

NEW YORK REAL ESTATE SYNDICATION ACT

NEW YORK GENERAL BUSINESS LAW § 352-e

1.

(a) It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to make or take part in a public offering or sale in or from the state of New York of securities constituted of participation interests or investments in real estate, mortgages or leases, including stocks, bonds, debentures, evidences of interest or indebtedness, limited partnership interests or other security or securities as defined in section three hundred fifty-two of this article, when such securities consist primarily of participation interests or investments in one or more real estate ventures, including cooperative interests in realty, unless and until there shall have been filed with the department of law, prior to such offering, a written statement or statements, to be known as an "offering statement" or "prospectus" concerning the contemplated offering which shall contain the information and representations required by paragraph (b) of this subdivision unless the security offering is exempted hereunder or under section three hundred fifty-nine-f, subdivision two, of this article by rule or action of the attorney general. The term "real estate" as used in the paragraph shall not include mineral, oil or timber leases or properties, or buildings, structures, land or other realty housing or containing business offices or industry, owned or leased by the issuer, where the issuer is not primarily engaged in the business of buying and selling such building or other realty or leases or interests therein. The circulation or dissemination of a non-firm offer (including circulation or dissemination of a preliminary prospectus pursuant to section ten (b) of the securities act of nineteen hundred thirty-three, and the rules thereto appertaining) shall not constitute making or taking part in a public offering within the meaning of this section.

(b) The detailed terms of the transaction; a description of the property, the nature of the interest, and how title thereto is to be held; the gross and net income for a reasonable period preceding the offering where applicable and available; the current gross and net income where applicable and available; the basis, rate and method of computing depreciation; a description of major current leases; the essential terms of all mortgages; the names, addresses and business background of the principals involved, the nature of their fiduciary relationship and their financial relationship, past, present and future, to the property offered to the syndicate and to those who are to participate in its management; the interests and profits of the promoters, offerors, syndicate organizers, officers, directors, trustees or general partners, direct and indirect, in the promotion and management of the venture; all restrictions, if any, on transfer of participants' interests; a statement as to what stock or other security involved in the transaction, if any, is non-voting; a statement as to what disposition will be made of the funds received and of the transaction if not consummated, which statement shall represent that all moneys received from the sale of such securities until actually employed in connection with the consummation of the transaction as therein described, shall be kept in trust and that in the event insufficient funds are raised through the offering or otherwise to effectuate the purchase or purchases or other consummation of the contemplated transaction, or that the intended acquisition shall not be completed for any other reason or reasons, then such moneys, less such amounts actually employed in connection with the consummation of the transaction, shall be fully returned to the investor; which of the securities offered are unsecured; clearly distinguish between leasehold and fee ownership, between fact and opinion; a commitment to submit annual reports to all participants, including an annual balance sheet and profit and loss statement certified by an independent certified public accountant; clearly distinguish between those portions of promised distributions which are income and those which are a return of principal or capital; in the case of qualified leasehold condominiums, as defined in section three hundred thirty-nine-e of the real property law, a disclosure of the unique requirements imposed on the unit owners of such condominiums by the provisions of sections

three hundred thirty-nine-bb and three hundred thirty-nine-cc of such law; and such additional information as the attorney general may prescribe in rules and regulations promulgated under subdivision six hereof as will afford potential investors, purchasers and participants an adequate basis upon which to found their judgment and shall not omit any material fact or contain any untrue statement of a material fact.

(c) All advertising in connection with an offering of securities described in this subdivision shall be consistent with the representations and information required to be set forth as hereinbefore in this subdivision provided.

2. Unless otherwise provided by regulation issued by the attorney general, the offering statement or statements or prospectus required in subdivision one of this section shall be filed with the department of law at its office in the city of New York, prior to the public offering of the security involved. No offer, advertisement or sale of such securities shall be made in or from the state of New York until the attorney general has issued to the issuer or other offerer a letter stating that the offering has been filed. The attorney general, not later than thirty days after the submission of such filing, shall issue such a letter or, in the alternative, a notification in writing indicating deficiencies in the offering statement, statements or prospectus; provided, however, that in the case of a building or group of buildings to be converted to cooperative or condominium ownership which is occupied in whole or in part for residential purposes, such letter or notification shall be issued in not sooner than four months and not later than six months from the date of submission of such filing. The attorney general may also refuse to issue a letter stating that the offering statement or statements or prospectus has been filed whenever it appears that the offering statement or statements or prospectus does not clearly set forth the specific property or properties to be purchased, leased, mortgaged, or otherwise to be acquired, financed or the subject of specific investment with a substantial portion of the offering proceeds.

