13 NYCRR Section 18.3: Format and content

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Plans subject to this Part must comply with the format and minimal disclosure requirements set forth in subdivisions (a) through (hh) of this section, in addition to the requirements of article 23-A of the G.B.L.

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

(1) If any non-purchasing residential tenant may be evicted by application of the provisions of G.B.L., section 352-eee, 352-eeee, rent regulatory laws, or after expiration of a lease term, the cover shall contain the following statement in boldface roman type at least as large as eight-point modern type and at least two points leaded:

THIS IS AN EVICTION PLAN. SEE PAGE_____.

If G.B.L. section 352-eee, 352-eeee or 352-e(2-a) is applicable, also state:

NON-PURCHASING TENANTS OTHER THAN ELIGIBLE SENIOR CITIZENS AND ELIGIBLE DISABLED PERSONS WILL BE EVICTED.

(2) If the plan is a non-eviction plan, the cover shall contain the following statement in boldface roman type at least as large as eight-point modern type and at least two points leaded:

THIS IS A NON-EVICTION PLAN. NO NON-PURCHASING TENANT WILL BE EVICTED BY REASON OF CONVERSION TO COOPERATIVE OWNERSHIP.

(3) The title in boldface type: **COOPERATIVE OFFERING PLAN** followed by the address of the property.

(4) The cash amount of the offering, which shall be based on the maximum aggregate price at which the shares are initially offered. State the number of shares and the number of units being offered. The minimum aggregate price at which the shares are initially offered to tenant purchasers also may be included.

(5) Amount of the mortgage(s) which shall be based on the projected unpaid balance of all mortgages encumbering the property at the time of acquisition by the apartment corporation.

(6) The total of the maximum cash amount of the offering and of the mortgage(s). The total of the minimum cash amount and of the mortgage(s) may also be included.

(7) The amount of the working capital fund and/or reserve fund to be retained by the apartment corporation. The amount of reserve fund shall be in compliance with the applicable local law. If there is a working capital fund and this fund may be diminished or depleted for closing adjustments, so indicate. If there is not a working capital fund or reserve fund, indicate -0-.

(8) The name and principal business address of the sponsor, the selling agent, and the apartment corporation. Telephone numbers may also be included. The address of the sponsor must not be in care of sponsor's attorney.

(9) The statement: "Approximate date of first offering," which shall not be earlier than the date the Department of Law files the plan. The term of the initial offer is 12 months commencing on the date indicated in the letter from the Department of Law stating that the plan is filed. The term may be extended by an amendment to the offering plan. The date of the plan should be left blank at submission to the Department of Law and completed when the plan is filed.

(10) If the plan contains a special risk section, the statement: "SEE PAGE _____ FOR SPECIAL RISKS TO PURCHASERS" must be printed apart from other print and be in capital letters, in boldface modern type at least eight-point modern type and at least two points leaded.

(11) The front cover of a proposed offering plan first submitted to the Department of Law shall contain the following statement in capital letters printed in red in boldface roman type of at least eight-point modern type and at least two points leaded. The following statement shall not appear on the front cover of offering plans filed with the Department of Law:

THIS IS A PROPOSED OFFERING PLAN ("RED HERRING") TO CONVERT THIS BUILDING TO A COOPERATIVE. IT HAS BEEN SUBMITTED TO THE NEW YORK STATE DEPARTMENT OF LAW, REAL ESTATE FINANCE BUREAU. APARTMENTS MAY NOT BE SOLD OR OFFERED FOR SALE UNTIL THE OFFERING PLAN IS FILED WITH THE DEPARTMENT OF LAW.

(12) The following statement in capital letters printed in boldface roman type at least as large as eight-point modern type and at least two points leaded must be included on the cover of all plans filed with the Department of Law:

THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL THESE COOPERATIVE APARTMENTS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY APARTMENTS. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.

(b) *Table of contents.* The format and order set forth below shall be followed in the table of contents. Include headings for the subjects not marked with an asterisk. In addition, a limited number of headings may be added to the plan. Headings for subjects that are marked with an asterisk may be omitted if the subject matter is not applicable to the offering. Omissions, other than headings marked with an asterisk on the table of contents, and additions, should be expressly noted and explained in the transmittal letter. Alternative wording for headings to meet particular facts are set forth in parentheses. Documentation listed in Part II of the table of contents shall be included in full in Part II of the plan. The texts of such documents which will be binding upon the sponsor or the apartment corporation, such as the subscription agreement, the proprietary lease, and the bylaws of the apartment corporation, shall be consistent with the disclosures in the plan and shall conform to the requirements with respect thereto set forth in this section.

TABLE OF CONTENTS

PART I PAGE

SPECIAL RISKS ....
ELECTION FORMS FOR ELIGIBLE SENIOR CITIZENS AND DISABLED PERSONS ....
INTRODUCTION AND SUMMARY ....
OFFERING PRICES AND SHARE ALLOCATION, SCHEDULE A ....
BUDGET FOR FIRST YEAR OF COOPERATIVE OPERATION, SCHEDULE B ....
ACCOUNTANT'S CERTIFIED STATEMENTS OF OPERATION ....
CHANGES IN PRICES AND UNITS ....
RIGHTS OF ELIGIBLE SENIOR CITIZENS AND ELIGIBLE DISABLED PERSONS ....
RIGHTS OF EXISTING TENANTS ....
OBLIGATIONS OF OWNERS OF SHARES OF DWELLING UNITS

OCCUPIED BY NON-PURCHASING TENANTS ....
INTERIM LEASES ....
PROCEDURE TO PURCHASE ....
ASSIGNMENT OF SUBSCRIPTION AGREEMENTS ....
EFFECTIVE DATE ....
TERMS OF MORTGAGES ....
FINANCING FOR QUALIFIED PURCHASERS ....
SUMMARY OF PROPRIETARY LEASE ....
APARTMENT CORPORATION ....
HOLDERS OF UNSOLD SHARES ....
PURCHASERS FOR INVESTMENT OR RESALE ....
RESERVE FUND ....
WORKING CAPITAL FUND ....
CONTRACT OF SALE (OR EXCHANGE) ....
SPECIAL TAX CONSEQUENCES OF CONTRACT OF EXCHANGE MANAGEMENT
AGREEMENT, CONTRACTS AND LEASES IDENTITY OF PARTIES ....
SPONSOR'S PROFIT ....
REPORTS TO SHAREHOLDERS ....
DOCUMENTS ON FILE ....
GENERAL ....
*RESERVATION OF AIR AND DEVELOPMENTAL RIGHTS ....
SPONSOR'S STATEMENT OF BUILDING CONDITION ....

PART II

OPINION OF REASONABLE RELATIONSHIP ....
ATTORNEY'S INCOME TAX OPINION ....
SUBSCRIPTION AGREEMENT (OR PURCHASE AGREEMENT) ....
PURCHASER'S AFFIDAVIT OF INTENTION TO RESIDE ....
FORM OF STOCK CERTIFICATE ....
FORM OF MORTGAGE, NOTE AND RELATED PRINCIPAL DOCUMENTS ....
DESCRIPTION OF PROPERTY AND BUILDING CONDITION ....
ASBESTOS REPORT ....
CERTIFICATE OF INCORPORATION OF APARTMENT CORPORATION ....
PROPRIETARY LEASE (AND HOUSE RULES) ....
BY-LAWS OF THE APARTMENT CORPORATION ....
APPLICABLE RENT REGULATIONS ....
GENERAL BUSINESS LAW SECTION 352-eeee, 352-eee or 352-e(2-a) ....
PART 18.8 ELIGIBLE SENIOR CITIZENS AND ELIGIBLE DISABLED PERSONS ....
ESCROW AGREEMENT ....
CERTIFICATIONS
SPONSOR AND PRINCIPALS ....
SPONSOR'S ENGINEER (OR ARCHITECT) ....
SPONSOR'S EXPERT CONCERNING ADEQUACY OF BUDGET ....

(c) *Special risks.* This is a very important section, if applicable, and must be on a separate page following the table of contents. All features of a plan which involve significant risk, or are reasonably probable to affect disproportionately or unusually the maintenance charges or obligations of shareholders in future years of cooperative operation, must be conspicuously disclosed and highlighted. A brief description of the nature of the risk should be given in this section and a more thorough description should be given in a referenced later section. Uncertainties as to whether a risk should be described in this section should be resolved in favor of inclusion.

(1) Disclose whether sponsor is reserving the right to rent rather than sell units appurtenant to its unsold shares (hereinafter "units") as they become vacant. If sponsor is retaining such right, without committing itself to sell at least 51 percent of the units as they become vacant, to purchasers for personal occupancy, the cover of the plan must state in bold print:

BECAUSE SPONSOR IS RETAINING THE RIGHT TO RENT MORE THAN 49 PERCENT OF THE UNITS IN THE BUILDING OR BUILDINGS BEING CONVERTED TO COOPERATIVE OWNERSHIP, FUTURE MARKETABILITY OF ALL UNITS MAY BE ADVERSELY AFFECTED AND PURCHASERS MAY NEVER GAIN EFFECTIVE CONTROL OF THE COOP BOARD OF DIRECTORS.(SEE SPECIAL RISKS SECTION.)

Disclose that a result of sponsor retaining more than 49 percent of the units, marketability of the units may be adversely affected. Explain that certain institutional lenders may be unwilling to make loans for the purchase of units in a cooperative in which the sponsor and/or holders of unsold shares retain more than 49 percent of the units and that purchasers may therefore be unable to obtain institutional financing for their own purchase. Disclose that if they do close title and subsequently seek to sell their apartments, prospective purchasers may be unable to obtain institutional financing solely on the basis of sponsor's holding more than 49 percent of the units in the cooperative corporations, regardless of the credit worthiness of the prospective purchaser. If the sponsor is able to demonstrate that an institutional lender has approved the project for coop loans to qualified purchasers, a disclosure identifying the lender, the terms of the loans to be offered, eligibility criteria and other material aspects of the lender's commitment to the project should be included.

