



**NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL  
REAL ESTATE FINANCE BUREAU**

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**INSTRUCTION SHEET  
REAL ESTATE SYNDICATION  
FULL FILING UNDER GBL § 352-e**

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A real estate syndication full filing under §352-e of the New York General Business Law ("GBL") must be submitted in compliance with 13 NYCRR Part 16 and these instructions. There is no formal procedure for a pre-filing review, but the Department of Law may grant such review on a case-by-case basis. The submission must include the proposed offering literature, a Filing Form RS-1 and an Application in the following format.

Cover Sheet

Every application should commence with a cover sheet headed "Full Filing Application under GBL §352-e." The headings below should be typed flush left and the relevant information should be provided for each line. (The advisory matter to the right of the colon for each heading should be omitted.)

ISSUER NAME:

NATURE OF SECURITY: (limited partnership interests, \_\_\_% bonds,  
\_\_\_% debentures, shares of stock, etc.)

OFFERING AMOUNT:

NAME AND ADDRESS OF RESPONSIBLE PERSON: (Person to whose attention any letter should be addressed. Indicate form of address: Mr., Ms., Mrs. or Esq.)

NAME AND TELEPHONE  
NUMBER OF PERSON TO CONTACT:

PRINCIPALS:

(The names only of the persons and entities listed in paragraph 3 of the application.)

### Contents of Application

The application must be in the form of an affidavit signed, or a petition verified, before a notary public by an officer, general partner, trustee or other principal of the issuer who is a natural person and who has knowledge of the facts contained therein, stating in full the following information, representations, covenants and undertakings:

#### [Issuer and Principal Information]

1. The name, address, legal domicile and legal nature (corporation, trust, limited partnership, limited liability company etc.) of the issuer entity ("applicant").
2. The individual affiant's name, residence address and affiliation, his or her business or profession, and business address.
3. The names and residence addresses of all principals of the applicant, together with a statement that there are no other principals and that attached to and made part of the application are Registrant Information forms ("RI-1 Forms") and Prior Syndication History letters for each principal who is a natural person. List principals directly here rather than by reference to exhibits. If the issuer entity will be investing in any operating entity (creating a "multi-tiered arrangement"), RI-1 Forms and Prior Syndication History letters are required from the principals of the operating entity or entities as well as the issuer entity.

A Prior Syndication History letter must be signed by each such person, listing all real estate syndications in which he or she has taken part as a principal during the last 10 years stating whether or not any New York residents were investors, and stating whether or not any filings were made pursuant to GBL §352-e and GBL §359-e, exemptions were obtained pursuant to GBL §352-g and GBL §359-f(2), or no-filing letters were obtained, as to each syndication. If such person has not taken part in any syndication in the last 10 years, the letter should so state.

Where there are a large number of officers and directors of a corporate principal or general partner, the applicant may provide RI-1 Forms and Prior Syndication History letters only from the principal owners, chair of the board of directors and the five next highest ranking executive officers, as well as any other officers directly responsible for the subject offering. Information requested in paragraphs 4 and 5 below should nevertheless be provided for all principals.

4. A statement whether or not, to the best of affiant's knowledge after reasonable investigation, any principal of the applicant ever was adjudged a bankrupt, filed a bankruptcy petition or made an assignment for benefit of creditors, or was an officer, director or principal of any entity which filed a petition for bankruptcy or reorganization, sustained an involuntary petition for bankruptcy, was reorganized in bankruptcy, adjudged a bankrupt, or made an assignment for benefit of creditors. If so, specify details.

5. A statement whether or not, to the best of affiant's knowledge after reasonable investigation, any principal of the applicant ever was convicted of or pleaded guilty to any crime, excluding minor traffic violations; or was the subject, or was a principal officer or principal of an entity that was the subject, of any injunction, cease and desist order, or restraining order, any denial, suspension or revocation of a license to engage in a trade, occupation or profession or denial of renewal of a license, any stipulation or consent to desist from any act or practice, any assurance of discontinuance accepted by the Attorney General, or any other disciplinary action by any court or administrative agency; and whether any such action or proceeding is pending. If so, specify details.

[Transaction Information]

6. The total dollar amount of the offering, including any deferred capital contributions, optional units and any shares underlying warrants, the number of units to be offered, and the minimum dollar amount of the interests that will be offered to any one person. Include in the total dollar amount of the offering and the individual units any amounts paid by notes, any mandatory assessments and any capital contributions to be made in the future.

