

### 13 NYCRR Section 25.5.

#### Amendments

(a) *General.* Documents to supplement or amend an offering plan (collectively, “amendment[s]”) shall be deemed part of the offering plan. Existing facilities, which have plans previously accepted for filing by the Department of Law, need not submit a new offering plan, but must comply with the requirements of this section when amending the plan. All amendments shall meet the following requirements:

(1) If the offering plan does not comply with [GBL, section 352-e\(1\)\(b\)](#) or section 25.1(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 Office of the Attorney General.

(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 Office of the Attorney General stating that the amendment has been filed and not sooner.

(4) Amendments that have been filed with the Office of the Attorney General 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 restated to incorporate the amendments into the body of the plan, and must be restated if required by the Office of the Attorney General.

(5) If there is a material amendment to the offering plan that adversely affects the prospective residents, sponsor must grant prospective residents 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 to prospective residents who rescind. Sponsor may condition return of deposit to interim lessees upon their vacating the apartment. Notwithstanding the provisions of paragraph (f)(3) of this section, sponsor may return any deposit to prospective residents who request rescission.

(6) Amendments must be served on offerees in accordance with section 25.1(d) of this Part, unless the Office of the Attorney General consents to service on a specified class or classes of offerees.

(7) Amendments served on offerees must be dated on the date of the letter of the Office of the Attorney General accepting the amendment for filing. Proposed amendments shall be submitted undated.

(8) Amendments filed by the Office of the Attorney General must be served in accordance with section 25.1(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, 23rd 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 Office of the Attorney General 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 Office of the Attorney General;

(iv) identifies, if possible, the attorney in the Office of the Attorney General who reviewed the most recent submission; and

(v) gives the current status of the offering plan:

(a) states whether or not the plan has been declared effective or whether occupancy has commenced; and

(b) states if there are any outstanding rescission periods;

(vi) notes if there is currently an investigation pending by the Office of the Attorney General of the sponsor, a principal of sponsor, or of the proposed property.

(2) Three copies of the amendment to the offering plan.

(3) Check(s) (certified or uncertified) for filing fee(s) pursuant to [GBL, section 352-e\(7\)](#) payable to New York State Office of the Attorney General stapled or clipped to the transmittal letter.

(4) One copy of the offering plan including all filed amendments.

(5) One form RS-2, signed by the sponsor.

(c) *Amendments extending the term of the offering plan.* Pursuant to section 25.3(a)(4) of this Part, the term of the initial offer is 12 months commencing on the date indicated in the letter issued by the Office of the Attorney General stating that the plan is filed. Any amendment other than an entrance fee change amendment extends the term of the offering for an additional 12-month term from the date of filing of the amendment. An entrance fee 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 solicitation of prospective residents 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 entrance, monthly or optional service fees; an updated certified budget; the most recent certified financial statement which shall be filed in an amendment within three months of the end of recent fiscal year; and any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, the rights of residents, or sponsor's capacity to perform all of its obligations under the plan. In addition, all amendments must state the number and identification of available units.

(2) The first amendment after the commencement of occupancy must be submitted within 30 days of such commencement and must include the date on which the first resident took occupancy and the date the temporary or permanent certificate of occupancy was issued. If the permanent certificate of occupancy has not yet been issued, indicate the projected time table when such certificate will be obtained and the amount of the security posted to guarantee sponsor's obligation to obtain the permanent certificate of occupancy.

(3) In addition, for all offering plans in which the sponsor owns in the aggregate more than 10 percent of the units, the amendment must disclose:

(i) financial obligations which will become due within 12 months from the date of the amendment including, but not limited to, payments for repair and improvement obligations;

(ii) payments due on all mortgages or construction loans encumbering the property; 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;

(iii) the means by which any payments or obligations set forth pursuant to subparagraphs (i) and (ii) of this paragraph will be funded. If the funding source is stated as income from projected entrance fees, disclose other sources of funding, if any, that will be utilized if such projections are not met;

(iv) state whether the sponsor is current on all payment obligations under mortgages or other financing arrangements relating to the property. 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 operation of the residence. 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;

