

13 NYCRR Section 22.5.

Amendments

(a) *General.* Documents to supplement or amend an offering plan (collectively, “amendment[s]”) shall be deemed part of the offering plan and shall meet the following requirements:

- (1) If the offering plan ceases to comply with [General Business Law section 352-e](#)(1)(b) or section 22.1(b) of this Part due to change of circumstances, the passage of time or any other reason, the offering plan must be amended promptly.
- (2) An amendment must include a representation that all material changes of facts or circumstances affecting the property or the offering are included.
- (3) An amendment to an offering plan shall be filed on the date indicated in the letter issued by the Department of Law stating that the amendment is filed and not sooner.
- (4) Amendments that have been filed with the Department of Law must be attached to the inside front cover of the offering plan before the amended plan is distributed to the public. The cover of the offering plan must contain the legend: “This plan has been amended. See inside front cover.” Any revisions, additions or deletions of specific language in the offering plan should reprint a sufficient portion of the paragraph from the offering plan as revised so that the revised portion of the offering plan may be understood easily. An offering plan that has been amended extensively may be restated to incorporate the amendments into the body of the plan, and must be restated if required by the Department of Law.
- (5) If there is a material amendment to the offering plan that adversely affects the purchasers, sponsor must grant purchasers a right of rescission and a reasonable period of time that is not less than 15 days after the date of presentation to exercise the right. Sponsor must return any deposit or down payment to purchasers who rescind. Sponsor may condition return of the deposit to interim lessees upon their vacating the premises. Notwithstanding the provisions of subdivision (e)(3) of this section, sponsor may return any deposit or downpayment to purchasers who request rescission.
- (6) Amendments must be served on offerees in accordance with section 22.1(d) of this Part unless the Department of Law grants an exemption pursuant to section 22.1 (i) of this Part and consents to service on a specified class of offerees.
- (7) Amendments served on offerees must be dated with the date of the letter from the Department of Law accepting the amendment for filing. Proposed amendments shall be submitted undated.
- (8) Amendments filed by the Department of Law must be served in accordance with section 22.1(d) of this Part by personal delivery or mailing no later than five days after receipt of the letter accepting the amendment for filing.

(b) *Procedure for submission of amendments.* Amendments must be mailed to or submitted during normal business hours to the [New York State Department of Law](#), Real Estate ~~Financing~~ Finance Bureau, ~~Department of Law~~, 120 Broadway, 23rd Floor, New York, N.Y., 10271. Include the following when submitting an amendment:

- (1) A transmittal letter, signed by the individual attorney who prepared the amendment, that:

Formatted: Superscript

- (i) states the date the offering plan was filed and the Department of Law file number;
- (ii) identifies the subject amendment in numerical order;
- (iii) states that no prior amendments have been submitted to but not yet filed with the Department of Law;
- (iv) identifies, if possible, the attorney in the Department of Law who reviewed the most recent submission;
- (v) gives the current status of the offering plan:

(a) states whether or not the plan has been declared effective or the closing of the first home or lot has occurred; and

(b) states if there are any outstanding rescission periods;

(vi) notes if sponsor is aware of any investigation currently pending by the Department of Law of the sponsor, a principal of the sponsor, or of the proposed HOA property.

(2) Three copies of the amendment to the offering plan.

(3) Check(s) (certified or uncertified) for filing fee(s) pursuant to [General Business Law section 352-e\(7\)](#) payable to New York State Department of Law stapled or clipped to the transmittal letter, including fee(s) for additional phases being offered in the current amendment unless such fee has been prepaid and a copy of the cancelled check is provided.

(4) One copy of the offering plan including all filed amendments.

(5) One form RS-2, signed by the sponsor.

(c) *Amendments extending the term of the offering plan.* Pursuant to section 22.3 (a)(5) of this Part, the term of the initial offering is 12 months commencing on the date indicated in the letter issued by the Department of Law stating that the plan is filed. Prior to the closing of the first home or lot an amendment extends the term of the offering for an additional six month term, unless the term is shorter by the provisions of the amendment. The filing of the amendment disclosing the recording of the declaration and the first closing, will extend the term of the offer for six months. Any subsequent amendment extends the term of the offering for an additional 12 month term from the date of filing of the amendment. An amendment extending the term of the offer must be filed before the end of the term and must comply with the provisions of this section and the requirements set forth below.

(1) The amendment must disclose all material changes including, but not limited to, material decreases or increases in association charges; an updated budget, if adopted by the board of directors and certified if the sponsor is still in control of the board; the most recent financial statement, certified if the sponsor is still in control of the board, which shall be filed in an amendment within three months of the end of the most recent fiscal year; and any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, the rights of home or lot owners, sponsor's capacity to perform all its obligations under the plan, the homeowners association or the operation of the homeowners association.

(2) In addition, all amendments submitted after closing of the first home or lot has occurred must state:

- (i) the number and identification of unsold homes or lots remaining; and

(ii) the extent to which the sponsor controls the board of directors of the HOA. If the sponsor is still in control, state the requirements of the offering plan regarding the relinquishment of control. If the sponsor has relinquished control, state the date when control was relinquished.

