

STATE OF NEW YORK
DEPARTMENT OF LAW
REAL ESTATE FINANCE BUREAU

COOPERATIVE POLICY STATEMENT # 12
APPLICATION FOR EXEMPTION FROM REGULATORY FILINGS FOR OFFERINGS OF
COOPERATIVE INTERESTS IN REALTY WHERE THE REALTY IS SITUATED OUTSIDE
THE STATE OF NEW YORK

WITH FORMS

Effective May 5, 2016

COOPERATIVE POLICY STATEMENT # 12

I. Applicability

For certain offerings of cooperative interests in realty that: (i) involve realty situated exclusively outside the State of New York; and (ii) are situated within a jurisdiction that has enacted laws to protect realty purchasers through legal protections that are comparable to those of New York, such as full disclosure of the terms of sale; the Department of Law has resolved to provide an application process for the offeror to be exempted from compliance with certain New York State regulatory requirements. The Department of Law will only grant such an exemption if the application therefor fully complies with the requirements set forth in this Cooperative Policy Statement # 12 (“CPS-12”).

II. Background

New York General Business Law (“GBL”) Article 23-A contains provisions governing the registration and filing requirements needed to legally offer for sale cooperative interests in realty in or from the State of New York. Offerors must be registered in New York as a broker/dealer of securities pursuant to GBL § 359-e, and unless exempt, must also file a statement containing the detailed terms of the offering with the Department of Law. These requirements exist for all offerings of cooperative interests in realty, including offerings involving realty situated outside the State of New York.

Pursuant to his authority under GBL § 352-e(6), the Attorney General promulgated rules governing the form, content and procedure for acceptance of offering statements for differing types of cooperative interests in realty. *See* New York Compilation of Codes, Rules & Regulations (“NYCRR”) title 13, Part 18 (residential rental buildings converted into cooperatives); 13 NYCRR Part 20 (newly-constructed or vacant condominiums); 13 NYCRR Part 21 (newly-constructed cooperatives); 13 NYCRR Part 22 (properties in newly-formed homeowners’ associations); 13 NYCRR Part 23 (residential rental buildings converted into condominiums); 13 NYCRR Part 24 (timeshare offerings); and 13 NYCRR Part 25 (newly-constructed residential communities for senior citizens). Included within each Part is a rule providing that upon written application of an offeror, the Department of Law may, in its discretion, exempt an offering from the various provisions of that Part. *See* 13 NYCRR § 18.1(k); 13 NYCRR § 20.1(i); 13 NYCRR § 21.1(i); 13 NYCRR § 22.1(i); 13 NYCRR § 23.1(k); 13 NYCRR § 24.1(h); and 13 NYCRR § 25.1(h). To facilitate compliance with its regulations governing exemptions, and to expedite its review of offerings of cooperative interests in realty that do not involve realty situated in New York, the Department of Law publishes this CPS-12 to set standard requirements for exemption applications involving such offerings.

III. Application Procedure

A. Applicants must use the CPS-12 Application form annexed hereto.

- B. The offeror and each principal¹ of the offeror must execute the certification to the CPS-12 Application.
- C. The offeror will not be granted an exemption from applicable regulations requiring a schedule of prices and related information. *See* 13 NYCRR §§ 18.3(f), 20.3 (g), 21.3(f), 22.3(g), 23.3(g), 24.3(i), 25.3(g).
- D. The offeror will be granted an exemption from the regulatory requirement that escrowed funds from New York purchasers must be deposited in a bank located in the State of New York, *see* 13 NYCRR at §§ 18.3(p)(2)(v), 20.3(o)(3)(iv), 21.3(l)(3)(iv), 22.3(k)(2)(iv), 23.3(q)(2)(v), 24.3(m)(3)(iv), and 25.3(l)(3)(iv). The Department of Law will permit escrowed funds from New York purchasers to be held in a bank located outside of the State of New York if the bank is a participating member of the Federal Deposit Insurance Corporation (FDIC) and such funds are insured. Insofar as the applicable regulations make limited provisions for: (i) alternative forms of security to be held in lieu escrowed funds; and (ii) that the escrow agent need not be a lawyer or firm of lawyers licensed to practice in the State of New York; the Department of Law shall continue to have the discretion to accept a CPS-12 Application that includes one or both of those provisions.
- E. A transmittal letter addressed to the Department of Law that is signed and affirmed under penalty of perjury by the individual attorney who prepared the CPS-12 Application. It shall contain the following unqualified statements and must be submitted with the application at the time the application is submitted.