(2) If sponsor represents that it will sell 51 percent of the units as they become vacant, to purchasers for personal occupancy, disclose whether sponsor further represents that it will endeavor in good faith to sell, in a reasonably timely manner, all remaining unsold units as they become vacant, to purchasers for personal occupancy, in the building or buildings being converted to cooperative ownership. If sponsor intends to sell fewer than all of the units, disclose this fact and the number and percentage which sponsor does intent to sell, in bold print as the first special risk. Disclose that the units reserved by sponsor may remain unsold indefinitely and sponsor may dispose of such units as it chooses, including selling to investors, renting to tenants, permitting occupancy by relatives or others, allowing them to remain vacant or selling to purchasers for personal occupancy. If the sponsor later chooses to sell a greater number and percentage of units to the public for personal occupancy than disclosed in the initial offering plan, the plan must be amended to disclose that fact.

If sponsor makes a bulk sale of all or some of its unsold shares, the transferee is bound by sponsor's representation regarding its commitment to sell units as they become vacant.

(3) If the bylaws of the cooperative do not include a provision that after the initial sponsor control period, a majority of the Board of Directors must be owner-occupants or members of owner-occupant's households who are unrelated are unrelated to the sponsor and its principals, this fact must be disclosed as a special risk and the following warning must be placed on the cover:

THIS PLAN DOES NOT GUARANTEE THAT OWNER-OCCUPANTS WILL EVER CONSTITUTE A MAJORITY OF THE COOP BOARD OF DIRECTORS. (SEE SPECIAL RISKS SECTION OF PLAN.)

Disclose that unless and until a majority of the Board are residents of the building unrelated to the sponsor, owner-occupants will not gain effective control and management of the cooperative. Disclose that owner-occupants and non-resident shareholders, including sponsor, may have inherent conflicts on how the cooperative should be managed because of their different reasons for purchasing, i.e. purchase as a home as opposed to as an investment.

(d) In an eviction plan, if G.B.L., section 352-eee, is applicable, include the eligible senior citizen and eligible disabled person forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively. In an eviction plan, if G.B.L., section 352-e(2-a) or 352-eeee, is applicable, include the eligible senior citizen and eligible disabled person forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.

(e) *Introduction.* The introduction must:

(1) Explain that the purpose of the offering plan is to set forth all the material terms of the offer. Explain that the plan may be amended from time to time when an amendment is filed with the New York State Department of Law. State that amendments will be served on all offerees, as defined in section 18.1(d) of this Part.

(2) Identify the sponsor, state when the sponsor acquired the property or sponsor's interest as a contract vendee.

(3) Disclose sponsor's intent with regard to the sale of apartments offered in the plan. Disclose whether sponsor represents that it will endeavor in good faith to sell, in a reasonably timely manner, all residential units as they become vacant, to purchasers for personal occupancy in the building or buildings being converted to cooperative ownership. If sponsor represents an intent to sell fewer than all of the units in the building or buildings being converted to cooperative ownership, disclose the number and percentage with sponsor does intend to sell. Disclose whether sponsor represents that it will decline to rent apartments, as they become vacant, until has sold at least 51 percent of the units to purchasers for personal occupancy. If sponsor reserves the right to rent rather than sell after reaching the 51 percent sales level, disclose whether sponsor is limiting its right to rent rather than sell based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the condition upon which sponsor would resume sales. If sponsor does not represent its good faith intent to sell and to obtain sales of 51 percent of the units prior to renting, include on the cover of the plan the warning set forth in paragraph (c)(1) of this section and discuss as a special risk.

(4) Describe the interest that the apartment corporation is to acquire in the land and building.

(5) Summarize the number of shares and units being offered in this offering plan, whether the units are residential or otherwise, any parking or recreational facilities, and refer to Schedule A for prices. Identify any units or property interests that are not being offered, such as commercial space, the superintendent's apartment and common areas. If applicable, note any air rights or transferable development rights benefitting or encumbering the property.

(6) Outline the basic aspects of cooperative ownership, including the following:

(i) if applicable, the apartment corporation will purchase the property at the closing and will sell shares to purchasers to raise funds;

(ii) the apartment corporation, as the fee owner of the entire building, is assessed for the real estate taxes on the property and may be the mortgagor encumbering the entire property. As a result, shareholders are co-dependent on each other and on the sponsor for payment of the mortgage and taxes, default on which will jeopardize each shareholder's equity in his/her shares and unit. Where the sponsor owns a substantial percentage of the units, a default in payment of maintenance by sponsor jeopardizes the equity interest of other shareholders;

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

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

(v) the conduct of the affairs of the apartment corporation will be in the hands of the board of directors; disclose whether sponsor represents, and provides in the bylaws, that a majority of the apartment corporation board must be owner-occupants of the building or members of an owner-occupant's household, who are unrelated to the sponsor or its principals, after the end of the sponsor control period. If sponsor does not make this representation, include the warning set forth in paragraph (c)(3) of this section and discuss as a special risk;

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

(vii) discuss the transitional phase of the conversion process from rental building to owner-occupied cooperative. Disclose that because the plan can be declared effective based on sales of 15 percent of the units to tenants or bona fide purchasers for their own occupancy, purchasers may be living a mixed rental/owner-occupied building for an indeterminate period of time, and that purchasers' units may not be marketable and owner-occupants may not control the board or operation of the property during such transition. Further discuss how the existence of rent regulated, non purchasing, tenants, who have a right to continued occupancy, may affect the speed of the conversion process. Discuss other aspects of living in a mixed rental/owner-occupied building, including different interests of owners and renters and the consequences of sponsor's continuing role in the building. From time to time the Department of Law may promulgate model forms for the description of the basic aspects involved in a cooperative conversion for a non-eviction plan under various laws. The transmittal letter from the attorney who prepared the plan shall note if the applicable model forms are used.

(7) If applicable, state the number of apartments subject to each applicable rent regulatory law.

(8) Refer to Schedule A for price information. State the length of any exclusive period(s), that there will be no increase in prices during the exclusive period for tenant purchasers, and that sponsor will not accept subscriptions from non-tenant purchasers for occupied units during any exclusive period.

(9) State whether any non-purchasing tenant may be evicted by application of the provisions of G.B.L., section 352-eee or section 352-eeee, rent regulatory laws, or after expiration of a lease term. Refer to the sections of the plan that explains the rights of purchasing and non- purchasing tenants. Do not characterize the plan as a "non-eviction" plan if non-purchasing tenants are entitled to remain only for the balance of a lease term. State whether non-purchasing tenants will remain subject to a rent regulatory law only during the term of tax exemption or abatement benefits.

(10) State that the prices are not subject to approval by the Department of Law or any other government agency.

(11) State that the plan delivered to tenants and prospective purchasers contains all the detailed terms of the transaction. State that copies of the plan, all documents referred to in the plan and all exhibits submitted to the Department of Law in connection with the filing of the plan will be available for inspection without charge, and for copying at a reasonable charge, to prospective purchasers and their attorneys at the office of the selling agent or sponsor.

(12) State any lawful limitations on who may purchase units.

(13) Include the following paragraph printed in boldface roman type at least as large as eight-point modern type and at least two points leaded: THE PURCHASE OF A COOPERATIVE APARTMENT HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A SUBSCRIPTION (OR PURCHASE) AGREEMENT.

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

(1) Schedule A must appear on a separate page entitled "Schedule A" and list the following information for each apartment in columnar form. Column headings may be shortened and abbreviated. Indicate that all projected charges are for a stated 12-month period, *e.g.,* January 1, 1983 to December 31, 1983. Totals must be given for subparagraphs (iv)-(viii) of this paragraph:

(i) unit identification;

(ii) rent regulatory status of each unit, and which unit(s) is (are) vacant;

(iii) number of rooms (or usable space in square feet) and bathrooms;

(iv) share allocation;

(v) cash purchase price for each class of purchasers;

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

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

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

(2) Shares must be allocated in whole shares.

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

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

(ii) For the share allocation, explain the basis for the allocation of shares in the particular building.

(iii) For the cash purchase price, explain any differences in prices to classes of purchasers. Prior to the filing of an effectiveness amendment, plans subject to G.B.L. section 352-eee or section 352-eeee may not contain different prices for different classes of tenants in occupancy on the filing date. Refer to the portion of the plan that explains price changes. If applicable, state that prices are negotiable.

(iv) For the cash purchase price, refer to the portion of the plan that explains any closing costs that a purchaser may have to pay.

(v) For the approximate amount of mortgage(s) applicable to shares, explain that although shareholders will not be personally liable to pay the mortgage(s), the apartment corporation will be responsible, shareholders' maintenance charges include amounts to pay debt service, and a failure of a certain number of tenants to make the maintenance payments may result in a foreclosure and the loss of each individual's equity in his or her apartment. If any mortgage encumbers the property and will encumber the property after the closing, explain that the approximate amount of the mortgage applicable to shares is based on the assumption that a closing will occur on a specified date.

(vi) For the projected maintenance charges, disclose that if the purchaser obtains financing, the purchaser's debt service will be an additional expense. Disclose that projected maintenance charges do not include certain costs for which the shareholder is responsible, such as (where applicable) repairs to the interior of the unit, separately metered gas, electricity, hot water, heat, air conditioning and cable television service. If shareholders individually pay for heat and hot water costs, or for costs usually paid by a cooperative apartment corporation, refer to Schedule B-1 for individual maintenance costs; see subdivision (g)(4) of this section.

(vii) State the aggregate of the monthly rents currently payable from tenants of all occupied units, or a reasonable approximation thereof.