7. The business of the issuer, and the purpose of the offering (e.g., to purchase the fee or leasehold of described property at a stated location). Specify with reasonable detail the breakdown of how the proceeds of the offering will be used after offering expenses have been deducted. A copy of the Use of Proceeds section of the

prospectus may be annexed as an exhibit to the application. If the offering has a minimum and maximum total dollar amount, set forth uses of proceeds for each.

8. State that in compliance with GBL §352-h, all proceeds of the offering, inclusive of deferred capital contributions and notes as well as amounts paid upon subscription, will be received and held in trust (not merely in escrow) for the benefit of investors to be used only for purposes set forth in paragraph 7 above. State that if any proceeds will be held after closing of escrow, such trust obligations will continue until all proceeds have been so applied. State the name and branch address of the bank where the proceeds will be deposited in escrow, the name and address of the escrow agent, and the title of the account which should show that it is an escrow for multiple beneficiaries.

9. State how the funds received will be disposed of if any of the contemplated property acquisitions or transactions are not consummated. Applicant must represent that if the stated intended purposes are not fulfilled or the proposed transactions representing a substantial portion of proceeds of the offering are not completed for any reason, then the proceeds or the affected portion thereof shall be fully returned to the investors.

10. State whether proposed properties will be acquired at arm's length, and refer to any such disclosures in the literature. Also state briefly (with corresponding cross-references) any interests of principals, affiliates or promoters in property being acquired and any benefits or profits to them therefrom.

11. State whether any previous application or filing under §352-e, §352-g or §359-f of the General Business Law has been made by the applicant or any affiliate regarding the subject property or properties. If so, specify the date of each prior application, the name of the issuer and the disposition of the application.

[Offering Literature]

12. State that a copy of the Prospectus or Offering Statement, the executed Filing Form RS-1, a set of all exhibits and background documents pertaining to the issuer, the offering, the properties to be acquired, and any management agreements and other material documents, have been submitted to the Department of Law and are incorporated by reference into this application. If the literature does not fulfill an

enumerated requirement of GBL §352-e (1)(b) or of Section 16.2 of Part 16, explain the reason and the disclosures made instead.

13. State that no supplemental literature, apart from the prospectus or other literature and amendments so filed, will be used in connection with the offering; and that all advertisements, promotional material, solicitation letters and offering methods will conform to the requirements of Subdivisions 3, 4 and 5 of GBL §352-e and Section 16.3 of Part 16.

[Accounting and Other Undertakings]

14. State that (a) the issuer's accounting books and records will be maintained in accordance with good accounting practices at the issuer's place of business; (b) the issuer's books and records will be available for inspection and copying by investors upon written request; and (c) the managing partner or managing entity will not charge any part of its overhead, entertainment, administrative or general operating expenses, or salaries or expense accounts of its officers to the issuer except to the extent specifically disclosed in the offering literature. Also indicate where these covenants are set forth in the partnership agreement or other organizational document.

15. State that within four months after the close of each fiscal year, all investors will be provided with: (a) a narrative report which summarizes results, developments and any material changes of fact, including recent events after the year; and (b) an annual financial statement of the issuer (and those of any operating entities if under a multi-tiered arrangement) including a written balance sheet and statement of profit and loss, with an express opinion by an independent public accountant that such statements fairly present the financial position and results of operation of the issuer (and such operating entities, if any) on a consistent basis. Indicate if any special accounting treatment is intended to be used.

16. State that the issuer will comply with the requirements of Section 16.9 of Part 16 regarding Source of Distribution Statements, whenever applicable.

17. State that issuer will submit to the Department of Law for filing all amendments to the Prospectus or Offering Statement, and any other offering literature to be employed by the issuer, in advance of use.

18. Provide a concluding statement reading: "WHEREFORE, it is respectfully requested that the annexed offering literature for sale of the securities of \_\_\_\_\_ (fill in name of issuer) be accepted for filing under the provisions of §352-e of the General Business Law of New York."

19. The application must be sworn to or verified by the affiant before a notary public; an acknowledgment of execution of the document is insufficient. A legible notary stamp should be placed on the sheet, underneath or next to the notary's signature.

20. Executed RI-1 and RS-1 forms, and a copy of the offering literature, must be annexed to the application. Exhibits and background documentation should be filed and indexed in a binder. A copy of form RS-1 and this application along with two (2) additional copies of the entire offering statement or prospectus must be submitted as well.

