

13 NYCRR Section 18.1.

General

(a) *Applicability.* The offering statement or “offering plan” required by [section 352-e of the General Business Law](#) (“G.B.L.”) for a cooperative that meets the requirements set forth below is subject to this Part. Except as provided in paragraph (4) of this subdivision, offerings subject to this Part are not subject to any other Part.

- (1) One or more individuals reside in the building on the date the proposed offering plan is submitted to the Department of Law.
- (2) The cooperative is not organized as a time-sharing arrangement.
- (3) One or more of the cooperative units to be offered are used for residential purposes or for combined residential/home occupation purposes. A cooperative offering for commercial use only is not subject to this Part.
- (4) The conversion of an occupied building to two or more condominium units and the conversion of one or more of the condominium units to an apartment corporation (“condo- coop”) is primarily subject to this Part. In addition, the offering plan must comply with the requirements of Part 19 of this Subchapter to the extent necessary to comply with subdivision (b) of this section.

(b) *Standard of compliance.* An offering plan must, at a minimum:

- (1) contain in detail the terms of the transaction and be complete, current and accurate;
- (2) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (3) not omit any material fact;
- (4) not contain any untrue statement of a material fact;
- (5) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (6) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
- (7) not contain any representation or statement which is false, where the sponsor or the person who made such representation or statement:
 - (i) knew the truth;
 - (ii) with reasonable effort could have known the truth;
 - (iii) made no reasonable effort to ascertain the truth; or
 - (iv) did not have knowledge concerning the representation or statement made.

(c) *Definitions.*

- (1) As used in this Part, the word *sponsor(s)* means any person, partnership, joint venture, corporation, com-

pany, trust, association or other entity who makes or takes part in a public offering or sale, in or from the State of New York, of securities consisting primarily of shares or participation interests or investment in real estate, including cooperative interests in realty.

(i) *Sponsor* shall not be deemed to include a selling agent who has complied with [section 359-e of the General Business Law](#) or an attorney or other expert retained by the sponsor solely to render professional advice or opinions in connection with the offering.

(ii) Whenever under this Part references are made to the sponsor performing an act, it shall be deemed compliance with this Part if the plan states that the apartment corporation will perform the act, provided nothing herein shall be interpreted so as to relieve the sponsor of any responsibility or to impose upon the apartment corporation any financial burden it would not otherwise have if the sponsor was named in the offering plan as the party performing the act. Plans which elect to name the apartment corporation as performing the act when this Part specifically names the sponsor, shall, in the introduction, state that the acts of the apartment corporation are caused by the sponsor and shall incorporate the proviso stated above.

(2) As used in this Part, the word *principal(s)* means all individual sponsors, all general partners of sponsors that are partnerships, all officers, directors and shareholders of a corporate sponsor that are actively involved in the planning or consummation of the offering, and all other individuals who both (i) own an interest in or control sponsor, and (ii) actively participate in the planning or consummation of the offering, regardless of the form of organization of sponsor.

(3) As used in this Part, the word *subscription* or *subscription agreement* means any executed written agreement to purchase shares allocated to a dwelling unit. As used in this Part, the word *subscriber* means any person, partnership, joint venture, corporation, company, trust, association or other entity who executes such a subscription. As used in this Part, the phrase *to subscribe* shall mean to execute any such subscription agreement.

(4) As used in this Part, the words *presentation date* shall mean the date of completion of service, as defined in subdivision (d) of this section, of a copy of the plan or amendment filed with the Department of Law.

(5) *Consummation of the plan* means transfer of title to the apartment corporation and the issuance of shares and a proprietary lease to at least one subscriber under the plan following a declaration of effectiveness by the sponsor and acceptance of the amendment by the Department of Law confirming or declaring the plan effective.

(6) *Filing* means the issuance of a letter from the Attorney General stating that an offering plan or amendment has been accepted for filing.

