

13 NYCRR Section 24.2.

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 Financing Bureau, [Department of Law, Room 48-61, Two World Trade Center 120 Broadway, 23rd Floor](#), New York, N.Y. [1004710271](#).

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(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. Whenever an exhibit document is marked "orig." on the list set forth in paragraph (c)(4) of this section, it means that at least one document must be a duly executed, original document. If a document is not so marked on the list set forth below, it means that a true and complete copy of the document must be included.

(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 attorney who prepared the plan, containing the statements required by section 24.4 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 (apart from those noted), and set forth the reasons for the omission. Exemption applications submitted pursuant to section 24.1(h) 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.

(2) Staple or clip to the transmittal letter a check (certified or uncertified) for one half of the filing fee under [General Business Law, section 352-e\(7\)\(a\)](#) (a nonrefundable deposit) payable to New York State Department of Law. The filing fee is based on the maximum total amount of the offering.

(3) Three copies of a typed or printed, bound offering plan.

(4) Two sets of exhibits. Each set is to be in binders from which documents can be removed easily, and the binders must be indexed with tabs. The cover of each binder must be labeled with the name and location of the timesharing plan and the name, address and telephone number of the attorney who prepared the plan. One of the binders must be marked "original" 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 that is not included, 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 shall appear in the offering plan:

(a) (A-1) Certification by the sponsor and the sponsor's principals, signed by "sponsors" and "principals" as defined in section 24.1(c)(orig.); see section 24.4(b).

(b) (A-2) Certification by sponsor's engineer or architect concerning the property description in part II of the plan and at exhibit C-1 (orig.); see section 24.4(c).

(c) (A-3) Certification by expert as to adequacy of projected income and expenses for the timesharing plan (orig.); see section 24.4(d).

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

(a) (B-1) A projection, by a qualified expert or local supplier, of the consumption, rate and total cost of furnishing heat, hot water, electricity and other utilities to timeshare property.

(b) (B-2) Title company report for all property subject to the use and occupancy of purchasers under and as part of the timesharing plan, including property outside the immediate timeshare regime, dated within 30 days of submission (orig.).

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

(d) (B-4) Letter from an insurance company or its authorized agent, stating proposed insurance coverage and amounts, and the annual premium or premiums.

(e) (B-5) 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 policy is for an agreed amount which waives co-insurance.

(f) (B-6) Section 352-a/section 352-b designation of Secretary of State as agent (applicable only to out-of-state issuers, sponsors, principals and/or selling agents).

(g) (B-7) For a timesharing plan located outside of New York, submit any statutes and regulations governing the registration and formation of the timesharing plan. A timesharing plan located outside of New York must include evidence of compliance with any local laws and regulations concerning registration and formation of the timesharing plan.

(h) (B-8) If a homeowner's association or cooperative corporation is part of the offering, submit the certificate of incorporation and receipt from the New York Secretary of State (or equivalent proof of organization of such entity for out-of-state plans), bylaws and other relevant organizational documents.

(i) (B-9) If the plan offers financing, submit all financing documents, including but not limited to the promissory note and mortgage or other security instrument.

(j) (B-10) If applicable, submit an estimate of the assessed valuation, after completion of construction or rehabilitation, from the local tax assessor. If not available, submit an estimate of the assessed valuation, after completion of construction or rehabilitation, from a real estate broker, appraiser, attorney or other professional familiar with the tax assessment practices in the locality in which the timeshare property is located.

(k) (B-11) If, as part of the timesharing plan, timeshare owners have the right to use and occupy property outside the immediate timeshare regime (at no additional charge or at a discount from rates charges to the general public), submit an easement which establishes this right, along with evidence that it has been recorded against the servient estate in accordance with the recording act of the jurisdiction in which the servient estate is located.

(l) (B-12) If, as part of the timesharing plan, timeshare owners have the right to use and occupy property outside the immediate timeshare regime (at no additional charge or at a discount from rates charged to the general public), submit a covenant (running with the land) that such property will be used only as set forth in the offering plan, along with evidence that the covenant has been recorded against the other property in accordance with the recording act of the jurisdiction in which the other property is located.

