

Further Revised Proposed Revisions to 13 N.Y.C.R.R. § 24.3(b, o)

Plans subject to this Part shall comply with the format and minimal disclosure requirements set forth in subdivisions (a) through (z) of this section, in addition to the requirements of the provisions of article 23-A of the General Business Law.

* * *

(b) *Table of contents.* The format and order set forth below must be followed in the table of contents. Include headings for the subjects not marked with an asterisk. In addition, a limited number of headings or subheadings may be added to the plan. Headings for subjects that are marked with an asterisk may be omitted if the subject matter is not applicable to the offering. Omissions, other than headings marked with an asterisk in the table of contents, and additions should be expressly noted and explained in the transmittal letter. Alternative wording for headings to meet particular facts are set forth in parentheses.

TABLE OF CONTENTS

PART I	PAGE
RIGHT OF CANCELLATION
SPECIAL RISK FACTORS
INTRODUCTION
DEFINITIONS
DESCRIPTION OF PROPERTY AND IMPROVEMENTS
LOCATION AND AREA INFORMATION
SCHEDULE A - PRICES OF INTERVALS
SCHEDULE B - PROJECTED BUDGET FOR TIMESHARING PLAN
*SCHEDULE C - PROJECTED BUDGET FOR HOMEOWNERS ASSOCIATION	
CHANGES IN PRICES OR UNITS
*ACCOUNTANT'S CERTIFIED STATEMENTS OF OPERATION
PROCEDURE TO PURCHASE
*FINANCING OFFERED (ARRANGED) BY SPONSOR STATE OF TITLE
*CLOSING OF TITLE
*CLOSING COSTS
RIGHTS AND OBLIGATIONS OF SPONSOR
RIGHTS AND OBLIGATIONS OF TIMESHARE OWNERS
*RIGHTS AND OBLIGATIONS OF BOARD OF MANAGERS	
(BOARD OF DIRECTORS)
RESORT EXCHANGE PROGRAM
MANAGEMENT
RESERVATION AND CHECK-IN/CHECK-OUT PROCEDURES
IDENTITY OF PARTIES
DOCUMENTS ON FILE
GENERAL

Part II

DESCRIPTION OF PROPERTY (AND SPECIFICATIONS)	
(AND BUILDING CONDITION)
LOCATION/AREA MAP
SITE MAP
*FLOOR PLANS
PURCHASE (SUBSCRIPTION) AGREEMENT
*POWER OF ATTORNEY
*FORM OF DEED
*FORM OF SECURITY INSTRUMENT, NOTE AND RELATED	
FINANCING DOCUMENTS
*DECLARATION OF CONDOMINIUM

*DECLARATION OF COVENANTS AND RESTRICTIONS
 *BYLAWS
 *PROPRIETARY LEASE
 HOUSE RULES
 *FACILITIES USE AGREEMENT
 *TITLE TRUST AGREEMENT
 TAX OPINION
 FINANCIAL STATEMENTS OF SPONSOR
 LIST OF PERSONAL PROPERTY INCLUDED IN UNITS
 *FIVE-YEAR CALENDAR OF INTERVALS
 CERTIFICATIONS
 SPONSOR AND PRINCIPALS
 SPONSOR'S ENGINEER (OR ARCHITECT)
 SPONSOR'S EXPERT CONCERNING ADEQUACY OF BUDGET

* * *

(m) *Procedure to purchase.* Describe the essential terms of the purchase or subscription agreement, which must comply with this Part.

(1) State the amount and/or the percentage of the minimum down payment.

(2) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of [GBL sections 352-e\(2-b\)](#) and [352-h](#) and these regulations, and all funds paid by purchasers shall be handled in accordance with these statutes and regulations.

(3) Escrow, trust fund. The following requirements shall apply to all offerings and shall be fully disclosed in all offering plans subject to this Part:

