STATE OF NEW YORK DEPARTMENT OF LAW

OFFICE OF ATTORNEY GENERAL ROBERT ABRAMS

MEMORANDUM

TO: REF Attorneys, Paralegals & Law Students

DATE: 7/21/89

FROM: Mary Sabatini DiStephan MSD

RE: Requirement for certified financial statements in extension amendments

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There appears to be some inconsistency by review attorneys in dealing with the requirement that sponsors provide certified financial statements in all extension amendments. This memo is intended to reiterate our longstanding policy.

WHEN THE SPONSOR IS IN CONTROL OF THE BOARD

When the sponsor is in control of the board, certified financial statements should be provided each year by the board to the coop or condo in conformity with the provisions of the offering plan (usually within four months after the end of the fiscal year). Since the sponsor is in control, there should be no reason why it cannot produce the statements in the extension amendment. There are some instances, however, where there is a delay in completing the statement, particularly in April or May. Reviewers should use discretion in permitting these statements to come in a month or two after they are due, where it is clear that the sponsor has endeavored to fulfill this obligation but the accountant cannot complete the statement in time.

WHEN THE SPONSOR IS NOT IN CONTROL OF THE BOARD

When the sponsor is not in control of the board, the sponsor cannot direct the board to spend the money for, or to produce certified financial statements. Sponsor can only make available in the extension amendment that which has been provided to the sponsor. This is acceptable because the non-controlled sponsor board is not likely to understate the budget or to operate the building at a deficit. If unaudited financial statements are produced, these should be included in the amendment. In either case, the sponsor should specifically state in the amendment that the board, not controlled by sponsor, has not provided certified financial statements.

MSD:kd