(viii) For the projected income tax deduction, explain that the projected tax deduction may vary in future years (where applicable) due to changes in the mortgage principle balance or in the interest rate on the existing mortgage (if any) or on a refinanced mortgage, or from changes in the allocation of constant debt service payments between interest and principle, or due to the allocation of constant debt service payments to interest and principal, or due to changes in real property taxes resulting from the expiration of real estate tax benefits, or from changes in the assessed value, the tax rate or the method of assessing real property. Explain that the projected tax deductions do not include interest paid by purchasers who finance the purchase of their units, which may also be deductible.

(ix) If the initial interest rate on any mortgage that will encumber the property after closing will be the rate prevailing at closing, state the predicted rate on which the projected maintenance charges and projected income tax deductions are based, that the actual rate at the time of closing may be higher or lower, and that the sponsor will amend the plan, as required by law, to disclose the rate prevailing at the closing.

(g) *Budget for first year of cooperative operation (Schedule B).* The plan must describe all projected income and expenses for the first year of cooperative operation in Schedule B.

(1) The budget must be based upon a specified 12-month period, to commence on the date when it can reasonably be projected that cooperative operations will begin. When calculating the projection, include the expiration of any exclusive period and sufficient time to arrange for the closing. If the actual or anticipated date of commencement of cooperative

operation is to be delayed from the budget year projected in the offering plan, the plan must be amended to include a revised budget disclosing current projections. If such amended projections exceed the original projections by 25 percent or more, the sponsor must offer all purchasers the right to rescind and a reasonable period of time that is not less than 15 days after the date of presentation to exercise the right, whether or not sponsor offers to guarantee the previous budget projection. Sponsor must return any deposit or downpayment promptly to subscribers who rescind.

(2) The budget for the cooperative must be in the following format. Headings marked with an asterisk may be omitted if not applicable to the offering. Additional income, expenses or cost items unique to a building should be added whenever appropriate to reflect additional sources of income, expenses, cost or unique circumstances.

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                              SCHEDULE B
                Budget for First Year of Cooperative Operation
                    Beginning _____________ 1, 198__

Projected Income
Maintenance Charges

(___________ shares at $__________ per share) ................. $___________
* Commercial ............................................... $___________
* Laundry .................................................. $___________
* Other (explain) .......................................... $___________
      TOTAL ................................................ $___________
Projected Expense
* Labor .................................................... $___________
Heating .................................................... $___________
Utilities (Electricity and gas) ............................ $___________
Water charges and sewer rents .............................. $___________
Repairs, maintenance and supplies .......................... $___________
* Service contracts ........................................ $___________
Insurance .................................................. $___________
* Management fees .......................................... $___________
Legal fees and audit fees .................................. $___________
Franchise and corporate taxes .............................. $___________
Real estate taxes .......................................... $___________
* Mortgage payments ........................................ $___________
* Other (explain) .......................................... $___________
* Contingency .............................................. $___________
      TOTAL ................................................ $___________
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(3) Detailed footnotes must support and explain the projected amounts in Schedule B. The footnotes must set forth the basis or assumptions for each projection.

(i) Commercial income. Briefly describe any contracts or leases, other than proprietary leases, that will provide income to the apartment corporation. State whether the apartment corporation is required to provide heat, water, electricity, gas or insurance, and describe any other specific additional costs under the contract or lease. State the name and business address of each contractor, or lessee, the annual income and the expiration of the contract or lease. If applicable, state whether sponsor may rent vacant, nonresidential space, or extend the term of existing leases. State whether the rent to be collected could be less than the rent set forth in Schedule B for the space. Sponsor must amend the plan if any new lease or extension of an existing lease is for a term in excess of two years.

(ii) Labor costs. State the number of full and part-time existing staff, the number of full and part-time staff projected for the cooperative in Schedule B, and whether the staff will be union members. If the budget reflects a reduction in the existing staff, disclose what effect this will have on the existing level of services. The labor budget must include benefits required by local, State or Federal law or required by contract such as workers' compensation, disability insurance, welfare and pension contributions by employers, unemployment insurance and payroll taxes. Specify the

wages and the cost of each applicable benefit. The budget must reflect current wage rates and reasonably anticipated increases or increases mandated by contract. If applicable, state the expiration dates of all union contracts. If there is nonunion labor in the building, discuss whether their wages meet State minimum wage laws.

(iii) Heating, cooling and hot water costs. State the type and quantity of energy projected to be used during the year and the projected total cost per gallon or other pricing unit, inclusive of sales tax, for all energy costs for providing heat, air conditioning and hot water for the building. State the basis for projecting the quantity of energy to be used. Unless it would be misleading for a particular building, base the projected quantity of energy on the average quantity of energy purchased for the prior three years. State the quantity of energy purchased in each of the three prior years, the average cost per gallon or other pricing unit and the total cost per year. The Department of Law may, from time to time, issue pricing guidelines to reflect minimum fuel costs.

(iv) Utilities (electricity and gas). State the basis for the projected consumption and projected unit cost for utilities. Unit cost should be based on the current tariff plus a reasonably anticipated increase which should be set forth, *e.g.,* estimate based on current tariff plus a 10-percent increase. Unless it would be misleading for a particular building, base the projected quantity of the utilities on the average quantity of the utilities purchased for the prior three years.

(v) Water charges and sewer rents. State the present rents and charges and base the projection on reasonably anticipated increases for the first year of cooperative operation. If the water charges or sewer rents are metered charges, state the consumption for the prior three years.

(vi) Repairs, maintenance and supplies. Describe the material components of the expense for repairs and maintenance, such as interior repairs, roofing, exterior repairs (including walls, foundations, windows, doors and locks), heating system (fuel burner, boiler, pipes, radiators), plumbing, electrical work, exterminating, grounds maintenance (snow removal, gardening and landscaping, where applicable), janitor supplies, painting of common areas and such building services and maintenance items not included under service contracts or other expenses.

(vii) Service contracts. State the name of the contractor, the service, the annual cost and the expiration of the contract. Highlight as a special risk any contract with an expiration date more than five years after the anticipated closing date, unless it is customary in the area to enter a long-term contract for the service rendered (*e.g.,* cable TV contract).

(viii) Insurance. The budget for insurance must provide, and the apartment corporation must have, at closing, fire and casualty insurance under an agreed amount replacement cost policy or under a policy including at least an 80 percent coinsurance provision so that the insured shall not be a coinsurer. Discuss the adequacy of the insurance to replace the building in the event of total loss and to avoid being a coinsurer in the event of partial loss. Disclose the items covered, the coverage amount limits, the deductibles and the exposures insured against. Disclose if insurance proceeds may be applied by the mortgagee to reduce the outstanding mortgage indebtedness instead of to restoring property.

(*a*) The budget for insurance must provide and the apartment corporation must have public liability insurance at closing.

(*b*) If the following items are not included in the budget and are applicable to the offering, state that coverage for them is not included and may be available at extra cost: officers' and directors' liability; rent insurance; water damage; elevator collision; boiler and machinery; excess liability; auto liability; fidelity bond and garage keeper's liability. The plan must alert shareholders to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to unit contents, replacements, additions, upgraded fixtures and improvements; and liability coverage for occurrences within the unit.

(ix) Management contract. State the basis for projected management fee. The projected cost must include any costs required by the terms of the management agreement, such as bonding. If the cost of a manager or the management contract is greater or substantially less than the prevailing cost for similar services, state the prevailing cost which would be charged for services. If no manager or management contract is provided for in the budget, state the services that shareholders will have to provide.

(x) Real estate taxes. For the projected budget year, the present year and the two years prior to submission, state the assessing authority, the assessed valuation, the tax rates and the amounts payable. Data for the projected budget year should be estimated if actual figures are not currently available. Discuss any known or tentative changes in assessed valuation or tax rate for the first year of cooperative ownership. Describe any changed circumstances such as a sale or prospective sale prior to the transfer to the apartment corporation which may have a material effect on future assessments. State whether *certiorari* proceedings are pending and whether they will be continued after the closing, and if so, for whose benefit and at whose expense.

(xi) Tax exemption and tax abatement benefits. If the building receives tax benefits (*e.g.,* under section J-51 or section 421-a), describe the present benefits, the term, the level of benefits for future years of cooperative operation and the impact that termination of benefits will have on maintenance charges. If the plan represents that the cooperative may or will receive particular tax benefits, the plan must state that the sponsor will use best efforts to obtain those benefits, and must project the amount, commencement and duration of the benefits. Highlight as a special risk if the plan states that the apartment corporation may or will receive tax benefits, and the sponsor does not anticipate obtaining the benefits before the closing. Describe the effect on the budget and maintenance charges with and without the tax benefits. If full tax benefits may be available for only part of the first year of operation, the budget may either reflect:

(*a*) partial benefits, with a footnote to explain the timing of full benefits; or

(*b*) full benefits, with a footnote to explain that the sponsor agrees to pay all taxes in excess of the budgeted figure for the first year of operation, as well as an approximate projection of when full benefits will be available.

(xii) Mortgage payments. Describe how the mortgage(s) is (are) payable during the budget year. State the dollar amount of mortgage interest and mortgage principal for the first year of cooperative operation. Explain that, in future years, principal amortization payments will increase and interest payments will decrease, if applicable. State the amount, term and interest rate of the mortgage(s). Refer to the “Terms of Mortgages” section for further explanation of all mortgage terms. Disclose any fixed increases in payment due under the mortgage(s) in the 10 years after closing, or the life of the mortgage, whichever is shorter.

(xiii) Other expenses. Include expenses such as employer association dues (if applicable), building telephone or switchboard, applicable license fees, registration and municipal permits, provision for corporate income taxes (if so indicated in tax opinion) and miscellaneous expenses not provided for in other lines.

(xiv) State that the contingency fund (if any) is intended to provide for any unanticipated expenses or unanticipated increases in the projected expenses. Distinguish between the contingency fund and a reserve for capital expenditures.