"I am the attorney who prepared the CPS-12 Application for the captioned property. I affirm as follows:

Enclosed is a CPS-12 Application submitted under the simplified procedure set forth in CPS-12 Application for certain offerings of cooperative interests in realty that: (i) involve realty situated exclusively outside the State of New York; and (ii) are situated within a jurisdiction that has enacted laws to protect realty purchasers through either (a) full disclosure of the terms of sale or (b) other substantive legal protections.

I am fully familiar with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Attorney General in the applicable regulations, and CPS-12.

I have prepared this CPS-12 Application based on information from the offeror. I expressly disclaim any responsibility to have made an independent inspection of the property or investigation of the information furnished to me by the offeror.

I have no actual knowledge of any violation of Article 23-A of the General Business Law or the applicable regulations promulgated by the Department of Law, nor do I have actual

¹ For purposes of the certification, 'principal' shall have the meaning ascribed thereto in the applicable regulations. *See* 13 NYCRR §§ 18.1(c)(2); 20.1(c)(2); 21.1(d); 22.1(c)(2), 23.1(c)(2); 24.1(c)(2) and 25.1(c)(2).

knowledge of any material fact omitted or any untrue statement of a material fact included in the application."

- F. The following documents must accompany the CPS-12 Application:
- a. A statistical information card available from the Department of Law.
 - b. A notice of appearance pursuant to New York Executive Law ("EL") § 166.
 - c. A broker-dealer registration statement² must accompany the CPS-12 Application.
 - d. Such other documentation and information as the Department of Law may require.
- G. Applicants must tender two separate checks for the following fees:
1. The minimum filing fee (\$750.00) for offering statements or prospectuses, as required by GBL § 352-e(7); and
 2. A broker-dealer registration fee of \$300.00, plus \$15.00 per principal named therein, as required by GBL § 359-e(5)(d).

IV. Criteria for Granting or Denying CPS-12 Application

- A. The CPS-12 Application may be granted solely on the information and documentation supplied within. Any material misstatement or omission of a material fact may render the letter granting the CPS-12 application *void ab initio*. An application may be denied if the situs state does not provide legal protections compared to those afforded to purchasers in New York.
- B. The granting of the CPS-12 Application shall not be construed to be a waiver of or limitation on the Attorney General's authority to take enforcement action pursuant to Article 23-A of the General Business Law or other applicable provisions of law except as expressly stated in the letter granting the CPS-12 Application.
- C. The granting of the CPS-12 Application shall have no value as precedent and may not be relied upon in the submission of any other application to the Department of Law.
- D. The Department of Law will complete its review of the CPS-12 Application within 30 days of its receipt of the complete application, by either issuing a letter indicating that the CPS-12 Application has been granted or listing deficiencies in the submission.

²Available at http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/m_10.pdf. GBL § 359-e(3)(c) provides that the registration of brokers and dealers are for a term of four years. The statute also provides terms for registration renewal. *See id.*

V. Procedure For Amendments to the CPS-12 Application

A. Once the original CPS-12 Application has been granted by the Department of Law, the CPS-12 Application must be amended in the following circumstances:

1. If the identity of offeror or any of its principals changes, including the addition of other offerors or principals or the removal of an existing offeror or principal. (In these circumstances, a CPS-12 Amendment may need to be accompanied by new or supplemental broker-dealer registration statements); or
2. If there is a material and adverse change to the facts or statements contained in the originally filed CPS-12 Application (*e.g.*, in the event of litigation that may materially impact the offering). In instances where a material and adverse change is disclosed in the CPS-12 Amendment, the Department of Law may require offeror to offer rescission to New York contract vendees who executed a purchase agreement pursuant to the CPS-12 Application and any amendments thereto. The determination of whether or not such a change is material and adverse shall be based on the same criteria applied to offering within New York State.