(d) *Service.*

(1) Unless otherwise provided by statute or regulation, any document required to be served by this Part shall be served on:

(i) one residential tenant per unit;

(ii) subscribers or purchasers who have executed and delivered subscription agreements or purchase agreements to the sponsor, apartment corporation or selling agent, and are not in default;

(iii) shareholders of the apartment corporation; and

(iv) any other person entitled to service pursuant to local law or regulation (collectively "offerees"), in the following manner:

(a) personal delivery; or

(b) mailing by regular mail or registered or certified mail, with or without return receipt requested, addressed to the offeree at the last known residence of such offeree or, if offeree has provided written information of an alternative address for notices, addressed to the offeree at the alternative address. If sponsor has no information of the last known residence address, but has written information of the place of business or employment of such offeree, the mailing shall be addressed to such last business or employment address.

(2) Service by personal delivery shall be deemed complete upon delivery. Service by mailing shall be presumed complete on the fifth day after the date of mailing. An affidavit of service identifying the offerees served, stating the manner of service and the date of service, shall be a document required to be retained under section 18.3(ff) of this Part. The date of completion of service shall be the latest date on which service upon all offerees is deemed and/or presumed complete.

(e) *Notice to tenants and affidavit of service.*

(1) Within three business days from the date the proposed offering plan is first submitted to the Department of Law, the sponsor shall serve each offeree, as defined in subdivision (d) of this section, with a copy of the proposed offering plan, together with the following notice:

Date of Notice: _____

We have submitted to the ~~New York State Department of Law, Real Estate Finance Bureau~~~~Department of Law of the State of New York, Real Estate Financing Bureau~~, a proposed offering plan, commonly known as a “red herring”, for the conversion of *(insert address and name of building, if any)* to a cooperative. The final offering plan has not yet been filed with the Department of Law. The law requires us to disclose all material information concerning the building and the conversion process in this proposed offering plan. A copy of the proposed offering plan is enclosed for you to comment on and to retain. Additional copies of the proposed offering plan are available for inspection and copying at a reasonable charge, at the office of sponsor (or selling agent) located at *(insert address of sponsor or selling agent)* and the Department of Law.

The Attorney General strongly urges you to read this proposed offering plan carefully and to consult with an attorney to advise you as to the meaning and consequences of this plan.

The law requires the Department of Law, within not less than 120 days nor more than 180 days from the date of submission of the proposed offering plan, to either file the offering plan or to indicate how the offering plan is deficient. No apartments may be sold or offered for sale, no subscription agreements may be executed, and no downpayments may be accepted unless and until the Department of Law files the final offering plan. A copy of the filed plan will then be served on each tenant. You may send written comments on the proposed offering plan to the ~~New York State~~ Department of Law, Real Estate ~~Financing-Finance~~ Bureau, ~~120 Broadway, 23rd Floor~~~~48th Floor, Two World Trade Center~~, New York, N.Y. ~~10271047~~. You may also send your written comments to *(insert name and address of sponsor or selling agent.)*

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(2) If [G.B.L. section 352-eee](#) is applicable, the notice shall also state that pursuant to [G.B.L. section 352-eee](#) (1)(i), a copy of the notice will be sent to the clerk of the municipality where the building or group of buildings is located.

(3) If [G.B.L. section 352-eee](#) or [352-eeee](#) is applicable, the notice shall also state:

Tenants or their representatives may physically inspect the premises at any time subsequent to the submission of the plan to the Department of Law, during normal business hours, upon written request made by them to the sponsor or selling agent, provided tenants' representatives are registered architects or professional engineers licensed to practice in the State of New York. After a final offering plan is filed with the Department of Law, copies of all postings required by [section 352-eee](#) or [352-eeee of the New York General Business Law](#), which are described in the “Rights of Existing Tenants” section on page _____ of the plan, will be made available for in-

spection and copying at the office of the Department of Law where the submission was made and at the office of the sponsor or selling agent.

(4) An affidavit of service together, with a copy of the notice, must be submitted to the Department of Law within three business days following completion of service on all offerees.