(i) ~~The account~~Mandatory escrow agreement. All deposits, down payments, or advances made by subscribers or purchasers prior to closing of each individual transaction shall be held pursuant to a written agreement entered into between the sponsor, the subscriber or purchaser, and the escrow agent. Said provisions may be included in a separate escrow agreement or in the subscription or purchase agreement, and are referred to in this paragraph (3) as the "escrow agreement." The plan must set forth the material terms of the escrow agreement. The sponsor shall specify the exhibit in Part II of the plan that contains the escrow agreement. If a separate escrow agreement is used, a copy of the full agreement must be contained as a separate exhibit to the plan in Part II. Disclose, without limitation, any indemnity by the sponsor in favor of the escrow agent, provision for discharge of the escrow agent's obligations by the sponsor upon payment of the deposit and interest in accordance with these regulations, any right of the escrow agent to represent the sponsor in any lawsuit, any compensation by the sponsor to the depository bank, any provision for payments by the sponsor under an indemnity in favor of the escrow agent and whether the sponsor will compensate the escrow agent for acting as such. The plan and escrow agreement must include language conforming to subsections (v) - (vii), below. However, the failure to include such language in the plan or escrow agreement shall not excuse the sponsor and the escrow agent from compliance with said subsections, whether received before or after the date of consummation of the plan, must be placed within five business days after the agreement is signed by all necessary parties, in an attorney's segregated special escrow account in a bank doing business in the State of New York which account is covered by Federal bank deposit insurance. Sponsor shall include as a special risk that deposits in excess of \$100,000 will not be federally insured in excess of \$100,000. An attorney shall open and maintain such account in his or her own name, or in the name of a firm of attorneys of which he or she is a member, or in the name of the attorney or firm of attorneys by whom he or she is employed, separate from such attorney's personal accounts or from any accounts in which assets belonging to the firm are deposited, and separate from any accounts maintained in the capacity of executor, guardian, trustee or receiver. A master escrow account with a sub-account for each subscriber or purchaser is acceptable. The name of the account, the bank, and the bank address must be stated in the plan. The word "escrow" must be included as part of the name of the account. Funds from this account may be released only by signature of the attorney who is named as Escrow Agent. Neither the sponsor nor any principal of the sponsor may be a signatory on the account. Funds must be placed in an interest bearing account, with all interest credited to the purchaser or subscriber, unless either the purchaser or subscriber defaults and the plan is consummated, or the sponsor elects to place the funds in a separate Interest On Lawyer's Account ("IOLA") for each offering plan pursuant to Judiciary Law section 497. The plan shall indicate whether the interest rate to be earned will be the prevailing rate for such accounts. State the current prevailing

rate and when interest will begin to accrue. No fees of any kind may be deducted from the account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of the account.

(ii) Payments. All funds received from purchasers or subscribers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the purchaser or subscriber to the order of the attorney or law firm as escrow agent.

(iii) The escrow agent. The escrow agent must be an attorney or firm of attorneys admitted to practice in the State of New York or an attorney admitted in a foreign jurisdiction who submits to the jurisdiction of the State of New York for any cause of action arising out of the escrow provisions set forth in the escrow agreement or a firm of such attorneys. The authorized signatories on the escrow account must be a escrow agent shall be independent of the sponsor. Attorneys admitted ~~or to practicing~~ in the State of New York or admitted in a foreign jurisdiction who submit to the jurisdiction of the State of New York for any cause of action arising out of the escrow provisions set forth in the escrow agreement must comply with the Appellate Division rules for the preservation of client funds of the Judicial Department having jurisdic-

~~tion over the attorney. Neither the escrow agent nor any authorized signatory on the account may be the sponsor, the selling agent, the managing agent, or a principal thereof. However, a~~ law firm ~~which that~~ has a member who is a principal of the sponsor, ~~shall not may~~ be the escrow agent ~~provided that, but one or more~~ members of the firm ~~who are signatories on the account are not themselves other than the principals may act as escrow agent~~. Only an attorney or a member of a firm acting as escrow agent shall be a signatory on the account and only such attorney shall be authorized to release funds. The name, address and telephone number of the escrow agent and of each attorney who is a signatory must be stated in the plan.

(iv) ~~Eserow agreement. The account. All deposits, down payments, or advances made by subscribers or purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, must be placed within five business days after the escrow agreement is signed by all necessary parties in an attorney's segregated special escrow account in a bank doing business in the State of New York which account is covered by Federal bank deposit insurance. Sponsor shall include as a special risk that deposits in excess of \$100,000 will not be federally insured in excess of \$100,000. An attorney shall open and maintain such account in his or her own name, or in the name of a firm of attorneys of which he or she is a member, or in the name of the attorney or firm of attorneys by whom he or she is employed, separate from such attorney's personal accounts or from any accounts in which assets belonging to the firm are deposited, and separate from any accounts maintained in the capacity of executor, guardian, trustee or receiver. A master escrow account with a sub- account for each subscriber or purchaser is acceptable. The name of the account, the bank, and the bank address must be stated in the plan. The word "escrow" must be included as part of the name of the account. Funds from this account may be released only by signature of the attorney(s) who is/are named as an authorized signatory or signatories. Neither the sponsor nor any principal of the sponsor may be an authorized signatory on the account. Funds must be placed in an interest-bearing account, with all interest credited to the subscriber or purchaser, unless the sponsor elects to place the funds in a separate Interest-On-Lawyer's- Account ("IOLA") for each plan pursuant to Judiciary Law section 497. The plan shall indicate whether the interest rate to be earned will be the prevailing rate for such accounts. State the current prevailing rate and when interest will begin to accrue. No fees of any kind may be deducted from the account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of the account material terms of the eserow agreement shall be disclosed in the plan and a copy of the full agreement must be contained as an exhibit to the plan in Part II. Include, without limitation, any indemnity by the sponsor in favor of the eserow agent, provision for discharge of the eserow agent's obligations by the sponsor upon payment of the deposit and interest in accordance with these regulations, any right of the eserow agent to represent the sponsor in any lawsuit, any compensation by the sponsor to the depository bank, any provision for payments by the sponsor under an indemnity in favor of the eserow agent and whether the sponsor will compensate the eserow agent for acting as such. A model form for the eserow agreement is available from the Department of Law; if such form is not used the attorney's transmittal letter should so indicate. If a different form of eserow agreement is used, all material terms of the Department of Law's model must be included in the agreement, and the agreement should be red lined to indicate changes from or additions to the model form.~~

