

13 NYCRR Section 18.9.

Issuance of No-Action Letter

(a) *Applicability.* Upon application made in accordance with the requirements of this section, the Department of Law may, in its discretion, issue a “no-action letter” stating that it will not take any enforcement action because the transaction described in the application occurs without the filing of an offering plan in compliance with [section 352-e of the G.B.L.](#)

(1) A no-action letter may be issued where the Department of Law determines that:

- (i) the relationship between the offeror(s) and all the offerees is of such a nature that the offerees do not require the protection of an offering plan;
- (ii) the relationship between all offerees and the cooperative interests being offered is such that all the offerees are aware of the condition of the property which is the subject of the offering; or
- (iii) the filing of an offering plan pursuant to [G.B.L., section 352-e](#), is not necessary to effectuate the purpose of G.B.L., article 23-A, or to protect the public interest.

(2) Following are examples of transactions which may qualify for a no-action letter:

- (i) the offering and sale by an apartment corporation established either prior to the enactment of [G.B.L., section 352-e](#), or pursuant to an offering made in compliance with the G.B.L., of shares allocated to space that was not sold under the original offering. Such space may include, but shall not be limited to, space formerly used as a superintendent's apartment, maids' rooms, commercial space or professional offices;
- (ii) the offering and sale of shares allocated to units in property which is already owned and occupied solely by the offerors as tenants-in-common, sole shareholders of the corporate owner or sole partners in a partnership holding title to the property, where title to the property was acquired by such offerors in one of the above forms at least two years prior to submission of the application for a no-action letter and the total number of dwelling units in the building does not exceed 10; and
- (iii) the offering and sale of shares allocated to units in property proposed to be acquired by all tenants of a building under a tenant-sponsored or promoted proposal, where the total number of dwelling units in the building does not exceed 10 and all tenants join in the application for a no-action letter.

(3) A no-action letter shall not be issued where the offering involves more than 10 residential units or the property was acquired by all the offerees as tenants in common, sole shareholders of the corporate owner or sole partners in a partnership holding title to the property less than two years prior to submission of the application.

(b) *Application procedure.*

(1) An application for a no-action letter shall be submitted to the [New York State Department of Law, Real Estate Financing-Finance Bureau, Department of Law, 120 Broadway, 23rd Floor Two World Trade Center, Room 48-64, New York, N.Y. 1002471](#).

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(2) An application for a no-action letter shall consist of the following:

(i) an affidavit signed and sworn to by the offeror(s) which shall state:

(a) The name, residence and business address and legal status (corporation, partnership, individual, etc.) of each offeror and its principals, and the relationship of the offeror(s) to the property which is the subject of the offering. If

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the offerors are rental tenants at the property, state how long each tenant has been in occupancy at the property.

(b) The specific unit or units being offered, the total number of units being offered and the total number of units in the building. If any vacant units are being offered, describe how such vacancies occurred.

(c) The name, residence and business address and legal status of each proposed offeree known to the offeror(s). State whether the offering is limited to the offerees so identified. If the offering is limited to known offerees, describe the nature and length of any relationship between the offeror(s) and each offeree. If the offering is not limited to known offerees, describe to whom and how the offering will be made.

(d) A description of the proposed transaction.

(e) If payment will be made for the shares, that the offeror(s) will comply with [G.B.L., section 352-e\(2\)\(b\)](#) and [section 352-h](#), and hold all down payments for the purchase of shares in trust for the benefit of the purchasers and that such funds shall not be commingled with the moneys of the offeror(s) until actually employed in connection with the consummation of the transaction.

(f) That the offeror(s) will provide to each offeree the following information:

(1) the purchase price;

(2) the estimated maintenance and the current or proposed budget;

(3) a copy of any mortgage or ground lease on the property;

(4) a copy of the most recent financial statement of income and expenses for the operation of the property, if applicable;

(5) information known to the offeror(s) which may result in extraordinary expenses for shareholders or for the apartment corporation including, but not limited to, assessments, liabilities, dangerous or hazardous conditions, pending litigation and administrative proceedings;

(6) a copy of the offering plan and all amendments if one was previously filed with the Department of Law and is available;

(7) a copy of the certificate of occupancy for the building; and

(8) such other information as the Department of Law may require to be presented to each offeree.

