

Part 21

Newly Constructed and Vacant Cooperatives

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Section 21.1 General

(a) Applicability. The offering statement or "offering plan" required by Section 352-e of the General Business Law ("GBL") for a cooperative that meets the requirements set forth in this section is subject to this Part. Except as provided in paragraph (4) of this subdivision, offering plans submitted pursuant to this Part are not subject to the provisions of any other Part.

(1) The building is completely vacant of individuals residing in the building on the date of submission of the offering plan to the Office of the Attorney General or the building is to be newly constructed.

(2) The cooperative is not organized as a time-sharing arrangement.

(3) One or more of the cooperative units being offered are used for residential purposes or for combined residential/home occupation purposes.

(4) The conversion of a vacant or newly constructed building to two or more condominium units and the conversion of one or more of the condominium units to an apartment corporation is primarily subject to this Part. In addition, the offering plan must

comply with the requirements of Part 20 to the extent necessary to comply with subdivision (b) of this section.

(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;

21.1(b)

(2) afford potential investors, purchasers and participants 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 or fictitious or pretended purchase or sale;

(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;

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

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

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

(c) Sponsor(s). As used in this Part, the word sponsor(s) means any person, partnership, joint venture, corporation, company, trust, association or other entity or agent thereof who 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 cooperative interests in realty.

(d) (1) Principal(s). As used in this Part, the word principal(s) means all individual sponsor; all general partners of sponsors that are partnerships; all officers, directors and shareholders of a corporate sponsor that are actively involved in the planning and consummation of the offering; and all other individuals who

(i) own an interest in or control sponsor; and

21.1(d)

(ii) actively participate in the planning and consummation of the offering, regardless of the form of organization of sponsor.

(2) Consummation of the plan means transfer of title to the apartment corporation and the issuance of shares and a proprietary lease to at least one subscriber under the plan following a declaration of effectiveness by the sponsor and acceptance of the amendment by the Office of the Attorney General confirming or declaring the plan effective.

(3) Filing means the issuance of a letter from the Attorney General stating that an offering plan or amendment has been accepted for filing.

(e) Service. Unless otherwise provided by statute or regulation, any documents required to be served by this Part shall be served on subscribers or purchasers who have executed and delivered subscription agreements or purchase agreements to the sponsor and who are not in default, shareholders and any other person entitled to service pursuant to local law or regulation (collectively "offerees"), in the following manner:

(1) personal delivery; and

(2) mailing by regular or registered or certified mail, with or without return receipt requested, addressed to the offeree at the last residence of such offeree. If sponsor has no information of the last 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.

Service shall be complete upon completion of personal delivery on all offerees or three or three days after mailing to all offerees not personally served. An affidavit of service identifying the offerees served, stating the manner of service, and the date of service shall be part of the documents required to be retained in subdivision (z) of Section 21.3 of this Part.

(f) Time of review. Not later than 30 days after the date of submission of the 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 may issue a deficiency letter whenever it appears that the Office of the Attorney General cannot make any finding mandated by law or that the offering plan is deficient in one or more respects.

21.1(f)

(g) 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 General Business Law.

(h) Out-of-state cooperatives. A sponsor of a cooperative located outside of New York who makes or takes part in a public offering or sale in or from the State of New York of cooperative units must file an offering plan with the Office of the Attorney General that provides the full and fair disclosure required by this Part. The Office of the Attorney General, on its discretion, may allow the sponsor to comply with any requirement of this Part which would require a departure from the offering plan approved by or filed with the state where the cooperative is located by employing an addendum at the end of the offering plan containing the information required and, where necessary, by deleting from the offering plan any representations or statements that are inconsistent with or not permitted by this Part or the General Business Law.

(i) Exemptions. Upon written application of the sponsor, or sponsor's attorney, the Office of the Attorney General, in its discretion, may by ruling 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 General Business Law 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 for which the exemption is sought and the grounds for the exemption; and
- (3) be signed by sponsor or the sponsor's attorney.

The certifications required by Section 21.4 of this Part shall be in the form required by this Part, without modification, and shall be based on the presumption that any exemption sought pursuant to this section has been granted. In the event the application for exemption is denied, the Office of the Attorney General shall issue a deficiency letter as provided in subdivision (f) of this section.

(j) Transition. With respect to any offering plan which:

21.1(j)

- (1) was submitted to the Office of the Attorney General pursuant to the prefiling procedure set forth in section 17.3 of this subchapter before the effective date of this Part;
- (2) had not been filed with the Office of the Attorney General on the effective date of this Part; and
- (3) meets the requirements of subdivision(a) of this section.

The Office of the Attorney General, in its discretion, may issue a letter to the sponsor or sponsor's attorney stating that an offering plan is filed if the sponsor's attorney affirms that the offering plan substantially complies with this Part and executes a

transmittal letter to that effect. For purposes of this section, substantial compliance shall mean that the offering plan contains all information required to be disclosed by this Part either in the bound offering plan or in a supplemental submission annexed to the plan.

21.1(j)

Section 21.2 Procedure for submission.

(a) The offering plan and the exhibits described below shall be submitted to the Investment Protection Bureau - Real Estate Financing Section, Office of the Attorney General, 120 Broadway, Room 23-170, New York, New York 10271.

(b) The exhibits shall accompany the offering plan submitted to the Office of the Attorney General and shall be subject to the requirements and sanctions of Article 23-A of the General Business Law. Whenever an exhibit document is marked "original" on the list set forth in subdivision (c) of this section, it means that the document must be a duly executed original document. Whenever a document is marked "copy" on the list set forth in subdivision (c) of this section, it means that a true and complete copy of the document must be included.

(c) The offering plan and exhibits submitted pursuant to this Part must contain the following components and be in the following format:

(1) A transmittal letter addressed to the Office of the Attorney General that is signed and affirmed under penalty of perjury by the attorney for the sponsor, containing the unqualified statements required by Section 21.4(a) of this Part. The transmittal letter must expressly indicate any exhibit that is not included and set forth the reasons for the omission. Exemptions requested pursuant to Section 21.1(i) of this Part, must be annexed to and be submitted with the transmittal letter. Pursuant to Section 21.3(g) of this Part the transmittal letter must not whether the offering plan contains any description of or reference to a wraparound mortgage on the property.

(2) Six copies of a typed or printed, bound offering plan.

(3) Two copies of Parts A (Certifications) and B (General) of the exhibits, indexed with numbered tabs and secured in folders so that documents can be removed easily. In addition, conformed or photostatic copies of the certification must appear in the offering plan.

(i) Part A of the exhibits (Certifications) shall consist of the following documents:

21.2(a)

(a) (A-1) index of documents in Parts A and B;

(b) (A-2) certification by sponsor and sponsor's principals (orig.);

(c) (A-3) certification by sponsor's engineer or architect (orig.);

(d) (A-4) certification by expert as to adequacy of projected income and expenses of the cooperative for the first year of cooperative operation (orig.)

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

(a) (B-1) projections from qualified experts or the local suppliers of consumption, and total cost for furnishing heat, hot water, electricity and other utilities to the building including public areas. If shareholders directly pay the cost of heating their own units, include similar projections for heat, hot water and electricity for individual units;

(b) (B-2) copy of title company report dated within 30 days of submission;

(c) (B-3) copy of proposed management agreement;

(d) (B-4) copies of any contract which will be binding on the apartment corporation for \$2,500 or more per year;

(e) (B-5) copy of letter from an insurance company or its authorized agent, stating proposed insurance coverage and amounts, the applicable tariff classifications, and the annual premium or premiums;

(f) (B-6) copy of an opinion from a licensed insurance broker, insurance appraiser concerning adequacy of coverage to avoid being a co-insurer and/or the adequacy of coverage to replace the building.

21.2(c)

(g) (B-7) copy of Section 352-a/352-b Designation of Secretary of State as agent (applicable only to out-of-state issuers, sponsors, principals and/or selling agents);

(h) (B-8) if the plan involves construction or rehabilitation and one is available, and estimates of the assessed valuation after completion of construction or rehabilitation from the local tax assessor. If applicable but not available, an estimate of the assessed valuation after completion of construction or rehabilitation from a real estate broker, appraiser, attorney or other professional familiar with the tax assessment practices in the locality in which the property is located;

(i) (B-9) for cooperatives located outside of New York, copy of statutes and regulations governing cooperatives and evidence of compliance with that law.

(j) (B-10) copy of the mortgage and note or bond required by sponsor if sponsor is offering financing or required by a mortgage lender procured by sponsor

together with any other document which significantly affects a purchaser's obligations for financing offered or procured by sponsor. If the documents are not available at the time of submission to the Office of the Attorney General submission to the Office of the Attorney General, so indicate and forward when available.

(k) (B-11) copy of Certificate of Incorporation and receipt from Secretary State for the apartment corporation;

(l) (B-12) copy of specimen stock certificate. Include any restrictions on transferring and any endorsements;

(m) (B-13) copy of any mortgage and note or bond that will be a lien on the property after closing or which presently encumbers the property;

(n) (B-14) copy of any mortgage financing commitment letter;

21.2(c)

(o) (B-15) copies of professional and commercial leases;

(p) (B-16) copy of contract of sale or exchange between the sponsor and the apartment corporation that conforms to the contract described in the offering plan;

(q) (B-17) other material document(s), each of which should be described in the transmittal letter, e.g., copy of regulatory agreement with a government agency;

(r) (B-18) 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 the bank forms to be used to open the escrow account;

(s) (B-19) copy of surety bonds or letter of credit proposed to secure down payments and any underlying agreement or related agreement, and any undertaking called for in the regulations or proposed to be furnished.

(iii) One copy of Part C of the exhibits (Engineering). Part C of the exhibits shall consist of the following documents:

(a) (C-1) copy of approved building plans if available or if required by General Business Law Section 352-ee or if required by local law. Any specifications required by government agencies having jurisdiction and copies of all required construction permits from government agencies having jurisdiction. Except for an offering plan governed by General Business Law Section 252-ee, if the approval of the building plans on the construction permits are not available at the time of submission of the offering plan to the Office of the Attorney General, so indicate and forward when available;

(b) (C-2) architect's or engineer's detailed description of the physical aspects of the cooperative with the architect's or engineer's stamp and original signature;

21.2(c)

(c) (C-3) copy of temporary, partial or permanent certificate of occupancy to be in effect after construction or rehabilitation, if available. If the certificate of occupancy is not available at the time of submission of the offering plan to the Office of the Attorney General, so indicate and forward to the Office of the Attorney General when available.

(iv) One copy of Part D of the exhibits (fees and other information) in a separate folder similarly secured and indexed. Part D of the exhibits shall consist of the following documents:

(a) (D-1) personal or certified checks for filing fees under General Business Law Sections 352-e(7)(a) and 359-e(5) payable to the New York State Office of the Attorney General placed within an envelope at the first tab with form of receipt issued by the Office of the Attorney General. To expedite processing, the sponsor should submit to checks, each in the amount of one-half of the total fee due under General Business Law Section 352-e(7)(a) at the time of submission. Each check for filing fee should be accompanied by a form of receipt issued by the Office of the Attorney General. One of the two checks will be returned to the sponsor if the Office of the Attorney General issues a deficiency letter;

(b) (D-2) signed M-10 form(s), registration for broker-dealer, for the selling agents (orig.), and signed M-2 form(s) salesman statement, for all individual employees who act as salesmen. Forms do not have to be submitted if currently valid registration forms are on file with the Office of the Attorney General from prior public offerings (orig.);

(c) (D-3) signed M-10 form(s), registration for broker-dealer for the sponsor signed by all officers, directors, partners or principals. Forms do not have to be submitted if currently valid registration forms are on file with the Office of the Attorney General from prior public offerings (orig.);

21.2(c)

(d) (D-4) 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.);

(e) (D-5) proof of financial responsibility of sponsor (sponsor's certified statement or affidavit of sponsor's net worth) and sponsor's certification that its net worth together with the proceeds of firmly committed construction financing, are sufficient to meet sponsor's unsecured obligations under the plan to complete all work and meet sponsors' obligations for unsold shares (orig.);

(f) (D-6) an affidavit from sponsor and principals of sponsor, as defined in subdivisions (c) and (d) of Section 21.1 of this Part, stating whether sponsor and principals of sponsor have taken part in 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 address of the realty and approximate date of the closing for condominiums;

(g) (D-7) exemption application pursuant to General Business Law Section 359-e;

(h) (D-8) completed statistical information card(s) available from the Office of the Attorney General.

21.2(c)

Section 21.3 Format and Content.

Plans submitted pursuant to this Part must comply with the format and minimal disclosure requirements set forth in subdivisions (a) through (bb) of this section in addition to the requirements of Article 23-A of the General Business Law.

(a) Cover. The outside front cover of the offering plan shall contain the following information:

(1) the title in bold face type: COOPERATIVE OFFERING PLAN followed by the address of the property and the number of units being offered;

(2) the cash amount of the offering which shall be based on the aggregate price at which the shares are initially offered. State the number of shares and the approximate number of units;

(3) amount of the outstanding mortgage(s) which shall be based on the projected unpaid balance of all mortgages encumbering the property at the time it is acquired by the apartment corporation;

(4) the total offering price which shall include the reserve fund (if any) and the working capital fund (if any);

(5) the name and principal business address of the sponsor and selling agent. Telephone numbers may also be included.

(6) the approximate date of first offering which shall not be earlier than the date the Office of the Attorney General files the plan. The term of the initial offer is 12 months commencing on the date indicated in the letter from the Office of the Attorney General stating that the plan is filed. The term may be extended by an amendment to the offering plan. The dates should be left blank at printing and completed after the plan is filed;

(7) the following statement in capital letters, printed in bold face common type at least as large as 10-point modern type and at least 2 points leaded:

21.3(a)

THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL THESE COOPERATIVE UNITS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE Office of the Attorney General PRIOR TO SELLING OR OFFERING TO SELL ANY UNIT. FILING WITH THE Office of the Attorney General DOES NOT MAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING;

(8) if the plan contains any special risks, as defined in subdivision (c) of this section, the following statement in capital letters printed in bold face common type at least as large as 10-point modern type and at least 2 point leaded:

THIS PLAN CONTAINS SPECIAL RISKS TO PURCHASERS

SEE PAGE .