(4) If shareholders must separately pay for heating and hot water costs directly to the utility, such as energy for heat pumps, baseboard, radiant or space heaters, individually fired boilers, or for integrated cooling, projections for these individual costs shall be set forth and explained in Schedule B-1 (next following). This schedule shall present in chart format applicable individual expense categories for typical units of various sizes and layouts, supported by detailed footnotes containing information similar to corresponding footnotes required in this section for Schedule B.

(h) *Changes in prices and units.*

(1) State that the cash purchase price to be paid by tenants will not increase during any applicable exclusive period.

(2) The offering prices set forth in Schedule A must be changed by a duly filed amendment to the plan when the change in price is an across-the-board increase or decrease affecting one or more lines of units or unit models, or is to be advertised, or is a price increase for an individual purchaser. Unless it would constitute a prohibited discriminatory inducement, the apartment corporation or sponsor may enter into an agreement with an individual purchaser to sell one or more units at prices lower than those set forth in this section without filing an amendment if the plan discloses in this section that the prices are negotiable.

(3) State that no change will be made in the size or number of units, the share allocations, the total number of shares or in the size or quality of public areas, except by amendment to the plan.

(4) State that the sponsor must obtain a further opinion as to reasonable relationship prior to closing if any change in price, share allocation or the total number of shares is made prior to the closing.

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

(6) State that no material change will be made in the total number of shares or in the size or quality of public areas unless subscribers not in default receive a right to rescind and a reasonable period of time that is not less than 15 days after the date of presentation to exercise the right. Sponsor must return any deposit or downpayment promptly to subscribers who rescind.

(i) *Opinion of reasonable relationship.* Unless the plan states that purchasers are not expected to be entitled to deductions under Internal Revenue Code section 216, include an opinion from a licensed real estate broker, or other expert appraiser, as to whether the “reasonable relationship” test under Internal Revenue Code section 216 will be met.

(1) The opinion must state what experience, if any, the broker or appraiser has had with offering plans and with selling comparable cooperative or condominium units and other experience or knowledge predicated as the basis of expertise.

(2) Disclose whether the broker or appraiser is the selling agent or managing agent for the property. The broker or appraiser may not have any other beneficial interest in the sponsor or in the profitability of the conversion.

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

(4) The opinion must explain the basis for the allocation of shares in the particular building.

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

(j) *Accountant's certified statements of operation.* Include certified statements of income and expenses, for the two most recent fiscal years of operation, prepared by an independent certified public accountant. No report need be filed for a fiscal year which ends less than three months before the date the proposed offering plan is submitted to the Department of Law. If the building has been in operation for less than two years, include a statement for the period since the building began operations. If, after the plan is filed but before it is declared effective, a more recent fiscal year has ended and the sponsor has had three additional months after the end of the more recent fiscal year to prepare a certified statement, sponsor must amend the plan to include the certified statement for the more recent fiscal year.

(1) The accountant's certification must:

(i) state that the examination was made in accordance with generally accepted auditing standards and include such tests of the accounting records and other accounting procedures as are generally considered necessary in the circumstances;

(ii) state that, in the accountant's opinion, the statement of income and expenses presents fairly the income and expenses of the building for the periods specified in conformity with generally accepted accounting principles applied on a consistent basis; and

(iii) be signed by a duly authorized signatory or by the firm.

(2) The statement of income and expenses should conform as nearly as possible to the order of presentation and categories presented in Schedule B.

(3) The following income or expense items, and other such items that are not applicable to the operation of the building as a cooperative, may be excluded: depreciation, vacancy advertising, credit checking, interest income, rental commissions and painting of and repairs to individual apartments.

(k) *Attorney's income tax opinion.* Discuss in easily understandable language the specific requirements of Internal Revenue Code section 216 for the apartment corporation to qualify as a cooperative housing corporation, and for tenant-stockholders to be entitled to deduct a proportionate share of real estate taxes and interest. Discuss any issues in qualifying under section 216 presented by the particular plan, including problems raised by the share allocations, existing or proposed apartment uses, the legality of such uses under the certificate of occupancy, and income from sources other than tenant-stockholders.

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

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

(ii) *tenant-stockholders* as defined in Internal Revenue Code section 216 will be entitled to deduct for income tax purposes their proportionate share of the interest and real estate taxes paid by the apartment corporation.

(2) Highlight as a special risk if there are unusual features of the plan which may jeopardize the apartment corporation's qualification or the deductibility of interest and taxes by tenant- stockholders who itemize deductions in the first year of cooperative operation of thereafter. Highlight as a special risk if a corporation, partnership, trust, estate or other entity is not required to designate an individual to purchase shares of the apartment corporation.

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

(4) Suggested language for the disclaimer of liability is set forth as follows: In our opinion, the apartment corporation will qualify as a cooperative housing corporation and tenant-stockholders will be entitled to income tax deductions. However, this opinion is not a guarantee; it is based upon existing rules of law applied to the facts and documents referred to above. No assurances can be given that the tax laws upon which counsel base this opinion will not change. In no event will the sponsor, the sponsor's counsel, the apartment corporation, counsel to the apartment corporation, the selling agent or any other person be liable if the apartment corporation ceases to meet the requirements of the Internal Revenue Code of 1954, as amended, or the New York State Tax Law, as amended, if there are changes in the facts on which counsel relied in issuing this opinion, or if there are changes in the applicable statutes, regulations, decisional law or Internal Revenue Service rulings on which counsel relied.

(l) *Rights of eligible senior citizens and eligible disabled persons.* If G.B.L., section 352-e(2-a), 352-eee or 352-eeee is applicable, and the plan provides that it is an eviction plan, include the following information on the rights of eligible senior citizens and eligible disabled persons:

(1) Explain that senior citizens and disabled persons who meet the eligibility requirements may not be evicted by holders of unsold shares or any subsequent purchaser at any time because the building is converted to cooperative ownership or under owner-occupancy provisions of rent codes.

(2) If G.B.L., section 352-eee is applicable, state:

(i) An eligible senior citizen is a nonpurchasing tenant who is 62 years of age or older on the date the plan is declared effective and the spouse of any such tenant on such date.

(ii) G.B.L., section 352-eee does not require that a tenant file an election form in order to qualify as an eligible senior citizen. However, it is advised and requested that a tenant who believes he or she is or will become an eligible senior citizen within 12 months from the date the plan is filed, complete the election form SH-5 promulgated by the Department of Law and included in the plan. This senior citizen election form should be completed, signed, notarized and returned to the sponsor within 60 days of presentation of the offering plan.

(3) If G.B.L., section 352-e(2-a) or 352-eeee is applicable, explain that an eligible senior citizen is a nonpurchasing tenant or the spouse of a nonpurchasing tenant who:

(i) is 62 years of age or older on the date that the plan is filed with the Department of Law ("filing date"); and

(ii) has elected not to purchase his or her apartment within 60 days from the presentation date by completing the senior citizen election form in the plan, signing the form and having the signature notarized, and personally delivering it to the named sponsor or selling agent at a location specified in the plan or by mailing it, by certified or registered mail, return receipt requested, to the named sponsor or selling agent at the location specified in the plan. In the event that the plan becomes subject to G.B.L., section 352-e(2-a) after the plan was accepted for filing, (*a*) the plan must be amended immediately after the statute becomes applicable to such offering, and (*b*) such election may be made within 60 days of presentation of such amendment.

(4) Explain that an eligible disabled person is a nonpurchasing tenant or spouse of a nonpurchasing tenant who:

(i) has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which is demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which is expected to be permanent, and which prevents the disabled person from engaging in any substantial gainful employment on the date the Department of Law accepted the plan for filing;

(ii) has elected not to purchase his or her apartment within 60 days from the presentation date by completing the disabled person election form in the plan, signing the form and having the signature notarized, and personally delivering it to the named sponsor or selling agent at a location specified in the plan or by mailing it, by certified or registered mail, return receipt requested, to the named sponsor or selling agent at the location specified in the plan. In the event that the plan becomes subject to G.B.L., section 352-e(2-a) after the plan was accepted for filing, (*a*) the plan must be amended immediately after the statute becomes applicable to such offering, and (*b*) such election may be made within 60 days of presentation of such amendment.

(iii) If the disability first occurs after acceptance of the plan for filing, then such election may be made within 60 days following the onset of such disability unless during the period subsequent to 60 days following the presentation 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.

(5) Describe the protections given to eligible senior citizens and eligible disabled persons under G.B.L., section 352-e(2-a), 352-eee or 352-eeee, including the following:

(i) No eviction proceeding will be commenced at any time against either eligible senior citizens or eligible disabled persons, except that such proceedings may be commenced for nonpayment of rent, illegal use or occupancy of the apartment, refusal of reasonable access to the owner or a similar breach of obligations to the landlord.

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

(iii) 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 by the Department of Law, shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. Complaints concerning such increases may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, New York, NY, 10005.

(iv) The rights granted under the plan and rent regulatory laws to eligible senior citizens and eligible disabled persons may not be abrogated or reduced, regardless of any expiration of or amendment to G.B.L., section 352-e(2-a), 352-eee or 352-eeee.

(v) Each purchaser, including a holder of unsold shares, of the shares allocated to an apartment occupied by an eligible senior citizen or eligible disabled person, shall be bound by the provisions of the G.B.L. and the terms of the plan. Each purchaser will be required to represent in writing to the apartment corporation, at the time of acquisition, that the purchase is subject to all the rights of the eligible senior citizen or eligible disabled person occupying the apartment, and that the purchaser, his successors and assigns shall continue to be bound as long as such occupancy continues.

(6) Sponsor may dispute the election by a tenant to be an eligible senior citizen or an eligible disabled person by applying to the Department of Law for a determination of the tenant's eligibility within 30 days of the receipt of the election form pursuant to section 18.8 of this Part. The Department of Law shall issue a determination of eligibility within 30 days thereafter.

