

13 NYCRR Section 23.2. Procedure for Submission

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(a) The proposed offering plan and the exhibits described in this section shall be submitted 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.

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(b) The exhibits shall accompany the proposed offering plan submitted to the Department of Law and shall be subject to the sanctions of article 23-A of the General Business Law. A notation of "Orig" on the list set forth in paragraph (c)(5) of this section means that at least one document must be a duly executed, original document.

(c) The following are to be included when submitting a proposed offering plan pursuant to this Part:

(1) A transmittal letter addressed to the Department of Law that is signed and affirmed by the individual attorney who prepared the plan, containing the statements required by section 23.4(a) of this Part, without qualification or alteration in substance. As specified in paragraph (4) of this subdivision, the transmittal letter must expressly indicate any exhibit that is not included (apart from those noted) and set forth the reasons for the omission and list any documents submitted as exhibit B-21. Exemption applications submitted pursuant to section 23.1(k) of this Part must be annexed to and submitted with the transmittal letter. Omissions and additions to the table of contents must be noted and explained. As specified in section 23.3(n)(1) of this Part, note if any model form(s) for description of tenants' rights have been used. Pursuant to section 23.3(j)(7), the transmittal letter must note whether the offering plan contains any description of or reference to a commercial unit. Pursuant to section 23.3(bb)(14), the transmittal letter must note financing offered to purchasers which contains any unusual risks. Pursuant to section 23.1(l) of this Part, the transmittal letter must note if the plan is an out-of-state conversion plan which has already become effective and subject to a 30-day review. The transmittal letter must also note if there is currently an investigation pending by the Department of Law of the sponsor, a principal of the sponsor or of the property to be converted to condominium ownership.

(2) A check (certified or uncertified) for one half of the filing fee under G.B.L., section 352-e(7)(a) (a non-refundable deposit), payable to the New York State Department of Law and stapled or clipped to the transmittal letter. The filing fee is based on the maximum total amount of the offering price to nontenant purchasers.

(3) Signed originals of the following forms: (i) M-2 and M-10 forms, if new forms are submitted as exhibits D-1 and D-2, with a check for the filing fee under G.B.L., section 359-e(5) attached; and (ii) RI-1 forms, submitted as exhibit D-3.

(4) Three copies of a typed or printed, bound offering plan.

(5) Two sets of exhibits. Each set is to be in binders from which documents can be removed easily, and the binders must be indexed with tabs. The cover of each binder must be labeled with the name and the address of the condominium and the name, address and telephone number of the attorney who prepared the plan. One of the binders must be marked "Original" and contain the original documents required below. Each binder must contain an index of the documents. The transmittal letter required by paragraph (1) of this subdivision must note the omission of any exhibit, other than the exceptions stated below, that is not included and the reason for the omission. If exhibits A-4, B-2, B-3, B-7, B-8, B-9, B-10, B-11, B-13, B-18, B-19, B-20 and B-21 are omitted solely because the exhibit is not applicable to the offering, the omission need not be noted in the transmittal letter.

(i) Part A of the exhibits (certifications) shall consist of the following documents. Photocopies or conformed copies of the certifications must appear in the offering plan.

(a) (A-1) Certification by the sponsor and the sponsor's principals signed by "sponsors" and "principals" as defined in section 23.1(c) of this Part (Orig); see section 23.4(b) of this Part.

(b) (A-2) Certification by sponsor's engineer or architect concerning the description of the property and

building condition in Part II of the plan and at exhibit C-1 (Orig); see section 23.4(c) of this Part.

(c) (A-3) Certification by expert on adequacy of budget for the first year of condominium operation (Orig); see section 23.4(d) of this Part.

(d) (A-4) Certification by expert on adequacy of common charges payable by the commercial unit owner(s) (Orig); see section 23.4(e) of this Part.

(ii) Part B of the exhibits (general) shall consist of the following documents:

(a) (B-1) Title company report, including a report on housing or building code violations of record, dated or updated within 90 days of submission (Orig).

(b) (B-2) Proposed management agreement (Orig).