(b) Table of contents. The format and order set forth in this subdivision must be followed in the table of contents. Include headings for the subjects not marked with an asterisk except that:

(1) a limited number of headings may be added to the plan; and

(2) headings for subjects that are marked with an asterisk may be omitted if the subject mater is not applicable to the offering.

Omissions and additions should be expressly noted and explained in the transmittal letter. Alternative wording for headings to meet particular facts are set forth in parentheses.

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21.3(b)

(c)

Special risks.

This section, if applicable, must be on a separate page immediately following the table of contents. All features of a plan which involve significant risk or will disproportionately or unusually affect maintenance charges or obligations of shareholders in future years of cooperative operation must be conspicuously disclosed and highlighted. A brief description of the risk should be given in this section and a more thorough description should be given in a referenced later section. Questions as to whether a risk should be highlighted in this section should be resolved in favor of inclusion.

(d) Definitions. Important terms, terms that are not likely to be understood by the general public, and terms that have special meaning or are used as proper nouns should be defined and explained. Such terms include but are not limited to: closing; closing date; tenant-shareholder; sponsor; selling agent; cooperative apartment or unit; maintenance charges; filing; proprietary lease; effective date; assessments; and holder of unsold shares. Terms must be used consistently throughout the offering plan.

(e) Introduction. The introduction should:

(1) explain that the purpose of the offering plan is to set forth all the terms of the offer. Explain that the plan may be amended from time to time when an amendment is filed with the New York State Office of the Attorney General. State that amendments will be served on purchasers and shareholders;

(2) describe the type of interest that the apartment corporation is to acquire in the land and building(s) and appurtenances thereto;

(3) identify the sponsor, state when the sponsor acquired the property or sponsor's interest as a contract vendee;

(4) summarize the number of shares and units being offered in this offering plan, whether the units are residential or otherwise, any parking and recreational facilities and refer to Schedule A for prices. Identify any units or property interests that are not being offered. If the building is an existing building, state whether it is being rehabilitated;

21.3(e)

(5) state that the prices were approved by the sponsor and are not subject to approval by the Office of the Attorney General or any other government agency;

(6) state that the plan, including all schedules and Parts A, B and C of the exhibits, constitute the entire offer and that copies of the plan and Parts A, B and C of the exhibits will be available for inspection without charge to prospectus purchasers at the site whenever the on-site sales office is open and at the office of the selling agent or sponsor;

(7) if the plan involves new construction or rehabilitation, state the approximate construction timetable for completion of the cooperative;

(8) outline the basic aspects of cooperative ownership, including the following:

(i) that the apartment corporation will purchase the property and will sell shares to purchasers to raise funds;

(ii) each shareholder will enter into a proprietary lease;

(iii) any restrictions on using, transferring, leasing or mortgaging the units and shares;

(iv) control of the apartment corporation will be in the hands of the board of directors;

(v) each shareholder will have the right to vote for members of the board of directors;

(vi) each shareholder will be responsible for the payment of maintenance charges and assessments;

(9) state any limitations on who may purchase units provided that such limitations do not violate applicable law;

21.3(e)

(10) include the following paragraph printed in bold face common type at least as large as 10-point modern type and at least 2 points leaded:

THE PURCHASE OF A COOPERATIVE HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A SUBSCRIPTION AGREEMENT.

(f) Purchase prices and share allocation (Schedule A).

(1) Schedule A must appear on a separate page entitled Schedule A and list the following information for each unit in columnar form. Include a footnote on Schedule A indicating that all projected charges are for a stated 12 month period, e.g., January 1, 1982 to December 31, 1982:

(i) unit identification;

(ii) number of rooms and baths or useable space in square feet;

(iii) share allocation;

(iv) cash purchase price;

(v) approximate amount of mortgage application to a block of shares (if applicable);

(vi) projected maintenance charges for the first year of operation at \$_____ per share (annual and monthly); and

(vii) projected annual income tax deduction at \$_____ per share for the first year of operation (if applicable).

(2) Shares must be allocated in whole shares.

21.3(f)

(3) Detailed footnotes must support and explain the information in Schedule A. These footnotes should include but are not limited to the following:

(i) for the number of rooms and baths, state the method of calculating the number of rooms or area of each unit. If rooms or area are calculated in accordance with an industry standard, it is sufficient to refer to the industry standard employed;

(ii) for the number of rooms and baths, identify the rooms or area within each unit or model (e.g., line G: 2BR, LR, K, 1ΩB, balcony);

(iii) for the share allocation, disclose the basis for calculating the share allocation;

(iv) for the cash purchase price, refer to the portion of the plan that discloses and explains price changes. If applicable, explain that prices are negotiable;

(v) for cash purchase price, refer to the portion of the plan that discloses and explains any closing costs or adjustments that a purchaser may have to pay and project approximate amount due for closing costs;

(vi) for approximate amount of mortgage applicable to shares, explain that although shareholders will not be personally liable to pay the mortgage(s), the apartment corporation will be responsible and shareholders' maintenance charges include amounts to pay debt service;

(vii) for projected maintenance charges, disclose, that if the purchaser obtains financing, debt service will be an additional expense. Disclose that projected maintenance charges do not include certain costs for which the shareholder is responsible such as (where applicable) repairs to the interior of the unit, separately

21.3(f)

metered gas, electricity, hot water, heat and air conditioning. Disclose any built-in increases in future years resulting from a fixed amount increase in mortgage debt service and state the dollar per share impact

(viii) for projected income tax deduction, explain that the projected tax deduction may vary in future years (where applicable) due to changes in the interest rate on the existing mortgage (if any) or on a refinanced mortgage, due to the allocation of constant debt service payments to interest and principal, due to the expiration of real estate tax benefits or due to changes in the assessed value, the tax rate or in the method of the assessing real property which result in a change in real property taxes. State the percentage of the budget for the first year of operation represented by the deductible items.

(g) Projected budget for first year of operation of cooperative (Schedule B). The plan must describe all projected income and expenses for the first year of cooperative operation in Schedule B. The budget must be based upon a specified 12 month period which should be a realistic projected commencement of the budget year in the offering plan differs by six months or more from the anticipated date of closing, there plan must be amended to include a revised budget disclosing current projections. If such amended projections exceed the original projections by 25 percent or more, the sponsor must offer all purchasers the right, for a specified reasonable period of time, to rescind their offer to purchase and have their deposits refunded. Sponsor's guaranty of the budget will not avoid an offer of rescission. The budget for the cooperative must be in the following format. Headings marked with an asterisk may be omitted if not applicable to the offering. Additional income, expenses or cost items unique to a building should be added whenever appropriate to reflect additional sources of income, expenses, cost or unique circumstances.

21.3(g)

SCHEDULE B

Projected Budget For First Year of Operation

Beginning _____ 1, 19 _____

Income

Maintenance Charges

(_____ shares at \$_____ per share) \$_____

* Commercial \$_____

* Laundry \$_____

* Other (explain) \$_____

TOTAL \$_____

Expenses

* Salaries and wages \$_____

Heating \$_____

Electricity and gas \$_____

Water charge and sewer rent \$_____

* Telephone \$_____

Repairs and maintenance \$_____

Services and supplies \$_____

Insurance \$_____

* Management fees \$_____

Legal fees and audit fees \$_____

Franchise and corporate taxes \$_____

* Contingency \$_____

* Other (Explain) \$_____

Real estate taxes \$_____

* Mortgage Interest and amortization \$_____

TOTAL \$_____

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(1) Detailed footnotes must support and explain the information in Schedule B. The footnotes must set forth the basis or assumptions for each projection.

(i) Commercial income. Describe any contracts or leases, other than proprietary leases, that will be binding on the apartment corporation and refer to the section of the plan on management agreements and other contractual arrangements.

(ii) Labor costs. State the number of full and part-time staff projected for the cooperative and whether the staff will be union members.

(a) State whether such level of staffing complies with all applicable housing and labor laws.

(b) The labor budget must include benefits required by local, state or federal law or required by contract such as worker's compensation, disability insurance, welfare and pension contributions by employers, unemployment insurance, and payroll taxes. The budget must reflect current wage rates and reasonably anticipated increases.

(iii) Heating, cooling and hot water costs. State the type and quantity of energy estimated to be used during the year and the cost per gallon or other measure, inclusive of sales tax, for all energy costs for providing heat, air conditioning and hot water for the building. Explain any energy costs that are shared between the shareholders and the apartment corporation. The Office of the Attorney General may, from time to time, issue pricing guidelines to reflect minimum fuel and utility costs.

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(iv) Utilities. State the basis for the projected consumption and the projected unit cost for utilities. Unit cost should be based on the current tariff plus a reasonably anticipated increase which should be set forth (e.g., estimates based on current tariffs plus 12 percent increase).

(v) Insurance. The budget for insurance must provide for fire and casualty insurance under an agreed amount replacements value policy or under a policy including an 80 percent co-insurance provision so that the insured shall not be a co-insurer. Discuss the adequacy of the insurance to replace the building in the event of total loss and/or to avoid being a co-insurer in the event of partial loss.

(a) State whether the insurance coverage satisfies the requirements of any mortgage lender procured by sponsor or any requirements of a managing agent contract.

(b) Fire, casualty and general liability insurance must provide that there will be no cancellation without notice to the Board of directors and waive subrogation.

(c) If the following items are not covered and are applicable to the offering, state that coverage for them is not included and may be available at extra cost: officers and directors liability, rent insurance, water damage; elevator collision; boiler and machinery; excess liability; auto liability, fidelity bond and garage keeper's liability. The plan must

alert shareholders to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to unit contents, replacements, additions, upgraded fixtures and improvements; and liability coverage for occurrences within the unit.

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(vi) Real estate taxes. State the projected assessed valuation after completion of construction and the projected tax rate used to calculate the budget item. Include the present assessed valuation if the cooperative is an existing building being sold without rehabilitation or is undergoing minimum rehabilitation.

(vii) Tax exemption/tax abatement benefits. If the plan represents that the cooperative may or will receive tax benefits, the plan must state that the sponsor will use best efforts to obtain the benefits, and project the amount, commencement and duration of the benefits.

(a) Highlight as a special risk if the plan states that the apartment corporation may or will receive tax benefits, and the sponsor does not anticipate obtaining the benefits before the closing. Describe the effect on the budget and maintenance charges with and without the tax benefits. If full tax benefits may be available for only part of the first year of operation, the budget may either reflect:

(1) partial benefits and footnote to explain the timing of full benefits; or

(2) full benefits and footnote to explain that the sponsor agrees to pay all taxes in excess of the budgeted figure for the first year of operation and project approximately when full benefits will be available.

(viii) Management and service contracts. State the basis for projected management fees and service contracts. Conspicuously disclose in the footnotes and highlight as a special risk if the cost of the management contract

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or any other contract which will be binding on the apartment corporation exceeds or is substantially less than the prevailing cost for similar services.

(ix) State that the contingency fund (if any) is intended to provide for any unanticipated expenses or unanticipated increases in the projected expenses.

(x) Mortgage interest and amortization. Describe how the mortgage is payable during the budget year and the allocation of payments to interest and principal. Refer to the "Terms of Mortgages" section for further explanation of all mortgage terms.

(2) If units are individually heated so that shareholders must pay heating costs directly to the supplier, projections for heat, hot water and electricity should be set forth and explained in Schedule B-1. Each item in Schedule B-1 must be supported by detailed footnotes containing information similar to the corresponding footnotes described in this Part for Schedule B.

(h) Changes in prices and units.

(1) The offering prices set forth in Schedule A must be decreased or increased by a duly filed amendment to the plan when the change in price is an across-the-board change affecting one or more lines of units or unit models or is to be advertised. However, the sponsor may enter into an agreement with a purchaser to sell one or more units at prices different from those set forth in Schedule A without filing an amendment before entering the agreement if the plan discloses in the footnotes to Schedule A and in this section that the prices are negotiable. Sponsor must file an amendment to the plan that reflects any changes in price negotiated with individual purchasers within 10 days after entering into such agreements. State whether sponsor will obtain a further opinion as to reasonable relationship prior to the closing.

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(2) State that no change will be made in the size or number of units, the share allocations, the total number of shares or in the size or quality of public areas except by amendment to the plan. Holders of unsold shares must comply with this provision.

(3) State that unless an affected purchaser consents, no change will be made in unit size, layout, or share allocation if a subscription agreement has been executed and delivered to the sponsor for that unit and the purchaser is not in default.

(4) State that no change will be made in the total number of shares or in the size or quality of public areas unless purchasers who executed and delivered subscription agreements to the sponsor and are not in default receive a right to rescind and a reasonable and specified period in which to exercise the right.

(i) Opinion of reasonable relationship. Include an opinion from a licensed real estate broker or appraiser stating whether the cash purchase price to be paid for each unit is not less than an amount which bears a reasonable relationship to the portion of the value of the apartment corporation's equity in the property which is attributable to each such unit.

(1) The opinion must be signed by a duly authorized signatory or by the firm.

(2) The opinion must include consent to copy the opinion in the plan.

(j) Attorney's income tax opinion. Discuss in easily understandable language the specific requirements of Internal Revenue Code Section 216 for the apartment

corporation to qualify as a cooperative housing corporation and for tenant-shareholders to deduct real estate taxes and interest.

(1) Unless highlighted as a special risk, counsel for sponsor or independent counsel must render an affirmative, unqualified opinion that under present law, regulations, rulings and decisional law and based on the terms of the offering plan:

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(i) the apartment corporation will qualify at closing as a cooperative housing corporation under Internal Revenue code Section 216; and

(ii) tenant stockholders will be entitled to deduct for income tax purpose their proportionate share of the interest and real estate taxes paid by the apartment corporation. Highlight as a special risk if there are unusual features of the plan which may jeopardize the apartment corporation's qualification or the deductibility of interest and taxes by tenant stockholders who itemize deductions in the first year of cooperative operation or thereafter.