(v) Notification to subscriber or purchaser. Within 10 business days after ~~tender of the deposit submitted with the subscription or purchase~~ the escrow agreement is signed by all necessary parties, the escrow agent shall notify the subscriber or purchaser that such funds have been deposited in the bank indicated in the ~~offering~~ plan, and shall provide the account number and the initial interest rate. If the subscriber or purchaser does not receive notice of such deposit within 15 business days after tender of the deposit, he or she may cancel the subscription or purchase and rescind within 90 days after tender of the deposit, ~~or may apply to the Attorney General for relief~~. Complaints concerning the failure to honor such cancellation requests may be made to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, N.Y. 10271. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the subscriber or purchaser.

(vi) Escrow revisions. Before funds are transferred to a new escrow account, or if the escrow agent is replaced, the plan must be amended to provide the same full disclosure with respect to the new account, the escrow agent and the escrow agreement as was originally provided. A bond, letter of credit or other security may be substituted for the escrow account only after the Department of Law approves in writing the use of such alternate form of security, pursuant to the provisions of paragraph (m)(4) of this section.

(vii) Release of funds. The escrow agreement and the plan must set forth the requirements and procedures for the release of the escrowed funds. These shall include:

(a) Under no circumstances shall sponsor ~~apply for~~seek release of the escrowed funds of a defaulting subscriber or purchaser until after consummation of the plan. Consummation of the plan does not relieve the sponsor of its obligations pursuant to [GBL section 352-h](#).

(b) The escrow agent shall ~~hold~~release the funds ~~in escrow until otherwise if so~~ directed ~~in~~:

(1) pursuant to terms and conditions set forth in the escrow agreement upon closing of the individual transaction;

(2) in a subsequent writing signed by both sponsor and purchaser or subscriber; or

~~(3) a determination of the Attorney General pursuant to subparagraph (viii) of this paragraph; or~~

~~(3) a final, non-appealable order or judgment or order of a court of competent jurisdiction, or until released pursuant to clause (d) of this subparagraph; or~~

(4) by a final, non-reviewable determination of the Attorney General pursuant to subparagraph (viii) of this paragraph so long as the subscription or purchase agreement provides for dispute resolution by the Attorney General and was signed on or before March 1, 2013.

(c) If the escrowed funds are not released pursuant to subparagraph (b), above, and the escrow agent receives a request by either party to release the funds, the escrow agent must give both parties prior written notice of not fewer than 30 days before releasing said funds. If the escrow agent has not received notice of objection to the release of the funds at the expiration of the 30 day period, the funds shall be released and the escrow agent shall provide further written notice to both parties informing them of said release. If the escrow agent receives a written notice from either party objecting to the release of the escrowed funds within said 30 day period, the escrow agent shall continue to hold said funds until otherwise directed pursuant to subparagraph (b), above. However, the escrow agent shall also have the right at any time to deposit the funds contained in the escrow account with the clerk of a court in the county in which the interest offered pursuant to the plan is located and shall give written notice to both parties of such deposit.

(ed) The sponsor shall not object to the release of the escrowed funds to:

(1) a purchaser or subscriber who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan; or

(2) all purchasers or subscribers after an amendment abandoning the plan is accepted for filing by the Department of Law.

~~(d) If there is no written agreement between the parties to release the escrowed funds, the escrow agent shall not pay the funds to the sponsor until the escrow agent has given the subscriber or purchaser written notice of not fewer than 10 business days. Thereafter, the funds may be paid to the sponsor unless the purchaser or subscriber has already made application to the Department of Law pursuant to the dispute resolution provisions contained in these regulations and has so notified the escrow agent in accordance with such provisions.~~

(viii) Disputes.

(a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply and the purchaser or subscriber or the escrow agent holding the down payments in escrow may apply to the Attorney General for a determination on the disposition of the down payment and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party applying shall contemporaneously send to all other parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the purchaser or subscriber and the escrow agent shall abide by any interim directive issued by the Attorney General.

(c) If the application permitting release of funds is granted, the deposit and any interest earned thereon shall be disposed of in

accordance with ~~the a final, non-reviewable~~ determination of the Attorney General, ~~subject to any court action in which preliminary relief is granted.~~

(d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) If the application seeking release of funds is denied, the escrow agent shall continue to hold the deposit and any interest earned thereon until:

(1) both the sponsor and subscriber or purchaser direct payment to a specified party in accordance with a written direction signed by both the sponsor and purchaser or subscriber; or

(2) a ~~judgment or final, non-appealable~~ order or judgment of a court ~~of competent jurisdiction~~ is served on the escrow agent; or

(3) the escrow agent deposits the disputed amount into court.

