

SUMMARY OF REVISED REGULATIONS

The operational and financial control of a condominium, as well as the ability of its unit owners to resell their units, can be imperiled if an offeror unilaterally elects to rent, rather than sell, most of its condominium units after its offering plan has been consummated. Accordingly, the Department of Law's regulations, Part 20 of Title 13 of the New York Compilation of Codes, Rules & Regulations ("13 N.Y.C.R.R."), have always mandated that offerors of condominiums disclose in their offering plans if they are reserving a right to rent, rather than sell, units in a condominium, and certain risks to purchasers associated therewith. Because these risks can be substantial, the regulations specify both the form and content of these disclosures. *See* 13 N.Y.C.R.R. §§ 20.3(c)(1), (d)(4), (n)(1), and (t)(1).

However, the purpose and wording of these mandatory disclosures have been misinterpreted in recent years. Specifically, counsel for some condominium offerors have advanced a novel interpretation of the language as it presently exists: that it grants the offeror permission to rent units in a newly-constructed or vacant building offer before the offering plan is consummated. Most troublingly, this interpretation recently has been proffered to create confusion about a building's legal status when the condominium offeror has neither consummated nor abandoned its offering plan, but instead operates the building as a rental property while obtaining certain legal, financial, and tax benefits intended only for consummated condominiums.

Such a reading of these requirements is in conflict with New York General Business Law ("G.B.L.") Section 352-e and 13 N.Y.C.R.R. Part 20, both of which require additional disclosures and protections for tenants of an occupied residential rental building. *See* G.B.L. §§ 352-eeee(2); 352-eee(2); and 352-e(2-a)(b). In addition, both G.B.L. Section 352-e and 13 N.Y.C.R.R. Part 20 contemplate that a condominium offeror shall either consummate its public offering, or, in certain circumstances, withdraw or abandon its offering plan. *See* 13 N.Y.C.R.R. §§ 20.1(1)(2) and 20.5(g). The Department of Law therefore has modified the mandatory disclosure language in 13 N.Y.C.R.R. Part 20 to clarify that a condominium offeror's reservation in the offering plan of

the right to rent residential units only applies after the offering plan is consummated, or if a purchaser in contract rents a residential unit pursuant to the terms of an interim lease or interim rental agreement.

Under the revised regulations, certain condominium offerors that may have misinterpreted the existing regulations to permit renting of residential units by non-interim lessees prior to the time an offering plan is consummated will be required to file an amendment either: (i) amending and restating their offering plan to include the legally required disclosures and protections for tenants of an occupied residential rental building, (ii) withdrawing their offering plan, or (iii) abandoning their offering plan. Such condominium offerors will incur one-time costs associated with such a filing, including a \$225.00 amendment filing fee as prescribed by G.B.L. Section 352-e(7) and the legal fees associated with preparing the amendment. The revised regulations do not prevent a condominium offeror who has not rented any residential units prior to consummation of the offering plan (other than to a purchaser in contract pursuant to the terms of an interim lease or interim rental agreement) from consummating the offering plan.

The Department of Law believes that the revised regulations (i) clarify what risk a purchaser assumes when reading the mandatory disclosure language; (ii) advance the statutory objective of G.B.L. Section 352-e; (iii) reduce the potential for abuse stemming from a misinterpretation of the existing regulations' purpose; (iv) clarify that only interim renting by a purchaser in contract is permitted in a newly-constructed or vacant building offer before the offering plan is consummated, unless the offering plan is abandoned; and (v) give greater effect to those other provisions in 13 N.Y.C.R.R. Part 20 which contemplate the eventual consummation, withdrawal, or abandonment of an offering plan.