(2) If a permanent, temporary or partial certificate of occupancy has not been issued prior to closing for offering plans subject to the provisions of General Business Law Section 352-ee, discuss whether the apartment corporation is a cooperative corporation within the meaning of Internal Revenue Code Section 216, including whether tenant stockholders are entitled to occupy units for dwelling purposes.

(3) Tax counsel's opinion may not contain a general disclaimer of liability. It may limit liability if the facts represented by sponsor and sponsor's experts are not true or if there are changes in the applicable law and regulations, decisional law or Internal Revenue Service rulings. It may state that it is an opinion, not a guarantee that the apartment corporation will qualify as a cooperative corporation or that deductions will be available to stockholders.

(4) Suggested language for the disclaimer of liability is set forth below.

This is an opinion, not a guarantee, that the apartment corporation will qualify as a cooperative corporation and that tenant-stockholders will be entitled to income tax deductions. This opinion is based solely on the facts and documents referred to above. No warranties are made that the tax laws upon which counsel base this opinion will

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not change. In no event will the sponsor, the sponsor's counsel, the apartment corporation, counsel to the apartment corporation, the selling agent or any other person be liable if the apartment corporation ceases to meet the requirements of the Internal Revenue Code of 1954, as amended, or the New York state Tax Law, as amended, by

reason of future changes in fact or applicable law, regulations decisional law or Internal Revenue Service rulings.

(5) The opinion should be signed by a duly authorized signatory or by counsel's firm.

(6) The opinion must include counsel's consent to include a copy of the opinion in the plan.

(k) Real estate tax benefits. If the plan represents that the apartment corporation may or will receive tax benefits, state that the sponsor will use best efforts to obtain the benefits and project the amount, commencement and duration of the benefits and describe the benefits. Highlight as a special risk if the plan states that the apartment corporation may or will receive tax benefits and the sponsor does not anticipate obtaining the tax benefits before the closing. Describe the efforts the sponsor will make to obtain the tax benefits after closing and the approximate timetable for obtaining the benefits. Highlight as a special risk if any construction or rehabilitation to the interior of units is the responsibility of shareholders and failure to complete such work may have an adverse impact on the availability of tax benefits.

(1) An opinion from sponsor's counsel or independent counsel must support sponsor's representations.

(2) Counsel's opinion may not contain a general disclaimer of liability. It may limit liability if the facts represented by sponsor and sponsor's experts are not true or if there are changes in the applicable law, regulations or decisional law.

(3) The opinion must include counsel's consent to include a copy of the opinion in the plan.

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(4) The opinion must be signed by a duly authorized signatory or by counsel's firm.

(l) Procedure to purchase. Describe the essential terms of the subscription agreement which must comply with this Part and contain the following provisions.

(1) State the amount or the percentage of the deposit.

(2) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of GBL Sections 352-e(2-b) and 352-h and these regulations, and all funds paid by purchasers shall be handled in accordance with these statutes and regulations.

(3) Escrow, trust fund. The following requirements shall apply to all offerings and shall be fully disclosed in all offering plans subject to this Part:

(i) The account. All deposits, down payments, or advance made by subscribers or purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, must be placed within five business days after the agreement is signed by all necessary parties, in an attorney's segregated special escrow account in a bank doing business in the State of New York which account is covered by federal bank deposit insurance. Sponsor shall include as a special risk that deposits in excess of \$100,000 will not be federally insured in excess of \$100,000. An attorney shall open and maintain such account in his or her own name, or in the name of a firm of attorneys of which he or she is a member, or in the name of the attorney or firm of attorneys by whom he or she is employed, separate from such attorney's personal accounts or from any accounts in which assets belonging to the firm are deposited, and separate from any accounts maintained in the capacity of executor,

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guardian, trustee or receiver. A master escrow account with a sub-account for each subscriber or purchaser is acceptable. The name of the account, the bank, and the bank address must be stated in the plan. The word "escrow" must be included as part of the name of the account. Funds from this account may be released only by signature of the attorney who is named as escrow agent. Neither the sponsor nor any principal of the sponsor may be a signatory on the account. Funds must be placed in an interest-bearing account, with all interest credited to the subscriber or purchaser, unless either the subscriber or purchaser defaults and the plan is consummated, or the sponsor elects to place funds in a separate Interest-On-Lawyer's-Account ("IOLA") for each offering plan pursuant to Judiciary Law Section 497. The plan shall indicate whether the interest rate to be earned will be the prevailing rate for such accounts. State the current prevailing rate and when interest will begin to accrue. No fees of any kind may be deducted from the account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of the account.

(ii) Payments. All funds received from subscribers or purchasers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the subscriber or the purchaser to the order of the attorney or law firm as escrow agent.

(iii) The escrow agent. The escrow agent must be an attorney admitted to practice in the State of New York or an attorney admitted in a foreign jurisdiction who submits to the jurisdiction of the State of New York for any cause of action arising out of the escrow agreement or a firm of such attorneys. The escrow agent shall be independent of the sponsor. Attorneys admitted or practicing in the State of New York must comply with the Appellate Division rules for the preservation of

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client funds of the Judicial Department having jurisdiction over the attorney. A law firm which has a member who is a principal of the sponsor, shall not be the escrow agent, but one or more members of the firm other than the attorney acting as escrow agent shall be a signatory on the account and only such attorney shall be authorized to release funds. The name, address and telephone number of the escrow agent and of each attorney who is a signatory must be stated in the plan.

(iv) Escrow agreement. The material terms of the escrow agreement shall be disclosed in the plan and a copy of the full agreement must be contained as an exhibit to the plan in Part II. Include, without limitation, any indemnity by the sponsor in favor of the escrow agent, provision for discharge of the escrow agent's obligations by the sponsor upon payment of the deposit and interest in accordance with these regulations, any right of the escrow agent to represent the sponsor in any lawsuit, any compensation by the sponsor to the depository bank, any provision for payments by the sponsor under an indemnity in favor of the escrow agent and whether the sponsor will compensate the escrow agent for acting as such. A model form for the escrow agreement is available from the Office of the Attorney General; if such form is not used the attorney's transmittal letter should so indicate. If a different form of escrow agreement is used, all material terms of the Office of the Attorney General's model must be included in the agreement, and the agreement should be red-lined to indicate changes from or additions to the model form.

(v) Notification to purchaser. Within 10 business days after tender of the deposit submitted with the subscription or purchase agreement, the escrow agent shall notify the subscriber or purchaser that such funds have been deposited in the bank indicated in the

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offering plan, and shall provide the account number and the initial interest rate. If the subscriber or purchaser does not receive notice of such deposit within 15 business days after tender of the deposit, he or she may cancel the subscription or purchase and rescind within 90 days after tender of the deposit, or may apply to the Attorney General for relief. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the subscriber or purchaser.

(vi) escrow revisions. Before funds are transferred to a new escrow account, or if the escrow agent is replaced, the plan must be amended to provide the same full disclosure with respect to the new account, the escrow agent and the escrow agreement as was originally provided. A bond, letter of credit or other security may be substituted for the escrow account only after the Office of the Attorney General approves in writing the use of such alternate form of security, pursuant to the provisions of paragraph (1)(4) of this section.

(vii) Release of funds. The escrow agreement and the plan must set forth the requirements and procedures for the release of the escrowed funds. These shall include:

(a) Under no circumstances shall sponsor apply for release of the escrowed funds of a defaulting subscriber or purchaser until after consummation of the plan. Consummation of the plan does not relieve the sponsor of its obligations pursuant to GBL Section 352-h.

(b) The escrow agent shall hold the funds in escrow until otherwise directed in:

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(1) a writing signed by both sponsor and subscriber or purchaser; or

(2) a determination of the Attorney General pursuant to the subparagraph (viii) of this paragraph; or

(3) a judgment or order of a court of competent jurisdiction, or until released pursuant to clause (d) of this subparagraph.

(c) The sponsor shall not object to the release of the escrowed funds to:

(1) a subscriber or purchaser who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan; or

(2) all subscribers or purchasers after an amendment abandoning the plan is accepted for filing by the Office of the Attorney General.

(d) If there is no written agreement between the parties to release the escrowed funds, the escrow agent shall not pay the funds to the sponsor until the escrow agent has given the subscriber or purchaser written notice of not fewer than 10 business days. Thereafter, the funds may be paid to the sponsor unless the subscriber or purchaser has already made application to the Office of the Attorney General pursuant to the dispute resolution provisions contained in these regulations and has so notified the escrow agent in accordance with such provisions.

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(viii) Disputes.

(a) In the event of a dispute, the sponsor shall apply and the subscriber or purchaser or the escrow agent holding the down payments in escrow may apply to the Attorney General for a determination on the disposition of the down payment and any interest earned thereon. Forms for this purpose will be available from the Office of the Attorney General. The party applying shall contemporaneously send to all other parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the subscriber or purchaser and the escrow agent shall abide by any interim directive issued by the Attorney General.

(c) If the application permitting release of funds is granted, the deposit and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted.

(d) The Attorney General shall act upon the application within 30 days after its submission to the Office of the Attorney General, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) If the application seeking release of funds is denied, the escrow agent shall continue to hold the deposit and any interest earned thereon until:

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(1) both the sponsor and subscriber or purchaser direct payment to a specified party in accordance with a written direction signed by both the sponsor and subscriber or purchaser; or

(2) a judgment or order of a court of competent jurisdiction is served on the escrow agent; or

(3) the escrow agent deposits the disputed amount into court.

(f) In no event shall the escrow agent release funds in dispute, other than a payment of such funds into court, until such dispute is finally resolved either by determination of the Attorney General or by order or judgment of a court of competent jurisdiction or by written agreement of the sponsor and the subscriber or purchaser.

(ix) Exhibits to plan. Copies of the forms provided by the bank for opening the escrow account and the escrow agreement as proposed must be included as Exhibit B-19 of the submission. Upon first deposit, a copy of the escrow agreement as executed and a copy of the bank forms as executed must be submitted as supplements to Exhibit B-19 of the submission.

(x) Records on file. The escrow agent shall maintain all records concerning the escrow account seven years after release of the funds. Upon the dissolution of any law firm which was the escrow agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of them or by the successor firm and shall notify the Office of the Attorney General of such transfer.

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(xi) Review and audit. The Office of the Attorney General may perform random reviews and audits of any records involving escrow accounts to determine compliance with statute and regulation.

(xii) Waiver void. Any provision of any contract or agreement, whether oral or in writing, by which a subscriber or purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of this section of the regulations shall prevail over any conflicting or inconsistent provision in the offering plan or in a subscription or purchase agreement.

(xiii) Trust obligation of sponsor. Nothing contained herein shall diminish or impair the sponsor's statutory obligation to each subscriber or purchaser pursuant to GBL Section 352-h to hold in trust all deposits, advances or payments made in connection with the offer until consummation of the transaction with such subscriber or purchaser. Consummation of the plan does not relieve sponsor of its obligations pursuant to GBL Section 352-h. Funds from the escrow account remain the property of the subscriber or purchaser until employed in connection with the consummation of the transaction. Such funds shall not be a part of the estate of the sponsor or the escrow agent upon any bankruptcy, incapacity or death.

(xiv) Transaction. All funds required to be held pursuant to GBL Sections 352-e(2-b) and 352-h on the effective date of this section shall be transferred into escrow accounts in compliance with this regulation within 60 days thereafter.

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(4) Alternatives to escrow account. A sponsor may apply to the Attorney General to use security in the form of surety bonds or a letter of credit in lieu of escrow of such funds for use in newly constructed or gut rehabilitated developments upon showing of adequate insurance of such funds to the satisfaction of the Attorney General.

(i) Application for alternate security. Sponsor must submit an affidavit which contains full information as to the proposed usage of such funds, the sponsor's financing of construction or rehabilitation work, expected completion date, the terms and conditions of the proposed surety bonds or letter of credit, and required undertakings and covenants.

(ii) Documentation. The proposed form of surety bond or letter of credit, any underlying agreement or related agreement, and any undertaking or covenant required hereunder, shall be appended to the application and also filed as Exhibits to the plan in Exhibits Part B Section 21.2(c)(3)(ii)(s)(B-19), or as exhibits to an amendment to the plan.

(iii) Change from escrow account. Where surety bonds are or a letter of credit is to be provided under an amendment to the plan calling for release of funds already

deposited in escrow, the amendment shall provide for, and annex a form for, the written consent of each affected subscriber or purchaser and shall provide for continuation of escrow of funds or any subscriber or purchaser who does not execute and deliver such written consent to the sponsor.

(iv) Disclosure. If an application for alternate security is approved, the terms of such alternate security shall be disclosed in the plan or in an amendment to the plan promptly submitted.

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(5) Surety bonds. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to subscribers or purchasers by effectuating the issuance of surety bonds to such subscribers or purchasers by a licensed insurance company which agrees to act as surety for the amount of such down payments or deposits.

(i) Deposits into escrow account. All down payments and deposits, received after the Attorney General's approval of the use of surety bonds as alternate security, shall be placed, within five business days after the subscription or purchase agreement is signed by all necessary parties, in an attorney's segregated special escrow account, established pursuant to and in compliance with paragraph (3) of this subdivision. Such funds shall be released by the escrow agent to the sponsor upon receipt by the escrow agent of a copy of the surety bond issued to the subscriber or purchaser whose funds are being released.

(ii) Payments. All funds received from subscribers or purchasers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the subscriber or purchaser to the order of the attorney of law firm as escrow agent.