~~(f) In no event shall the escrow agent release funds in dispute, other than a payment of such funds into court, until such dispute is finally resolved either by determination of the Attorney General or by order or judgment of a court of competent jurisdiction or by written agreement of the sponsor and the purchaser or subscriber.~~

(ix) Exhibits to plan. Copies of the forms provided by the bank for opening the escrow account and the form of escrow agreement, if separate from the subscription or purchase agreement, as proposed must be included as Exhibit B-19 of the submission. Upon first deposit, a copy of the escrow agreement as executed and a copy of the bank forms as executed must be submitted as supplements to Exhibit B-19 of the submission.

(x) Records on file. The escrow agent shall maintain all records concerning the escrow account for seven years after release of the funds. Upon the dissolution of any law firm which was the escrow agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of them or by the successor firm and shall notify the Department of Law of such transfer.

(xi) Review and audit. The Department of Law may perform random reviews and audits of any records involving escrow accounts to determine compliance with statute and regulation.

(xii) Waiver void. Any provision of any contract or agreement, whether oral or in writing, by which a subscriber or purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of this section of the regulations shall prevail over any conflicting or inconsistent provision in the offering plan or in a purchase or subscription agreement.

(xiii) Trust obligation of sponsor. Nothing contained herein shall diminish or impair the sponsor's statutory obligation to each purchaser or subscriber pursuant to GBL section 352-h to hold in trust all deposits, advances or payments made in connection with the offer until consummation of the transaction with such purchaser or subscriber. Consummation of the plan does not relieve sponsor of its obligations pursuant to GBL section 352-h. Funds from the escrow account remain the property of the purchaser or subscriber until employed in connection with the consummation of the transaction. Such funds shall not be a part of the estate of the sponsor or the escrow agent upon any bankruptcy, incapacity or death.

(xiv) Transition. All funds required to be held pursuant to GBL sections 352-e(2-b) and 352-h on the effective date of this section shall be transferred into escrow accounts in compliance with this regulation within 60 days thereafter.

(4) Alternatives to escrow account. A sponsor may apply to the Attorney General to use security in the form of surety bonds or a letter of credit in lieu of escrow of such funds for use in newly constructed or gut rehabilitated developments upon showing of adequate insurance of such funds to the satisfaction of the Attorney General.

(i) Application for alternate security. Sponsor must submit an affidavit which contains full information as to the proposed usage of such funds, the sponsor's financing of construction or rehabilitation work, expected completion date, the

terms and conditions of the proposed surety bonds or letter of credit and required undertakings and covenants.

(ii) Documentation. The proposed form of surety bond or letter of credit, any underlying agreement or related agreement, and any undertaking or covenant required hereunder, shall be appended to the application and also filed as Exhibits to the plan in Exhibits Part B section 24.2(c)(4)(b)(B-20) or as exhibits to an amendment to the plan.

(iii) Change from escrow account. Where surety bonds are or a letter of credit is to be provided under an amendment to the plan calling for release of funds already deposited in escrow, the amendment shall provide for, and annex a form for, the written consent of each affected purchaser or subscriber and shall provide for continuation of escrow of funds of any purchaser or subscriber who does not execute and deliver such written consent to the sponsor.

(iv) Disclosure. If an application for alternate security is approved, the terms of such alternate security shall be disclosed in the plan or in an amendment to the plan promptly submitted.

(5) Surety bonds. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to purchasers or subscribers by effectuating the issuance of surety bonds to such purchasers or subscribers by a licensed insurance company which agrees to act as surety for the amount of such down payments or deposits.

(i) Deposits into escrow account. All down payments and deposits, received after the Attorney General's approval of the use of surety bonds as alternate security, shall be placed, within five business days after the ~~purchase or subscription es-~~row agreement is signed by all necessary parties, in an attorney's segregated special escrow account, established pursuant to and in compliance with paragraph (3) of this subdivision. Such funds shall be released by the escrow agent to the sponsor upon receipt by the escrow agent of a copy of the surety bond issued to the purchaser or subscriber whose funds are being released.

(ii) Payments. All funds received from purchasers or subscribers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the purchaser or subscriber to the order of the attorney or law firm as escrow agent.

(iii) Requirements to act as surety. The surety company must be licensed to write insurance in the State of New York by the New York State Department of Insurance, whether or not the property which is the subject of the plan is located in the State of New York, unless the law of the State where the property is located requires otherwise. If the property is located outside New York State and the sponsor claims that the law of such state conflicts and is controlling, the sponsor's application must specify the conflicting law. In order for the application for alternate security to be approved by the Attorney General, the applicant must show that the surety company with which the sponsor proposes to contract has a current rating for debt securities no lower than the third highest grade conferred by at least two of the national reporting services regularly evaluating insurance companies.

