

POLICY STATEMENT 101

EXEMPTION APPLICATION UNDER §352-g(1) AND §359-f(2) OF THE GENERAL BUSINESS LAW FOR REAL ESTATE SYNDICATION OFFERINGS MADE TO PERSONS NOT EXCEEDING FORTY IN NUMBER

General Business Law ("GBL") §352-g(1) provides that the Attorney General, upon application, may exempt from the provisions of §352-e any offerings of securities made to persons not exceeding forty in number. Policy Statement 101 ("PS 101") provides an exemption application procedure for issuers seeking an exemption under §352-g(1). If the requirements described below are met, PS 101 may be used by issuers exempt from registration with the Securities and Exchange Commission under Regulation D or for any other reason, and by issuers making intra-state offerings of real estate securities otherwise subject to §352-e. PS 101 provides a simultaneous exemption under GBL §359-e, subdivisions 2, 3, 4, 5 and 6, for which there is a separate fee. PS 101 supersedes the "Instructions for §352-g Exemptions" as they apply to §352-g(1) exemption applications.

PS 101 may not be used for offerings of cooperative, condominium, homeowners' association or timeshare interests in real estate except in special cases in which investors are not entitled to the use of space allocated to units purchased, and certain other requirements are met.

PS 101 permits offerings to be made without a written offering statement, provided that the offering is made only to investors having a pre-existing relationship with the principals of the issuer, and the issuer supplies information about such investors as required in paragraph 14 below prior to the offer being made. Issuers using the Rule 504 exemption under Regulation D who elect not to provide a written offering statement to investors must use PS 101 rather than PS 100 and must meet the requirements for offering without a written offering statement. However, offerings to accredited investors only, as that term is defined by Regulation D, Rule 501, may be made without using a written offering statement, and issuers of such offerings may use the PS 100 exemption procedure.

Exemptions under §352-g(1) are ordinarily granted when offerings are to be made only to sophisticated investors who have sufficient means for the investment, and who have a pre-existing relationship with principals of the issuer. However, in appropriate

cases the Attorney General may exercise his discretion to exempt offerings

made to persons having less sophistication and smaller net worth but a particularly close relationship to principals of the issuer, or to wealthy and sophisticated individuals without a pre-existing relationship to principals of the issuer.

For purposes of counting investors, a husband and wife or other couple having a similarly close relationship sharing the same principal residence, and any relative of either of them sharing the same principal residence, may be counted as one person. Any trust or estate in which a purchaser has more than 50% of the beneficial interest, or in which a relative of the purchaser has more than 50% of the beneficial interest and the purchaser is the trustee or executor, may be counted together with the purchaser as one person. Institutional investors not meeting the above qualifications are counted as separate purchasers for purposes of PS 101.

An issuer applying for a §352-g(1) exemption must wait until it is granted before commencing the firm offering. A red herring copy of the offering material may be circulated after the PS 101 application including such material has been submitted to the Attorney General, provided that it contains, on the front cover, the following legend in upper case letters no smaller than the type used on the cover for text other than names:

"THIS IS NOT A FIRM OFFER [IN THE STATE OF NEW YORK]. NO FIRM OFFER MAY BE MADE [IN NEW YORK], AND NO DEPOSIT OR SUBSCRIPTION AGREEMENT MAY BE ACCEPTED, WITHOUT AN EXEMPTION BY THE NEW YORK STATE ATTORNEY GENERAL FROM REGISTRATION UNDER THE MARTIN ACT. THIS OFFERING MATERIAL MAY BE SUBJECT TO FURTHER AMENDMENT."

The matter in brackets may be deleted from the legend. Issuers required to list potential offerees in paragraph 11 below may solicit interest from persons with whom the principals have a pre-existing relationship, but any such solicitation of interest, which may be oral or in the form of a brief letter, should include the statement that no firm offer may be made and no deposit or subscription agreement may be accepted without an exemption by the New York State Attorney General.

DEFINITIONS

The following definitions apply specifically to this Policy Statement.

Multi-Tiered Arrangement: an arrangement in which the issuing entity invests in one or more operating entities.

Pre-Existing Relationship: a relationship between a principal of an issuer and an investor that may be either a close family relationship or a significant business or social relationship of at least one year's duration. An existing relationship between an investor and a principal of the issuer must be direct and not through either party's broker, investment advisor, lawyer or accountant. If the investor is an entity the relationship should be between a principal of the investing entity and a principal of the issuer.

Principal: a general partner of a partnership, an officer or director of a corporation, a trustee of a trust, a person or entity holding 10% or more of the interests in an entity, a syndicator, sponsor or promoter of an offering of interests in an issuer, a person exercising substantial control over the management or operation of an entity, or a principal of any entity that is itself a principal. An investor who acquires interests offered in a general partnership will not be considered a principal in the offering of interests in the general partnership if he or she does not participate in the promotion of the offering.