(iii) Requirements to act as surety. The surety company must be licensed to write insurance in the State of New York by the New York State Department of Insurance, whether or not the property which is the subject of the plan is located in the State of New York unless the law of the state where the property is located requires otherwise. If the property is located outside New York State and the sponsor claims that the law of such state conflicts and is controlling, the sponsor's application must specify the conflicting law. In order

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for the application for alternate security to be approved by the Attorney General, the applicant must show that the surety company with which the sponsor proposes to contract has a current rating for debt securities no lower than the third highest grade conferred by at least two of the national reporting services regularly evaluating insurance companies.

(iv) Agreement between sponsor and surety. The plan must fully disclose the material terms of the agreement between the insurance company as surety and the sponsor, including the premium to be paid by the sponsor, any agreement by which sponsor provides collateral to secure its obligations to the surety and any agreement by the sponsor indemnifying the surety. The agreement must provide that the surety will abide by directives in conformity with these regulations.

(v) Provisions of the bond. The surety bond must specify the name and address of the sponsor as principal; the name and address of the surety principal; the name and address of the company to which claims for payment may be made; provision for the name and address of the subscriber or purchaser as obligee on the bond; provision for the amount of the down payment or deposit secured and the rate of interest, if any, to accrue on such funds; the term of the bond, and, if the bond is for a finite period, a guarantee by the surety that it will pay the amount secured to the subscriber-obligee prior to expiration of the bond or a guarantee by the sponsor that the bond will be renewed before expiration.

(vi) Term and continuation. Each surety bond and any accompanying agreement shall provide that it will continue in effect or that it will be renewed periodically until consummation and closing of the sale of the

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respective shares the down payment for which is secured by such surety bond or until the secured funds of a subscriber or purchaser have been returned in full, or until the funds secured by the surety bond have been placed in the escrow account pursuant to paragraph (7) of this subdivision or until there is an undisputed subscriber or purchaser default or a determination by the Attorney General or order or judgment of a court of competent jurisdiction that the subscriber or purchaser has defaulted and that the sponsor is entitled to the secured funds.

(vii) Delivery of the surety bond. The sponsor shall cause the surety to mail or personally deliver the surety bond to the subscriber-obligee before the funds are released to the sponsor from the escrow account. The sponsor, the escrow agent and the surety company shall each retain a copy of the surety bond.

(viii) Invoking the bond. The subscriber-obligee shall have the right to demand payment of the amount secured by the surety bond directly from the surety, without first requesting payment from the sponsor. The surety shall be obligated to pay the amount secured by the bond to the subscriber-obligee without the consent or despite the objection of the sponsor, upon the following events or circumstances:

(a) timely rescission of a subscription or purchase agreement by a subscriber or purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;

(b) acceptance for filing by the Office of the Attorney General of an amendment abandoning the plan;

(c) determination by the Attorney General pursuant to subparagraph (x) of this paragraph that rescission or the return of funds is required;

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(d) failure by the sponsor to obtain a commitment by the surety company to renew the surety bond 60 days prior to its expiration;

(e) direction by the sponsor upon request by the subscriber or purchaser.

(ix) Failure by subscriber-obligee or purchaser-obligee to produce a copy of the bond. A subscriber's or purchaser's inability to produce a copy of the surety bond shall not be a basis for the surety to reject the subscriber's or purchaser's claim. The surety shall retain a copy of the bond and shall pay the secured funds to the subscriber-obligee or purchaser-obligee without a copy of the bond as long as the subscriber or purchaser is able to provide proof of identity as the obligee on the bond.

(x) Disputes.

(a) In the event of a dispute, the sponsor shall apply and the subscriber or purchaser or the surety issuing the bond may apply to the Attorney General for a determination on the disposition of the down payment secured by the bond and any interest earned thereon. Forms for this purpose will be available from the Office of the Attorney General. The party applying shall contemporaneously send to all other parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the subscriber or purchaser and the surety shall abide by any interim directive issued by the Attorney General.

(c) If the Attorney General determines:

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) that the subscriber or purchaser is entitled to the disputed funds secured by the surety bond, the surety shall pay the funds to the subscriber or purchaser in accordance with the determination of the Attorney General; or

(2) that the subscriber or purchaser is not entitled to the disputed funds secured by the surety bond, such determination may provide either that the surety bond shall be continued in effect or that the surety bond may be canceled.

(d) The Attorney General shall act upon the application within 30 days after its submission to the Office of the Attorney General, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) In no event shall the funds secured by the bond be paid to the subscriber or purchaser nor shall the surety bond be discharged until any dispute is finally resolved either by written agreement of the parties directing payment of the funds or discharge of the surety bond, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

(6) Letters of credit. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to subscribers or purchasers by effectuating the issuance of a letter of credit for the benefit of the subscribers or purchasers by an issuer qualifying hereunder.

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(i) Amount. The amount of the letter of credit shall be at least 125 percent of the aggregate of all subscription deposits or down payments or payments expected to be received from subscribers or purchasers, and not retained in escrow, during such period of time as the letter of credit will be needed, as estimated by the sponsor in the application to the Office of the Attorney General. The amount of the letter of credit may be reduced or increased as warranted by circumstances and pursuant to a filed amendment to the offering plan.

(ii) Irrevocability. The letter of credit must be irrevocable during the stated term and any renewal term.

(iii) Beneficiary. The beneficiary must be an attorney, or firm or attorneys, acting as or qualified under paragraph (3)(iii) of this subdivision to act as escrow agent under the plan, who shall act as a fiduciary for the benefit of subscribers and purchasers under the plan.

(iv) Authority to draw. The letter of credit must provide that the beneficiary shall have sole power to draw upon the letter of credit without the consent or despite the objection of the sponsor or of any provider of underlying credit, at such times or upon such events as are set forth in subparagraph (ix) of this paragraph.

(v) Issuer. The issuer must be a bank authorized to act as a commercial bank or savings institution under supervision of the New York State Banking Department or a federally supervised banking institution located in the State of New York, unless the

property is located in another state and the letter of credit is issued by a bank located within such state. In order for the application for alternate security to be approved by the Attorney General the applicant must show that the issuer bank has surplus funds and net worth of at least ten times the

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amount of the letter of credit, and must have a current rating with respect to its debt securities that is within "investment grade" by one of the generally accepted national reporting services regularly rating the debt securities of banking institutions and that the provisions of the letter of credit include the right of the beneficiary to draw down the letter of credit in conformity with these regulations.

(vi) Term and continuation. The letter of credit and related agreement and any accompanying undertaking shall provide that it will continue in effect or that it shall be periodically renewed until consummation and closings of sales of all shares referred to in the application for alternate security pursuant to paragraph (4)(i) of this subdivision or until the covered funds of subscribers and purchasers have been returned to them in full.

(vii) Undertaking. If the letter of credit will expire prior to the latest date of closings of sales of all such shares, provision for renewal of the letter of credit without loss of irrevocability and without any change of terms shall be afforded by:

(a) an "evergreen" or automatic renewal clause, if obtainable; and

(b) the irrevocable undertaking and covenant of the sponsor and by any other provider of underlying credit to provide successive renewals thereof until consummation and closings of sales of all shares or until the covered funds of subscribers and purchasers have been returned in full.

(viii) Operate provisions. Upon approval of a sponsor's application for use of a letter of credit as alternate security:

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(a) Deposits into escrow account. All down payments and deposits received shall be placed, within five business days after the subscription or purchase agreement is signed by all necessary parties, in an attorney's segregated special escrow account established pursuant to and in compliance with paragraph (3) of this subdivision. The escrow agent shall release such funds to the sponsor provided that the escrow agent has documentation showing that the letter of credit has been issued and is in effect. Such escrow agent shall no longer release funds from escrow if the escrow agent receives notice or information warranting draw-down of the letter of credit under paragraph (6)(ix) of this subdivision.

(b) Payments. All funds received from subscribers or purchasers whether in the form of checks, drafts, money orders, wire transfers or other instruments which identify the

payor, shall be made payable to or endorsed by the subscriber or purchaser to the order of the attorney or law firm as escrow agent.

(ix) Right to draw upon letter of credit. The escrow agents as the beneficiary of the letter of credit, acting as a fiduciary for the benefit of subscribers and purchasers under the plan whose funds were released from escrow by reason of the grant of sponsor's application, shall have the duty and the right to draw upon and collect the proceeds of the letter of credit, 10 business days after notice to the sponsor and sponsor's failure or refusal to restore such funds to the escrow agent, without the consent or despite the objection of the sponsor or the provider of the credit, upon the following events or circumstances:

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(a) timely rescission of a subscription or purchase agreement by a subscriber or purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;

(b) acceptance for filing by the Office of the Attorney General of an amendment abandoning the plan;

(c) determination by the Attorney General pursuant to subparagraph (x) of this paragraph mandating that rescission or the return of funds is required;

(d) failure by the sponsor to obtain a renewal or replacement letter or credit no later than 60 days prior to the expiration of the existing letter of credit;

(e) direction by the sponsor upon request of the subscriber or purchaser;

(f) notice of impending cancellation of the letter of credit has been given or received, or the issuer has filed a bankruptcy or insolvency petition or has been taken over by a Federal or state authority, and no proper replacement of the letter of credit has been furnished although continuation of the same in effect is required under paragraph 4(i) of this subdivision or subparagraph (vi) of this paragraph.

(x) Disputes.

(a) In the event of a dispute, the sponsor shall apply, and the subscriber or purchaser, the escrow agent or the bank issuing the letter of credit may apply to the Attorney General for a determination on the disposition of funds secured by the letter of credit, the deposit and

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any interest earned thereon. Forms for this purpose shall be available from the Office of the Attorney General. The party making such application shall contemporaneously send to the other three parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the subscriber or purchaser, the escrow agent and the bank shall abide by any interim directive issued by the Attorney General.

(c) If the application permitting release of funds is granted, such funds secured by the letter of credit, and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted.

(d) The Attorney General shall act upon the application within 30 days after its submission to the Office of the Attorney General, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) In no event shall the disputed funds secured by the letter of credit be paid to the subscriber or purchaser nor shall the letter of credit be terminated until any dispute is finally resolved either by written agreement of the parties directing payment of the funds, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

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(7) Change to escrow account. Where alternate security as provided under a filed offering plan is no longer needed by the sponsor, or new or additional alternate security cannot be obtained by a sponsor or its successor, sponsor shall submit an amendment for filing which provides that any future subscription or purchase deposits or down payments shall be held in the escrow account in accordance with paragraph (3) of this subdivision. Such amendment shall not affect the sponsor's obligation to account for funds previously released to the sponsor unless the funds representing all such deposits or down payments are restored to the escrow account.

(8) Highlight as a special risk any provision allowing sums in excess of 10 percent of the cash purchase price to be retained as liquidated damages other than the actual cost incurred for any special work ordered by the purchaser. Highlight as a special risk if sponsor may seek specific performance.

(9) State that the balance of the purchase price is to be paid after written demand is made and specify the minimum number of days to made the payment after sending the demand notice. If payment is due in advance of the closing, state the maximum number of days between the scheduled closing date and the date payment is due.

(10) Any "time is of the essence" provision concerning purchaser's obligations must be explained in easily understandable terms and be highlighted as a special risk.

(11) Purchasers must be given written notice of the closing date, of their obligation to pay the balance of the purchase price, and of their right to inspect the unit and property a specified number of days in advance of the closing date.

(12) Sponsor must make a written demand for payment 30 days before a purchaser is declared to be in default.

(13) Disclose whether the risk of loss from fire or other casualty remains with the sponsor unless and until either a purchaser is given the right

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to possession of a unit pursuant to a written agreement with the sponsor legal title to the property has been conveyed to the apartment corporation. Highlight as a special risk and explain the need for insurance if the risk of loss passes to the purchaser before closing except where the purchaser is given the right to possession prior to closing.

(14) Purchasers must be afforded either (i) not less than three days to review the offering plan and all filed amendments prior to executing a subscription agreement; or (ii) not less than seven days after delivering an executed subscription agreement together with the required deposit to rescind the subscription agreement and have the full deposit refunded promptly.

(15) A complete copy of the subscription agreement must be inserted in the plan.

(16) Highlight as a special risk if purchaser's obligation to purchase is not contingent on obtaining financing. If purchaser's obligations are contingent upon obtaining a commitment for financing or actually obtaining financing, the details must be fully disclosed and explained. State the time the purchaser has to notify sponsor of inability to obtain financing. Include the purchaser's time to obtain financing or a commitment and the risk, if any, that the commitment may expire or that the terms of the commitment may change prior to actual closing and the purchaser's obligations in either event.

(17) The plan and subscription agreement must provide that any conflict between the plan and the subscription agreement will be resolved in favor of the plan.

(18) Within a specified number of days after the purchaser delivers an executed subscription agreement together with the required deposit, the sponsor must either accept the subscription agreement and return a fully executed counterpart to the purchaser or reject the subscription agreement and refund the full deposit previously tendered.

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(19) The subscription agreement may not contain, or be modified to contain, a provision waiving purchaser's rights or abrogating sponsor's obligations under the offering plan or under Article 23-A of the General Business Law.

(m) Financing that may be available to purchasers. Fully disclose the terms of any commitment by sponsor or a lender procured by sponsor to finance the purchase of shares allocated to units. If any of the terms of the financing are not known at the time the offering plan is submitted to the Office of the Attorney General, sponsor must agree to amend the plan promptly when the terms are firm. The terms shall include but are not limited to:

(1) Name and address of lender.

(2) Amount and term. State the maximum amount (which may be expressed as a percentage of the cash purchase price) available for shares allocated to a unit and the minimum term of the loan. If the financing offered is not self-liquidating over the term, project the amount of the balance or "balloon" due on maturity, and set forth and explain the risk that refinancing may not be available on the same or better terms. State the maximum amount of financing available to purchasers generally through a bulk commitment. If sponsor is not making financing available to all purchasers who qualify, the limitations and the method of allocation must be fully explained. If sponsor procures financing with an institutional lender, it is sufficient to refer to the institution's credit standards.