B. Submission procedures.

1. Amendments must be submitted in conformity with Section III(A) above. Include a transmittal letter signed by the attorney for offeror that substantially complies with III(E) of the Application Procedure above, concerning transmittal letters. In addition to the information recited therein, the transmittal letter must also:
 - (a) State the date the CPS-12 Application was granted;
 - (b) Identify the amendment in numerical order and note the reason(s) for the amendment;
 - (c) If any prior amendments have been filed, identify the attorney in the Department of Law who reviewed the most recent amendment and provide a copy of it; and
 - (d) State that no prior amendments have been submitted to but not yet accepted for filing with the Department of Law.
2. Amendments to the CPS-12 Application should use the form of the CPS-12 Amendment annexed hereto.
3. The offeror and each principal³ of the offeror must execute the certification to the CPS-12 Amendment.

³ For purposes of the certification, 'principal' shall have the meaning ascribed thereto in the applicable regulations. See 13 NYCRR §§ 18.1(c)(2); 20.1(c)(2); 21.1(d); 22.1(c)(2), 23.1(c)(2); 24.1(c)(2) and 25.1(c)(2).

4. The schedule of prices and related information should be updated. *See* 13 NYCRR §§ 18.3(f), 20.3 (g), 21.3(f), 22.3(g), 23.3(g), 24.3(i), 25.3(g).
5. A notice of appearance pursuant to EL § 166 must be included.
6. A broker-dealer registration statement must be on file with the Department of Law. If the broker-dealer registration has expired, the CPS-12 Amendment must accompany the CPS-12 Amendment. *See* GBL § 359-e(3)(c). In these instances, a broker-dealer registration fee of \$300.00, plus \$15.00 per principal named therein, is required by GBL § 359-e(5)(d).
7. Such other documentation and information as the Department of Law may require.
8. A filing fee of \$225.00 for amendments to offering statements or prospectuses, as required by GBL § 352-e(7).

VI. Effective Date

The terms of this CPS-12 shall be effective as of May 5, 2016.

CPS-12 APPLICATION

STATE OF _____)
) ss.:
COUNTY OF _____)

_____ does solemnly affirm, under penalty of perjury, that the following is true and correct:

- 1. I am a principal of the offeror identified in paragraph 2 below. I am duly authorized by the offeror to make the statements and supply the information herein, and to file same with the State of New York, Department of Law. The offeror acknowledges that it is required to supply to all offerees a complete copy of this CPS-12 Application, with its exhibits, in connection with any offering or sales activity that occurs within the State of New York. The identity of the other principal(s) of offeror is/are:

_____.

- 2. The identity and contact information of the offeror is as follows:

Name: _____ Telephone: _____

Principal place of business: _____

Address of New York office, if any: _____

- 3. The offeror is a _____ that is organized under the laws of _____.

- 4. The purpose of this CPS-12 Application is to publicly offer for sale, within the State of New York, the following type of cooperative interests in realty:

___ (a) interests in a condominium, and offeror hereby applies for an exemption from certain provisions of New York Compilation of Codes, Rules & Regulations (“NYCRR”) title 13, Parts 20 or 23.

___ (b) interests in a cooperative, and offeror hereby applies for an exemption from certain provisions of 13 NYCRR Parts 18 or 21.

___ (c) interests in homeowners’ association, and offeror hereby applies for an exemption from certain provisions of 13 NYCRR Part 22.

___ (d) interests in a timeshare, and offeror hereby applies for an exemption from certain provisions of 13 NYCRR Part 24.

— (e) interests in a senior residential community, and offeror hereby applies for an exemption from certain provisions of 13 NYCRR Part 25.

5. The cooperative interests in realty being offered for sale is not comprised of realty situated in the State of New York. The jurisdiction where the realty is situated is: _____ . The law of that jurisdiction will govern the sale of the cooperative interests in realty being offered for sale, except as otherwise acknowledged by offeror in this CPS-12 Application. Offerees that receive a copy of this CPS-12 Application will also receive from offeror all the disclosures and substantive legal protections required by the law of the governing jurisdiction.
6. The name, address, telephone, telefax, and website of the authority within the governing jurisdiction which is primarily responsible for regulation of this transaction is:

_____	<i>e.g.</i> , Florida Department of Business & Professional Regulation Division of Florida Condominiums, Timeshares, and Mobile Homes 1940 North Monroe Street Tallahassee, Florida 32399 Phone: 850-488-1122 Fax: 850-921-5446 http://www.myfloridalicense.com/dbpr/lsc/index.html

Offeror has made all necessary filings with, and received all necessary approvals from, this authority.