(c) (B-3) Copies of any contract which: (1) will be binding on the condominium for \$2,500 or more per year, or (2) has a term in excess of two years, or (3) is with the sponsor, a business associate or affiliate of the sponsor, or a principal of the sponsor.

(d) (B-4) Copy of a letter from an insurance company or its authorized agent, stating proposed insurance coverage and amounts, and the annual premium or premiums.

(e) (B-5) Copy of an opinion from an independent, licensed insurance broker, insurance appraiser or real estate appraiser representing that the fire insurance coverage budgeted in the plan is adequate (1) so that the insured shall not be a coinsurer if the policy contains a coinsurance provision, or (2) to cover replacement cost if the policy is for an agreed amount which waives coinsurance. If the policy represents replacement cost coverage, indicate the replacement cost per square foot.

(f) (B-6) Copy of a fee quotation from a certified public accountant for preparing the yearly financial statements for the condominium.

(g) (B-7) Copy of section 352-a/section 352-b designation of Secretary of State as agent (applicable only to out-of-state issuers, sponsors, principals and/or selling agents), and filing receipt.

(h) (B-8) For condominiums located outside of New York, New Jersey, Florida, Pennsylvania and Connecticut, copy of statutes and regulations concerning the registration and formation of condominiums. All condominiums located outside of New York State must include evidence of compliance with local laws and regulations concerning the registration and formation of condominiums.

(i) (B-9) Copy of the form of promissory note and mortgage required by sponsor if the plan offers financing, together with any other document which significantly affects a purchaser's obligations for financing offered by sponsor.

(j) (B-10) Copy of any mortgage financing commitment letter, and amendments or extensions of the commitment letter.

(k) (B-11) Copies of all existing and proposed professional and commercial leases and subleases, and concession agreements.

(l) (B-12) Rent roll certified by the sponsor, managing agent or current owner, as of a date that is within 60 days prior to submission including the name of each tenant, apartment number, rent, term and termination date of lease, and status under any rent regulatory laws (Orig).

(m) (B-13) If the building receives tax abatement or exemption benefits, copy of proof of the level and duration of benefits described in the plan.

(n) (B-14) Copy of sponsor's or present owner's deed to the property, and copy of contract of sale between owner and sponsor if sponsor is contract vendee.

(o) (B-15) Copy of a specimen title insurance policy, applicable to individual units, which unconditionally insures that a valid condominium has been established. At closing, the policy shall not contain an exception indicating the existence of a mortgage or other liens affecting the unit insured.

(p) (B-16) Original letter from a title company stating it has reviewed the declaration, the bylaws and other relevant documents and is prepared to insure title to purchasers in accordance with exhibit B-15 and is prepared to insure that a valid condominium will be established upon the recording of the declaration and bylaws and the filing of the floor plans as required by the New York Condominium Act or applicable ~~State-state~~ and local law.

(q) (B-17) Copy of the agreements or other documents of local taxing authorities relating to the separate assessment of each condominium unit for real estate taxes, if available.

(r) (B-18) Copy of the escrow agreement between the sponsor and the board of managers relating to the payment of real estate taxes pending the separate assessment of each condominium unit for real estate taxes, if applicable.

(s) (B-19) Copy of documentary evidence that the holder of any mortgage existing after the conveyance of the first unit will either: (1) consent to the formation of a condominium and acknowledge that its lien will be limited to unsold condominium units; or (2) subordinate the lien of its mortgage to the declaration of condominium; or (3) release its lien on the condominium unit being conveyed.

(t) (B-20) Proof of registration of the building with the New York State Division of Housing and Community Renewal (registration summary and building service registration), if applicable.

(u) (B-21) Copy of any other material document(s), each of which should be described in the transmittal letter, e.g., copy of a regulatory agreement with F.H.A., H.U.D. or other government agency.

(v) (B-22) Copy of the escrow agreement between the sponsor and the attorney(s) acting as escrow agent. If the model form is not used, so indicate. Copy of bank forms to be used to open ~~the-any~~ escrow account.