(f) *No excessive long-term vacancies.* If [G.B.L. section 352-eee](#) or [352-eeee](#) is applicable to the offering, within three business days following completion of service on all offerees, as defined in subdivision (d) of this section, of a proposed offering plan, sponsor shall submit an affidavit stating:

(1) the number of dwelling units in the building;

(2) the number of dwelling units and the identification of the units that were not leased or occupied by bona fide tenants for more than five months prior to the date that the proposed plan was first submitted to the Department of Law;

(3) the percentage obtained by dividing the number of units identified in paragraph (2) by the number of units identified in paragraph (1);

(4) if the percentage set forth in paragraph (3) exceeds 10 percent, the normal average vacancy rate for the building or buildings for the two years prior to the January preceding the date of first submission, and a statement that said percentage set forth in paragraph (3) does not exceed twice the said normal average vacancy rate;

(5) that, based on the information provided in paragraphs (1)-(4) of this subdivision, an excess number of long-term vacancies did not exist on the date that the offering plan was first submitted to the Department of Law; and

(6) the following information with respect to any tenant who is the sponsor, or the selling agent, or is related to the sponsor, the selling agent or any principal of the sponsor or selling agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner:

(i) the identity of the tenant;

(ii) the number of the unit the tenant leases;

(iii) the nature of the relationships with the sponsor or the selling agent, or any principal of the sponsor or the selling agent;

(iv) the date of the lease;

(v) the date the tenant took occupancy of the unit; and

(vi) whether or not the tenant has been counted as a bona fide tenant by the sponsor for the purposes of this affidavit.

The Department of Law, in its discretion, may require such further proof as it deems necessary to establish that there were no excessive long-term vacancies.

(g) *Time of review.* After submission of the proposed offering plan for filing, the Department of Law shall issue a letter to the sponsor or sponsor's attorney stating that the plan is filed, or indicating deficiencies. The Department of Law shall issue such a letter for an offering plan subject to this Part no sooner than 120 days and no later than 180 days after the date of submission of the proposed offering plan. The Department of Law may issue a deficiency letter whenever it appears: (1) that the department cannot make any finding mandated by law, or (2) that the proposed offering plan is deficient in one or more respects. The Depart-

ment of Law may, in its discretion, deem an offering plan as not submitted if the proposed offering plan and exhibits are incomplete and therefore do not meet the requirements of section 18.2 of this Part, Procedure for Submission.

(h) *Revisions.* Following submission of a proposed offering plan, revisions must be made to reflect any material change of fact or circumstances pertaining to the proposed offering, the offerors, the property involved, the condition of the premises, or the costs of ownership and operation of the property, so that the offering plan may continue to comply with subdivision (b) of this section. Such revisions shall be submitted to the attorney assigned by the Department of Law to review the proposed offering plan. The Department of Law may issue a deficiency letter and/or require resubmission of a new offering plan if the revisions reflect matters of fact or circumstances which were known or should have been known to the sponsor at the time of original submission, or substantially change the nature or terms of the offering, or if the plan as revised comes within the grounds stated in subdivision (g) of this section. After the offering plan is filed the plan must be amended periodically as required by section 18.5 of this Part.

(i) *Statutory compliance.* Unless expressly provided herein, nothing contained in this Part shall be construed as limiting the requirements set forth in article 23-A of the G.B.L.

(j) *Out-of-state cooperatives.* A sponsor of a cooperative located outside of New York, who makes or takes part in a public offering or sale in or from the State of New York of cooperative interests in realty interest must file an offering plan with the Department of Law that provides the full and fair disclosure required by law, including this Part. The Department of Law, in its discretion, may allow the sponsor to comply with any requirement of this Part which would require a departure from the offering plan approved by or filed with the state where the cooperative is located by employing an addendum at the end of the offering plan containing the information required.

(k) *Exemptions.* Upon written application of the sponsor or sponsor's attorney, the Department of Law, in its discretion, may by ruling exempt a plan from the application of any provision of this Part, where it is found that enforcement of the provision is not necessary to effectuate the purposes of the G.B.L. or to protect the public interest. The application shall:

- (1) be annexed to and be submitted with the attorney's transmittal letter;
- (2) set forth the provisions from which the exemption is sought and the grounds for the exemption; and
- (3) be signed by sponsor or the sponsor's attorney.

The transmittal letter and certifications required by section 18.4 of this Part shall be in the form required by this Part, without modification, and shall be based on the assumption that any exemption sought pursuant to this section has been granted. In the event that the Department of Law denies the application for exemption, the Department of Law shall issue a deficiency letter as provided in subdivision (g) of this section. No additional fee is required for an exemption application.

