



MEMORANDUM

April 2, 1998

TO: REF Attorneys, Paralegals & Law Students
FROM: Mary Sabatini DiStephan *MS*
RE: Sponsor Sales and Special Risk

This memo is written to remind you that all plans and amendments should disclose the risks associated with a minimum number of shares or units sold by the sponsor.

In a plan, that disclosure should include the sponsor's present intention with regard to sales, the number of contracts to purchase (or subscribe) which the sponsor is obligated to obtain before it may declare the plan effective, and the risks associated with the sponsor's only selling (prospectively) the minimum number of shares or units to become effective (e.g., inability to obtain financing, or to sell to a purchaser who requires financing, retention of voting control by the sponsor for a possibly extended period of time, maintenance of the rental nature of the building, etc.).

In an extension amendment, the status of unsold shares or unsold units is always required to be disclosed. The sponsor should reiterate its intention with regard to selling in each extension amendment (or immediately when its intention changes). In the amendment, the special risk is actualized (in the plan it was a potential) if, in fact, a small percentage of shares or units have been sold. All special risks associated with the actual number of shares or units which are still owned by the sponsor, holder of unsold shares, or non-occupying owner should be disclosed.

These items are all *material* disclosures which must be disclosed since as indicated in State of New York v. Rachmani Corp., 71 N.Y.2d 718 (1987) they involve facts which if omitted "...would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available." (426 US at 449 [emphasis added]).

Please also refer to your memo books for two memoranda on a similar issue: "Non-Eviction and Vacant Building Plan Special Risk" memo, dated August 9, 1991 and "Status of Sales" memo, dated May 21, 1993. Please review the memo book periodically to insure that all disclosures are made. If you feel your book is not complete, please see Raj.

Thank you.