(iv) Agreement between sponsor and surety. The plan must fully disclose the material terms of the agreement between the insurance company as surety and the sponsor, including the premium to be paid by the sponsor, any agreement by which sponsor provides collateral to secure its obligations to the surety and any agreement by the sponsor indemnifying the surety. The agreement must provide that the surety will abide by directives in conformity with these regulations.

(v) Provisions of the bond. The surety bond must specify the name and address of the sponsor as principal; the name and address of the surety company to which claims for payment may be made; provision for the name and address of the purchaser or subscriber as obligee on the bond; provision for the amount of the down payment or deposit secured and the rate of interest, if any, to accrue on such funds; the term of the bond, and, if the bond is for a finite period, a guarantee by the surety that it will pay the amount secured to the purchaser-obligee or subscriber-obligee prior to expiration of the bond or a guarantee by the sponsor that the bond will be renewed before expiration.

(vi) Term and continuation. Each surety bond and any accompanying agreement shall provide that it will continue in effect or that it will be renewed periodically until consummation and closing of the sale of the respective unit or shares the down payment for which is secured by such surety bond or until the secured funds of a purchaser or subscriber have been returned in full, or until the funds secured by the surety bond have been placed in the escrow account pursuant to paragraph (7) of this subdivision or until there is an undisputed purchaser or subscriber default of a final, non-reviewable de-

termination by the Attorney General or final, non-appealable order or judgment of a court ~~of competent jurisdiction~~ that the purchaser or subscriber has defaulted and that the sponsor is entitled to the secured funds.

(vii) Delivery of the surety bond. The sponsor shall cause the surety to mail or personally deliver the surety bond to the purchaser-obligee or subscriber-obligee before the funds are released to the sponsor from the escrow account. The sponsor, the escrow agent and the surety company shall each retain a copy of the surety bond.

(viii) Invoking the bond. The purchaser-obligee or subscriber obligee shall have the right to demand payment of the amount secured by the surety bond directly from the surety, without first requesting payment from the sponsor. The surety shall be obligated to pay the amount secured by the bond to the purchaser-obligee or subscriber-obligee without the consent or despite the objection of the sponsor, upon the following events or circumstances:

(a) timely rescission of a purchase or subscription agreement by a purchaser or subscriber pursuant to an offer of rescission contained in the plan or an amendment to the plan;

(b) acceptance for filing by the Department of Law of an amendment abandoning the plan;

(c) pursuant to terms and conditions set forth in the escrow agreement, upon closing of the individual transaction;

(d) in a subsequent writing signed by both sponsor and subscriber or purchaser;

(e) by a final, non-appealable order or judgment of a court; or

(f) for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by final, non-reviewable determinations by the Attorney General pursuant to subparagraph (x) of this subdivision that rescission or the return of funds is required;

~~(g)~~ failure by the sponsor to obtain a commitment by the surety company to renew the surety bond 60 days prior to its expiration; or

~~(h)~~ direction by the sponsor upon request by the purchaser or subscriber.

(ix) Failure by purchaser-obligee or subscriber-obligee to produce a copy of the bond. A purchaser's or subscriber's inability to produce a copy of the surety bond shall not be a basis for the surety to reject the purchaser's or subscriber's claim. The surety shall retain a copy of the bond and shall pay the secured funds to the purchaser-obligee or subscriber-obligee without a copy of the bond as long as the purchaser or subscriber is able to provide proof of identity as the obligee on the bond.

(x) Disputes.

(a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply and the purchaser or subscriber or the surety issuing the bond may apply to the Attorney General for a determination on the disposition of the down payment secured by the bond and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party applying shall contemporaneously send to all other parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the purchaser or subscriber and the surety shall abide by any interim directive issued by the Attorney General.

(c) If the Attorney General determines:

(1) that the purchaser or subscriber is entitled to the disputed funds secured by the surety bond, the surety shall pay the Attorney General shall direct that the surety pay the funds to the subscriber or purchaser in accordance with the determination of the Attorney General.

(2) that the purchaser or subscriber is not entitled to the disputed funds secured by the surety bond, ~~such determination~~

~~may provide~~ the Attorney General shall direct either that the surety bond shall be continued in effect or that the surety bond ~~may shall~~ be cancelled.

(d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) In no event shall the funds secured by the bond be paid to the purchaser or subscriber nor shall the surety bond be discharged until any dispute is finally resolved either by written agreement of the parties directing payment of the funds or discharge of the surety bond, or, for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by a final, non-reviewable determination of the Attorney General or ~~by a~~ final, non-appealable order or judgment of a court ~~of competent jurisdiction.~~

(6) Letters of credit. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to purchasers or subscribers by effectuating the issuance of a letter of credit for the benefit of the purchasers or subscribers by an issuer qualifying hereunder.