7. The law of the governing jurisdiction provides that a contract for the purchase of the cooperative interests in realty may be rescinded by the purchaser within the following time frame:

_____.
8. The following is a brief description of the cooperative interests in realty being offered for sale (include total number of units being offered for sale, if known, and briefly describe the property that will be commonly owned and/or maintained):

_____.

A true, complete and accurate copy of the legal description of the cooperative interest in realty being offered for sale is annexed hereto as Exhibit 1 (*e.g.*, official recorded subdivision plat or tax map).

9. A schedule of the offering prices for the cooperative interests in realty, together with related information, is annexed hereto as Exhibit 2.
10. The cooperative interests in realty are:

___ (a) in existence, currently operating, and available for immediate occupancy/use to offerees. Accordingly, the most recent financial statements and budget of the cooperative interests in realty is annexed hereto as Exhibit 3.

-- or --

___ (b) not yet available for immediate occupancy/use by the offerees and not yet fully operational. Offeror estimates the cooperative interests in realty will be available for occupancy/use by the offerees on or around _____ [date]. The projected operating budget for when the cooperative interests in realty become fully operational is annexed hereto as Exhibit 3.

The budget supplied in Exhibit 3, and/or notations therein, prominently explain what ongoing financial obligations offerees may incur by purchasing an interest in the cooperative interest in realty being offered for sale.

11. True, complete, current and accurate copies of the governing documents of the cooperative interests in realty being offered for sale is annexed hereto as Exhibit 4 (e.g., condominium declaration, corporate bylaws, form of lease, form occupancy license, etc.).
12. The offeror acknowledges that any downpayments, deposits or advances of money that it accepts, or that any of its employees or agents accept on its behalf while conducting offering or sales activity within the State of New York, are governed by New York General Business Law §§ 352-e(2-b) and 352-h.
13. The offeror further acknowledges that it is required to comply with the applicable escrow account regulations (including, *i.e.*, those set forth in 13 NYCRR §§ 18.3(p), 20.3(o), 21.3(l), 22.3(k), 23.3(q), 24.3(m), or 25.3(l)) for any downpayments, deposits or advances of money that it accepts, or that any of its employees or agents accept on its behalf, in connection with any offering or sales activity that occurs within the State of New York, unless an exemption has been requested by the offeror and granted by the Department of Law. Attached as Exhibit 5 is a copy of the [escrow account agreement that it will supply to New York offerees] [alternative form of security] which complies with the applicable escrow account regulations and the Department of Law's memoranda regarding escrow trust funds.

[NO FURTHER TEXT ON THIS PAGE]

14. Offeror acknowledges: (i) its obligation to register as a broker-dealer of securities in accordance with the applicable provisions of GBL § 359-e, and (ii) that any initial registration is for a period of four (4) years, but may be renewed in accordance with provisions set forth in the statute.

Affiant

So sworn before me
this ____ day of _____.

Notary Public

CERTIFICATION OF OFFEROR AND ITS PRINCIPALS

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 Department of Law applicable to this type of cooperative interests in realty, and such other laws and regulations as may be applicable.

We have read the entire CPS-12 Application, including its exhibits. We have investigated the facts as set forth in the CPS-12 Affidavit and its exhibits, and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the CPS-12 Application and its exhibits do, and that the documents submitted hereafter by us which amend or supplement the CPS-12 Application will:

- a. be complete, current and accurate;
- b. afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- c. do not omit any material fact;
- d. do not contain any untrue statement of a material fact;
- e. do not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- f. do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- g. do not contain any representation or statement which is false, where I/we:
 - 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.

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

[OFFEROR], a [jurisdiction of organization] [entity]

By: _____
[Name]
[Title]

So sworn before me
this ____ day of _____.

Notary Public

[Name of Principal]

So sworn before me
this ____ day of _____.