(3) Interest rate. State the annual interest rate over the term of the loan. If the loan has a variable or adjustable rate, indicate the initial interest rate or (if not a fixed rate) explain how it will be established, the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact adjustments will have on debt service payments and the principal balance. If sponsor structures the financial terms of the transaction in such a manner as to result in taxable income to a purchaser, the financial and legal implications of such structuring must be disclosed

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and explained. If the sponsor procures cooperative financing at an interest rate that is below the prevailing rate offered by the lender, disclose the interest rate to the sponsor and the interest rate offered to purchasers and disclose any income tax consequences and any limitation on the ability of the purchasers to refinance on the same or better terms.

(4) Payments. State the amount of each payment, when payments are due, and how payments are applied to interest and principal. For variable rate or adjustable rate loans, disclose how initial payments are allocated to interest and principal, disclose and explain the effect of interest rate changes on the allocation of payments to interest and principal and effect on itemized deductions available to shareholders.

(5) Prepayment. State whether the unpaid principal balance may be prepaid in whole or in part, the number of days of prior notice that must be given, and any charges for prepayment. Disclose any restrictions on the ability of a purchaser to prepay the entire unpaid principal at any time.

(6) Term of commitment. State when the financing commitment expires.

(7) Late charges. Describe the amount of late charges and how they are assessed.

(8) Additional financing costs. Disclose the amount of additional costs of charges to purchasers in connection with such financing including, for example, points, origination fees, lender's legal fees, processing fees, application fees, insurance and appraisal fees.

(9) Restrictions. Describe all restrictions on a shareholder's right to alter, improve, sell, sublease, purchase, own, occupy, finance or otherwise acquire, use or dispose of a unit.

(10) Events of default. Describe the events of default entitling the lender to accelerate the principal indebtedness and describe grace periods granted to purchasers. Sponsor must either state affirmatively that there is not a due-on-sale clause or disclose the existence of a due-on-sale clause and explain the consequences to a purchaser.

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(n) Effectiveness date. The plan must explain that the offer to sell is contingent upon the plan's being declared effective and compliance with the relevant conditions and time periods. Sponsor must conform with the following provisions in determining whether, when and how the plan will be declared effective:

(1) The plan may not be declared effective until executed subscription agreements of a bona fide purchasers for occupancy have been accepted by sponsor for not less than 15 percent of the units offered under the plan.

(2) The plan must be declared effective when subscription agreements are accepted for the sale of 80 percent or more of the units offered under the plan.

(3) The plan may be abandoned by sponsor, at its option, before it is declared effective or before it is declared effective or before 80 percent of the units have been purchased. Within a specified number of days after abandonment, all monies paid by purchasers shall be refunded to them in full with interest earned if the plan provides for interest. Sponsor promptly shall file a notice of abandonment on form RS-3 or such other form as the Office of the Attorney General may require and explain the reasons for the abandonment and disposition of all funds received.

(4) The plan must explain under what limited circumstances the plan may be abandoned after the plan has been declared effective or 80 percent of the units have been purchased.

(5) Highlight as a special risk if sponsor may abandon the plan after it is declared effective for any reason other than:

(i) a defect in title which cannot be cured without litigation or cannot be cured for less than a stated amount;

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(ii) substantial damage or destruction of the building by fire or other casualty which cannot be cured for less than a stated amount; or

(iii) the taking of any material portion of the property by condemnation or eminent domain.

(6) The plan may be declared effective by duly filed amendment or by service of written notice to all purchasers.

(7) If the plan is declared effective by notice, sponsor must submit an amendment to the Office of the Attorney General within three business days after service of the notice.

(8) Conveyance of the property to the apartment corporation may not occur before the amendment declaring the plan effective or reflecting it has been declared effective is filed with the Office of the Attorney General.

(9) Sponsor must submit to the Office of the Attorney General, if requested, copies of subscription agreements (and any amendments or modifications) within five business days after the request is made.

(10) On the closing date, and not sooner, title to the property will be conveyed to the apartment corporation.

Certificates for the shares of the apartment corporation and the accompanying proprietary leases will be delivered promptly thereafter to each purchaser who has paid the cash purchase price and complied with all of purchaser's obligations under the subscription agreement.

(o) Unsold shares. Unsold shares (including those subscribed but not fully paid at closing) must be purchased or acquired by sponsor or financially responsible individuals produced by sponsor at the closing.

(1) Sponsor must guarantee payment of all maintenance charges and assessments due from a holder of unsold shares, regardless of transfer,

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until purchased by a bona fide purchaser for occupancy. If the holder of unsold shares or a person related by blood or marriage to the holder of unsold shares takes occupancy as a bona fide resident, the sponsor will be relieved of further obligations. The apartment corporation will have a lien upon the shares to secure performance of all obligations of sponsor and holders of unsold shares under the proprietary lease.

(2) Sponsor must represent that it has the financial resources to enable it to meet its obligations with respect to unsold shares and state the means by which it will fund its financial obligations to the cooperative. If the funding sources is stated as income from projected sales, disclose other sources of funding, if any, that will be utilized if such projected sales are not made. Disclose whether any bond or security has been furnished to secure sponsor's obligation.

(3) If sponsor is not a natural person, sponsor must state that it will transfer all shares to financially responsible natural persons within three years of closing.

(4) If not indicated in the opinion of reasonable relationship, state whether the consideration for the unsold shares at closing will be approved by a qualified expert as meeting the reasonable relationship standard of Internal Revenue Code Section 216.

(5) State whether unsold shares will be sold only to persons who purchase for their own account and whether the holder will pool profits or losses with other holders of unsold shares.

(p) Financial features. Set forth the basic outline of the major financial features of the plan.

(q) Terms of mortgages. Fully disclose the terms of all mortgages that will encumber the property on the closing date including:

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(1) Name and address of mortgagee and the current holder of the mortgage if different.

(2) Amount and term. State the date of the mortgage, original principal amount, estimated balance at date of closing, maturity date, total scheduled unpaid balance at maturity and amount per share. If any mortgage has been extended, consolidated or otherwise modified or changed, explain the present terms of the mortgage as modified. If the mortgage is not self-liquidating over the term, project the amount of the balance or "balloon" due on maturity, and set forth and explain the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the term is for less than five years.

(3) Interest rate. State the annual interest rate over the term of the loan. If the loan has a variable or adjustable rate, indicate the initial interest rate or (if not a fixed rate) explain how it will be established, the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact adjustments will have on payments and the principal balance. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the interest rate to the sponsor and the interest on the loan to the apartment corporation and disclose the limitations on the ability of the apartment corporation to refinance on the same or better terms.

(4) Payments. State the amount of each payment, when payments are due, and how payments are applied to interest and principal. For variable rate or adjustable rate mortgages, disclose how initial payments are allocated to interest and principal, disclose and explain the affect of interest rate changes on the allocation of payments to interest and principal and effect on itemized deductions available to shareholders. Highlight as a special risk if payments will increase in future years due to fixed amount increase.

(5) Prepayment. State whether the unpaid principal balance may be prepaid in whole or in part, the number of days of prior notice that must be given, and any charges for prepayment. Disclose any restrictions on the ability of the apartment corporation to prepay the entire unpaid principal at any time.

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(6) Insurance. State the amount and type of any insurance required to be carried for the benefit of the mortgage. The insurance coverage reflected in Schedule B must be sufficient to satisfy the requirements of the mortgagee.

(7) Escrow and reserve requirements. Describe all requirements for escrow and reserve deposits including any for taxes, water and sewer charges, insurance, capital reserves or otherwise and whether and how such requirements may be increased or modified.

(8) Late charges. Describe the amount of late charges and how they are assessed.

(9) Additional financial costs. Disclose the amount of additional costs or charges to the apartment corporation including for example, points, origination fees, lender's legal fees and insurance fees.

(10) Refinancing and subordinate mortgages. Discuss whether junior mortgages are subordinate to refinancing if prior mortgages come due first in time and fully disclose any limitations on refinancing.

(11) Subordinate mortgages. State whether subordinate mortgages are permitted. Describe and explain the lien priority of all subordinate mortgages. If any mortgage is a

"wraparound" mortgage, explain fully the meaning of a "wraparound" mortgage and all additional risks and costs as a result of such wraparound mortgage. Any wraparound mortgage must be specifically noted in the transmittal letter from the attorney who prepared the offering plan to the Office of the Attorney General.

(12) Events of default. Describe the important events of default entitling the lender to accelerate the mortgage indebtedness and describe grace periods granted to the apartment corporation. Sponsor must either state affirmatively that there is not a due on sale clause in the mortgage and that it is not a default under the mortgage to alter the building or disclose the existence of such clauses, and explain the consequences to the apartment corporation and state that the sponsor has obtained the necessary consents or that sponsor will satisfy the mortgage at closing if the consents are not obtained.

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(13) Restrictions. Describe all restrictions on the apartment corporation's right to alter, improve, sell, occupy or mortgage the property.

(r) Summary of proprietary lease. Summarize the important provisions of the proprietary lease including:

- (1) greater rights or exceptions for the benefit of holders of unsold shares;
- (2) restrictions on the shareholder's right to use, sell, lease or mortgage a unit;
- (3) the events of default under the lease;
- (4) the procedure to modify the terms of the proprietary lease; and

(5) highlight as a special risk if the following provision or a provision of the same substance is not part of the proprietary lease. Holders of unsold shares may not cancel their proprietary leases unless:

(i) shareholders owning a majority of the apartment corporation's outstanding shares (other than unsold shares) shall have given notice of intent to cancel; or

(ii) all unsold shares constitute 15 percent or less of the apartment corporation's outstanding shares, at least five years have elapsed since the apartment corporation acquired title to the building and on the effective date of cancellation holders of unsold shares shall pay to the apartment corporation a sum equal to the produce of the then current monthly rent (maintenance charges) payable under the proprietary lease multiplied by 24.

(s) Apartment corporation. Describe the manner in which the apartment corporation will be organized and how its affairs will be governed. Summarize the important sections of the bylaws and other relevant documents.

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(1) Among the topics that must be disclosed and explained are:

(i) the date and statutory authority under which the apartment corporation was incorporated and the number of shares authorized and issued;

(ii) the composition of the board of directors, eligibility requirements, elections and removal of members;

(iii) the powers, duties and potential personal liability of the board of directors and officers;

(iv) the allocation of responsibility between shareholders and the board of directors for repairs, replacement and maintenance;

(v) repair or restoration after fire or other casualty and whether insurance proceeds are dedicated to repair restoration;

(vi) insurance provided by the apartment corporation;

(vii) reports to shareholders including notice of meetings and availability of books and records;

(vii) reports to shareholders including notice of meetings and availability of books and records;

(viii) how to amend the apartment corporation's certificate of incorporation, bylaws and other relevant documents;

(ix) termination of apartment corporation;

(x) the right to accumulate reserves for capital replacements or otherwise and any restrictions imposed on such right;

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(xii) the extent to which sponsor will or may control the board of directors after closing and the consequences to purchasers of such reservation of control;

(a) sponsor and sponsor's designees may not retain voting control of the board of directors or veto power over expenditures for more than two years after closing or whenever 50 percent of the units have been closed, whichever is sooner;

(b) sponsor and sponsor's designees may not exercise veto power over expenses described in Schedule B, capital repairs, or over expenses required to comply with applicable laws or regulations;

(c) state whether officers and members of the board of directors serve with or without compensation; and

(d) state whether and under what circumstances officers and any manager or managing agent may be removed by the board of directors or shareholders;

(xiii) disclose and explain the manner in which the apartment secures a lien on each block of shares to secure payments of maintenance charges and assessments and the consequences of such lien;

(xiv) rights and procedure of the apartment corporation upon the sale of shares including right to approve or impose a charge or fee on such approval of sale or lease . Disclose whether corporate documents impose greater fees or charges (however denominated) on shareholders that on sponsor or holders of unsold shares. If the plan or by-laws grant sponsor or holders of unsold shares greater freedom in selling shares or leasing units, such fact must be specifically disclosed and explained;

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(xv) state that a copy of the bylaws is set forth in Part II of the plan;

(xvi) if any construction or rehabilitation to the interior of units is the responsibility of shareholders, state whether the shareholder's obligation to perform that work is an obligation under the proprietary lease, state whether and when the apartment corporation may enter the unit to complete the work and whether the apartment corporation may place a lien on shares for the cost of completing work.

(t) Reserve fund and working capital fund. The offering plan must state whether there is a working capital fund and whether there is a reserve fund to be used by the apartment corporation. If funds are provided, state the amount of the funds; whether the sponsor and purchasers contribute to the funds; what restrictions are on the use of each fund; and when the funds will be available to the apartment corporation. Discuss whether the reserve fund (if any) will be sufficient to pay for major capital repairs or replacement items likely to be needed within the first five years of operation.

(1) Unless highlighted as a special risk, while the sponsor is in control of the board of directors, the working capital fund may not be used to reduce maintenance charges.

(2) If the offering plan provides for a reserve fund or a working capital fund, the plan must state that neither the Office of the Attorney General nor any other government agency has passed upon the adequacy of the funds.

(3) Closing costs and adjustments must be deducted from the working capital fund. Disclose how the net closing adjustments, if in favor of the sponsor, are to be paid. State whether the working capital fund will not be reduced below a stated amount.

(u) Contract of sale (or exchange).