(i) Amount. The amount of the letter of credit shall be at least 125 percent of the aggregate of all down payments or subscription deposits or payments expected to be received from purchasers or subscribers, and not retained in escrow, during such period of time as the letter of credit will be needed, as estimated by the sponsor in the application to the Department of Law. The amount of the letter of credit may be reduced or increased as warranted by circumstances and pursuant to a filed amendment to the ~~offering~~ plan.

(ii) Irrevocability. The letter of credit must be irrevocable during the stated term and any renewal term.

(iii) Beneficiary. The beneficiary must be an attorney, or firm of attorneys, acting as or qualified under subparagraph (3)(iii) of this subdivision to act as escrow agent under the plan, who shall act as a fiduciary for the benefit of purchasers and subscribers under the plan.

(iv) Authority to draw. The letter of credit must provide that the beneficiary shall have sole power to draw upon the letter of credit without the consent or despite the objection of the sponsor or of any provider of underlying credit, at such times or upon such events as are set forth in subparagraph (ix) of this paragraph.

(v) Issuer. The issuer must be a bank authorized to act as a commercial bank or savings institution under supervision of the New York State Banking Department or a federally supervised banking institution located in the State of New York, unless the property is located in another state and the letter of credit is issued by a bank located within such state. In order for the application for alternate security to be approved by the Attorney General the applicant must show that the issuer bank has surplus funds and net worth of at least ten times the amount of the letter of credit, and must have a current rating with respect to its debt securities that is within "investment grade" by one of the generally accepted national reporting services regularly rating the debt securities of banking institutions and that the provisions of the letter of credit include the right of the beneficiary to draw down the letter of credit in conformity with these regulations.

(vi) Term and continuation. The letter of credit and related agreement and any accompanying undertaking shall provide that it will continue in effect or that it shall be periodically renewed until consummation and closings of sales of all units or shares referred to in the application for alternate security pursuant to subparagraph (4)(i) of this subdivision or until the covered funds of purchasers and subscribers have been returned to them in full.

(vii) Undertaking. If the letter of credit will expire prior to the latest date of closings of sales of all such units or shares, provision for renewal of the letter of credit without loss of irrevocability and without any change of terms shall be afforded by:

(a) an "evergreen" or automatic renewal clause, if obtainable; and

(b) the irrevocable undertaking and covenant of the sponsor and by any other provider of underlying credit to provide successive renewals thereof until consummation and closings of sales of all units or shares or until the covered funds of purchasers and subscribers have been returned in full.

(viii) Operative provisions. Upon approval of a sponsor's application for use of a letter of credit as alternate security:

(a) Deposits into escrow account. All down payments and deposits received shall be placed, within five business days after the purchase or subscription escrow agreement is signed by all necessary parties, in an attorney's segregated special escrow account established pursuant to and in compliance with paragraph (3) of this subdivision. The escrow agent shall release such funds to the sponsor provided that the escrow agent has documentation showing that the letter of credit or a renewal or replacement letter of credit has been issued and is in effect. Such escrow agent shall no longer release funds from escrow if the escrow agent receives notice or information warranting draw down of the letter of credit under subparagraph (ix) of this paragraph.

(b) Payments. All funds received from purchasers or subscribers whether in the form of checks, drafts, money orders, wire transfers or other instruments which identify the payor, shall be made payable to or endorsed by the purchaser or subscriber to the order of the attorney or law firm as escrow agent.

(ix) Right to draw upon letter of credit. The escrow agent as the beneficiary of the letter of credit, acting as a fiduciary for the benefit of purchasers and subscribers under the plan whose funds were released from escrow by reason of the grant of sponsor's application, shall have the duty and the right to draw upon and collect the proceeds of the letter of credit, 10 business days after notice to the sponsor and sponsor's failure or refusal to restore such funds to the escrow agent, without the consent or despite the objection of the sponsor or the provider of the credit, upon the following events or circumstances:

(a) timely rescission of a purchase or subscription agreement by a purchaser or subscriber pursuant to an offer of rescission contained in the plan or an amendment to the plan;

(b) acceptance for filing by the Department of Law of an amendment abandoning the plan;

(c) pursuant to terms and conditions set forth in the escrow agreement, upon closing of the individual transaction;

(d) in a subsequent writing signed by both sponsor and subscriber or purchaser;

(e) by a final, non-appealable order or judgment of a court; or

(f) for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by final, non-reviewable determinations by the Attorney General pursuant to subparagraph (x) of this paragraph mandating that rescission or the return of funds is required;

~~(g)~~ failure by the sponsor to obtain a renewal or replacement letter of credit no later than 60 days prior to the expiration of the existing letter of credit;

~~(h)~~ direction by the sponsor upon request of the purchaser or subscriber;

~~(i)~~ notice of impending cancellation of the letter of credit has been given or received, or the issuer has filed a bankruptcy or insolvency petition or has been taken over by a Federal or state authority, and no proper replacement of the letter of credit has been furnished although continuation of the same in effect is required under subparagraph (4)(i) of this subdivision or subparagraph (vi) of this paragraph.