2-a.

(a) For the purposes of this subdivision the following words shall have the following meanings:

(i) "Plan". Every offering statement or prospectus submitted to the department of law for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership, other than a plan governed by the provisions of either section three hundred fifty-two-eee or three hundred fifty-two-eeee of this chapter, or a plan for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(ii) "Non-purchasing tenant". A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(iii) "Eligible senior citizens". Non-purchasing tenants who are sixty-two years of age or older on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this subdivision; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(iv) "Eligible disabled persons". Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this subdivision; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit or the shares allocated thereto on the terms then offered to tenants in occupancy.

(b) The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of this section has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless the plan provides that:

(i) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability, such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(ii) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(iii) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(iv) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of

the civil practice law and rules, which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(c) The provisions of this subdivision shall be applicable in any city, town or village not covered by the provisions of section three hundred fifty-two-eee of this chapter, or which has not elected to be covered by section three hundred fifty-two-eee of this chapter, provided the local legislative body elects, by majority vote to adopt by resolution, coverage provided by this section. A certified copy of such resolution shall be filed in the office of the attorney general at Albany and shall become effective on the date of such filing.

2-b. In the case of offerings of cooperatives, condominiums, interest in homeowners association and other cooperative interests in realty, including homes subject to deed or covenant or agreements requiring investment therein, the attorney general may refuse to issue a letter of acceptance unless the offering statement, prospectus or plan shall provide that all deposits, down-payments or advances made by purchasers of residential units shall be held in a special escrow account pending delivery of the completed apartment or unit and a deed or lease whichever is applicable, unless insurance of such funds in a form satisfactory to the attorney general has been obtained prior thereto. In addition to the general regulatory authority provided in this section, the attorney general is hereby authorized to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this subdivision, including, but not limited to, determining when escrow funds may be released, the nature of escrowees, and other terms and conditions relating thereto deemed necessary in the public interest.

2-c. Payment of legal fees for representation of a tenant or tenant's association in a residential building undergoing conversion to cooperative or condominium ownership shall not be made from any reserve fund, working capital fund, or other fund established to cover expenses, repairs and capital improvements of buildings converted to cooperative or condominium ownership, unless made pursuant to a retainer agreement entered into before this subdivision shall have become a law. Payment of legal fees may be made, however, from another fund specifically designated for such purpose.

2-d.

(a) For the purposes of this subdivision the term "self-dealing contract" shall be defined as any contract or portion thereof which is entered into after October eighth, nineteen hundred eighty, and which:

(i) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project, or of property serving the condominium or cooperative unit owners in such projects;

(ii) is between such unit owners or such association and the developer or an affiliate of the developer;

(iii) was entered into while such association was controlled by the developer through special developer control or because the developer held a majority of the votes in such association;

(iv) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the developer or an affiliate of the developer; and

(v) may not be terminated without penalty by such unit owners or such association.

(b) In the case of offerings of cooperatives, condominiums or other interests in realty covered by the provisions of section six hundred eight of the Condominium and Cooperative Abuse Relief Act of 1980, 15 U.S.C. 3607, the attorney general shall refuse to issue a letter of acceptance unless the offering statement, prospectus or plan provides that the tenant shareholders or owners entitled to vote to terminate a self-dealing contract pursuant to such section twice be notified of such right in writing (i) once within thirty days of the date that the right to terminate pursuant to subsection (b) of such section commences and (ii) secondly at least six months prior to the date that such right to terminate will expire.

3. No offering literature shall be employed in the offering of securities as defined in subdivision one of this section except by the offering statement or statements filed in the department of law pursuant to the provisions of this section. All advertising in whatever form, including periodicals or on radio or television shall contain a statement that no offer of such securities is made except by such offering statement or statements.

