

13 NYCRR Section 25.4.

Transmittal Letter and Certifications

(a) *Transmittal letter.* A transmittal letter addressed to the Office of the Attorney General that is signed and affirmed by the individual attorney who prepared the offering plan, or by the *pro se* preparer, and containing the following unqualified statements must be submitted with the plan and exhibits (i) at the time the plan is submitted for filing, and (ii) immediately prior to its acceptance for filing:

“I am the attorney (person) who prepared the senior residence offering plan for the captioned property. I affirm as follows:

Enclosed for filing pursuant to Part 25, Senior Residential Communities are copies of the offering plan together with the Exhibits.

I am fully familiar with the provisions of Article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in Part 25.

I prepared the attached offering plan and Exhibits based on information from the sponsor. I have read all the printed copy submitted to the Office of the Attorney General but expressly disclaim any responsibility to have made an independent inspection of the building(s) or property or investigation of the information furnished to me by sponsor.

I have no actual knowledge of any violation of Article 23-A of the General Business Law or Part 25 of the regulations promulgated by the Office of the Attorney General, nor do I have actual knowledge of any material fact omitted or any untrue statement of any material fact included in the offering plan.”

(b) *Certification by sponsor.* Include in Part II of the plan and in the Exhibits a certification subscribed and sworn to by the sponsor and sponsor's principals in their capacity as principals, in the following form:

“We are the sponsor and the principals of sponsor of the senior residence offering plan for the captioned property. We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Office of the Attorney General in Part 25 and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan does, and that documents submitted hereafter by us which amend or supplement the offering plan will:

(i) set forth the detailed terms of the transaction and be complete, current and accurate;

(ii) afford potential residents an adequate basis upon which to found their judgment;

(iii) not omit any material fact;

(iv) not contain any untrue statement of a material fact;

(v) not contain any fraud, deception, concealment, suppression, false pretense or false promise or unconscionable contractual provisions;

(vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) not contain any representation or statement which is false, where I/we:

- (a) knew the truth;
- (b) with reasonable effort could have known the truth;
- (c) made no reasonable effort to ascertain the truth; or
- (d) did not have knowledge concerning the representation or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.”

(c) *Certification by engineer or architect.* Include in Part II of the plan and in the exhibits the following certification subscribed and sworn to by an engineer or architect (who must either be registered as an architect or be licensed to practice as a professional engineer in the jurisdiction where the residence is located). If the engineer or architect is a principal of the sponsor, the certification must be submitted by an independent engineer or architect. The certification and inspection report must both be dated within 90 days prior to the date of submission of the offering plan to the Office of the Attorney General. A second certification containing the language in parenthesis, below, shall be submitted with any addendum to a report.

“The sponsor of the offering plan to create a senior residence retained me/our firm to prepare a report describing the construction and/or renovation of the property (the “Report”). I/We visually inspected existing portions of the renovated property, if any, on _____, and I/we examined the building plans and specifications that were prepared by _____ dated _____ and prepared the Report dated _____. (I am/We are supplementing the report in this addendum dated _____,) a copy(ies) of which is (are) intended to be incorporated into the offering plan so that prospective residents may rely on the Report (and addendum).

I am/we are a registered architect/licensed engineer in the State-state in which the property is located.

I/We understand that I am/we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in Part 25 insofar as they are applicable to this Report (addendum).

I/We have read the entire Report (addendum) and investigated the facts set forth in the Report (addendum) and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

I/We certify that the Report (addendum):

(i) sets forth in narrative form the description and/or physical condition of the entire property (the aspects of the property discussed in the addendum) as it will exist upon completion of renovation and/or construction, provided that renovation and/or construction is in accordance with the plans and specifications that I/we examined;

(ii) in my/our professional opinion affords potential residents an adequate basis upon which to found their judgment concerning the description and/or physical condition of the property (the aspects of the property discussed in the addendum) as it will exist upon completion of renovation and/or construction, provided that renovation and/or construction is in accordance with the plans and specifications that I/we examined;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) does not contain any representation or statement which is false, where I/we:

(a) knew the truth;

(b) with reasonable effort could have known the truth;

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

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

I/We further certify that I am/we are not owned or controlled by and have no beneficial interest in the sponsor and that my/our compensation for preparing this Report (addendum) is not contingent on the commencement of operation of the property as a senior residential community or on the profitability of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.”

(d) *Certification by expert on adequacy of budget (or revised or updated budget)*. Include in Part II of the plan and in the exhibits a certification subscribed and sworn to by an expert concerning the adequacy of schedule(s) B-1 and B-2 in the following form. The certification must be dated within 90 days prior to the date of the submission of the offering plan to the Office of the Attorney General. The expert's certification must be based on experience in the management of cooperatives or condominiums or rental properties and must disclose the approximate number of properties managed and length of time managed together with other relevant real estate experience, qualifications and licenses.

“The sponsor of the senior residence offering plan for the captioned property retained me/our firm to review or prepare Schedule(s) B-1 and B-2, containing projections of income and expenses for the first year of operation. My/our experience in this field includes:

I/We understand that I am/we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in Part 25 insofar as they are applicable to Schedule(s) B-1 and B-2.

I/We have reviewed the Schedule(s) and investigated the facts set forth in the Schedule(s) and the facts underlying it with due diligence in order to form a basis for this certification. I/We also have relied on my/our experience in managing residential buildings.

I/We certify that the projections in Schedule(s) B-1 and B-2 appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses for the projected first year of operation as a senior residence.

I/We certify that the Schedule(s):

(i) sets forth in detail the projected income and expenses for the first year of operation as a senior residence;

(ii) affords potential residents an adequate basis upon which to found their judgment concerning the first year of operation;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) does not contain any representation or statement which is false, where I/we:

(a) knew the truth;

(b) with reasonable effort could have known the truth;

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

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

I/We further certify that I am/we are not owned or controlled by the sponsor. I/We understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the income and expenses for the first year of operation. This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made.

I/We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.”