Sophisticated Investor: a person having experience in real estate investments, investments in securities or other substantial business or financial experience, or a person having a personal advisor with such experience who is neither a principal of the issuer nor receiving commissions or other compensation from the issuer or its principals for the organization of or sale of interests in the issuer. An Accredited Investor as defined by SEC Regulation D, Rule 501 is assumed in every case to be a sophisticated investor.

Sufficient Means for the Investment: a combination of net worth and income of the prospective investor measured in comparison to the size of investment (also known as the suitability standard). For investments between \$20,000 and \$100,000, a person with a net worth minus home, home furnishings and automobile equal to three times the total investment plus an annual adjusted gross income equal to the total investment, or a net worth minus home, home furnishings and automobile equal to five times the total investment without regard to income, will in most instances be considered as having sufficient means for the investment. A proportionally higher standard may be required for investments under \$20,000, and a proportionally lower standard may be permitted for investments over \$100,000. A person's net worth and income may be aggregated with that of his or her spouse. An Accredited Investor as defined by SEC Regulation D, Rule 501 is assumed in every case to have sufficient means for the investment. If the investor is an

entity the sufficient means test may be satisfied either by the investing entity or by a majority of the principal owners or beneficiaries of the investing entity.

COVER SHEET

Every application should have attached to the top of it a cover sheet (or sheets, if necessary) headed "Policy Statement 101 Application." The headings below should be typed flush left and in THE ORDER AND WORDS USED: THE RELEVANT INFORMATION SHOULD BE PROVIDED FOR EACH LINE. (The advisory matter to the right of the colon for each heading below should not be typed on the cover sheet.) Applicants providing this cover sheet are not required to submit a separate form Transmittal Sheet.

ISSUER NAME:

NATURE OF SECURITY:

OFFERING AMOUNT:

NAME AND ADDRESS

OF RESPONSIBLE PERSON: Person to whom exemption letter will be addressed. Indicate preferred form of address: Mr., Ms., Mrs., Miss 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 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 and undertakings:

[Issuer and Principal Information]

1. The name, address and legal nature (corporation, trust, limited partnership, etc.) of the issuer entity ("applicant").

2. The name, residence address and affiliation of the individual affiant, his or her business or profession, and his or her 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 forms RI-1 and prior syndication history letters for each principal who is a natural person. List principals directly here rather than by reference to exhibits. 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 which had any New York residents as investors and stating whether or not filings were made pursuant to §352-e and §359-e, exemptions were obtained pursuant §352-g and §359-f(2), or no-filing letters were obtained as to each such syndication. If such person has not taken part in any such syndication in the last 10 years the letter should so state. If the issuing entity will be investing in an operating entity, creating a multi-tiered arrangement, RI-1:s and prior syndication history letters are required from the principals of the operating entity or entities as well as the issuing entity. Copies of executed forms RI-1 previously submitted may be used if they are less than six months old and bear a notation indicating the file in which the original may be found; the application should state that there have been no material changes in such RI-1's. However, updated prior syndication history letters should be provided with each application. Where there are a large number of officers and directors of a corporate general partner, the applicant may provide RI-1's and prior syndication history letters only from the principal owners, chair of the board of directors and five highest ranking executive officers, as well as any officers directly responsible for the offering sought to be exempted. Information requested in paragraphs 4 and 5 below should 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, made

an assignment for benefit of creditors, or was an officer, director or principal of any entity reorganized in bankruptcy, adjudged a bankrupt or which 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 any crime excluding minor traffic violations, or was the subject of any injunction, cease and desist order, suspension or restraining order, denial or revocation of a license to practice a trade, occupation or profession, or denial of an application to renew same, stipulation or consent to desist from any act or practice, including 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 presently pending. (If so, specify details.)

[Transaction Information]

6. The total dollar amount of the offering, including any optional units and any shares underlying warrants, the number of units to be offered and the minimum dollar amount of the interest that will be offered to any one person. Include in the total dollar amount of the offering any mandatory assessments or 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). If no offering literature is to be used, state the terms of purchase of the property or interest to be acquired, including total purchase price, cash requirements, mortgages and terms thereof, planned renovations or improvements and whether or not the property was acquired from principals or affiliates.

8. The use of proceeds of this offering, not including loans from other sources, set forth in tabular form, showing amounts in dollars and percentages of the total offering amount, and indicating which proceeds will or may be paid to principals or affiliates. Costs or expenses to be paid partly to principals or affiliates and partly to third parties should be listed as separate entries where the relative amounts are predictable. If the offering has a maximum and minimum total dollar amount, set forth the use of proceeds in both cases. Do not refer to accompanying offering material; however, a copy of a table containing the requested information may be attached as an exhibit to the application.