(7) In the absence of fraud, the determination by the Department of Law is the sole method for determining a dispute as to whether a tenant is an eligible senior citizen or eligible disabled person. The determination by the Department of Law is reviewable only through a proceeding under article 78 of the Civil Practice Law and Rules, which must be commenced within 30 days after the determination becomes final.

(8) State that an election not to purchase shall not preclude an electing senior citizen or disabled person from subsequently purchasing his or her apartment on the terms and conditions set forth in section 18.8 of this Part.

(m) *Rights of existing tenants.*

(1)

(i) Describe the rights of tenants as established in the General Business Law, the New York City Rent Stabilization Law, the New York City and State Rent Control Laws, the Emergency Tenant Protection Act, article 7-C of the Multiple Dwelling Law, or as granted by the sponsor. Include in the offering plan only the descriptions that are applicable to the particular tenants who reside in the building. Reproduce in Part II of the plan only those laws or regulations that are applicable to the particular tenants who reside in the building.

(ii) From time to time the Department of Law may promulgate model forms for the description of tenants' rights under various laws. The transmittal letter from the attorney who prepared the plan must note if the applicable model forms are used.

(iii) Include discussions of:

(*a*) The exclusive period. State:

(*1*) All bona fide tenants in occupancy on the date the plan is accepted for filing will have the exclusive right to subscribe to purchase the shares allocated to their dwelling units for 90 days after the plan is presented.

(*2*) Any bona fide tenant with the right to renew a lease on the date the plan is accepted for filing has the right to sub-

scribe as a tenant during the exclusive period.

(*3*) Any bona fide tenant who has the right to continued occupancy on the date the plan is accepted for filing has the right to subscribe as a tenant during the exclusive period.

(*4*) For the purpose of determining who has the right to subscribe during the exclusive period, a bona fide tenant of record with an unexpired lease on the date the plan is accepted for filing shall be presumed to be a tenant in occupancy even though the tenant has sublet his or her dwelling unit or the dwelling unit is not the tenant's primary residence.

(*5*) A bona fide sublessee in occupancy on the date the plan is accepted for filing has the right to subscribe during the exclusive period if he or she: (*i*) sublets from a non-bona fide tenant, or (*ii*) has obtained written permission to purchase shares allocated to this or her dwelling unit from a bona fide tenant of record. Nothing herein shall be construed to deprive an owner of any legal remedy for illegal occupancy.

(*6*) A residential occupant entitled to protection under article 7-C of the Multiple Dwelling Law has the right to subscribe during the exclusive period.

(*7*) Whether and under what conditions a corporation, partnership, trust, estate or other entity is required to designate an individual to purchase the shares allocated to its dwelling unit in order to exercise its right to subscribe.

(*b*) Any protected period of occupancy before a tenant may be evicted.

(*c*) Any period of time during which a tenant has the right to purchase on the terms obtained by an outside purchaser.

(*d*) Any provisions for notice to the tenants or postings of the percentage of tenants who have purchased units, or percentage of units for which sponsor has accepted subscription agreements.

(*e*) Any protection against rent increases for nonpurchasing tenants. State that complaints of unconscionable rent increases proscribed by law may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, New York, NY, 10005.

(*f*) The provision to nonpurchasing tenants of all services and facilities required by law on a nondiscriminatory basis. Refer to the services described in the "Obligations of Holders of Shares of Dwelling Units Occupied by Non-Purchasing Tenants" section of the plan.

(*g*) Any requirement that tenants or their representatives be allowed to physically inspect the building or buildings.

(*h*) Any protection against interruption or discontinuance of services or harassment of tenants.

(*i*) The extent to which applicable law (such as G.B.L., section 352-e(2-a), 352-eee or 352-eeee) protects nonpurchasing tenants against termination or abridgement of rights acknowledged or granted in the plan in the event of expiration of or amendment to such law.

(2) State that the bylaws provide that nonpurchasing tenants will be notified of changes in ownership of shares for dwelling units they occupy, and describe the timing and manner of such notification.

(3) State whether sponsor will permit the assignment or transfer of subscription agreements by tenants in occupancy, and refer to the Assignment of Subscription Agreements section of the plan; see subdivision (q) of this section.

(4) State that if, prior to the expiration of any exclusive period which begins prior to the closing, the sponsor amends the terms and conditions of the offering to be more favorable to tenant purchasers, a tenant who was in occupancy on the presentation date and who executed and submitted a subscription agreement before the sponsor amended the terms shall benefit from the more favorable terms and conditions.

(5) State whether tenants in occupancy may purchase a vacant apartment or any other apartment not occupied by the tenant, the price of the other apartment, the procedure to purchase, and the procedure that will be followed if more than one tenant seeks the same apartment.

(n) *Obligations of holders of shares of dwelling units occupied by nonpurchasing tenants.* The discussion of the obligations of holders of shares of dwelling units occupied by nonpurchasing tenants shall include:

(1) the rights of existing tenants to continued occupancy; and

(2) the specific laws and rent regulations, such as the New York City Rent Stabilization Law and Code, New York City Rent Control Law, the Emergency Tenant Protection Act, the Multiple Dwelling Law, the Multiple Residence Law, that will apply to the tenancy of the dwelling unit. Discussions of these obligations shall include:

(i) Any obligation to join any industry organization, as required by law, and whether the dwelling unit may be subject to rent control or may become so if membership in the Rent Stabilization Association lapses or purchaser is expelled. State whether the dwelling unit is subject to the Emergency Tenant Protection Act, even if the unit is vacated.

(ii) The obligation to pay the amount due as maintenance charges for the apartment even if the amount is more than the rent received from the nonpurchasing tenant.

(iii) The obligation to provide to the nonpurchasing tenant all services required by law to the extent applicable, including the obligation to make all repairs to the apartment which are not the responsibility of the apartment corporation under the proprietary lease. These services may include, but are not limited to, painting, interior decoration, repairs to interior plumbing and wiring, and replacement of fixtures and of appliances, doors, hardware and windows.

(iv) All litigation costs, fees, and any dues related to the tenancy, are the sole responsibility of the purchaser.

(v) The obligation to give renewal leases and riders as required by law. The tenant may only be evicted on grounds permitted by law.

(vi) Note that Rent Stabilization and Emergency Tenant Protection Act leases may be inspected by potential purchasers, and should be inspected to ascertain the purchaser's obligations.

(3) Subscription agreements or other agreements to purchase shares of dwelling units occupied by nonpurchasing tenants and the proprietary leases for said units shall include an agreement by the subscriber or purchaser to irrevocably appoint the apartment corporation's managing agent and its successors (or the apartment corporation if no managing agent is employed by the apartment corporation) as his or her agent to provide to the nonpurchasing tenant(s) all services and facilities required by law.

(4) Except for the sponsor and holders of unsold shares, subscription agreements or other agreements to purchase shares of dwelling units occupied by nonpurchasing tenants and the proprietary leases for said units shall include an agreement by the subscriber or purchaser to deposit with the managing agent (or apartment corporation if no managing agent is to be employed) at the closing an amount not less than two months' maintenance charges to be used as working capital to furnish services required under the nonpurchasing tenant's lease and under the laws and regulations specified in paragraph (2) of this subdivision. Upon notice by the managing agent (or apartment corporation) that the deposit has been diminished, the fund shall be replenished by the shareholder within a specified period of time. The failure of the shareholder to replenish the fund in a timely fashion shall result in the apartment corporation having a lien against the shares appurtenant to the dwelling unit. Interest, if any, earned on the fund shall be the property of the shareholder.

(5) The responsibility imposed on the holders of shares of dwelling units occupied by nonpurchasing tenants by General Obligations Law section 7-103 with respect to security deposit funds.

(o) *Interim leases.*

(1) State whether the owner of the building may rent any unit that is vacant before the closing.

(2) If applicable, state whether a tenant is subject to the Rent Stabilization Law or Emergency Tenant Protection Act. Also state that the rent will not exceed the maximum rental that may be legally collectable, if any.

(3) Describe the status of the tenant under any applicable rent regulatory law in the event that the plan is abandoned.

(4) State whether an uncured default under the subscription agreement is a default under the lease or if an uncured default under the lease is a default under the subscription agreement. If an uncured default under the lease can result in a default under the subscription agreement, state that before the sponsor may utilize the default under the lease to declare a default under the subscription agreement, either: (i) the sponsor must obtain an order of eviction or other judgment or order from a court or agency of competent jurisdiction against the lessee, or (ii) the lessee must have vacated the unit.

(5) State the length of time the interim lessee has to vacate the apartment after a default under the subscription agreement or recission of the subscription agreement by the lessee.

(p) *Procedure to purchase.* Describe the essential terms of the subscription (purchase) agreement which must comply with this Part. State the purchase procedure, including to whom and when the subscription agreement must be returned and the deposit payment made.

(1) State the amount or the percentage of the deposit, which may not be less than the lower of (i) $1,000 per block of shares, or (ii) 10 percent of the cash amount.