(l) *Exemption from [G.B.L. section 359-e](#).* An apartment corporation whose shares are to be sold pursuant to an offering plan filed with the Department of Law is deemed exempted from the registration requirements of [G.B.L. section 359-e](#), provided that all offering activities are made exclusively by persons duly registered under the filing requirements of such section. No application for exemption need be filed by an apartment corporation exempted under this subdivision.

(m) *Transition.* Notwithstanding any provisions to the contrary in this Part, the following provisions apply to any proposed offering plan which:

- (1) was submitted to the Department of Law after March 31, 1982 pursuant to Part 17 or proposed Part 18 of this Subchapter before June 25, 1982;

(2) had not been filed with the Department of Law before the effective date of Part 18 (June 2, 1982); and

(3) meets the requirements of subdivision (a) of this section.

(i) All such proposed offering plans (“transitional plans”) shall be revised to substantially comply with this Part and shall be resubmitted to the Department of Law (“resubmitted plan”). For purposes of this section, *substantial compliance* shall mean that the proposed offering plan contains all information required to be disclosed by this Part, either in the bound offering plan or in the supplemental submission annexed to the plan. A transitional plan will be deemed abandoned if it is not resubmitted within six months of the effective date of this Part. Sponsor shall notify all offerees in writing within five days after the plan is deemed abandoned.

(ii) The Department of Law, in its discretion, may issue a letter to the sponsor or sponsor's attorney stating that a transitional plan is filed if the resubmitted offering plan complies with this Part and more than 120 days have elapsed from the date the proposed offering plan was first submitted to the Department of Law.

(iii) After resubmission, the Department of Law shall issue a letter to the sponsor or sponsor's attorney stating that the resubmitted plan is filed, or indicating deficiencies. The Department of Law shall issue such a letter no later than 180 days after the date of resubmission. The Department of Law may issue a deficiency letter whenever it appears: (a) that the department cannot make any finding mandated by law, or (b) that the resubmitted plan is deficient in one or more respects.

(iv) The requirement in subdivision (e) of this section that a copy of the proposed offering plan and a notice be served on offerees does not apply to a resubmitted offering plan. If the resubmitted plan contains any material change in the terms of the proposed offering plan as first submitted to the Department of Law, the sponsor must serve a copy of the resubmitted plan and the following notice on each offeree. The transmittal letter required by section 18.2(c)(1) of this Part must state whether and in what respects the resubmitted plan materially changes the terms of the proposed offering plan first submitted to the Department of Law. A resubmitted plan that does not materially change the terms of the proposed offering plan first submitted to the Department of Law must be made available to tenants at the office of sponsor or selling agent for inspection and copying.

NOTICE

As you know, on _____ (*insert date*) we submitted to the New York State Department of Law a proposed offering plan for the conversion of (*insert address or name of building*) to cooperative ownership. This letter is to notify you of a recent change in law that may affect the timetable of the conversion process.

The amended law requires the Department of Law, within not less than 120 days nor more than 180 days from the date of submission of the proposed offering plan, either to file the offering plan or to indicate how the proposed offering plan is deficient. The Department of Law recently issued regulations that interpret the amendment to the law for buildings currently being converted.

As applied to (*insert address or name of building*), the Department of Law may file the plan or indicate how it is deficient after (*insert date that is 120 days after the date the proposed offering plan was first submitted to the Department of Law*) and must do so before (*insert date that is 181 days after the date the plan was revised and resubmitted pursuant to these regulations*).

We have materially changed the proposed offering plan that you received in (*insert month and year in which the plan was first served on tenants*). A copy of the revised plan is enclosed for you to comment on and to retain. You will receive a copy of the filed plan if and when the plan is filed with the Department of Law.

No apartments may be sold or offered for sale, no subscription agreements may be executed, and no down-payments may be accepted unless and until the Department of Law files the offering plan. A copy of the filed plan will be served on each tenant.

You may send written comments on the proposed offering plan to the [New York State Department of Law, Real Estate Financing-Finance Bureau, Two World Trade Center, 48th 120 Broadway, 23rd Floor, New York, N.Y. 10271047](#). You may also send your written comments to (*insert name and address of sponsor or selling agent*).