[Investor Information]

9. A statement that the offering will be made by personal contact only to persons having a pre-existing relationship with principals of the issuer, and that offers will be made to no more than 40 persons in New York and elsewhere. If the offering will be made to persons not having a pre-existing relationship with a principal of the issuer, so state, and in paragraph 11(b) describe the higher standards of suitability and sophistication for persons not having such pre-existing relationship.

10. A statement whether any prospectus, private offering memorandum or other offering material has been prepared or will be used. If so, state that a true copy of such offering material has been annexed as an exhibit to and made a part of the application.

11. (a) List the persons to whom interests will be offered, providing, for each person, his or her address, the nature and length of the pre-existing relationship and the name of the principal with whom such relationship exists. This list is not required prior to offering where offering material will be used and all investors will be sophisticated and have sufficient means for the investment; if the list is not required on this basis, so state.

(b) State that each of the investors will be sophisticated and have sufficient means for the investment, with the suitability standard for investors. If offers will be made to individuals who do not meet the standards of sophistication and suitability, but who have a particularly close relationship to a principal, list such individuals in a separate list in paragraph 11(a).

[Undertakings]

12. An undertaking to have all investors sign the following statement BEFORE MONIES ARE RECEIVED FROM THEM:

"I understand that I am purchasing this interest in without being furnished any offering literature or prospectus [other than a private placement memorandum dated] and that this transaction has not been scrutinized by the Attorney General of the State of New York as a full registration because of the offeror's representations of the small number of persons solicited and the private aspects of the offering. This interest is being purchased for my own account and not for the interest of any other and not for resale to others. I represent that I have adequate means of providing for my current needs and possible personal contingencies, and that I have no need for liquidity of this investment. I further warrant that my personal net worth minus home, home furnishings and auto is in excess of \$ [specify amount], and that my adjusted gross income last year was, and this year is anticipated to be, in excess of \$

[specify amount where suitability is based on both net worth and gross income]."

13. An undertaking that upon request by the Office of the Attorney General, one true copy of each basic document that is material to this investment, including purchase contracts or options, financing commitments, construction contracts or options, partnership agreements and certificates, subscription forms, leases, mortgages and deeds, will be furnished to the Attorney General within two weeks of the receipt of said request.

14. A statement that if any (or any other) prospectus, private offering memorandum, offering literature or advertising material or any amendments or supplements to such offering or advertising materials, is to be used, such material will be submitted to the Office of the Attorney General prior to its use.

15. (a) An undertaking that in compliance with GBL §352-h the proceeds of the offering will be received and held in trust [not merely in escrow] for the benefit of the investors to be used only for the purposes set forth in paragraph 8, above, and the name and branch address of the bank where proceeds will be deposited in trust. The exemption will not be granted until this information is provided.

(b) An undertaking that any private offering memorandum or prospectus used in connection with this offering will contain the above trust fund undertaking.

16. An undertaking to comply with the requirements of Regulation 16.9 regarding Source of Distribution Statements, and an acknowledgment that the applicant is familiar with the said regulation.

17. (a) An undertaking that beginning after the closing of the offering, all investors will be provided annually with financial statements of the issuing entity, and of operating entities in a multi-tiered arrangement, including a balance sheet and the related statements of income and retained earnings and changes in financial position, accompanied by a report of an independent public accountant stating that an audit of such financial statements has been made in accordance with generally accepted accounting principles, stating the opinion of the accountant with respect to the financial statements and the accounting principles and practices reflected therein and with respect to the consistency of the application of the accounting principles, and identifying any matters to which the accountant takes exception and stating, to the extent practicable, the effect of each such exception on such financial statements. The undertaking may state that financials need not be audited unless requested by investors holding, in the aggregate, 30% or more of the

interests in the issuer held by investors other than principals and affiliated persons, if this is disclosed in the offering material or limited partnership agreement. In conformity with §448(a) of the Internal Revenue Code of 1986, the cash method of accounting may not be used for financial statements unless the issuer is, or reasonably expects to qualify as, a Subchapter S corporation. An issuer whose accounting reports are required to conform to special accounting rules of another government agency may do so provided that the requirement to use such rules and the effect of such rules are described in the private offering memorandum or statement signed by investors.

(b) An undertaking that any private offering memorandum or prospectus used in connection with this offering will set forth the above undertaking to provide annual certified audited financial statements and, if a private offering memorandum containing the above undertaking is not used, that the statement which paragraph 12 above requires each investor to sign will contain the above undertaking to provide certified audited financial statements.