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

> (i) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of GBL sections 352-e(2-b) and 352-h and these regulations, and all funds paid by purchasers shall be handled in accordance with these statutes and regulations.
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> (ii) Mandatory escrow agreement. All deposits, down payments or advances made by subscribers or purchasers prior to closing of each individual transaction shall be held pursuant to a written agreement entered into between the sponsor, the purchaser, and the escrow agent. Said provisions may be included in a separate escrow agreement or in the subscription or purchase agreement, and are referred to in this paragraph (2) as the "escrow agreement." The plan must set forth the material terms of the escrow agreement. The sponsor shall specify the exhibit in Part II of the plan that contains thee escrow agreement. If a separate escrow agreement is used, a copy of the full agreement must be included as a separate exhibit to the plan in Part II. Disclose, without limitation, any indemnity by the sponsor in favor of the escrow agent, provision for discharge of the escrow agent's obligations by the sponsor upon payment of the deposit and interest in accordance with these regulations, any right of the escrow agent to represent the sponsor in any lawsuit, any compensation by the sponsor to the depository bank(s), any provision for payments by the sponsor under an indemnity in favor of the escrow agent and whether the sponsor will compensate the escrow agent for acting as such. The plan and escrow agreement must include language conforming to sub-sections (vi)--(viii), below. However, the failure to include such language in the plan or escrow agreement shall not excuse the sponsor and the escrow agent from compliance with said subsections.
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> (iii) Payments. All funds received from purchasers or subscribers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the subscriber or purchaser to the order of the attorney or law firm as escrow agent.
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> (iv) The escrow agent. The escrow agent must be an attorney or a firm of attorneys admitted to practice in the State

of New York or an attorney admitted in a foreign jurisdiction who submits to the jurisdiction of the State of New York for any cause of action arising out of the escrow provisions set forth in the escrow agreement. The signatories on any escrow account must be attorneys admitted in the State of New York or admitted in a foreign jurisdiction who submit to the jurisdiction of the State of New York for any cause of action arising out of the escrow provisions set forth in the escrow agreement. Neither the escrow agent nor any authorized signatory on any account may be the sponsor, the selling agent, the managing agent, or a principal thereof. However, a law firm that has a member who is a principal may be the escrow agent provided that members of the firm who are signatories on any account are not themselves principals. Only an attorney or member of a firm acting as escrow agent shall be a signatory on any account and only such attorney shall be authorized to release funds. The name, address and telephone number of the escrow agent and of each attorney who is a signatory must be stated in the plan.

(v) The account(s): All deposits, down payments, or advances made by subscribers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, must be placed within five businesses days after the escrow agreement is signed by all necessary parties in an attorney's segregated special escrow account or accounts in a bank or banks doing business in the State of New York which account(s) is/are insured by the Federal Deposit Insurance Corporation ("FDIC"). Sponsor shall state the applicable FDIC insurance limits, whether and to what extent the deposits, down payments, or advances are insured, and whether sponsor may utilize more than one segregated special escrow account for each deposit, down payment, or advance. Include as a special risk that deposits in excess of said limits will not be federally insured. An attorney shall open and maintain any such account in his or her own name, or in the name of a firm of attorneys of which he or she is a member, or in the name of the attorney or firm of attorneys by whom he or she is employed, separate from such attorney's personal accounts or from any accounts in which assets belonging to the firm are deposited, and separate from any accounts maintained in the capacity of executor, guardian, trustee or receiver. A master escrow account with a sub-account for each purchaser is acceptable. The name of any account, the bank, and the bank address must be stated in the plan. The word "escrow" must be included as part of the name of any account. Funds from any account may be released only by signature of the attorney who is named as Escrow Agent. Neither the sponsor nor any principal of the sponsor may be a signatory on any account. Funds must be placed in an interest-bearing account or accounts, with all interest credited to the purchaser, unless either the purchaser defaults and the plan is consummated, or the sponsor elects to place the funds in a separate Interest-On-Lawyer's-Account ("IOLA") for each offering plan pursuant to Judiciary Law section 497. The plan shall indicate whether the interest rate to be earned will be the prevailing rate for such accounts. State the current prevailing rate and when interest will begin to accrue. No fees of any kind may be deducted from any account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of any account.

(vi) Notification to purchaser. Within 10 business days after the escrow agreement is signed by all necessary parties, the escrow agent shall notify the purchaser that such funds have been deposited in the bank(s) indicated in the plan, and provide any ac-count number, and the initial interest rate. If the purchaser does not receive notice of such deposit within 15 business days after tender of the deposit, he or she may cancel the purchase and rescind within 90 days after tender of the deposit. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, 28 Liberty Street, New York, NY, 10005. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the subscriber or purchaser.

(vii) Escrow revisions. Before funds are transferred to a new escrow account, or if the escrow agent is replaced, the plan must be amended to provide the same full disclosure with respect to the new account, the escrow agent and the escrow agreement as was originally provided. A bond, letter of credit or other security may not be substituted for the escrow account, unless a special exemption under exceptional circumstances is first requested by the sponsor and is granted by the Attorney General, following the procedures of section 21.3(l)(4) of this Title. In such event, and only after the Department of Law grants such exemption in writing, the provisions of section 21.3(l)(5), (6) and (7) of this Title are applicable.

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

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

(*b*) The escrow agent shall release the funds in escrow if so directed:

(*1*) pursuant to terms and conditions set forth in the escrow agreement upon closing of the individual transaction; or

(*2*) in a subsequent writing signed by both sponsor and purchaser; or

(*3*) by a final, non-appealable order or judgment of a court; or

(*4*) by a final, non-reviewable determination of the Attorney General pursuant to subparagraph (ix) of this paragraph, so long as the subscription or purchase agreement provides for dispute resolution by the Attorney General and was signed on or before March 1, 2013.

(*c*) If the escrowed funds are not released pursuant to subparagraph (b), above, and the escrow agent receives a request by either party to release the funds, the escrow agent must give both parties prior written notice of not fewer than 30 days before releasing said funds. If the escrow agent has not received notice of objection to the release of the funds at the expiration of the 30 day period, the funds shall be released and the escrow agent shall provide further written notice to both parties informing them of such release. If the escrow agent receives a written notice from either party objecting to the release of the escrowed funds within said 30 day period, the escrow agent shall continue to hold said funds until otherwise directed pursuant to subparagraph (b), above. However, the escrow agent shall also have the right at any time to deposit the funds contained in the escrow account with the clerk of a court in the county in which the interest offered pursuant to the plan is located and shall give written notice to both parties of such deposit.

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

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

(*2*) all purchasers after an amendment abandoning the plan is accepted for filing by the Department of Law.

(ix) Disputes.

(*a*) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply and the purchaser or the escrow agent holding the down payments in escrow may apply to the Attorney General for a determination on the disposition of the deposit and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party making such application shall contemporaneously send to all other parties a copy of such application.

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

(*c*) If the application permitting release of funds is granted, the deposit and any interest earned thereon shall be disposed of in accordance with a final, non-reviewable determination of the Attorney General.

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

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

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

(*2*) a final, non-appealable order or judgment of a court is served on the escrow agent; or

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

(x) Exhibits to plan. Copies of the forms provided by the bank for opening the escrow account and the form of escrow agreement, if separate from the subscription or purchase agreement, must be included as Exhibit B-19 of the submission.

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

(xii) Review and audit. The Department of Law may perform random reviews and audits of any records involving escrow accounts to determine compliance with statute and regulation.

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

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

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

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

(4) State that the balance of the purchase price is to be paid after written demand is made and that the purchasers will have not less than 15 days to make the payment after receipt of the demand notice. If payment is due in advance of the closing, state the maximum number of days between the scheduled closing date and the date payment is due.

(5) Any “time is of the essence” provision concerning subscriber's obligations must be explained in easily understandable terms and must be highlighted as a special risk.

(6) Purchasers must be given written notice of the closing date at least 30 days in advance of the closing of title on the building to the apartment corporation.

(7) Sponsor or the apartment corporation must make a written demand for payment 30 days before a forfeiture of the

subscription agreement shall be declared.

(8) State when the subscriber (purchaser) is required to sign a proprietary lease, the number of days within which the lease must be returned to the selling agent or sponsor, and the consequences if the lease is not returned.

(9) The plan shall state that:

(i) Nontenant subscribers or purchasers are afforded either:

(*a*) not less than seven days after delivering an executed subscription agreement together with the required deposit to rescind the subscription agreement and have the full deposit refunded promptly. The subscriber must either personally deliver a written notice of rescission to the sponsor or selling agent within the seven-day period or mail the notice of rescission to the sponsor or selling agent and have the mailing postmarked within the seven-day period; or

(*b*) not less than three business days to review the offering plan and all filed amendments prior to executing a subscription agreement.

(ii) Tenants are afforded not less than three business days to review the offering plan and all filed amendments prior to executing a subscription agreement.

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

(11) Highlight as a special risk if the subscriber's obligation to purchase is not contingent on obtaining financing. If the subscriber's obligations are contingent upon obtaining a commitment for financing or actually obtaining financing, the details must be fully disclosed and explained. State the time within which the subscriber has to notify sponsor of inability to obtain financing. Include the subscriber's time to obtain financing or a commitment and the risk, if any, that the commitment may expire or that the terms of the commitment may change prior to actual closing. If subscriber's obligations are contingent on obtaining a financing commitment and the financing commitment lapses or expires prior to closing and the subscriber has made a good faith effort to extend the commitment, sponsor must grant to such subscriber a right of rescission and a reasonable period of time to exercise the right.

(12) The plan and subscription agreement must provide that any conflict between the plan and the subscription agreement will be resolved according to the terms of the plan.

(13) State that within a specified number of days after a subscriber delivers an executed subscription agreement, together with the required deposit, the apartment corporation or sponsor must either accept the subscription agreement and return a fully executed counterpart to the subscriber or reject the subscription agreement and refund the full deposit previously tendered. Discuss the outcome for the subscriber if the apartment corporation or sponsor takes no action within the time period specified in the plan.

(14) The subscription agreement and plan may not contain, or be modified to contain, a provision waiving purchaser's rights or abrogating sponsor's obligations under article 23-A of the G.B.L. The subscription agreement to be used by tenant purchasers who subscribe during the exclusive period may not be modified except by a duly filed amendment to the plan.

(q) *Assignment of subscription agreements.* State whether sponsor will permit the assignment or transfer of subscription agreements by tenants prior to the declaration of effectiveness. If they will be permitted:

(1) State the conditions, if any, upon which sponsor will grant permission to assign or transfer prior to the declaration of effectiveness. Such conditions shall be specific and reasonable and applied to an objective and nondiscriminary basis.