(iii) Part C of the exhibits (engineering) shall consist of the following documents:

(a) (C-1) Architect's or engineer's detailed description of the property and building condition with the architect's or engineer's seal and original signature. The description must be dated within 90 days of submission to the Department of Law and conform to the requirements of section 23.7 of this Part; see exhibit A-2.

(b) (C-2) Asbestos report, dated within 90 days of submission to the Department of Law. The report must conform to the requirements of section 23.7(cc) of this Part.

(c) (C-3) Copy of currently valid temporary, partial or permanent certificate of occupancy. If a certificate of occupancy is not available because the building was constructed before the municipality began to issue certificates of occupancy, include a representation from the sponsor that the proposed use by the condominium is identical to the present use of the building.

(iv) Part D of the exhibits (other information) shall consist of the following documents:

(a) (D-1) Signed M-10 form(s), broker-dealer statement, for the selling agent (Orig), unless exempted by G.B.L.

[section 359-e](#) and signed M-2 form(s), salespersons' statements, for all individual employees who act as salespersons (Orig) unless exempted by [G.B.L. section 359-e](#). Forms do not have to be submitted if currently valid registration forms are on file with the Department of Law from prior offerings and a copy of the form is submitted as exhibit D-1.

(b) (D-2) Signed M-10 form(s), for the sponsoring entity, which shall include all officers, directors, partners or principals who are "dealers" for purposes of [G.B.L., section 359-e](#) (Orig). Forms do not have to be submitted if currently valid registration forms are on file with the Department of Law from prior offerings and a copy of the form is submitted as exhibit D-2 (Orig).

(c) (D-3) Signed RI-1 form(s), registrant information form(s), concerning prior convictions, judgments, administrative actions, bankruptcy, employment and business affiliations for all principals of the sponsor (Orig).

(d) (D-4) Sponsor's affidavit that sponsor's net worth is or will be sufficient to meet the requirements of [G.B.L., section 352-k](#) and all of the unsecured obligations sponsor assumes in the offering plan, including sponsor's obligations for unsold units (Orig).

(e) (D-5) An affidavit from sponsor and principals of sponsor, as defined in section 23.1(c) of this Part, stating whether sponsor and principals of sponsor have taken part in real estate syndications of securities consisting of participation interests or investments in real estate, including limited partnership interests or private or public offerings of cooperative interests in realty, including condominiums, in or from New York, which were initially offered during the preceding five years. State the addresses of the realty, the name of the syndication or partnership and whether it received an exemption and the approximate date the offering plan was filed, and the date of the closing for cooperatives or the date of first closing for condominiums.

(f) (D-6) Completed statistical information card (available from the Department of Law).

(d) Upon preliminary advice from the Department of Law that the proposed offering plan may be filed, sponsor must submit:

(1) checks (certified or uncertified) for the balance of the filing fees under [G.B.L., section 352-e\(7\)\(a\)](#) and by separate check any additional filing fees under [G.B.L., section 359-e\(5\)](#), payable to New York State Department of Law;

(2) four copies of the typed or printed, bound offering plan, with the filing date left blank. The actual filing date shall be inserted after receipt of the letter from the Department of Law accepting the plan for filing. All offering plans must be dated before being presented to offerees;

(3) two copies of the rent roll as of the month the plan is to be filed, certified by the sponsor, managing agent or current owner;

(4) a new attorney transmittal letter, see section 23.4(a) of this Part. The letter may indicate that exhibits have previously been supplied; and

(5) if required by the Department of Law:

(i) a new certification by sponsor and sponsor's principals; see section 23.4(b);

(ii) a new certification by sponsor's engineer or architect; see section 23.4(c);

(iii) a new certification by sponsor's expert on the adequacy of the budget; see section 23.4(d); and

(iv) a new certification by sponsor's expert on adequacy of common charges payable by the commercial

unit owner(s); see section 23.4(e).

(e) The plan is filed on the date indicated in the letter from the Department of Law stating that the plan is filed.

(f) The sponsor shall present the plan within a reasonable time after the filing and submit an affidavit of service of the plan within five days of such service.