Department of Law may impose, in its discretion, in order to protect the public interest.

(2) A no-action letter shall not be granted if the Department of Law determines that such act may contravene the rights under G.B.L., article 23-A of any tenant who is not an offeror.

(3) The issuance of a no-action letter is based solely on the information provided in the application. Any material misstatement or omission of a material fact required by this part may render the no-action letter void *ab initio*.

(4) The issuance of a no-action letter shall not be construed to be a waiver of or a limitation on the Attorney General's authority to take enforcement action pursuant to article 23-A of the General Business Law and other applicable provisions of law, except as expressly stated in such letter.

(5) The issuance of a no-action letter by the Department of Law shall have no value as precedent and may not be relied upon in the submission of any other application for such letter.