



**OFFICE OF THE ATTORNEY GENERAL OF THE  
STATE OF NEW YORK  
REAL ESTATE FINANCE BUREAU  
120 BROADWAY, 23<sup>RD</sup> Floor  
NEW YORK, NEW YORK 10271**

**DISTRIBUTION OF DIGITAL COPIES OF  
OFFERING PLANS AND AMENDMENTS**

**COOPERATIVE POLICY STATEMENT #10  
(Applicable to all cooperative interests in realty)**

**Effective November 1, 2011**

## **Background**

The following Cooperative Policy Statement authorizes the distribution of offering plans and amendments in digital format at the sole option of prospective purchasers, provided that the sponsor of the offering plan follows the procedures outlined herein by (1) certifying that the digital copy of the offering plan as amended is identical to the hard copy, using the annexed form of certification; (2) obtaining the prospective purchaser's consent using the annexed form; (3) using the formatting and naming conventions prescribed below; and (4) distributing the offering plan as amended to date under cover letter using the annexed form.

General Business Law § 352-e(5) provides that:

No offering or sale whatever of securities described in subdivision one of this section shall be made except on the basis of information, statements, literature, or representations constituting the offering statement or statements or prospectus described in such subdivision, and no information, statements, literature, or representations shall be used in the offering or sale of securities described in such subdivision unless it is first so filed and the prospective purchaser furnished with true copies thereof.

Offering plans for cooperatives, condominiums, homeowners associations, timeshares, and senior communities are typically voluminous bound documents. As events occur that materially affect the offering, sponsors amend these plans pursuant to various provisions of 13 NYCRR, and re-bind the offering plans to include the amendments, insert the amendments into the bound copies of the offering plan, or distribute them through other means. Given the prevalence of computers today, the inconvenience to prospective purchasers of carrying and reviewing voluminous documents, the cost to sponsors of reproducing these documents, and the impact of such reproduction on the environment, it makes sense to permit prospective purchasers, in their sole discretion, to elect to receive offering plans and amendments via digital media in searchable, read-only .pdf format or other electronic format that the Department of Law deems acceptable. This change will reduce transaction costs and aid prospective purchasers and sellers, sponsors, and counsel alike.

This Cooperative Policy Statement is effective as of November 1, 2011. However, the Department of Law recognizes that some smaller sponsors and law firms may not presently be equipped to create and distribute offering materials in electronic format. For that reason, sponsors may opt not to make offering materials available in electronic format during 2011, but must commence doing so no later than January 1, 2012.

## **Definitions**

“Hard Copy” shall refer to a printed or “paper” copy of an offering plan or amendment reviewed by the Department of Law pursuant to General Business Law §§ 352-e, 352-ee, 352-eee, or 352-

eee and the regulations promulgated pursuant to those sections and codified in Title 13 of the New York Code, Rules & Regulations.

“Digital Copy” shall mean a copy of an offering plan or amendment identical to a Hard Copy except that it is recorded electronically in searchable, read-only .pdf format or other electronic format that the Department of Law deems acceptable. Digital Copies of offering plans shall include all of the supporting documents included in Part II of the Offering Plan, and Digital Copies of amendments shall include all exhibits and documents annexed to the amendment.

### **Filing With the Department of Law**

#### a. Submission of Certification

Sponsor must submit to the Department of Law a certification in the form annexed to this Cooperative Policy Statement before providing a Digital Copy of any offering materials to prospective purchasers, tenants, and other offerees required to be provided with a copy of the offering plan and subsequently filed amendments. Sponsor and all of its principals must sign the certification. A new certification must be filed before a Sponsor distributes Digital Copies of new materials (*i.e.*, after each amendment to an offering plan is accepted for filing). The actual Digital Copies should not be submitted to or filed with the Department of Law.

#### b. Digital Copies of the Offering Plan

The certification for any offering plan shall be submitted to the Department of Law together with the final, bound Hard Copies of the final offering plan pursuant to the applicable subsection of Title 13 of the New York Code, Rules & Regulations. Counsel for sponsor must note the submission of this certification in the attorney transmittal letter provided pursuant to the applicable subsection of Title 13 of the New York Code, Rules & Regulations.