(1) State the material terms of the contract of sale or exchange between the sponsor and the apartment corporation, including (unless stated elsewhere in the plan);

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(i) State the date of the agreement, purchase price of the property and how and when it is to be paid;

(ii) Describe any leases, mortgages and other liens, encumbrances and title exceptions affecting the property. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey would show, provided that the title exceptions do not render title uninsurable if the building remains standing. Highlight as special risk if any title exception impairs the mortgageability of the property;

(iii) State that the sponsor will procure title insurance, identify the title company, state the amount of the coverage, and whether the sponsor or the apartment corporation will pay for the insurance;

(iv) List the personal property included in the conveyance;

(v) Describe fully all estimated costs, fees, and charges to be paid or apportioned in connection with the closing and specify whether they will be paid by the apartment corporation or sponsor. Include fee and mortgage title insurance charges, state and local transfer taxes, mortgage recording taxes, recording fees for the deed and any mortgage, power of attorney and any other documents, apportionment of taxes, water and sewer charges, contributions to working capital fund or reserve fund, brokerage commissions, attorneys fees and all other closing costs or adjustments. For all items to be apportioned, set forth the basis for apportionment;

(vi) Describe the type of deed. Highlight as a special risk if the deed is not a bargain and sale deed with covenants against grantors acts or with full warranties;

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(vii) Describe whether the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the closing and the rights and obligations of purchasers of damaged units;

(viii) The plan and contract of sale or exchange must provide that any conflict between the plan and the contract will be resolved in favor of the plan;

(ix) State those obligations under the offering plan to be performed subsequent to closing that survive delivery of the deed;

(x) Sponsor must assign any manufacturer's warranties with respect to equipment and appliances installed in a unit to the purchaser of the shares for that unit and assign any warranties with respect to equipment and appliances installed in public areas to the apartment corporation; and

(xi) For a contract of exchange, disclose the approximate amount of the sponsor's tax basis and discuss the tax consequences of the exchange to the apartment corporation.

(v) Management agreement and other contractual arrangements.

(1) Summarize the important terms of the management agreement including:

(i) the name and address of the managing agent;

(ii) the term of the management agreement;

(iii) all fees and other compensation for services;

(iv) the major duties and services to be performed by the managing agent;

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(v) the obligation (if any) of the apartment corporation to reimburse the agent for expenses incurred or to indemnify the agent against liability for acts properly performed by it pursuant to the agreement; and

(vi) whether the management agreement is assignable by the agent and what restrictions are imposed or assignability.

(2) Summarize all agreements that will be binding on the apartment corporation such as labor union contracts, laundry contracts, and extermination services.

(3) Highlight as a special risk if any contract is binding on the apartment corporation for more than three years following the closing.

(4) Describe the apartment corporation's right to cancel any contract including the notice needed.

(5) Disclose material terms of all leases other than proprietary leases including the following:

(i) State the date and term of each lease, the identity of the lessee and sublessee(s), if any, and the rent and any additional rent payable thereunder, the present and permitted use for the space, the security deposited, and the spaces leased.

(ii) State whether the present and future rent payable by the lessee is sufficient to cover the expenses fairly attributable to the leased space.

(iii) Highlight as a special risk if (a) any lease has a term exceeding ten years; (b) if the lease generates less income than the pro-rata share of expenses attributable to the leased space now or in the future; or (c) if the ratio of income generated by the lease to the share of

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expenses fairly attributable to the leased space may decline in the future. Describe the potential burden to the apartment corporation of these risks, disclose the basis for projecting the share of expenses attributable to the leased space, and estimate the income and expenses for the lease term.

(iv) Explain the apartment corporation's rights and obligations under the lease with regard to making ordinary or structural repairs, rebuilding after a casualty, retaining insurance or condemnation proceeds, limiting use to those compatible with a first class residential building, barring offensive uses, and whether consent of the apartment corporation is required before the current use.

(v) If the offering plan is subject to the provisions of General Business Law Section 352-ee, disclose whether units are offered subject to the rights of existing commercial tenants and whether existing tenants could impair the completion of any rehabilitation.

(w) Identity of parties.

(1) State the name and business addresses, backgrounds and experience of sponsors, and principals of sponsor. Describe any prior convictions, injunctions, and judgments against sponsor and or principals of sponsor which may be relevant or material to the offering plan or an offering of securities generally.

(2) List all properties offered for sale by sponsor or sponsor's principals as cooperatives, condominiums or planned unit development homes within the past five years by address and the date they first became available for occupancy. If the number of such properties or projects exceeds 10 for the sponsor or a principal, the 10 most recent properties may be listed.

(3) Identify each cooperative, condominium or homeowners association, other than the subject building(s), where the sponsor, general partner

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or principal of the sponsor or the holder of unsold shares, owns 10 percent or more of the unsold shares or units as an individual, general partner or principal, and state whether the sponsor, general partner, principal or holder of unsold shares is current in its financial obligations, including, but not limited to, payment of maintenance or common charges, taxes, reserve or working capital fund payments, assessments, payments for repairs and improvements promised in the plan, payment of underlying mortgages, and payment of loans for which shares or units have been pledged as collateral or mortgaged. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(4) State the name and address of sponsor's attorney and the apartment corporation's attorney, if any. The same attorney may not represent both the sponsor and the apartment corporation. If an attorney represents the apartment corporation, describe the scope of the attorney's responsibilities.

If there is or will be a managing agent or manager for the property, include the name, address and experience of the managing agent or manager and a representative list of other properties being managed by the managing agent or manager.

(5) State the relationship (if any) between the sponsor or its principals and (i) the selling agent, (ii) the managing agent, and (iii) and person or firm who will provide service to the apartment corporation subsequent to the commencement of cooperative operation.

(x) Obligations of sponsor. Describe the rights and obligations of sponsor under the plan and applicable law with respect to the offering include the following elements:

(1) For offering plans involving construction or rehabilitation, the sponsor must state whether construction financing is firmly committed at the time of submission of the offering plan to the Office of the Attorney General. Disclose any conditions placed on the

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availability of the construction financing and highlight as a special risk if the sponsor may not be able to complete construction of the units offered. Project the timetable for procuring a firm commitment of construction financing.

(2) For offering plans involving construction or rehabilitation, state the sponsor's obligation to build and complete the property in accordance with the building plans and specifications identified in the plan and sponsor's right to substitute equipment or material and make modifications of layout or design; provided, however, that sponsor may not:

(i) substitute equipment or materials of lesser quality or design; or

(ii) change the size, location or value of any units, or of other improvements or public areas if such changes adversely affect public areas or adversely affect the value of any unit to which title has closed or for which a subscription agreement has been executed and is in effect unless all affected shareholders consent in writing to such change and all affected contract vendees are given the right to rescind and receive any deposit or downpayment.

(3) Except as provided in paragraph (4) of this subdivision, prior to the closing the sponsor must obtain a permanent certificate of occupancy for all units for which stock is offered or, alternatively, obtain a temporary or partial certificate of occupancy for all units for which stock is offered. The sponsor and its principals must agree to obtain a permanent certificate of occupancy for the property within a projected timetable after closing. Sponsor must obtain the permanent certificate of occupancy before the partial or temporary certificate of occupancy expires, unless extended. Highlight as a special risk if the sponsor does not anticipate obtaining a permanent certificate of occupancy until two years or more after closing.

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(4) Notwithstanding paragraph (2) of this subdivision, if the offering plan is subject to the provisions of General Business Law Section 352-ee, sponsor must state what alterations and improvements to the public areas of the property will be completed before a closing.

(5) This provision shall apply if the closing may take place prior to the issuance of a permanent certificate of occupancy for the property.

(i) Sponsor is required to maintain all deposits and funds in the special escrow account required by General Business Law 352-e(2)(b) unless the sponsor's engineer or architect certifies that a lesser amount will be reasonably necessary to complete the work needed to obtain a permanent certificate of occupancy, in which case the sum exceeding the amount so certified by the sponsor's engineer or architect may be released from the special escrow account. Alternatively, sponsor must deposit with an escrow agent an unconditional, irrevocable letter of credit or post a surety bond in the amount so certified.

(ii) Notwithstanding subparagraph (i) of this paragraph, if the offering plan is subject to the provisions of General Business Law Section 352-ee, sponsor is required to maintain all deposits and funds in the special escrow account required by General Business Law Section 352-e(2)(b) unless the sponsor's engineer or architect certifies that a lesser amount will be reasonably necessary to complete all alterations and improvements to the public areas of the property, in which case the sum exceeding the amount so certified by the sponsor's engineer or architect may be released from the special escrow agent an unconditional, irrevocable letter of credit or post a surety bond in the amount so certified.

(6) State whether the sponsor agrees to warrant the materials or workmanship of each unit or public areas. Fully disclose the terms of the warranties.

21.3(x)

(7) State that the sponsor agrees to pay for the authorized and proper work involved in the construction and establishment and sale of the cooperative that sponsor is obligated to complete under the plan and cause all mechanics liens with respect to such construction to be promptly discharged or bonded.

(8) State whether sponsor has an obligation to defend any suits or proceedings arising out of sponsor's acts or omissions and to indemnify the apartment corporation.

(9) State those obligations under the offering plan to be performed subsequent to closing that survive delivery of the deed.

(10) For offering plans involving construction or rehabilitation, the sponsor must agree to deliver a set of "as-built" plans to the apartment corporation.

(11) Sponsor must disclose whether any bond or other security other than those required by this Part has been furnished to secure sponsor's obligations including sponsor's obligations to complete construction of the property.

(12) Sponsor must guarantee payment of all maintenance charges and assessments with respect to unsold shares.

(13) Sponsor must agree to initially procure, and the budget must reflect, fire and casualty insurance pursuant to an agreed amount replacement value policy or in an amount sufficient to avoid co-insurance.

(14) Disclose when sponsor can dissolve or liquidates the sponsor and whether dissolution or liquidation will have an effect on sponsor's obligations under the plan.

(15) If the sponsor has a right of access to complete construction of the property, describe sponsor's obligation to repair damages and the extent to which sponsor can interfere with the shareholders' use.

21.3(x)

(16) If the plan represents that the apartment corporation may or will receive tax benefits, the plan must state that sponsor will use best efforts to obtain the tax benefits.

(17) The sponsor must convey the property free of all liens other than the mortgages and liens described in the plan.

(y) Reports to shareholders. State that is the obligations of the apartment corporation to give all shareholders annually:

(1) a statement of the amount deductible for income tax purposes by a specified date;

(2) an audited financial statement prepared by a certified public accountant by a specified date; and

(3) prior notice of the annual shareholders meeting.

(z) Documents on file. Sponsor must keep copies of the plan, Parts A, B, and C of the exhibits and documents referred to in the plan on file and available for inspection and copying at a specified location for six years from the date the plan was filed.

(aa) General. Describe any other material facts concerning the sponsor and its principals, the property, the offering and a prospective purchaser's right and obligations including:

(1) Disclose any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, sponsor's capacity to perform all of its obligations under the plan, the apartment corporation or the operation of the cooperative.

(2) Disclose whether the property is the subject of any prior public offerings.

(3) Represent that the sponsor and its agents will not discriminate against any person because of race, creed, color, sex, disability, marital status or national origin.

21.3(z)

(bb) Sponsor's statements of building condition. Include the following provisions for existing buildings:

(1) Sponsor must adopt the description of property set forth in Part II of the plan and state that there are no defects or need for major repairs to the property, except as set forth in the description of property.

(2) If not fully reported in the description of property, sponsor must describe the rehabilitation, if any, to be completed by sponsor; state whether major systems such as plumbing, heating, electrical, roof and windows have been partially or fully replaced or improved and the extent of improvement; and describe cosmetic renovations such as painting, plastering and furnishing the floors.

(3) State whether, prior to closing, sponsor will cause to be cured all violations of record, eliminate all dangerous and hazardous conditions and comply with all work orders from mortgages.

21.3(z(bb))

Section 21.4 Transmittal Letter and Certifications

(a) Transmittal letter. A transmittal letter addressed to the Office of the Attorney General that is signed and affirmed under penalty of perjury by the attorney who prepared the offering plan and containing the following unqualified statements must be submitted with the plan and exhibits.

I/We am/are the attorney(s) who prepared the cooperative offering plan for the captioned property.

Enclosed for filing pursuant to Part 21, Newly Constructed and Vacant Cooperatives, are six copies of the offering plan together with the exhibits.

I/We am/are fully familiar with the provisions of article 23-A of the General Business Law, the regulations promulgated by the Attorney General in Part 21 and such other laws and regulations as may be applicable to the offering.

I/We prepared the attached offering plan and exhibits based on information from the sponsor.

I/We 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/us by sponsor.

I/We have no actual knowledge of a violation of Article 23-A of the General Business Law or Part 21 promulgated by the Office of the Attorney General, nor do I/we know of any material fact omitted or any untrue statement of a material fact included in the offering plan.

(b) Include in the plan and in the exhibits a certification subscribed and sworn to by the sponsor and sponsor's principals, in the following form:

We are the sponsor and the principals of sponsor of the cooperative offering plan for the captioned property.

21.4(b)

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 Attorney General in Part 21 and each 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 investors, purchasers and participants 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 fictitious or pretended purchase or sale;

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

(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 representations or statements 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.

21.4(b)

(c) Include in the plan and in the exhibits a certification subscribed and sworn to by sponsor's engineer or architect (who must either be registered as an architect or be licensed to practice as a professional engineer in the state where the cooperative is located).

(1) The certification must be in the form below for new constructed cooperative:

The sponsor of the offering plan for cooperative ownership of the captioned property retained my/our firm to prepare a report describing the property when construed (the "report"). We examined the building plans and specifications that were prepared by _____, and prepared the report dated _____, and prepared the report dated _____, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the report.

I/We understand that I/we am/are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 21 insofar as they are applicable to this report.

I/We have read the entire report and investigated the facts set forth in the report 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 the report does:

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

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications I/we examined;

21.4(c)

(iii) not omit any material fact;

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

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

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

(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 representations or statements made.

(2) The certification must be in the form below for a property undergoing rehabilitation:

The sponsor of the offering plan for cooperative ownership of the captioned property retained my/our firm to prepare a report disclosing the condition of the property when rehabilitated (the "report"). I/We visually inspected the property on _____, examined the building plans and specifications that were prepared by _____, dated _____, and prepared the report dated _____, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the report.

I/We understand that I/we am/are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 21 insofar as they are applicable to this report.