Notary Public

[Name of Principal]

So sworn before me
this ____ day of _____.

Notary Public

Exhibit 1

[Annex Legal Description of the Cooperative Interests In Realty]

Exhibit 2

[Annex Offering Prices And Related Information]

Exhibit 3

[Annex Financials And Budget]

Exhibit 4

[Annex Governing Documents of the Cooperative Interests In Realty]

Exhibit 5

[Annex Escrow Account Agreement for New York Offerees]

CPS-12 AMENDMENT

STATE OF _____)
) ss.:
COUNTY OF _____)

_____ does solemnly affirm, under penalty of perjury, that the following is true and correct:

1. I am a principal of the offeror identified in paragraph 2 below. I am duly authorized by the offeror to make the statements and supply the information herein, and to file same with the State of New York, Department of Law. The offeror acknowledges that it is required to supply to all offerees a complete copy of: (i) this CPS-12 Amendment, with its exhibits; and (ii) the original CPS-12 Application, with its exhibits; in connection with any offering or sales activity that occurs within the State of New York. Offerees that receive a copy of the foregoing will also receive from offeror all the disclosures and substantive legal protections required by the law of the governing jurisdiction.

2. The identity of the other principal(s) of offeror is/are:

_____.

3. The identity and contact information of the offeror is as follows:
Name: _____ Telephone: _____
Principal place of business: _____

Address of New York office, if any: _____

4. The offeror is a _____ that is organized under the laws of _____.

5. The purpose of this CPS-12 Amendment is to update the original CPS-12 Application so that its terms are complete, current and accurate. Accordingly, the original CPS-12 Application is updated and amended as follows: [describe all relevant updates or amendments]

6. The following documentation, which was annexed to the original CPS-12 Application as an exhibit, has been updated. Annexed to this CPS-12 Amendment is an updated and amended copy of the following (check as applicable):

- (a) Exhibit 1: Legal Description of the Cooperative Interests In Realty;
- (b) Exhibit 2: Offering Prices And Related Information;
- (c) Exhibit 3: Financials and Budget;
- (d) Exhibit 4: Governing Documents of the Cooperative Interests In Realty; and/or
- (e) Exhibit 5: Escrow Account Agreement or alternative form of security for New York Offerees

7. [Insert at the direction of the Department of Law]: A material adverse change has taken place, and offeror is extending to all current contract vendees an offer of rescission. Offerees receiving this CPS-12 Amendment shall have fifteen days from the date of receipt to rescind their contract.

Affiant

So sworn before me
this ____ day of _____.

Notary Public

CERTIFICATION OF OFFEROR AND ITS PRINCIPALS

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 Department of Law applicable to this type of cooperative interests in realty, and such other laws and regulations as may be applicable.

We have read the entire CPS-12 Amendment, including its exhibits. We have investigated the facts as set forth in the CPS-12 Application, the CPS-12 Amendment and all exhibits, and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the CPS-12 Application and its exhibits do, and that the documents submitted hereafter by us which amend or supplement the CPS-12 Application will:

- a. be complete, current and accurate;
- b. afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- c. do not omit any material fact;
- d. do not contain any untrue statement of a material fact;
- e. do not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- f. do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- g. do not contain any representation or statement which is false, where I/we:
 - v. knew the truth;
 - vi. with reasonable effort could have known the truth;
 - vii. made no reasonable effort to ascertain the truth; or
 - viii. did not have knowledge concerning the representation or statement made.

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

[OFFEROR], a [jurisdiction of organization] [entity]

By: _____
[Name]
[Title]

So sworn before me
this _____ day of _____.

Notary Public

[Name of Principal]

So sworn before me
this ____ day of _____.

Notary Public

[Name of Principal]

So sworn before me
this ____ day of _____.

Notary Public

Exhibit 1

[Annex Legal Description of the Cooperative Interests In Realty]

Exhibit 2

[Annex Offering Prices And Related Information]

Exhibit 3

[Financials And Budget]

Exhibit 4

[Annex Governing Documents of the Cooperative Interests In Realty]

Exhibit 5

[Annex Escrow Account Agreement or Alternative Form of Security for New York Offerees]