(x) Disputes.

(a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply, and the purchaser or subscriber, the escrow agent or the bank issuing the letter of credit may apply to the Attorney General for a determination on the disposition of funds secured by the letter of credit, the deposit and any interest earned thereon. Forms for this purpose shall be available from the Department of Law. The party making such application shall contemporaneously send to the other three parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the purchaser or subscriber, the escrow agent and the bank shall abide by any interim directive issued by the Attorney General.

(c) If the Attorney General determines:

(1) that the subscriber or purchaser is entitled to the disputed funds secured by the letter of credit, the Attorney General shall direct that the issuer of the letter of credit pay the funds to the purchaser;

(2) that the subscriber or purchaser is not entitled to the disputed funds secured by the letter of credit, the Attorney General shall direct that the letter of credit shall be continued in effect or that the letter of credit shall be cancelled.

~~If the application permitting release of funds is granted, such funds secured by the letter of credit, and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted.~~

(d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) In no event shall the disputed funds secured by the letter of credit be paid to the purchaser or subscriber nor shall the letter of credit be terminated until any dispute is finally resolved either by written agreement of the parties directing payment of the funds, or by a final, non-appealable order or judgment of a court or, for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by a determination of the Attorney General ~~or by order or judgment of a court of competent jurisdiction.~~

(7) Change to escrow account. Where alternate security as provided under a filed offering plan is no longer needed by the sponsor, or new or additional alternate security cannot be obtained by a sponsor or its successor, sponsor shall submit an amendment for filing which provides that any future purchase or subscription down payments or deposits shall be held in the escrow account in accordance with paragraph (3) of this subdivision. Such amendment shall not affect the sponsor's obligation to account for funds previously released to the sponsor unless the funds representing all such down payments or deposits are restored to the escrow account.

(8) Alternate security for funds received out-of-state. Purchaser funds paid in another jurisdiction by a purchaser who is solicited within or from the State of New York in connection with the purchase of a cooperative interest in realty involving timeshare property located outside New York State shall be handled in accordance with the applicable laws and regulations of the jurisdiction in which the funds are received, provided that such jurisdiction requires funds to be held in trust or in escrow until title in the timeshare interest is conveyed to the purchaser and that interest earned, if any, on such deposit is credited to the purchaser on closing. Where not inconsistent with the law and regulations of such other jurisdiction, the sponsor may comply with the requirements set forth in paragraphs (3) through (7) of this subdivision, or may apply to the Department of Law for permission to comply with the alternate requirements set forth below. The granting of such application shall be in the discretion of the Attorney General.

(i) Sponsor shall establish a supplementary escrow account within the State of New York.

(ii) The supplementary escrow account shall be funded by the sponsor in the amount of one-tenth of one percent (.1%) of the gross offering amount of the public offering, with a minimum of \$5,000 and a maximum of \$25,000.

(iii) The escrow agent for the supplementary account shall be permitted to withdraw and pay over to the sponsor the interest earned on the supplemental escrow account provided that such withdrawal does not reduce the balance of the account below the minimum principal balance required to be held in escrow by the sponsor. Funds shall not otherwise be released from the supplemental escrow account until the sponsor has withdrawn its public offering and a closing of the sale with the last New York purchaser in New York State shall have occurred unless otherwise directed by the Department of Law. All other provisions for the handling of escrowed amounts, including dispute resolution, shall remain as set forth in paragraph (3) of this subdivision, except that the escrow agent shall be exempted from the notification requirements of subparagraph (3)(v) of this subdivision and no right of rescission shall arise as a result of failing to give notice

to purchasers as required in subparagraph (3)(v) of this subdivision.

(iv) As an alternative to the funding of a supplemental escrow account, a sponsor may apply to the Attorney General to use supplemental security in the form of surety bonds or a letter of credit. The funding amount of the alternative security shall be in the same amount as required to establish a supplementary escrow account. The provisions of paragraphs (4), (5), (6) and (7) of this subdivision, including dispute resolution, shall otherwise remain fully in effect.

(v) The sponsor shall appoint an attorney licensed to practice in the State of New York who maintains an office within New York State as the supplementary escrow agent. The sponsor and the supplementary escrow agent shall enter into a written escrow agreement which shall govern the operation of the supplemental escrow account. The agreement shall conform to the requirements of subparagraph (3)(iv) of this subdivision.

(vi) The sponsor shall have a continuing obligation to maintain the supplemental escrow account or supplemental alternate security at the minimum funding amount for such security, and within five business days of a payment to a New York purchaser from the supplemental escrow account or by bond or letter of credit, the sponsor shall be required to replenish the supplemental security to the full required amount. Each sponsor providing security in accordance with this paragraph shall agree that the determinations of the Attorney General with regard to the return of purchasers' moneys pursuant to dispute resolution under this subdivision shall be an obligation of the sponsor who shall cause its escrow agents holding the moneys of New York purchasers in other jurisdictions to comply with such determinations regardless of the value or amount of the supplemental security held by the supplemental escrow agent.