(3) In addition, after the closing of the first unit, and annually thereafter, for all offering plans in which the sponsor owns in the aggregate more than 10 percent of the lots or homes, the amendment must disclose:

(i) the aggregate monthly association charges for all homes or lots held by the sponsor;

(ii) the aggregate monthly real estate taxes payable for homes or lots owned by the sponsor;

(iii) the number of homes or lots owned by the sponsor which are occupied by tenants, if any, and the aggregate of the monthly rents currently payable from tenants of such units or a reasonable approximation thereof;

(iv) financial obligations to the HOA which will become due within 12 months from the date of the amendment (other than payment of association charges) including, but not limited to, reserve and working capital fund payments and payments for repair and improvement obligations;

(v) a list of all unsold homes or lots which are subject to mortgages or otherwise represent security for financing arrangements; the identity and address of the lender(s); the amount of the loan(s); the maturity date of the loan(s); and the payment obligations under the loan(s), stated on a monthly basis where possible.

(vi) the means by which any payments or obligations set forth pursuant to subparagraphs (i), (ii), (iv) and (v) of this paragraph will be funded. If the funding source is stated as income from projected sales, disclose any other sources of funding that will be utilized if such projected sales are not made;

(vii) a statement as to whether the sponsor is current on all financial obligations relating to the HOA, including, but not limited to, payment of association charges, reserve or working capital fund payments, assessments, and payments for repairs or improvements promised in the offering plan. In addition, state whether the sponsor is current on all payment obligations under mortgages or other financing arrangements relating to unsold homes or lots. If the sponsor is not current on its obligations, state the date and amount of each delinquency and discuss the effect of such delinquency on the HOA. Also state whether the sponsor was current on all such obligations (*i.e.*, had satisfied the obligation by the expiration of any grace period) during the 12 months prior to the filing of the amendment, and if not, state the details of any delinquency;

(viii) a list of all other cooperatives, condominiums and homeowners associations, by the Department of Law file number and address, in which the sponsor, general partner or principal of the sponsor, or holder(s) of unsold shares, as individual or as general partner or principal of the sponsor or holder of unsold shares, owns more than 10 percent of the shares or units. Disclose that offering plans for these buildings are on file with the Department of Law and are available for public inspection;

(ix) a statement as to whether the sponsor and all principals of the sponsor, as individuals, general partners or principals of the sponsor or holders of unsold shares, are current in all obligations set forth in subparagraph (vii) of this paragraph in other cooperatives, condominiums or homeowners associations in which they own more than 10 percent of the units as individuals, general partners or principals. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(4) An offering plan must be amended immediately if any delinquency required to be disclosed by subparagraph

(3)(vii) or (ix) of this subdivision has existed for 15 days, or if there has been a material change in the financial position of the sponsor which may jeopardize its ability to meet its obligations to the HOA. Submission of such amendment does not relieve sponsor of its obligation to cease all sales until all material facts have been disclosed in a duly filed amendment.

(d) *Post-closing amendment.* The amendment which discloses recording of the declaration and the first closing extends the term of the offering for six months. Sponsor must amend the plan within 45 days following the closing of the first home or lot, to include the following information. These facts need not be presented in the same amendment.

- (1) The date and place of the title closing to the first home or lot.
- (2) If applicable, the date the temporary or permanent certificate of occupancy was issued for HOA property. If the permanent certificate of occupancy has not yet been issued, indicate the projected timetable when such certificate will be obtained and the amount of the security posted to guarantee sponsor's obligation to obtain the permanent certificate of occupancy for HOA property.
- (3) The date of recording of the declaration of covenants, restrictions, easements and liens.
- (4) The amount of the reserve fund, if any, and the account(s) into which the fund was deposited, listing the name(s) and branch address(es) of the bank(s).
- (5) The amount of the working capital fund, if any, and the account into which the fund was deposited, listing the name(s) and branch address(es) of the bank(s).
- (6) A list of all unsold homes or lots held by the sponsor.
- (7) The names of the members of the board of directors and their relationship to the sponsor, and the names and the business addresses of the president, secretary and treasurer.
- (8) The date of the first meeting of the home or lot owners.

(e) *Amendment abandoning the plan.*

- (1) The amendment abandoning the plan must conform with representations disclosed in the offering plan concerning how and when a plan may be abandoned. If the plan has no effectiveness requirement or specific abandonment contingencies which are highlighted as a special risk, and contracts are not contingent on the plan's becoming effective, a plan may not be abandoned unless all contract vendees consent to cancel their contracts.
- (2) If payments under purchase agreements have been received sponsor must disclose the amount of such funds and the manner and time when these funds will be returned to purchasers. No purchaser may be compelled to accept a cancellation of his or her contract unless in conformity with the disclosures in the offering plan.
- (3) Funds may be returned to purchasers together with interest earned, if any, only after the amendment abandoning the plan has been accepted for filing by the Department of Law.
- (4) The transmittal letter for an amendment abandoning the plan must be accompanied by a completed copy of form RS-3 as promulgated by the Department of Law.