(v) a list of all other senior residences, cooperatives, condominiums and homeowners' associations, by the Office of the Attorney General file number and address, in which the sponsor, general partner or principal of the sponsor, as an individual or as general partner or principal of the sponsor or holder of unsold shares, owns more than 10 percent of the shares or units. Disclose that offering plans for these buildings are on file with the Office of the Attorney General and are available for public inspection;

(vi) a statement as to whether the sponsor and all principals of the sponsor, as individuals, general partners or principals of the sponsor or holders of unsold shares, are current in all obligations set forth in subparagraph (iv) of this paragraph in other senior residences, cooperatives, condominiums or homeowners' association 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)(iv) or (vi) 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.

(d) *Entrance fee change amendments.* An amendment proposing to change any entrance fee is subject to the requirements set forth below and must be consistent with section 25.3(j) of this Part.

(1) Notwithstanding paragraph (a)(3) of this section, if the amendment is solely limited to entrance fee changes, and no prior amendment has been submitted to but not yet filed by the Office of the Attorney General, the amendment shall be deemed filed when submitted to the Office of the Attorney General.

(2) If the amendment contains entrance fee 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 Office of the Attorney General stating that the amendment has been filed, and not sooner.

(e) *Amendment declaring a plan effective.* If the offering plan provides for a minimum number of executed residency agreements in order to declare the plan effective the following provisions must be complied with:

(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 to the date of the notice, and must be submitted to the Office of the Attorney General within five days of such notice. No commencement of occupancy shall occur until this amendment is accepted for filing by the Office of the Attorney General.

(2) The amendment shall state the percentage of units being offered for which sponsor has accepted residency agreements.

(3) For the purpose of computing the percentage of units for which residency agreements have been executed, a fractional percentage shall be rounded off to the next lower whole number.

(4) 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 Office of the Attorney General;

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

(a) are bona fide;

(b) have not executed a residency agreement as an accommodation to, or for the account or benefit of the sponsor or principals of sponsor; and

(c) have duly executed residency agreements and have paid the deposit as required in the offering plan or an amendment thereto;

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

(iv) the following information with respect to any resident who is the sponsor, the broker, or the managing agent or is a principal of the sponsor, the broker, or the managing agent or who is related to the sponsor, the broker or the managing agent or to any principal of the sponsor, the broker 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 resident;

(b) the identity of the unit to be occupied;

(c) the nature of the relationship;

(d) a representation that no resident counted for purposes of declaring the plan effective is the sponsor, the broker or the managing agent, or is a principal of the sponsor, the broker, or the managing agent or is related to the sponsor, the broker or the managing agent or any principal of the sponsor, the broker or the managing agent by blood, marriage, or adoption, or as a business associate, an employee, a shareholder, or a limited partner. Such a resident, 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 Office of the Attorney General establishing that the resident is bona fide;

(v) a list of the units which are being counted to meet the minimum percentage that are needed under the terms of the plan to declare the plan effective. For each unit state the date of the residency agreement.

(5) In addition to the submissions required by subdivision (b) of this section, an amendment declaring a plan effective shall be accompanied by:

(i) a copy of the notice and an affidavit of service of the notice on all residents if the plan was declared effective by notice; and

(ii) an affidavit of the sponsor stating the identity of the unit; the entrance fee; the date of the residency agreement; the amount of the deposit paid if for any reason it is less than the amount or percentage stated in the offer-

ing plan, and an explanation of the difference; the date that the deposit was paid if the date is different from the date of the application for residency; and a list of the residents counted to meet the minimum percentage of units that are needed under the terms of the plan to declare the plan effective.

(f) *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 residency agreements have been received sponsor must disclose the amount of such funds and the manner and time when these funds, will be returned to residents.

(3) Funds may be returned to residents together with interest earned, if any, only after the amendment abandoning the plan has been accepted for filing by the Office of the Attorney General.

(4) The transmittal letter for an amendment abandoning the plan must be accompanied by a completed copy of form RS-3 as promulgated by the Office of the Attorney General.