4. In all literature employed in the offer and sale of securities defined in subdivision one of this section and in all advertising in connection therewith there shall be contained, in easily readable print on the face thereof, a statement that the filing of an offering statement or statements or prospectus as required by subdivision one of this section with the department of law does not constitute approval of the issue or the sale thereof by the department of law or the attorney general of this state.

5. No offering or sale whatever of securities described in subdivision one of this section shall be made except on the basis of information, statements, literature, or representations constituting the offering statement or statements or prospectus described in such subdivision, and no information, statements, literature, or representations shall be used in the offering or sale of securities described in such subdivision unless it is first so filed and the prospective purchaser furnished with true copies thereof.

6.

(a) The attorney general is hereby authorized and empowered to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this section, including regulations for the method, contents and filing procedures with respect to the statements required by subdivision one and the making of amendments thereto.

(b) The attorney general is hereby authorized and empowered to adopt, promulgate, amend and rescind suitable rules and regulations relating to the information furnished to investors of the sources of any distribution or distributions made by any issuer in connection with the sale of realty securities since January first, nineteen hundred sixty-one within the provisions of section three hundred fifty-two-e and section three hundred fifty-two-g of this article.

7.

(a) The department of law shall collect the following fees for the filing of each offering statement or prospectus as described in subdivision one of this section: seven hundred fifty dollars for every offering not in excess of two hundred fifty thousand dollars; for every offering in excess of two hundred fifty thousand dollars, four-tenths of one percent of the total amount of the offering but not in excess of ¹ thirty thousand dollars of which one-half of said amount shall be a nonrefundable deposit paid at the time of submitting the offering statement to the department of law for review and the balance payable upon the issuance of a letter of acceptance for filing said offering statement. The department of law shall, in addition, collect a fee of two hundred twenty-five dollars for each amendment to an offering statement. For each application granted by the department of law which permits the applicant to solicit public

interest or public funds preliminary to the filing of an offering statement or for the issuance of a “no-filing required” letter, the department of law shall collect a fee of two hundred twenty-five dollars. In the event the sponsor thereafter files an offering statement, the fee paid for the preliminary application shall be credited against the balance of the fee due and payable on filing. For each application granted pursuant to section three hundred fifty-two-g of this article, the department of law shall collect a fee of two-tenths of one percent of the amount of the offering of securities; however, the minimum fee shall be seven hundred fifty dollars and the maximum fee shall be ² thirty thousand dollars. All revenue from that portion of any fee imposed pursuant to this paragraph, which exceeds twenty thousand dollars shall be paid by the department of law to the state comptroller to be deposited in and credited to the real estate finance bureau fund, established pursuant to section eighty of the state finance law.

(b) The attorney general may, in his discretion, require an inspection to be made by the department of law in connection with a real estate syndication, cooperative, or condominium offering, of lands and property thereon, situated outside of the state of New York, involved in such offering. In such case, prior to the acceptance of such filing, there shall be remitted to the department of law an amount equivalent to the cost of travel from New York to the location of the property involved in the offering and return, as estimated by the department of law, and a further reasonable amount estimated to be necessary to cover the additional expenses of such inspection. The department of law shall return to the person making the remittance any amount advanced in excess of the actual expenses incurred, and where there is a deficiency, the department of law shall be empowered to collect the difference between the actual expenses and the amount advanced.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, the department of law shall not collect any fees for the filing of an offering statement or prospectus or any amended filings thereto as described in subdivision one of this section whenever a conversion of a mobile home park, building or group of buildings or development from residential rental status to cooperative or condominium ownership is being made pursuant to article eighteen, nineteen or twenty of the private housing finance law.

8. Within four months after the end of its fiscal year, every syndicate which shall have been required to file an offering statement or statements or prospectus under subdivision one of this section shall file with the department of law at its office in the city of New York an annual report of the syndicate operation, including an annual balance sheet and profit and loss statement certified by an independent certified public accountant. The department of law shall collect a fee of five dollars for the filing of each such annual report.

9. Each offering statement or prospectus as described in subdivision one of this section, and all exhibits or documents referred to therein shall be available for inspection by any person who shall have purchased a security described in this section or shall have participated in the offering of such security.