### Fees, Submissions, & Related Procedures

I. The Application and Filing Form RS-1 should be submitted with a check to the Department of Law in an amount based upon the formula set forth below. One-half of the fee is non-refundable. Upon acceptance of the filing, the entirety of the fee is non-refundable. The applicant may remit one-half of the filing fee upon submission, with the balance payable prior to the issuance of a letter accepting the offering for filing.

The statute provides that the fee shall be two-tenths of one percent (2/10 of 1%) of the total amount of the offering, but not less than \$750 nor more than \$30,000. See GBL §352-e(7)(a). The fee is based upon the aggregate offering amount, without apportionment of any amount to be offered in New York.

II. Applications, documentation and fees should be sent to: New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, floor, 15<sup>th</sup> Floor, New York, NY 10005.

III. Out-of-state issuers must file with the New York Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231, a Designation of the Secretary of State As Agent for Service of Process under GBL §§352-a/352-b with the appropriate fee. Copies (not originals) of the Designation as well as the State Notice and Further State Notice forms should be submitted to the Department of Law.

IV. The issuer also must comply with the dealer registration requirements under subdivisions 2, 3 and 8 of GBL §359-e (issuers come within the definition of "dealer" in Subd. 1(a) of §359-e). The issuer ordinarily should file an Issuer Statement, Form M-11, with the Department of Law with a separate check for the fee calculated as

specified on such form; which should be forwarded, with the §352-e submission, to the Real Estate Finance Bureau. The issuer must concurrently file with the Department of State the issuer's State Notice and Further State Notice, with the appropriate fees.

V. All proposed advertisements, promotional material and solicitation letters should be submitted, at least 10 days in advance of proposed use, to attention of the Department of Law attorney assigned to the file. Advertisements, promotional material and solicitation letters should avoid indication of any offer therein and should conform to requirements set forth in Subdivisions 3, 4 & 5 of GBL §352-e and Section 16.3 of Part 16.

VI. (a) Amendments submitted after acceptance of the filing should be accompanied by an executed Filing Form RS-2, with any amended documentation and a check for the filing fee of \$225. Three copies of the proposed amendment, along with a copy of the original offering statement or prospectus and any prior amendments, must also be submitted.

(b) Corrections of prior typographical errors and minor clerical errors which do not amend the substance of the disclosure, the dollar amounts or the offering terms and which do not effect any substantive change, generally will not be considered an amendment hereunder. A letter setting forth such minor changes along with three copies of the corrected offering statement or prospectus (and a marked copy of the changed pages) must be sent to the Department of Law, prior to use.

(c) An amendment is required to continue the filing in effect after four months following the date of acceptance of the filing, or if a material change occurs in the facts represented or required to be stated in the literature, or in the offering terms, or in the surrounding facts and circumstances. In any such case, unless and until a satisfactory amendment is submitted and accepted for filing by the Department of Law, the offering must not be continued.

(d) Any adverse material change which occurs prior to full consummation of the transactions described in the offering literature or full utilization of the proceeds of the offering, concurrently therewith or shortly thereafter, may necessitate additional amendment to the offering literature and an offer of rescission to investors.

(e) Following completion of the offering, the occurrence of completion, the total amount raised from investors, and any amendment of the issuer's partnership agreement, certificate of incorporation, by-laws, declaration of trust or other such documents should be reported to investors and to the Department of Law within a reasonable time.



VII. Any abandonment of the offering, inclusive of any termination without partial completion, must be reported to the Department of Law by filing Form RS-3, showing (in normal course) the return of all subscription payments to investors or other proper disposition of all funds collected from investors. The issuer must also file an amendment (see VI. above) disclosing such abandonment, unless an affidavit and other proof satisfactory to the Department of Law clearly shows that all funds collected from subscribers and purchasers have been returned to them with any earned interest.

VIII. The annual reporting requirement under Section 16.7 of Part 16 calls for a questionnaire report on Form AR-1 within four months after the close of each fiscal year, with filing fee of \$5, filed in duplicate. Such report should be accompanied by: (a) a copy of the narrative report sent to investors, (b) a copy of the certified financial statements sent to investors, (c) the schedule of distributions in accordance with the provisions of Section 16.7(a) of Part 16 accompanied when applicable with the Source of Distribution Statements (Form SD-1) under Section 16.9 of Part 16, and (d) any additional items called for in Form AR-1.

In the event that such report is not available within four months after the close of any fiscal year, an extension of filing time for an additional month (or two months for good cause) can be obtained upon a letter signed by a principal of the issuer. The letter must state the reasons, and must advise if the issuer has any financial difficulties that have affected the completion of the report.

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