(2) In order for assigned or transferred subscriptions to be counted towards effectiveness:

(i) a subscription agreement shall be signed by the tenant and the full downpayment paid by the tenant to the sponsor; and

(ii) the assignee shall provide a notarized affidavit stating that the assignee was not procured by the sponsor or the selling agent, and that the assignee intends that he or she or a specified member of his or her immediate family personally occupy the dwelling unit. The form of assignee affidavit shall appear in Part II of the plan.

(r) *Effective date.* The plan must explain that the offer to sell is contingent upon the plan being declared effective and upon compliance with the relevant conditions and time periods described in the offering plan. Sponsor must conform with the following provisions in determining whether, when and how the plan will be declared effective.

(1) The plan may be declared effective by (i) an amendment to the plan, or (ii) by serving notice on each tenant and non-tenant purchaser (in the manner required by section 18.1[d] of this Part) that the plan is declared effective and submitting an amendment to the Department of Law within five days confirming that the plan was declared effective on a specified date. The amendment must conform to section 18.5(e) of this Part. State that no closing shall be held until this amendment is accepted for filing by the Department of Law.

(2) If the plan is presented pursuant to G.B.L. section 352-eee or section 352-eeee, state the minimum percentage of sales to tenants or other purchasers that are needed before the plan may be declared effective. In all plans, state that when calculating that percentage, no more than one subscription agreement by the tenant or tenants of a particular dwelling unit shall be counted. Also state that only one subscription agreement from any tenant who leases or occupies more than one dwelling unit shall be counted towards effectiveness.

(3) If the plan is not presented pursuant to G.B.L. section 352-eee or section 352-eeee, state that the plan may not be declared effective unless tenants in occupancy or bona fide purchasers who represent in their subscription agreements that they or a specified member of their immediate family intend to occupy the unit when it becomes vacant have signed subscription agreements for at least 15 percent of the units offered under the plan.

(4) State that the plan will not be declared effective based on subscription agreements:

(i) signed by subscribers who have been granted a right of rescission that has not yet expired or been waived;

(ii) assigned or transferred without compliance with subdivision (q) of this section;

(iii) if the subscriber was not afforded the protections required by paragraph (p)(9) of this section; or

(iv) with any subscriber who is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or is related to the sponsor or the selling agent or to any principal of the sponsor or the selling agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; except that such a subscriber other than the sponsor or a principal of the sponsor may be included to the extent permissible under section 18.5(e)(6)(vi)(*c*) or section 18.5(e)(6)(vii)(*b*)(*2*) of this Part, as applicable.

(5) The plan must be declared effective when subscription agreements have been accepted by sponor for 80 percent or more of the units offered under the plan.

(6) If the plan is submitted pursuant to G.B.L. section 352-eeee:

(i) For a noneviction plan, state that the plan may not be declared effective until written purchase agreements have been executed and delivered for at least 15 percent of all dwelling units in the building or group of buildings or development subscribed for by bona fide tenants in occupancy, or bona fide purchasers who represent that they intend that they or a specified member of their immediate family occupy the dwelling unit when it becomes vacant. As to tenants who were in occupancy on the date the plan was accepted for filing, the subscription agreement shall be exe-

cuted and delivered pursuant to an offering made without discriminatory repurchase agreements or other discriminatory inducements.

(ii) For an eviction plan, state that the plan may not be declared effective unless at least 51 percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings on the date the offering statement or prospectus was accepted for filing shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory inducements.

(*a*) In establishing a base for computing the required 51 percent, all dwelling units in the building or group of buildings shall be included, except:

(*1*) those that were both vacant and not under lease on the date the offering plan or prospectus was accepted for filing by the Department of Law ("the filing date"); and

(*2*) dwelling units of eligible senior citizens and eligible disabled persons who have not subsequently purchased, unless the sponsor has disputed such election in which case the affected dwelling unit will remain in the base until such time as a final determination is made that the election is sustained.

(*b*) In computing the 51 percent requirement, the following subscriptions may be included:

(*1*) subscriptions by bona fide tenants in occupancy on the filing date of shares allocated to his or her dwelling unit;

(*2*) subscriptions by bona fide tenants in occupancy on the filing date of shares allocated to dwelling units which are both vacant and not under lease;

(*3*) subscriptions by bona fide tenants in occupancy on the filing date of shares allocated to a dwelling unit of another bona fide tenant if the other tenant has subscribed to purchase the shares allocated to the first tenant's dwelling unit or a vacant dwelling unit;

(*4*) subscriptions by the bona fide tenant of record on the filing date or by a subtenant who has the right to purchase; and

(*5*) subscriptions for shares allocated to dwelling units leased to a corporation, partnership, trust, estate or other entity subscribed to by an individual approved by said corporation, partnership, trust, estate or other entity.

(iii) State that the plan will be deemed abandoned, void and of no effect if its does not become effective within 15 months from the date the offering plan or prospectus was accepted for filing; and, in the event of such abandonment, no new plan for conversion of such building or group of buildings or development shall be submitted to the Department of Law for at least 12 months after such abandonment. Such 15-month limit shall not be extended although a plan is amended from an eviction plan to a noneviction plan.

(7) If the plan is submitted pursuant to G.B.L. section 352-eee:

(i) For a noneviction plan, state that the plan may not be declared effective unless at least 15 percent of those bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the plan is declared effective shall have executed and delivered written agreements to purchase under the plan. As to tenants who were in occupancy on the date a letter was issued by the Attorney General accepting the plan for filing, the subscription agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements. In establishing a base for computing the required percentage necessary for effectiveness, all dwelling units in the building, group of buildings or development shall be included in the base.

(ii) For an eviction plan, state that the plan may not be declared effective unless written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other

discriminatory inducements shall have been executed and delivered by:

(*a*) at least 51 percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the plan was accepted for filing by the Attorney General, excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, nonpurchasing eligible senior citizens who have returned completed election forms and who are 62 years old prior to the plan being declared effective, nonpurchasing and nonelecting eligible senior citizens for whom the sponsor has submitted evidence of eligibility satisfactory to the Department of Law, and nonpurchasing eligible disabled persons; and

(*b*) at least 35 percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the Attorney General, including, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons.

(*1*) In establishing a base for computing the required percentages necessary for effectiveness, all dwelling units in the building or group of buildings shall be included, except:

(*i*) for purposes of both the 51-percent calculation and the 35-percent calculation, those that were both vacant and not under lease on the date the offering plan or prospectus was accepted for filing by the Department of Law ("the filing date"); and

(*ii*) for purposes of the 51-percent calculation, dwelling units of nonpurchasing eligible senior citizens who have returned completed election forms prior to the plan being declared effective, nonpurchasing eligible senior citizens for whom the sponsor has submitted evidence of eligibility satisfactory to the Department of Law, and the eligible disabled persons who have not subsequently purchased, unless the sponsor has disputed such election in which case the affected dwelling unit will remain in the base until such time as a final determination is made that the election is sustained.

(*2*) In computing the percentage necessary for effectiveness, the following subscriptions may be included:

(*i*) subscriptions, by bona fide tenants in occupancy on the filing date, of shares allocated to his or her dwelling unit;

(*ii*) subscriptions, by bona fide tenants in occupancy on the filing date, of shares allocated to dwelling units which are both vacant and not under lease;

(*iii*) subscriptions, by bona fide tenants in occupancy on the filing date, of shares allocated to a dwelling unit of another bona fide tenant if the other tenant has subscribed to purchase the shares allocated to the first tenant's dwelling unit or a vacant dwelling unit;

(*iv*) subscriptions by the bona fide tenant of record on the filing date or by a subtenant who has the right to purchase; and

(*v*) subscriptions for shares allocated to dwelling units leased to a corporation, partnership, trust, estate or other entity subscribed to by an individual approved by said corporation, partnership, trust, estate or other entity.

(iii) State that the plan will be deemed abandoned if it does not become effective within 12 months from the filing date. In the event of abandonment, no new plan for the conversion of the building may be submitted to the Department of Law for at least 15 months after the abandonment.

(8) An eviction plan may become a noneviction plan provided that sponsor first amends the plan prior to declaring it effective to notify the tenants of the change or impending change. The amendment must grant subscribers a right of rescission and a 30-day period after presentation of such duly filed amendment to exercise the right. Sponsor must return any deposit or downpayment promptly to a purchaser who rescinds. Sponsor must honor any non-rescinded subscription agreements. Thereafter, sponsor may declare the plan effective as a noneviction plan when sponsor accepts subscription agreements as required by law or by these regulations for a minimum percentage of tenants or units. If the amendment provides that the plan will

become a noneviction plan immediately following the expiration of a time period, sponsor shall notify the tenants of the outcome by a notice posted and filed as provided under section 18.1(p) of this Part.

(9) A noneviction plan may not be amended at any time to provide that it shall be an eviction plan.

(10) If the plan may be abandoned by sponsor, at its option, before it is declared effective, the plan must state that within a specified number of days after abandonment, all monies paid by subscribers shall be refunded to them in full, with interest earned if the plan provides for interest payable to the subscriber. Sponsor shall promptly file a notice of abandonment on form RS-3 as required by section 18.1(o) of this Part.

(11) Sponsor may not abandon the plan after the effectiveness amendment is filed for any reason other than: (i) a defect in title which cannot be cured without litigation or cannot be cured for less than a stated amount; (ii) work orders of a mortgagee or violations that cannot be cured for less than a stated amount; (iii) substantial damage or destruction of the building by fire or other casualty which cannot be cured for less than a stated amount; or (iv) the taking of any material portion of the property by condemnation or eminent domain. This section must provide that any stated amount (of money) relied upon as basis for abandonment after effectiveness must exclude any such title defects, violations, work orders, or determinations of any authority or regulatory association which exist on the date of presentation of the plan and either are known to the sponsor or are a matter of public record.

(12) If required by law, state the time within which the plan must be declared effective and, if the plan is not declared effective within that time, or if sponsor has not received the minimum requisite number of subscription agreements within that time, state the time before another plan may be presented.