(9) Describe in detail the timing and manner of payment of the purchase price and refer to the section of the offering plan which sets forth the terms of any financing offered or arranged by the sponsor.

(10) State (in capital letters) that a purchaser may cancel his or her contract within seven business days (or longer if required by the law of the jurisdiction in which the timeshare property is located), and receive a full refund of moneys paid in connection with the timeshare purchase. Refer readers to page one of the offering plan for a detailed discussion of this cancellation right.

(11) If the sponsor is offering financing, describe any existing arrangements or future plans for the pledge, hypothecation, sale or other negotiation of notes executed by timeshare purchasers. Discuss the applicability and effect of the "holder-in-due-course" doctrine, including appropriate references to Federal Trade Commission rules (16 CFR part 433) on this subject.

(12) State that no document executed by a purchaser will contain a cognovit or confession- of-judgment clause.

(13) State that the funds of a purchaser who is not in default under the purchase agreement (including payments made by the purchaser directly to the sponsor or funds received by the sponsor upon the negotiation of notes executed by the purchaser) will be disbursed from escrow to the sponsor only when the following conditions have been met:

(i) At least five days have passed following the expiration of the purchaser's cancellation period.

(ii) Bona fide purchasers for value have executed purchase agreements (which are no longer subject to rescission by the purchasers) for 15 percent of the total number of timeshares offered in those phases of the project in which any purchase agreements have been executed.

(iii) In a fee timesharing plan, title to the timeshare has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the purchaser or to a trust and 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.

(iv) In a fee cooperative timesharing plan, title to the timeshare property has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the cooperative corporation and the shares allocated to the timeshare have been transferred to the purchaser.

(v) In a leasehold cooperative timesharing plan, the leasehold estate in the timeshare property has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the coop-

erative corporation and the shares allocated to the timeshare have been transferred to the purchaser.

(vi) Any real or personal property to be held by an owner's association under the timesharing plan has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the association.

(vii) In a timesharing plan with fixed units, construction of the purchaser's unit and the common facilities (including property and facilities outside the immediate timeshare regime which timeshare owners have the right to use and occupy as part of the timesharing plan at no additional charge or at a discount from rates charged to the general public) has been completed (and a permanent or temporary certificate of occupancy has been issued, if required), and the unit and common facilities have been furnished as set forth in the offering plan, or a bond or other security has been provided in an amount and form satisfactory to the Department of Law.

(viii) In a timesharing plan with floating units, construction of the common facilities has been completed (and a permanent or temporary certificate of occupancy has been issued, if required), and the total number of timeshare purchasers is less than the number of intervals available in those units on which construction has been completed (and a permanent or temporary certificate of occupancy has been issued, if required), and said units and common facilities have been furnished as set forth in the offering plan, or a bond or other security has been provided in an amount and form satisfactory to the Department of Law.

(ix) 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), an easement establishing this right has been recorded against the servient estate in accordance with the recording act of the jurisdiction in which the servient estate is located.

(x) 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), a covenant (running with the land) that such property will be used only for the purposes set forth in the offering plan has been recorded against the other property in accordance with the recording act of the jurisdiction in which the other property is located.

(xi) In a leasehold timesharing plan, the leasehold estate in the timeshare unit has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the purchaser.

(14) Describe what happens in the event a purchaser defaults on his or her obligations under the purchase or subscription agreement or purchase-money note. Include a discussion of any applicable grace period and notice requirements. Discuss acceleration of indebtedness and liquidated damages.

(15) A complete copy of the subscription or purchase agreement and financing documentation (if sponsor is offering or has arranged for financing) must be included in part II of the offering plan.

(16) The plan and subscription agreement must provide that any conflict between the plan and the subscription agreement will be resolved according to the terms of the plan.

(17) The subscription agreement and plan may not contain, or be modified to contain, a provision waiving purchaser's rights or abrogating sponsor's obligations under article 23-A of the General Business Law.

(18) The following legend must appear in capital letters just above the signature line in the purchase or subscription agreement: **YOU MAY CANCEL THIS CONTRACT AT WILL AND WITHOUT EXPLANATION WITHIN SEVEN (7) BUSINESS DAYS AFTER YOU SIGN IT, IN WHICH EVENT YOU WILL RECEIVE A FULL REFUND. SEE PAGE 1 OF THE OFFERING PLAN. (If the law of the jurisdiction in which the timeshare property is located requires a rescission period of more than seven business days from the date of execution of the contract, substitute the appropriate time period in the above legend.)**

(19) If the sponsor requires a purchaser to sign or initial an acknowledgment form, such form must include a separate item (to be initialed by the purchaser) informing the purchaser that he or she may cancel the purchase agreement within seven business days of the date of execution (or longer if required by the law of the jurisdiction in which the timeshare property is lo-

cated) and receive a full refund.