21.4(c)

I/We have read the entire report and investigated the facts set forth in the report 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 the report does:

(i) set forth in detail the condition of the entire property as it will exist upon completion of rehabilitation, provided rehabilitation is in accordance with the plans and specifications that I/we examined;

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property as it will exist upon completion of rehabilitation, provided rehabilitation is in accordance with the plans and specifications that I/we examined;

(iii) not omit any material fact;

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

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

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

(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 representations or statements made.

(3) The certification must be in the form below for a property being sold in "as is" condition or undergoing minimal rehabilitation.

21.4(c)

The sponsor of the offering plan for cooperative ownership of the captioned property retained my/our firm to prepare a report describing the condition of the property (the "report"). I/We visually inspected the property on _____, and prepared the report dated _____, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the report.

I/We understand that I/we am/are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 21 insofar as they are applicable to this report.

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

- (i) set forth in narrative form the physical condition of the entire property;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment or suppression;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and

21.4(c)

(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 representations or statements made.

(d) Include in the body of the plan a certification subscribed and sworn to by an expert concerning the adequacy of Schedule(s) B (and B-1) in the following form. The expert's experience must include management of cooperatives, or condominiums or rental properties. Include the number of properties managed and length of time managed together with other relevant real estate experience, qualifications and licenses. Include references to Schedule B-1 only if applicable. Alternative language for new construction or major rehabilitation is in parentheses.

The sponsor of the cooperative offering plan for the captioned property retained my/our firm to review Schedule(s) B (and B-1) containing projections of income and expenses for the first year of cooperative operation.

I/We understand that I/we am/are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 21 insofar as they are applicable to Schedules B (and B-1).

I/We have reviewed the schedule(s) and investigated the fact set forth in the schedule(s) and the facts underlying it/them with due diligence in order to form a basis for this certification. I/We certify that the projections in Schedule(s) B (and B-1) appear reasonable and adequate based on present prices adjusted to reflect continued inflation and present levels of consumption for comparable units similarly situated.

I/We certify that this certification and all documents prepared by me/us hereafter that concern the schedule(s) do:

(i) set forth in detail the terms of the transaction as it relates to the schedules and be complete current and accurate;

21.4(d)

(ii) afford potential investors, purchasers and participants and 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, or suppression;

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

(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 representations 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 certification is not contingent on the conversion of the property to a cooperative or on the profitability or price of the offering. I/We understand that a copy of this certification is intended to be incorporated into the offering plan so that prospective purchasers may rely on it.

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.

21.4(d)

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Section 21.5 - Amendments.

(a) General. Documents filed with the Office of the Attorney General to supplement or amend an offering plan previously filed pursuant to this Part and new or amended literature to be employed in connection with an offering (collectively, "amendment[s]") shall be deemed part of this offering statement and shall meet the following requirements:

(1) Any amendment submitted for filing to the Office of the Attorney General which would be in derogation of purchaser's rights in the offering plan or would abrogate sponsor's obligations under the offering plan must be expressly noted in the transmittal letter accompanying the amendment.

(2) Except as provided in subdivision (d) of this section, an amendment to an offering plan shall become effective on the date indicated in the letter issued by the Office of the Attorney General stating that the amendment has been filed, and not sooner.

(3) If the offering plan does not comply with Section 21.1(b) of this Part due to change of events, the passage of time or any other reason, the offering plan must be amended promptly.

(4) An amendment must include all material changes of facts or circumstances affecting the property, or the offering unless the changes of fact were described in a prior amendment submitted to but not yet filed with the Office of the Attorney General.

(5) Amendments to offering plans that have been filed with the Office of the Attorney General 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 be stamped: "This plan has been amended. See inside 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 with the revisions to be understood easily.

21.5(a)

(6) Sponsor must grant purchasers a right of rescission and a reasonable period of time to exercise the right and sponsor must return any deposit or downpayment promptly if there is a material amendment to the offering plan that adversely affects the purchasers.

(7) Amendments must be served on offerrees in accordance with Section 21.1(e) of this Part.

(b) Procedure for submission of amendments. Amendments should be submitted during business hours to the Investment Protection Bureau - Real Estate Financing Section, Office of the Attorney General, 120 Broadway, Room 23-170, New York, New York 10271. Each amendment to an offering plan must contain the following components and be in the format below:

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

(i) states the date the offering plan was filed;

(ii) identifies the subject amendment in numerical order; and

(iii) states whether the sponsor had submitted prior amendments that were not yet filed with the Office of the Attorney General.

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

(3) Personal or certified check(s) for filing fees under General Business Law Section 352-e(7) payable to New York State Office of the Attorney General and placed within an envelope together with three copies of the form of receipt issued by the Office of the Attorney General.

(4) One copy of the offering plan.

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

21.5(b)

(c) Extensions of offering plans. Pursuant to Section 21.3(a)(6) of this Part, the term of the initial offer is 12 months commencing on the date indicated in the letter issued by the Office of the Attorney General stating that the plan is filed. Requests for extensions of time must be made by amendment and must comply with the provisions of this section and the requirements set forth in this subdivision. Prior to the filing of a post-closing amendment, extensions of time may be granted for additional terms, each of which shall be six months. After the post-closing amendment is filed, any subsequent amendment other than a price change amendment extends the term of the offering for an additional 12-month term from the date of filing of the offering.

A price change amendment submitted pursuant to subdivision (d) of this section does not extend the term of the offering. In the absence of any other amendments, an extension of the term must be made by amendment before the end of the then current term and must comply with the provisions of this section and the requirements set forth below.

(1) The amendment must disclose all material changes, such as decreases or increases in maintenance charges.

(2) The amendment must state:

(i) the number of unsold shares remaining;

(ii) the status of construction, if any, including a general description of the major work remaining to complete the cooperative; and

(iii) the extent to which the sponsor controls the board of directors if the closing has occurred. 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, for all offering plans in which the sponsor or holder(s) of unsold shares owns in the aggregate more than 10 percent of the shares, the amendment must disclose:

21.5(c)

(i) the aggregate monthly maintenance payments for the units appurtenant to the unsold shares;

(ii) the number of units appurtenant to unsold shares owned by the sponsor or holder(s) of unsold shares which are occupied by tenants, if any, and the aggregate of monthly rents currently payable for such units, or a reasonable approximation thereof;

(iii) financial obligations to the cooperative which will be come due within 12 months from the date of the amendment (other than payment of maintenance) including, but not limited to, reserve and working capital fund payments and payments for repair and improvement obligations;

(iv) a list of all unsold shares which have been pledged as collateral for loan(s) or otherwise represented security for financing arrangements; the identity and address of the lender(s); the maturity date of the loan(s); and payment obligations under the loan(s), stated on a monthly basis where possible;

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

(vi) a statement as to whether the sponsor or holder(s) of unsold shares is current on all financial obligations to the cooperative, including, but not limited to, payment of maintenance, reserve or working capital fund payments, assessments, and payments for repairs or improvements promised in the offering plan. In addition, state whether the sponsor or holder(s) of unsold shares is current on payments of underlying

21.5(c)

mortgages and all obligations under financing commitments for which unsold shares have been pledged as collateral. If the sponsor or holder(s) of unsold shares is not current on its obligations, state the date and amount of each delinquency and discuss the effect of such delinquency on the cooperative. Also state whether the sponsor or holder(s) of unsold shares was current on all such obligations (i.e., had satisfied the obligation by the

expiration of the grace period) during the 12 months prior to the filing of the amendment, and if not, state the details of any delinquency;

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

(viii) a statement as to whether the sponsor and all principals of the sponsor, and all holders of unsold shares, as individuals or as general partners or principals of the sponsor or holder of unsold shares, are current in all obligations set forth in subparagraph (vi) of this paragraph in other cooperatives, condominiums and 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.

21.5(c)

(4) An offering plan must be amended immediately if any delinquency required to be disclosed by Section 21.5(c)(3)(vi) or (vii) of this Title has existed for 15 days or if there has been a material change in the financial position of the sponsor or holder of unsold shares which may jeopardize its ability to meet its obligations to the cooperative.

(d) Price change amendments. Amendments proposing to change any offering price in an offering plan that was filed pursuant to this Part are subject to the requirements set forth below and must be consistent with Section 21.3(h) of this Part.

(1) Notwithstanding paragraph (a)(2) of this section, if the amendment is limited solely to price changes and no prior amendment has been submitted but not yet filed with the Office of the Attorney General, the amendment shall be deemed filed when submitted to the Office of the Attorney General.

(2) If the amendment contains price changes and supplements or amends any other part of the offering plan, the amendment shall become effective on the date indicated in the letter issued by the Office of the Attorney General stating that the amendment has been filed.

(3) If the sponsor has offered or procured financing for purchasers, the sponsor must disclose the effect the change in price will have on the mortgage amount, the monthly mortgage amount, the monthly mortgage charge and the amount projected as the annual deduction in Schedule A.

(4) The transmittal letter for a price change amendment must state:

(i) the total offering price prior to filing the subject amount;

(ii) the amount of fees paid to the Office of the Attorney General prior to filing the subject amendment;

(iii) the total offering price as changed by the subject amendment; and

(iv) the amount of fees enclosed, if any.

21.5(d)

(e) Amendments declaring a plan effective. In addition to the submissions required by subdivision (b) of this section, an amendment declaring a plan effective or an amendment disclosing that a notice has been sent to all purchasers declaring the plan effective shall also be accompanied by a list setting forth the name and address of each purchaser, the unit(s) purchased, the purchase price; and the date the subscription agreement was signed by the purchaser.

21.5(e)

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Section 21.6 Advertisements

(a) Except as provided in subdivision (b) of this section, all advertising in print or other media as well as circulars, flyers, cards, letters and other literature employed to solicit interest (advertisement) for offering plans filed pursuant to this Part shall contain the following statement in easily readable print, separated from the body of the advertisement or spoken in easily understandable terms:

**THE COMPLETE OFFERING TERMS ARE IN AN
OFFERING PLAN AVAILABLE FROM SPONSOR**

(b) Notwithstanding subdivision (a) of this section, in all classified type advertisements not more than five inches long and not more than one column of print wide, the following statement may be used, in lieu of the statement required in subdivision (a) of this section:

SALE ONLY ON TERMS IN OFFERING PLAN

(c) Any chart or diagram used in an advertisement must be consistent with the offering plan. Any room or floor plan must be to scale.

(d) No abbreviations shall be employed in advertisements, unless the meaning is unmistakably clear.

(e) All advertisements in connection with an offering plan filed pursuant to this Part shall be consistent with the representations and information required to be set forth by the General Business Law and this Part. All assertions of fact in advertisements must be provably true.

(f) Anticipated maintenance charges shall be preceded by the word "projected". There shall be no subtraction or representation of specific dollar or percentage saving because of anticipated tax deductions.

(g) Advertisements of amenities or services available at a fee charged in addition to the maintenance charge or in addition to purchase price must refer to the additional fee. Advertisements of amenities or services that will not be available at closing must state the approximate date of availability.

21.6(g)

(h) Artist's rendering of a property in an advertisement must accurately and realistically depict the dimensions, height and landscaping of the project and surrounding roads, buildings and open space.

(i) Advertisement of financing offered or procured by sponsor must include the term of the financing when the term is less than three years.

21.6(i)

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Section 21.7 Description of Property (and specifications) (and building condition)

Each offering plan submitted pursuant to this Part must include a comprehensive description of the building(s) and property included in the project. If any materials being used are not new, the condition should be fully described. Describe and set forth outline specifications for all applicable items in the order listed below. If the building is undergoing partial rehabilitation, describe the condition of the major systems that are not being rehabilitated and are likely to require major upgrading within the next five years and highlight as a special risk.

(a) Location and use of property. State whether this property and proposed use will comply with all zoning and use requirements at closing. Include in discussion:

(1) address;

(2) block and lot number;

(3) zoning; and

(4) permissible use.

(b) Status of construction. Describe class of construction and current status, and whether a certificate of occupancy has been obtained and if not, what work must be completed before a permanent certificate of occupancy will be issued. For existing buildings state:

(1) year built;

(2) class of construction;

(3) certificate of occupancy, type and number; and

(4) alteration permit numbers and description of work.

(c) Site. Discuss:

(1) size;

21.7(c)

(2) number of buildings and use;

(3) streets:

(i) paving (material and condition);

(ii) curbing (material and condition);

(iii) catch basins, drainage (number, location and condition); and

(iv) street lighting (material, type, number, location and condition); and

(4) drives, sidewalks and ramps:

(i) paving (material and condition);

(ii) curbing (material and condition);

(iii) catch basins, drainage (number, location and condition); and

(iv) street lighting (material, type, numbers, location and condition).

(d) Utilities. Identify source or provider of all utilities. Specifically identify which are public utilities or regulated companies and which are solely the obligation of the project. Indicate whether water, sewer (or septic tank), gas, electric and telephone are metered individually, collectively or by any other method of billing.

(e) Sub-soil conditions. Describe (including water conditions):

(1) whether load bearing capacity and porosity is sufficient to support buildings;

(2) whether there is any moisture or seepage and, if any, indicate whether corrective actions are needed; and

21.7(e)

(3) whether there is any danger from flooding, either due to water table in area or overflow from other bodies of water. Note potential for mudslides or erosion and what preventive action is appropriate.

(f) Landscaping and enclosures. Describe:

(1) grass cover (type and whether seeded or sod, depth of topsoil);

(2) plantings (type and location);

(3) trees (kind, size and location);

(4) fencing (kind, location);

(5) gates (material, location);

(6) garden walls (material, location);

(7) retaining walls (material, location);

(8) display pools and foundations (location, materials).

(g) Building height. Specify:

(1) total height (total feet from ground level to highest part of roof);

(2) sub-sub cellar (floor or ceiling);

(3) sub-cellar (floor to ceiling);

(4) cellar (floor to ceiling);

(5) number of floors (actual);

(6) penthouse (height above roof);

(7) equipment rooms (height above roof); and

(8) parapet (height above roof).

