STATE OF NEW YORK **DEPARTMENT OF LAW**

REAL ESTATE FINANCE BUREAU
MEMORANDUM

RE: MIXED USE BUILDINGS EXPANDED NO-ACTION TREATMENT **DATED** 1/29/09

The Real Estate Finance Bureau has received many inquiries concerning our office policy on the issuance of no-action letters from owners of multi-use properties wishing to separate the residential and commercial units into separate condominium units. In the past, the office has granted no-action letters only in cases where the building was undergoing renovation or construction and did not contain any residential tenants in occupancy at the time of application. We are now expanding our policy to permit an occupied multi-use building to become a condominium with two or more units, so long as the owner has no present intention of selling the individual apartments contained within the residential condominium unit.

In the current economic climate, there exists a strong rationale in favor of the implementation of this policy. Owners would be able to get separate financing for the commercial and residential units, achieving greater flexibility. The sale of the commercial space would permit them to tap into previously unavailable equity. In addition, there is no downside for tenants. Residential renters would still have the opportunity to purchase their units if and when the owner converts the units pursuant to a full offering plan. Thus, upon conversion, the rental tenants' statutory rights would attach.

The following transactions may qualify for a no-action letter::

- The owner of a multi-use building wants to divide the space into two or more condominium units, but will retain ownership of all units. The ownership entity intends to divide the building into separate tax lots for reasons such as financing, income tax, estate planning or government program purposes.

- A similar situation as to the above, but instead of retaining ownership, the owner contemplates a transfer to an affiliate or controlled entity.

- In circumstances where no public offering occurred, a sale to a non-affiliated party may qualify for no-action treatment if the purchaser is a sophisticated party who does not require the protection of a full offering plan.

The no-action application must comply with 13 NYCRR 23.9 and the additional guidelines and disclosure requirements set forth below:

1. The issuance of such no-action letters is entirely discretionary and does not constitute a precedent for future submissions.

2. The application must contain a representation that in the event that the residential unit will be offered for sale to the residential tenants, an offering plan drafted in compliance with either Part 18 or Part 23 must be submitted to this office for filing or another application for a no-action letter must be made.

3. The applicants must provide an explanation of how building operation expenses are to be allocated between commercial and residential entities, such that the residential unit is not subsidizing the commercial unit in paying for the operation of the building..

4. An expert must certify the reasonableness of the allocation of the percentages of common interest between the residential and commercial units.

5. The application must contain an affidavit from the owner that substantially complies with the requirements set forth in Part 23.

6. The purchaser or transferee must submit an affidavit setting forth that it is understood that no offering literature other than as required by the no-action letter will be provided and that it is acknowledged that the purchaser or transferee has been informed that if this transaction constituted a public offering within the meaning of GBL Article 23-A , the purchaser or transferee would be entitled to certain rights and protections pursuant to such Article.