(m) (B-13) Any mortgage and note or bond that presently encumbers any property subject to the use and occupancy of purchasers under and as part of the timesharing plan, including property outside the immediate timeshare regime.

(n) (B-14) Any instrument which establishes a trust to hold title to timeshare property pending the full satisfaction of a purchaser's financing obligation.

(o) (B-15) For timesharing plans located outside New York, submit an opinion, from independent counsel ad-

mitted to practice in the jurisdiction in which the timeshare property is located:

(1) that any escrow account for purchaser's funds established in a bank located outside the State of New York is not subject to attachment, garnishment, foreclosure, levy or other legal seizure by the creditors or bankruptcy trustee of the sponsor, selling agent, the owner of the timeshare property or the principals of any of them;

(2) that any property (both real and personal) held in a trust pending the satisfaction of a purchaser's purchase-money financing obligation is not subject to attachment, garnishment, foreclosure, levy or other legal seizure by the creditors or bankruptcy trustee of the sponsor, the selling agent, the owner of the timeshare property or the principals of any of them; and

(3) that the timesharing plan complies with all applicable statutes, regulations and ordinances of the jurisdiction in which the timeshare property is located.

The opinion should discuss the foregoing issues in detail and include citations to relevant statutory and decisional law. The Department of Law may require an opinion from local counsel on other issues as well.

(p) (B-16) The sponsor's or present owner's deed to the property, and copy of the contract of sale between owner and sponsor if the sponsor is a contract vendee.

(q) (B-17) An affidavit from the sponsor setting forth the total number of timeshares in the timesharing plan, the jurisdictions in which sales are authorized, the total number of timeshares sold and the number of timeshares in the timesharing plan which have been sold to residents of the State of New York, if any.

(r) (B-18) Any other material document(s), each of which should be described in the transmittal letter.

(s) (B-19) Copy of the escrow agreement between the sponsor and the attorney(s) acting as escrow agent. If the model form is not used, so indicate. Copy of bank forms to be used to open ~~the~~ any escrow account.

(t) (B-20) Copy of surety bonds or letter of credit proposed to secure down payments and any underlying agreement or related agreement, and any undertaking called for in the regulations or proposed to be furnished.

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

(a) (C-1) Architect's or engineer's detailed description of the property, 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 24.7 of this Part; see exhibit A-2.

(b) (C-2) Copies of currently valid temporary, partial or permanent certificates of occupancy, if available and if required. If a certificate of occupancy for any building or buildings has not been issued, so indicate and forward to the Department of Law when issued.

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

(a) (D-1) Signed M-10 form(s), broker-dealer statement, for the selling agent (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 prin-

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 representation to that effect is made in exhibit D-2 (Orig).

(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 the sponsor's net worth, together with the proceeds of firmly committed construction financing, is sufficient to meet the requirements of [General Business Law, section 352-k](#) and all of the unsecured obligations assumed by the sponsor under the offering plan, including the sponsor's obligation to complete all work and the sponsor's obligations for unsold timeshares.

(e) (D-5) Sponsor's audited financial statements for the last two fiscal years ending prior to the date of submission. Timeshare sales financed by the sponsor must be presented in the sponsor's financial statements on an installment sale basis unless the purchase-money notes executed by timeshare purchasers are negotiated to an unaffiliated third party or parties without direct or indirect recourse to the sponsor.

(f) (D-6) An affidavit from the sponsor and principals of the sponsor, as defined in section 24.1(c) of this Part, stating whether the sponsor and principals of the sponsor have taken part in public offerings of cooperative interests in realty, including timesharing plans, in or from New York, which were initially offered during the preceding five years. State the addresses of the realty and approximate date the offering plan was filed (orig.).

(g) (D-7) Completed statistical information card (available from the Department of Law).

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

(1) checks (certified or uncertified) for the balance of the filing fee under [General Business Law, section 352-e\(7\)\(a\)](#) and the filing fees under [General Business Law, section 359-e\(5\)](#), payable to New York State Department of Law; and

(2) ~~six~~three copies of the typed or printed, bound offering plan.

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