21.7(g)

(h) Occupancy. Specify:

(1) number of units (for lofts, give usable residential space in square feet); and

(2) total number of residential rooms (state formula for calculation).

(i) Structural system. Describe materials used. Include type of foundations and method of installation. Specify:

(1) Exterior of buildings:

(i) Walls. List materials, type of construction, method of construction. For New York City buildings, if Local Law 10 (1980) applies, state the results of the inspection. If Local Law 10 is inapplicable, so state. If insulated, specify "R" factor and type material.

(ii) Windows. Specify type and materials in all parts of the building including sills, screens, lintels, storm sash, hardware, single or double glazing and caulking. Indicate infiltration/air seepage level and state ability to withstand severe weather conditions in terms of ambients in area.

(2) Parapets and copings. State type of materials and how secured in place.

(3) Chimneys and caps. Indicate number, location and material of each chimney for boilers, incinerators, compactors and fireplaces. If fireplaces are not usable for wood fires, this fact must be conspicuously disclosed.

(4) Balconies and terraces. Describe:

(i) deck finish (material);

(ii) balustrade (type, material);

21.7(i)

(iii) railings (material);

(iv) copings (material);

(v) soffits (material); and

(vi) doors to balconies and terrace (type, material).

(5) Exterior entrances. Describe:

- (i) exterior doors and frames (material, type, lock);
- (ii) vestibule doors and frames (material, type, lock);
- (iii) exterior stairs (material, location);
- (iv) railings (materials, location);
- (v) mail boxes (type, location); and
- (vi) lighting (type, location).

(6) Service entrances. Describe:

- (i) doors and frames (material, type, lock);
- (ii) gates (material, type, lock);
- (iii) exterior stairs (material, location); and
- (iv) railings (material, location).

(7) Roof and roof structures. Describe:

- (i) type roofs for all areas:
 - (a) material (give number of plies and adhesive if built-up);

21.7(i)

- (b) insulation ("R" Factor);
 - (c) surface finish;
 - (d) expected useful life;
 - (e) bond or guarantee; and
 - (f) flashing materials including counter flashing.
- (ii) Drains:
- (a) number;

- (b) material and type; and
- (c) gutters and leaders (type, material),
- (iii) Skylights (location, type, material).
- (iv) Bulkheads;
 - (a) stairs (materials);
 - (b) elevator (materials); and
 - (c) other.

(v) Metal work at roof levels:

- (a) exterior, metal stairs (materials);
- (b) vertical ladders, including gooseneck (material);
- (c) railings (material);
- (d) hatches to roof (type, material); and

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- (e) other.

(vi) Rooftop facilities (describe in detail).

(8) Fire escapes. Specify whether sufficient to meet or exceed local safety codes (describe at each floor):

- (i) location (describe how attached and supported);
- (ii) floors covered;
- (iii) drop ladder;
- (iv) type; and
- (v) materials.

(9) Yard and courts. Describe each yard or court, including front, rear and interior areas, listing access methods.

- (i) paving (material);
- (ii) drainage (type and material);
- (iii) railings (material);
- (iv) stairs (material);
- (v) fencing (type and material); and
- (vi) walls (type and material).

(10) Interior stairs. Describe:

- (i) number of stairs of each type;
- (ii) enclosure (construction and interior finishes);

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- (iii) stair construction (steel, concrete, wood);
- (iv) stringers (material);
- (v) treads (material);
- (vi) risers (material);
- (vii) guard rails (material); and
- (viii) balustrade (material).

(11) Interior doors and frames. Describe material, type, location for each and state whether fireproof or exceed fire/safety standard:

- (i) unit entrances and interior doors and frames;
- (ii) corridor doors and frames;
- (iii) stair hall doors and frames; and
- (iv) roof doors, basement doors and their frames.

(12) Elevators. Describe:

- (i) number of passenger and service elevators;
- (ii) manufacturer of each and capacity;
- (iii) type of operation for each elevator by elevator number;
- (iv) automatic (type of controls);
- (v) floors served;
- (vi) type-hydraulic; gearless;
- (vii) doors (sliding, swinging, manual, automatic);

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- (viii) location of machine rooms;
- (ix) DC to motor (manufacturer);
- (x) AC to motor-generator set (manufacturer); and
- (xi) other.

(13) Elevator cabs. Describe:

- (i) kind (manufacturer);
- (ii) floor (material);
- (iii) walls (material);
- (iv) ceiling (material);
- (v) lighting (describe).

(j) Auxiliary facilities:

(1) Laundry Rooms. Describe:

- (i) location and number of rooms;
- (ii) clothes washers (numbers and type [e.g. heavy duty, coin-operated, electric, gas, etc.]);
- (iii) clothes dryers (number and type);

- (iv) laundry trays (number and material);
- (v) room ventilation (method and final exhaust); and
- (vi) dryer ventilation (method and final exhaust).

(2) Refuse disposal. Describe generally, including:

21.7(j)

- (i) incinerators (number, location, capacity, type, manufacturer);
- (ii) compactors (number, location, capacity, type, manufacturer);
- (iii) approvals by authority having jurisdiction (date of each approval);
- (iv) initial storage location (ultimate storage location); and
- (v) pick-up schedule and whether public or private provider.

(k) Plumbing and drainage

(1) Water supply. Describe system, pumps, storage and location.

(2) Fire protection system. Describe:

- (i) standpipes (material, size, location);
- (ii) hose racks, hoses and nozzles (location); and
- (iii) sprinkler heads (type system, location); and
- (iv) Siamese connection (type, location).

(3) Water storage tanks and enclosures. Describe:

- (i) number, type, location of each;
- (ii) material (interior and exterior of tanks including roofs);
- (iii) access to tank (vertical gooseneck ladder, etc.);
- (iv) capacity (total gallons);and

21.7(k)

(v) capacity (fire reserve).

(4) Water pressure and how maintained.

(5) Sanitary sewage system. General description including:

(i) sewage piping (materials);

(ii) sewage pumps (if any); and

(iii) sewage disposal (public/private; treatment; drainfield, sewer).

(6) Permits required. List with dates obtained.

(7) Storm drainage system. General description of system, method of disposal and materials including:

(i) catch basins (number, location);

(ii) yard and roof drains (number, location);

(iii) piping (materials); and

(iv) eject or sump pumps (describe in detail and describe conditions requiring pumps).

(l) Heating. Describe (including space heating and domestic hot water heating:

(1) method (working of each system and its components). Give capacity for heating and distributing domestic hot water in terms of gallons, usage and recovery rates. Estimate the number of showers that may reasonably be taken per unit prior to loss of hot water. Describe heating system's adequacy to maintain comfortable conditions under anticipated weather conditions under anticipated weather conditions, specifying internal temperature and base ambient temperature used in calculations.

21.7(l)

(2) number of boilers and description;

(3) manufacturer of boilers (model, capacity);

(4) manufacturer of burners (model);

(5) type of controls;

(6) radiators, piping, insulation, valves, pumps, etc.;

(7) fuel (for oil, give type and grade);

(8) location of oil tank; and

(9) capacity of oil tank; and

(10) for gas (details on type and supply system).

(m) Gas supply (when not covered above). Describe:

(1) type;

(2) meters; and

(3) piping.

(n) Air conditioning. Describe cooling system's adequacy to maintain comfortable conditions under anticipated weather conditions, specifying internal temperature and base ambient temperature used in calculations. Describe:

(1) type of system;

(2) central system (give manufacturer, model and capacity);

(3) cooling towers, condensers (roof top, self-contained units, etc., including number, location and description); and

21.7(n)

(4) individual units (window/sleeve - specify number, capacity EER, amperage, etc).

(o) Ventilation. Describe system in kitchens, fireplaces and all windowless areas such as corridors, garages, laundries, baths, etc.

(p) Electrical system. Specify:

(1) service entrances to main service switchgear (amperes, voltage, phases, wire protective equipment);

(2) service to individual units;

(3) compartment switch gear (location and floor of sectional meter boards and transformers supplying power to the meter boards);

(4) unit service (ratings of main fuses, circuit breakers of fuses to units and ratings, number and size and type entrance wire for units);

(5) adequacy

(i) service - average number of circuits per apartment and capacity to handle modern appliances - specifically air conditioners, dishwashers and electric dryers;

(ii) lighting and fixtures; and

(iii) convenience outlets, appliance outlets - average number per room including air conditioning outlets.

(6) Intercommunication and/or door signal systems.

(q) Television reception facilities, (Master antennae, cable TV, antennae by tenants, security closed circuit TV).

(r) Public area lighting. Describe and state adequate (entrances, halls and stairs, corridors, basements, states and yards).

21.7(s)

(s) Garages and parking areas. Describe:

(1) location of garages (describe of facility);

(2) location of parking areas (number of spaces in each);

(3) surfaces (materials used, lighting, fencing, etc.);

(4) parking (attended or not attended);

(5) garage ventilation (method and equipment);

(6) garage fire protection (method and equipment); and

(7) drainage.

(t) Recreation facilities. If on roof, specify support system and describe:

(1) swimming pools (size including roof); and

(i) enclosure (material including roof); and

(ii) pumping and filter system (describe material).

(2) tennis courts:

(i) type (clay, macadam, turf); and

(ii) number and size;

(iii) lighting (number and type); and

(iv) fencing or enclosure (including distance between fence or enclosure and all sides of court);

(3) other (e.g., golf courses, boating facilities, etc.).

21.7(t)

(u) Additional items, violations. List all applicable permits which must be obtained and inspection, authority inspecting and duration of approval once obtained; include all compactors, incinerators, boilers, oil storage tanks, elevators, etc. In New York City include Department of Air Resources, Fire Department and Buildings Department permits. List all violations outstanding as of the date of this report and the agency imposing the violation, the condition involved, the date violation issued, time permitted to cure and work required to cure. If no violations are outstanding, so state.

(v) Unit Information. Specify the unit designations for each type or line of units, including the number and type of rooms. Describe (include foyers, living rooms, dining areas, kitchens, bedrooms, bathrooms, etc.):

(1) Type and grade of finish material used in each type of unit and the number of coverings given. Include paint, wall and floor coverings, as well as specifying the type of flooring, walls and ceiling used.

(2) Specify all bathroom fixtures including manufacturer, model and type material of sink, tub, shower and toilet.

(3) Specify kitchen and laundry equipment including range, refrigerator, dishwasher, sink, cabinets, countertops, clothes washer, clothes dryer, hoods.

(i) If data is same for all units a single narrative may be substituted for this schedule.

(ii) If any equipment or fixtures described are not included in the offering price, or the offering price is conditioned on the equipment and fixtures selected, such fact must be conspicuously noted in the body of the plan.

(w) Finish schedule of spaces other than units. The following is a form of schedule to be given for each floor.

Room Floor Walls Ceiling Remarks

Show all common rooms and spaces including but not limited to: sub-sub cellar, sub-cellar, basement, first floor, penthouse floor, public and service halls, corridors, lobbies.

21.7(w)

(x) General information. Describe any fire or smoke safety devices installed in units and common areas.

(y) Additional information required. Include in the description of property and improvements section of the plan.

(1) floor plans for each unit drawn to scale and showing room dimensions;

(2) Specify all bathroom fixtures including manufacturer, model and type material of sink, tub, shower and toilet.

(3) an area map showing the communities surrounding the cooperative is required if the cooperative is not located in a highly urban area.

(Z) Asbestos.

(1) With respect to vacant buildings, state whether asbestos-containing-material (ACM) is present in insulating or fireproofing material anywhere in the building(s).

Sponsor shall perform such tests as are necessary to make such determination. In the event that ACM is present, sponsor shall have a person who is qualified to render an opinion on asbestos prepare a report on the asbestos in the building(s) (the "asbestos report"). Such asbestos report shall contain at least the following information:

(i) the qualification of the person preparing the report;

(ii) a detailed inventory of the asbestos in each apartment and in all other areas of the property, including the location, amount of ACM, type and concentration of asbestos in the ACM, and condition. State whether the presence of any of the ACM poses an immediate health or safety hazard. State which apartments, if any, were not examined and describe efforts made to gain access to any such apartments;

21.7(z)

(iii) recommendations for handling each and every item of the asbestos inventory, i.e., removal, enclosure, encapsulation, or leaving undisturbed;

(iv) how the recommendations should be implemented. Include, if applicable, whether apartments must be vacated or whether use of certain rooms will be limited and the projected duration thereof. State whether the work must be performed in compliance with New York City Local Law 76 of 1985 or any other applicable laws; and

(v) a recommended protocol for the future handling and maintenance of asbestos which will remain in the building, whether encapsulated, enclosed or left undisturbed.

(2) The provisions of this subdivision shall take effect on August 8, 1986.

(i) Proposed offering plans submitted to the Office of the Attorney General on or after February 8, 1987 shall contain a statement as to whether ACM is present in the building(s) and, if so, shall contain an asbestos report.

(ii) Offering plans submitted and/or accepted for filing between August 8, 1996 and February 8, 1987 shall be revised or amended no later than May 8, 1987. Such plans shall not be declared effective until 30 days after such statement and report are incorporated in an amendment and presented to purchasers.

(iii) Offering plans accepted for filing prior to August 8, 1996 in which any units remain unsold shall be amended no later than May 8, 1987 to include a statement as to whether ACM is present in the building(s) and, if so, shall be revised or amended to include an asbestos report no later than May 8, 1987.

21.7(z)

If before such an amendment is accepted for filing the sponsor seeks to declare the plan effective, close, or sell unsold shares, the sponsor shall amend the offering plan to inform prospective purchasers that such statement and asbestos report are forthcoming. Such amendment shall give purchasers the opportunity to delay closing until 30 days after the amendment containing such statement and asbestos report have been distributed to them. If any closings take place prior to the completion of asbestos removal and treatment work, sponsor shall place in escrow a sum of money sufficient to pay for said work, the amount to be determined by a person qualified to render an opinion on asbestos, but in no event less than \$2,500 per unit.

21.7(z)