#### c. Digital Copies of the Offering Plan with Amendments

The certification for any amendment to an offering plan with the addition of each new amendment shall be submitted to the Department of Law within five days of receipt of the Department of Law’s letter accepting the amendment for filing.

If a sponsor filed an offering plan or amendment before adoption of this Cooperative Policy Statement and wishes to provide Digital Copies to prospective purchasers, sponsor may submit a certification to the Department of Law without further amending the offering plan.

### **Purchasers’ Option to Receive Digital Copies**

Prospective purchasers of cooperative interests in realty offered pursuant to 13 NYCRR Titles 18, 19, 20, 21, 22, 23, 24, and 25 may, in their sole discretion, elect to receive a Digital Copy instead of a Hard Copy of any offering materials.

A sponsor may provide a prospective purchaser with a Digital Copy in lieu of a Hard Copy only if the prospective purchaser so chooses by signing the election form annexed to this Cooperative Policy Statement, and the proper certification is filed with the Department of Law. Sponsor must retain copies of such election forms for six years from the date of execution.

### **Format of Digital Copies of Offering Materials**

All Digital Copies shall be distributed in searchable .pdf format or other format deemed acceptable by the Department of Law in its sole discretion that does not allow the data to be revised.

All Digital Copies shall be distributed on CD-ROMs, DVDs, by email, or via other media deemed acceptable by the Department of Law in its sole discretion.

All Digital Copies distributed on CD-ROM or DVD must bear a label or printed or written information on the jewel case, sleeve, or other container in the form annexed to this Cooperative Policy Statement.

All Digital Copies distributed on CD-ROM or DVD must also bear a label or printed or written information on the disk itself in the form annexed to this Cooperative Policy Statement.

All Digital Copies shall include an initial table of contents page that lists the offering plan and all amendments included in it and allows the reader to access the offering plan and each amendment separately.

### **Cover Letter**

All Digital Copies shall be accompanied by a cover letter in the form annexed to this Cooperative Policy Statement. For Digital Copies distributed by email, the text of the cover letter shall be included in the text of the email, and shall not be made an attachment to the email.

Where the Digital Copy includes an amendment requiring timely action by a contract vendee or prospective purchaser, including without limitation a right of rescission that is time sensitive, the cover letter shall include the language in **BOLD, ALL CAPS** found in the form annexed to this Cooperative Policy Statement.

Sponsor or its representative shall prepare and maintain for six years an affidavit of service concerning delivery of Digital Copies to prospective purchasers, purchasers, and contract vendees, in the form annexed to this Cooperative Policy Statement.

**CERTIFICATION OF SPONSOR AND PRINCIPALS  
CONCERNING DIGITAL COPIES**

We are the sponsor and the principals of sponsor of the condominium offering plan for the [insert name, complete address, and file number of cooperative, condominium, homeowners' association or timeshare].

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Department of Law in Part \_\_ of Title 13 of the New York Code, Rules & Regulations and such other laws and regulations as may be applicable.

We have read the offering plan as amended to date. We hereby certify that any Digital Copy to be distributed will be identical in content to the Hard Copy of the offering plan as amended to date and accepted for filing by the Department of Law.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

[sponsoring entity]

By:

\_\_\_\_\_  
[printed name and title of authorized signatory]

\_\_\_\_\_  
[printed name of principals on separate signature lines]

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
[affix stamp or signature]

**ELECTION TO RECEIVE DIGITAL COPIES OF OFFERING MATERIALS  
FOR THE [INSERT NAME OF COOPERATIVE, CONDOMINIUM, ETC.]**

I hereby elect to receive the offering plan and all amendments accepted for filing to date for the \_\_\_\_\_ [insert name, complete address, and file number of cooperative, condominium, homeowners' association, or timeshare] in searchable, read-only .pdf format [specify other electronic format that the Department of Law deems acceptable if applicable], [on/ in] a [CD-ROM/ DVD/ email attachment].