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(v) Subdivision (f) of this section, concerning excessive long-term vacancies, does not apply to a transitional offering plan. However, if [G.B.L. section 352-eee](#) or [352-eeee](#) is applicable, sponsor shall include, at Exhibit B-18 of the resubmitted plan and exhibits, proof satisfactory to the Department of Law that there were no excessive long-term vacancies on the date the proposed offering plan was first submitted to the Department of Law. Proof shall include, but is not limited to, an affidavit from sponsor stating the information in subdivision (f) of this section.

(vi) The Department of Law shall credit filing fees previously paid under [G.B.L. section 352-e\(7\)\(a\)](#) to the resubmitted plan if the plan is resubmitted within six months of the effective date of this Part.

(vii) The transmittal letter required by section 18.2(c)(1) of this Part for a resubmitted plan must include the date the plan was first submitted to the Department of Law, the file number and, if possible, a copy of the receipt for the filing fee.

(viii) Section 18.3(j) of this Part concerning certified operating statements for the building need not be complied with on the date the offering plan is resubmitted to the Department of Law. The certified operating statements required by section 18.3(j) of this Part may be included in the resubmitted offering plan before it is filed with the Department of Law or, if the plan so states, included in an amendment to the resubmitted offering plan after it is filed but before the plan is declared effective.

(n) *Effectiveness of regulations.*

(1) This Part, as in effect on June 2, 1982, applies to offering plans that meet the requirements of subdivision (a) of this section and were submitted on or after April 1, 1982 but before July 20, 1983.

(2) This Part, as revised by revisions filed with the Secretary of State on May 24, 1983, applies to offering plans that meet the requirements of subdivision (a) of this section and are submitted on or after July 20, 1983.

(3) Sections 18.3 and 18.5 of this Part, as revised on May 24, 1983 (excluding sections 18.3[n][4], 18.5[e][6][iv] and 18.5[e][7][iv] of this Part, except to the extent that any of these are required by the terms of the offering plan) shall apply to amendments submitted on or after July 20, 1983 for offering plans which meet the requirements of subdivision (a) of this section regardless of when such plan was filed.

(4) Section 18.6 of this Part, as revised on May 24, 1983, is effective immediately for advertisements for offering plans that meet the requirements of subdivision (a) of this section regardless of when such plan was filed.

(5) Section 18.8 of this Part, as revised on May 24, 1983, is effective immediately for all offering plans filed by the Department of Law on or after July 21, 1982, and to all sales of units occupied by eligible senior citizens, eligible handicapped persons or eligible disabled persons or persons seeking exemptions as eligible senior citizens or eligible handicapped persons or eligible disabled persons, on or after July 21, 1982.

(6) This Part, as revised by revisions filed with the Secretary of State on March 5, 1984, applies to offering plans that meet the requirements of section 18.1(a) and are submitted on or after April 5, 1984.

(7) This Part, as revised by revisions filed with the Secretary of State on March 5, 1984, is effective immediately for all offering plans, regardless of when such plan was submitted, that:

- (i) meet the requirements of section 18.1(a); and
- (ii) are or become subject to [G.B.L., section 352-e\(2-a\)](#), prior to being declared effective.

(8) Sections 18.1(p) and 18.3(r) of this Part, as revised on March 5, 1984, are effective immediately for all offering plans, regardless of when such plan was submitted, that:

- (i) meet the requirements of section 18.1(a);
- (ii) are or become subject to [G.B.L., section 352-eee](#), prior to being accepted for filing; and
- (iii) were not accepted for filing prior to June 30, 1983.

(o) *Abandonments, terminations and withdrawals.* If the offering plan is withdrawn or terminated prior to filing, or is abandoned after filing, the sponsor shall execute and file form RS-3 promulgated by the Attorney General within five business days thereafter. If subscription payments have been received, an accounting of the disposition of all funds received shall be included in form RS-3. The sponsor shall concurrently send written notice as to the withdrawal, termination, or abandonment to all offerees as defined in these regulations.