18. An undertaking to maintain the books and records of the issuer, and of each operating entity in a multi-tiered arrangement, at its principal place of business and to make the books and records available, upon reasonable notice, for inspection by investors at reasonable hours during the business day.

19. An undertaking that any private offering memorandum or prospectus used in connection with this offering will contain the following legends on its cover page:

"THIS PRIVATE OFFERING MEMORANDUM HAS NOT BEEN REVIEWED BY THE ATTORNEY GENERAL PRIOR TO ITS ISSUANCE AND USE. THE ATTORNEY GENERAL OF THE STATE OF NEW YORK HAS NOT PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL."

"THIS PRIVATE OFFERING MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY ARE MADE, NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS OF DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN."

20. A statement that on the completion of the offering the issuer will file with the Office of the Attorney General a duplicate original or photocopy of the executed partnership agreement, certificate of incorporation, venture agreement or trust indenture and a list of the names and addresses of the participants in the offering and the extent of their participation, or if the offering is terminated without closing that the issuer will file a notice with the Office of the Attorney General that the offering was terminated and that all funds received from the offering were returned to investors.

21. A statement whether any previous application or filing under §352-e, §352-g, §359-e or §359-f of the General Business Law has been made by the applicant or any affiliate regarding the property involved in this application. If so, specify the date of each prior application, the name of the issuer and the disposition of the application.

The application should conclude, prior to subscription or verification, with the following clause, "WHEREFORE, it is respectfully requested that the offering for sale of the securities of the [the issuer] be exempted under General Business Law §352-g(1) and §359-f(2) (d) from the provisions of §352-e and subdivisions two through six of §359-e."

FEE

Separate checks must be submitted for the fee imposed for the §352-g exemption and the fee imposed for the §359-f(2) exemption. The fee for 352-g exemption is two-tenths of one percent of the amount of the offering of securities; however, the minimum fee is \$750 and the maximum fee is \$30,000. This fee is based on the aggregate offering amount without apportionment for the amount to be offered within New York. The fee for the §359-f(2) exemption is \$300, by separate check. Both checks should be made payable to the New York State Office Department of Law. These fees will not be refunded after the exemptions are granted.

SUBMISSION

Submissions must include two copies of any draft prospectus or private offering memorandum and partnership agreement and copies of any financial forecasts to be used in the offering. All required material should be submitted at the same time. Applicants should be prepared to provide the Attorney General copies of the partnership agreement, recent appraisal reports, rental histories and financial statements for the property upon request where available, and may submit such material with the application.

Applications with supporting documents and fees should be sent to: Real Estate Finance Bureau, Syndication Section, New York State Department of Law, 28 Liberty Street, New York, NY 10005.

DESIGNATION FOR SERVICE OF PROCESS

Out-of-State issuers and principals must file with the Department of State in Albany a Designation of the Secretary of State as Agent for Service of Process. State in the covering letter whether such has been or is being filed, and submit copy of the Designation with the application.

BROKER-DEALER REQUIREMENTS

The exemption granted pursuant to §359-f(2) from the provisions of §359-e does not exempt the issuer, the underwriter or any broker-dealer from the provisions of §359-e(8). Therefore, one Further State Notice form must be filed for the transaction with the Department of State in Albany, New York. State in the covering letter whether such has been or is being filed.

If the exemption is not sought under §359-f(2) from the provisions of §359-e, attention is directed to the issuer's dealer registration requirements under GBL §359-e. This ordinarily requires a Broker-Dealer Statement filed with the Office of the Attorney General (with fee paid by separate check), and a separate filing of a State Notice and Further State Notice sent to the Department of State, Albany, New York.

AMENDMENTS AND SUPPLEMENTS

No fee is required to amend or supplement an application for exemption previously granted, unless the total dollar amount of securities is increased and the maximum fee has not been paid. The cover letter for the amendment or other supplementary material should state the name of the original reviewing attorney and the Law Department file number, if known. Changes should be red-lined and accompanied by a copy of the original material or the affected pages of the original material. Amendments and supplements, including all promotional materials, are presumed accepted for filing 10 days after submission, unless notice is provided to the issuer by the Office of the Attorney

General that acceptance is being delayed pending review and discussion. Expedited review of amendments and supplements may be requested by telephone where special circumstances require an immediate response.

THE GRANT OF EXEMPTION AND THE FILING OF AMENDMENTS AND SUPPLEMENTS DOES NOT CONSTITUTE A WAIVER OF THE ATTORNEY GENERAL'S AUTHORITY TO TAKE ENFORCEMENT ACTION AGAINST THE ISSUER OR ITS PRINCIPALS ON THE GROUNDS OF MATERIAL MISSTATEMENTS OR OMISSIONS IN THE OFFERING MATERIAL OR OTHER FRAUDULENT PRACTICES UNDER THE MARTIN ACT.

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