(g) That the offeror(s) agrees to furnish a complete copy of the application for a no- action letter and a copy of the no-action letter to each offeree prior to accepting any downpayment.

(h) That the offeror(s) agrees to furnish within five days, after a request by the Department of Law, copies of executed offeree affidavits required pursuant to clause (k) of this subparagraph.

(i) That the use for which the unit(s) and property are being offered will comply with the property's certificate of occupancy, zoning, building and housing laws, rules and regulations, or, if the proposed use will not comply with the legally permissible use, discuss what steps must be taken to comply with or to change the legally permissible use and identify which party will assume responsibility to take such steps.

(j) Whether the offeror(s) or its principals, within the preceding five years, have participated in any other applications for a no-action letter or have made any other offerings which were not pursuant to an offering plan filed

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with the Department of Law and the address of the property/properties which were the subject of such application(s) or offering(s).

(k) That an affidavit will be obtained from each proposed offeree prior to the closing on a unit that is subject to this application which will contain the following representations:

(1) the name, residence and business address and legal status (corporation, partnership, individual, etc.) of each offeree;

(2) that the offeree has read the affidavit of the offeror(s) submitted as part of the application for a no-action letter;

(3) that the offeree understands that no offering literature other than as required by the no-action letter will be provided. If the offeree is a tenant in occupancy of a dwelling unit at the subject property, the offeree must state that he/she acknowledges that he/she has been informed that if this transaction constituted a public offering within the meaning of G.B.L., article 23-A, he/she would be entitled to certain rights and protections pursuant to such article;

(4) that the offeree has inspected the subject property; and

(5) that the offeree is purchasing the unit(s) for personal occupancy and does not have the intention of reselling the unit(s) within two years from the later of the closing or the date the no-action letter is issued by the Department of Law. This statement is not required if the application involves the type of transaction described in subparagraph (a)(2)(ii) of this section;

(ii) A transmittal letter addressed to the Department of Law that is signed by the attorney who prepared the application which states:

(a) The reasons why the transaction described in the application meets the standards set forth in paragraph (a)(1) of this section.

(b) That the attorney has no actual knowledge of any omission or untrue statements of a material fact included in the application.

(c) That the attorney has prepared or has reviewed all legal documents necessary to form an apartment corporation and, in the attorney's opinion, the apartment corporation is duly organized, validly existing and in good standing. If the apartment corporation is not in existence at the time the application is submitted, state that counsel will cause the apartment corporation to be formed in conformity with applicable law.

(iii) A check in the amount required by [G.B.L., section 352-e\(7\)\(a\)](#) made payable to the Department of Law.

(iv) If requested by the Department of Law, the offeror(s) must submit a Broker-Dealer Statement (form M-10) for the offerors and such other documents and information as the Department of Law may specify.

(v) If requested by the Department of Law, a certified copy of the minutes of a duly held shareholders meeting at which shareholders of the apartment corporation were informed of the proposed transaction and the impact such transaction would have on the allowance of deductions to tenant-stockholders under [Internal Revenue Code, section 216](#). The minutes shall reflect that the shareholders, after being informed of the foregoing, approved by not less than a two-thirds vote, the consummation of the proposed transaction.

(c) *Conditions to the granting of a no-action letter.*

(1) The granting of a no-action letter may be on such terms and conditions as the Department of Law may

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impose, in its discretion, in order to protect the public interest.

(2) A no-action letter shall not be granted if the Department of Law determines that such act may contravene the rights under G.B.L., article 23-A, of any tenant who is not an offeror.

(3) The issuance of a no-action letter is based solely on the information provided in the application. Any material misstatement or omission of a material fact required by this Part may render the no-action letter void *ab initio*.

(4) The issuance of a no-action letter shall not be construed to be a waiver of or a limitation on the Attorney General's authority to take enforcement action pursuant to article 23-A of the G.B.L. and other applicable provisions of law, except as expressly stated in such letter.

(5) The issuance of a no-action letter by the Department of Law shall have no value as precedent and may not be relied upon in the submission of any other application for such letter.

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