(p) *Postings of subscription percentages.* If [G.B.L., section 352-eee](#) or [352-eeee](#), is applicable, on the 30th, 60th, 88th and 90th day after the date of presentation of the offering plan and at least once every 30 days until the plan is declared effective or is abandoned, and on the 10th and 2nd day before the expiration of any exclusive purchase period provided in an amendment to the plan, the sponsor shall post before noon, in a prominent place accessible to all tenants in the building, a statement under oath listing the percentage(s) of bona fide tenants in occupancy on the filing date who have signed subscription agreements as of a specified time on the date of the statement. Such statement shall remain posted until the next statement must be posted. The percentage(s) shall be computed in the same manner as the sponsor must compute the minimum percentage(s) needed to declare the plan effective. The statement also shall be filed with the Department of Law. The Department of Law may issue model forms, which are recommended for use by sponsors, for posting statements. The statement shall include the following:

- (i) The date and time of the statement.
- (ii) The date the plan was filed with the Department of Law.
- (iii) The date of presentation of the plan (and the current amendment).
- (iv) The last day of any exclusive period(s).
- (v) If an eviction plan, the last day for eligible senior citizens or eligible disabled persons to elect not to purchase pursuant to [G.B.L., section 352-eeee](#), or the last day for eligible disabled persons to elect not to purchase pursuant to [G.B.L., section 352-eee](#).
- (vi) If the plan is subject to [G.B.L., section 352-eeee](#), state the number of bona fide tenants in occupancy on the filing date who have signed subscription agreements as of a time specified in the statement. If the plan is a noneviction plan subject to [G.B.L., section 352-eeee](#), also state the number of bona fide nontenant subscribers who have represented that they or member(s) of their immediate family intend to occupy the apartment when it becomes vacant. If the plan is an eviction plan subject to [G.B.L., section 352-eee](#), state the number of bona fide tenants in occupancy on the filing date who have signed subscription agreements. If the plan is a noneviction plan subject to [G.B.L., section](#)

352-eee, state the number of bona fide tenants in occupancy on the filing date and also state the number of bona fide tenants who became tenants in occupancy after the filing date who have signed subscription agreements. Any subscriber who is required to be listed under section 18.5(e)(6)(v) of this Part shall not be included in the count unless the sponsor has submitted proof satisfactory to the Department of Law establishing that the subscriber is a bona fide tenant, or in a noneviction plan subject to [G.B.L., section 352-eeee](#), unless the sponsor has submitted proof satisfactory to the Department of Law establishing that the subscriber is a bona fide purchaser who meets the requirements of section 18.5(e) of this Part.

- (vii) The number of subscribers required to be listed under section 18.5(e)(6)(v) of this Part who may not be included in the count at the time of the posting, but whom sponsor seeks to include in the future.
- (viii) The number of units or tenants counted in the base. If the plan is an eviction plan under [G.B.L., section 352-eee](#) or [352-eeee](#), also state the number of tenants or units subtracted from the base to date, and the basis in law for each subtraction.
- (ix) The percentage obtained by dividing the number of subscribers to be counted towards effectiveness given in subparagraph (vi) of this paragraph by the number of tenants or units counted in the base given in subparagraph (viii) of this paragraph.
- (x) If the plan is an eviction plan subject to [G.B.L., section 352-eee](#), also give the percentage obtained by dividing:
 - (a) the number of subscribers to be counted towards effectiveness given in subparagraph (vi) of this paragraph by
 - (b) the number of tenants or units counted in the base given in subparagraph (viii) of this paragraph, plus the eligible senior citizens and eligible disabled persons who were bona fide tenants in occupancy on the filing date and had been subtracted from the base in subparagraph (viii).

(q) *Disclaimers.* The requirements set forth in section 18.3 of this Part apply to the offering plan generally and shall not be negated or contradicted by inconsistent provisions in other portions of the offering plan, or by provisions purporting to discharge liability or to terminate the continuing effect of representations in the offering plan upon an event such as the closing or the delivery of shares with the proprietary lease. Disclaimer provisions, either direct, or indirect through stated reliance on an expert with respect to factual matters required to be represented or set forth in the offering plan, may not be included except as and to the extent permitted in this Part.