

## 13 NYCRR Section 25.1.

### General

(a) *Applicability.* The offering statement or “offering plan” required by [section 352-e of the General Business Law](#) (“GBL”) for a senior residential community that meets the requirements set forth below is subject to this Part, “Newly Constructed or Vacant Senior Residential Communities.” The offering plan must be filed with the Department of Law prior to the commencement of any offer to the public of residence in the community.

(1) The proposed senior residential community (“residence”) will be established as a cooperative, condominium or homeowners association or will require as a prerequisite to admission the payment of a substantial entrance fee by applicants for residence in the community. Continuing care retirement communities authorized under Public Health Law, articles 46 and 46-A are exempt from the filing requirements of this Part.

(2) The residence is established as a residence for senior citizens, and may impose a minimum age requirement for one or more occupants of a unit.

(3) Offerings subject to this Part are also subject to the relevant regulations for cooperatives (Part 21 of this Title), condominiums (Part 20 of this Title), or homeowners associations (Part 22 of this Title), if the Residence offered is to be organized as one of those forms of ownership. If the plan is submitted pursuant to Part 20, 21 or 22 of this Title, it must comply with those Parts and those sections of this Part not addressed by Part 20, 21 or 22 of this Title, such as section 25.3(o) “Terms of Residency Agreement” of this Part.

(4) Residences to be offered which meet the criteria of paragraphs (1) and (2) of this subdivision and also provide services which require a license or operating certificate from other ~~State-state~~ or local agencies, must obtain approval from such agencies and comply with this Part as well.

(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 residents 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, false promise or unconscionable contractual provision;

(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; or

(ii) with reasonable effort could have known the truth; or

(iii) made no reasonable effort to ascertain the truth; or

(iv) did not have knowledge concerning the representation or statement made.

(c) *Definitions.* As used in this Part:

(1) *Entrance fee* means the initial fee paid to obtain admission to a senior residential community, which may be refundable in whole or in part upon departing from the residence, as distinguished from monthly fees incurred after occupancy.

(2) *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.

A director of a profit or not-for-profit corporate sponsoring entity, who does not actively participate in the planning or consummation of the offering, is not deemed to be a principal.

(3) *Residency agreement* means the document executed by the sponsor and a resident pursuant to which a resident will be entitled to occupancy. Such document shall set forth the terms and conditions of residency in the senior residential community.

(4) *Senior residential community* means a residential community established as a residence for senior citizens, possibly imposing a minimum age requirement for one or more occupants of a unit, and which requires either the purchase of a cooperative, condominium or home in a homeowners' association or the payment of a substantial entrance fee to reside in the Residence.

(5) *Sponsor* means any person, partnership, joint venture, corporation, company, trust, association or other entity which 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 investments in real estate including condominium units and other cooperative interest in realty. Sponsor shall not be deemed to include a broker who has complied with [section 359-e of the GBL](#) or an attorney or other expert retained by the sponsor solely to render professional advice or opinions in connection with the offering.

(d) *Service.*

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

(i) commercial or professional tenants;

(ii) prospective residents;

(iii) unit residents; or

(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 the 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 is a document required to be retained under section 25.3(x) of this Part. The completion of service shall be the latest date on which service upon all offerees is deemed or presumed complete.

(e) *Time of review.* After submission of the proposed offering plan for filing, the Office of the Attorney General shall issue a letter to the sponsor or sponsor's attorney stating that the plan is filed, or indicating deficiencies. The Office of the Attorney General shall issue such a letter for an offering plan subject to this Part no later than 30 days after submission of the proposed offering plan. The Office of the Attorney General may issue a deficiency letter whenever it appears that the proposed offering plan is deficient in one or more respects. The Office of the Attorney General 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 25.2, "Procedure for submission" of this Part.

(f) *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 GBL or the laws regulating senior residential communities in the state where the property is located.

(g) *Waiver.* In the interests of justice, the Office of the Attorney General may waive compliance with any provision of these regulations and can permit variations of regulations so long as the variation is consistent with the purpose and intent of the regulation and statute or unless prohibited from doing so by statute or by final court order.

(h) *Exemptions.* Upon written application of the sponsor or sponsor's attorney, the Office of the Attorney General, in its discretion, may 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 GBL or to protect the investing public. 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 25.4 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 Office of the Attorney General denies the application for exemption, the Office of the Attorney General may issue a deficiency letter as provided in subdivision (e) of this section. No additional fee is required for an exemption application.

(i) *Out-of-state senior residential communities.* A sponsor of a senior residential community located outside of New York State which makes or takes part in a public offering in or from the State of New York of senior residential community units must file an offering plan with the Office of the Attorney General. To comply with this requirement, the sponsor of an out-of-state plan may file a complete offering plan drafted in accordance with New York law and this Part. In the alternative, the Office of the Attorney General may, in its discretion, allow the sponsor to file the offering plan approved by or filed with the state or jurisdiction in which the senior residential community is located and an addendum with such additional information as is

required by the Office of the Attorney General. Sponsor must represent that the plan complies with all applicable local laws.

(j) *Effectiveness of regulations.* The effective date of these regulations is the date of filing with the Secretary of State. As of such date:

(1) This Part is effective immediately for offering plans that meet the requirements of subdivision (a) of this section. Existing facilities, which have plans previously accepted for filing by the Department of Law, need not submit a new offering plan, but must comply with the requirements of section 25.5 of this Part when amending the plan.

(2) Section 25.5 of this Part is effective for amendments to plans submitted after the effective date of these regulations that meet the requirements of subdivision (a) of this section, regardless of when such plans were filed.

(3) Section 25.6 of this Part is effective for advertisements, appearing on or after the effective date of these regulations, for offering plans that meet the requirements of subdivision (a) of this section, regardless of when such plans were filed.

(k) *Withdrawals, abandonments and rejections.*

(1) If the offering plan is withdrawn prior to filing, written notice thereof shall be served simultaneously by the sponsor on the Office of the Attorney General and on all commercial or professional tenants, if any, in the manner specified by paragraph (d)(1) of this section.

(2) If the offering plan is to be abandoned after filing and the sponsor has accepted residency agreements, the sponsor shall promptly submit an amendment to the Office of the Attorney General together with form RS-3 as promulgated by the Office of the Attorney General. If payments under residency agreements have been received, the amount of such funds and the manner and time when these funds will be returned to residents must be disclosed. The funds must be returned within five days after the amendment abandoning the plan has been accepted for filing. If there are no outstanding residency agreements the sponsor need not submit an amendment but shall submit a form RS-3 to the Office of the Attorney General which shall be served simultaneously by the sponsor on all commercial or professional tenants, if any, in the manner specified by paragraph (d)(1) of this section.

(3) If the offering plan is finally rejected by the Office of the Attorney General and there is no outstanding right to cure defects, the sponsor shall promptly serve notice of such rejection on all commercial or professional tenants, if any, in the manner specified by paragraph (d)(1) of this section.

(l) *Disclaimers.* The requirements set forth in section 25.3 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 execution of a residency agreement or commencement of occupancy. 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.