I acknowledge that I am entitled to receive paper or "hard" copies of such materials but have elected not to do so.

Check the appropriate box:

\_\_\_\_\_ I hereby elect to receive the offering plan as amended to date and, after subsequent amendments are accepted for filing for the \_\_\_\_\_ [insert name, complete address, and file number of cooperative, condominium, homeowners' association, or timeshare] in digital format, in searchable, read-only .pdf format [specify other electronic format that the Department of Law deems acceptable if applicable], [on/ in] a [CD-ROM/ DVD/ email attachment]. I further hereby elect to receive copies of all subsequent amendments to the offering plan in digital format, in searchable, read-only .pdf format [specify other electronic format that the Department of Law deems acceptable if applicable], [on/ in] a [CD-ROM/ DVD/ email attachment containing a complete copy of the offering plan as amended to date.

\_\_\_\_\_ I hereby elect to receive the offering plan as amended to date and copies of each amendment to this offering plan after it is accepted for filing for the \_\_\_\_\_, [insert name, complete address, and file number of cooperative, condominium, homeowners' association, or timeshare] in hard copy.

Dated: [Month, day, year]

\_\_\_\_\_  
Signature of Purchaser

\_\_\_\_\_  
Printed Name of Purchaser

**LABEL FOR JEWEL CASE, SLEEVE OR OTHER CONTAINER OF CD-ROM OR DVD**

Offering Plan for the \_\_\_\_\_ [Cooperative/ Condominium/  
Homeowners' Association/ Timeshare] [And \_\_ Through \_\_ Amendments Thereto]

Complete Address: \_\_\_\_\_

File No: \_\_\_\_\_

Sponsor's Name and Complete Address: \_\_\_\_\_

\_\_\_\_\_

Contents: \_\_\_\_\_ [e.g., offering plan, of offering plan  
and amendments 1-6 thereto]

**LABEL FOR CD-ROM OR DVD**

Name of Offering Plan: \_\_\_\_\_

Contents: \_\_\_\_\_ [e.g., offering plan, of offering plan  
and amendments 1-6 thereto]

**COVER LETTER FOR DISTRIBUTION OF  
DIGITAL COPIES OF OFFERING MATERIALS**

[Letterhead of Sponsor or Sponsor's Attorney]

[date of letter]

[Address and email address, if available, of Purchaser/ Contract Vendee]

Enclosed/ attached please find a digital copy of the offering plan [and amendments \_\_ through \_\_\_ thereto] for the [insert name of cooperative, condominium, etc.], located at [insert complete address of cooperative, condominium, etc.], File No. [insert Department of Law file number]

The Digital Copy includes an initial table of contents page that lists the offering plan and all amendments included in it and allows the reader to access the offering plan and each amendment separately.

**THIS [ENCLOSURE/ ATTACHMENT] CONTAINS AN AMENDMENT REQUIRING TIMELY ACTION BY A CONTRACT VENDEE OR PROSPECTIVE PURCHASER [AND EXTENDS AN OFFER OF RESCISSION THAT IS TIME-SENSITIVE]. PLEASE REVIEW THE CONTENTS OF THE[THE ENCLOSURE/ ATTACHMENT] IMMEDIATELY SO THAT YOU MAY DETERMINE WHETHER YOU WISH TO EXERCISE ANY RIGHTS CONFERRED BY IT.**

[printed name and authorized signature of sponsor]



**AFFIDAVIT OF SERVICE FOR DISTRIBUTION OF  
DIGITAL COPIES OF OFFERING MATERIALS  
(continued)**

\_\_\_ by transmitting a true and correct copy thereof as a .pdf attachment, with cover letter in email text, via email to the foregoing purchaser/ prospective purchaser/ contract vendee] at the following email address: [insert email address for purchaser/ prospective purchaser/ contract vendee]

\_\_\_\_\_  
[Signature and Printed Name of Affiant]

Sworn to before me this  
\_\_\_ day of \_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

[insert stamp and seal of Notary Public]