(13) State, where applicable, that on the closing date, title to the property will be conveyed to the apartment corporation. Certificates for the shares of the apartment corporation and the accompanying proprietary leases will be delivered promptly thereafter to each purchaser who has paid the cash purchase price and has complied with all of the purchaser's obligations under the subscription agreement.

(14) State that within 10 days after a first annual shareholders' meeting is held, a copy of the closing statement together with copies of supporting documents shall be delivered to the Department of Law and also served upon one member of the board of directors who is a resident shareholder and not related to the sponsor or a holder of unsold shares. The closing statement shall include all documents executed to effect the transfer of title to the cooperative corporation including but not limited to a summary of the transaction, financing statements, transfer and gains tax returns if any, adjustments, title report, mortgages, commercial leases, master leases, management agreements, and all agreements binding on the cooperative corporation after closing.

(s) *Terms of mortgages.* Disclose the terms of each mortgage that will encumber the property after the closing date. Include the following information:

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

(2) Amount and term. State the date of the mortgage, estimated balance at anticipated date of closing, maturity date, total scheduled unpaid balance at maturity and amount per share. If any mortgage has been extended, consolidated or otherwise modified, explain the present terms of the mortgage as modified. If the mortgage is not self-liquidating over the term, project the amount of the balance or “balloon” due on maturity, and explain the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the term for a mortgage that is not self-liquidating is for less than five years from the anticipated date of closing, unless the estimated balance due at the date of closing is less than 10 percent of the minimum cash amount of the offering. In view of the potential risks to the apartment corporation in some short-term mortgages, the attorney who prepared the plan must note any short- term mortgage in the transmittal letter to the Department of Law required by section 18.2(c)(1) of this Part.

(3) Interest rate. State the annual interest rate(s) over the term of the loan. State the initial interest rate, or (if not a fixed rate) explain how it will be established. If the loan has a variable or adjustable rate, explain the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact that adjustments will

have on payments and the principal balance. Highlight as a special risk if the variable or adjustable rate could increase by more than five percent within a 30-month period or if the variable or adjustable rate is not subject to a specific limit on increases. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the prevailing rate offered by the lender and the interest on the loan to the apartment corporation. If the mortgage is not self-liquidating, also disclose any limitations on the ability of the apartment corporation to refinance on the same or better terms.

(4) Payments. State the amount of each payment, when payments are due, and how payments are applied to interest and principal. For variable rate or adjustable rate mortgages, disclose the impact that interest rate changes will have on the allocation of payments to interest and principal and on itemized deductions available to shareholders. Highlight as a special risk if payments will increase in the first 10 years of operation due to a fixed amount increase.

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

(6) Insurance. The insurance coverage reflected in Schedule B must be sufficient to satisfy the requirements of the mortgagee.

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

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

(9) Refinancing and subordinate mortgages. State whether subordinate mortgages are permitted. Describe the lien priority of subordinate mortgages. Discuss whether junior mortgages are subordinate to refinancing if prior mortgages come due first in time, and disclose any limitations on refinancing. Highlight as a special risk if a subordinate mortgage does not continue to be subordinate when it is time to refinance prior mortgages.

(10) Wraparound mortgages.

(i) If any mortgage is a "wraparound" mortgage, explain the meaning of a wraparound mortgage and explain additional risks and costs to the apartment corporation as a result of such wraparound mortgage. In view of the potential risks to the apartment corporation in some wraparound mortgages, the attorney who prepared the plan must note any wraparound mortgage in the transmittal letter to the Department of Law required by section 18.2(c)(1) of this Part.

(ii) Any wraparound mortgage which is a purchase money mortgage to be placed at or prior to the closing, or which was or will be granted to the present owner or last previous owner within the three years prior to submission, or following submission of the proposed offering plan to the Department of Law, must provide that if the holder defaults in any payment due on any underlying mortgage and the applicable grace period has expired, the wraparound mortgage shall be deemed satisfied; provided, however, if the holder of the wraparound mortgage becomes current on all past due payments, the holder(s) of the underlying mortgage(s) has (have) not commenced foreclosure proceedings or has (have) discontinued foreclosure proceedings because of default, and the holder of the wraparound mortgage pays all expenses incurred by the apartment corporation as a result of such default by the holder, including legal fees and fees paid to arrange for refinancing the underlying mortgages, the wraparound mortgage may be reinstated.

(iii) If a mortgage is, or is represented or purports to be a wraparound mortgage, it shall provide: (*a*) that the holder's interest in the mortgage shall stand as security for fulfillment of the described periodic payments and final payments on senior mortgages; (*b*) that it will be executed and acknowledged by both the mortgagee and the mortgagor; (*c*) that any assignee and any successor by operation of law will be bound by the wraparound mortgagee's described obligation to make such payments on senior mortgages; and (*d*) will contain an undertaking that any assignee as well as the assignor will execute and acknowledge the assignment instrument.

(11) Negative amortization mortgages. If any mortgage is a “negative amortization” mortgage, highlight as a special risk and explain the meaning of a negative amortization mortgage and the additional risks and costs to the apartment corporation as a result of such negative amortization mortgage. Include a discussion of the potential increase in the principal balance over the term of the mortgage and any limitations on the increase in interest payments. In view of the potential risks to the apartment corporation in some negative amortization mortgages, the attorney who prepared the plan must note any negative amortization mortgage in the transmittal letter to the Department of Law required by section 18.2(c)(1) of this Part.

(12) If any mortgage contains unusual risks and features which are not prevalent among financing institutions in the State of New York engaged in providing real estate mortgage loans to apartment corporations, highlight as a special risk and explain the risks of such mortgage. The attorney who prepared the plan must note such a mortgage in the transmittal letter to the Department of Law required by section 18.2(c)(1) of this Part.

(13) Events of default. For each mortgage, describe the material events of default entitling the lender to accelerate the mortgage indebtedness and describe grace periods granted to the apartment corporation. Sponsor must either state affirmatively that there is not a due-on- sale clause in the mortgage or disclose the existence of such a clause, and state that the sponsor has obtained the necessary consents or that sponsor will replace or satisfy the mortgage at closing if the consents are not obtained, or give an assurance satisfactory to the Department of Law that sponsor will replace the mortgage if a default is declared. Sponsor must state that, except as discussed above, no default will exist at closing.

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

(15) Sponsor must represent that it will make all payments due prior to or at closing on existing mortgages that will also encumber the property after closing.

(t) *Financing for qualified purchasers.* Disclose the terms of any commitment by sponsor or a lender procured by sponsor to finance the purchase of shares allocated to units. The plan must be amended to include the terms of financing if not fully described in the offering plan. The terms shall include, and are not limited to, the following:

(1) Name and address of lender.

(2) Amount and term. State the maximum amount (which may be expressed as a percentage of the cash purchase price) available for shares allocated to a unit and the minimum term of the loan. If the financing offered is not self-liquidating over the term, state how the amount of the balance or “balloon” due on maturity will be calculated, and explain the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the principal balance is due in less than three years. If the sponsor is providing the financing, state whether the sponsor will refinance or extend the loan at maturity. State the maximum amount of financing available to purchasers generally through a bulk commitment.

(3) Availability. Sponsor must discuss whether financing is available to all purchasers. If not, discuss the method of allocation of such financing which shall not constitute a discriminatory inducement to tenant purchasers.

(4) Interest rate. State the annual interest rate over the term of the loan. If the loan has a variable or adjustable rate, indicate the initial interest rate or (if not a fixed rate) explain how it will be established, the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact adjustments will have on debt service payments and the principal balance. If sponsor structures the financial terms of the transaction in such a manner as to result in possible taxable income to a purchaser, the financial and tax implications of such structuring must be disclosed. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the prevailing interest rate and the interest rate offered to purchasers. If the loan is not self-liquidating, also disclose any limitation on the ability of the purchasers to refinance on the same or better terms.

(5) Payments. State when payments are due, and how payments are applied to interest and principal. For variable rate or adjustable rate loans, disclose how initial payments are allocated to interest and principal, disclose the impact that inter-

est rate changes will have on the allocation of payments to interest and principal and on itemized deductions available to shareholders.

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

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

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

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

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

(11) Events of default. Describe the material events of default entitling the lender to accelerate the principal indebtedness, and describe grace periods granted to purchasers.

(12) If any proposed financing contains unusual risks and features which are not prevalent among financing institutions in the State of New York engaged in providing cooperative apartment loans to unit purchasers, highlight as a special risk and explain the risks of such financing. The attorney who prepared the plan must note such financing in the transmittal letter to the Department of Law required by section 18.2(c)(1) of this Part.

(u) *Summary of proprietary lease.* Summarize the important provisions of the proprietary lease, including the following:

(1) Discuss any restrictions on the shareholder's right to use, sell, lease or pledge the shares and proprietary lease. Describe any fees or charges imposed by the apartment corporation for purchasing, selling, leasing or pledging shares or units.

(2) State whether the apartment corporation will notify a lender of a shareholder's default under the proprietary lease.

(3) State the material events of default under the lease.

(4) Discuss the procedure to modify the terms of the proprietary lease.

(5) State whether the shareholder is responsible for interior repairs and whether the consent of the apartment corporation is needed for alterations or additions.

(6) Discuss the right to accumulate reserves for capital expenditures or otherwise and restrictions imposed on such right.

(7) Discuss the shareholder's right to cancel the proprietary lease.

(8) Discuss the procedures to establish maintenance charges and to divide the charges among shareholders.

(9) If the offering plan is, or is amended to be, a noneviction plan for any nonpurchasing tenants, or is subject to G.B.L., section 352-e(2-a), 352-eee or 352-eeee and subject to occupancy by eligible senior citizens and eligible disabled persons, the proprietary lease must state:

(i) such nonpurchasing tenants may not be evicted by the proprietary lessee for purposes of owner occupancy;

(ii) such right is intended for the benefit of nonpurchasing tenants, and is not intended to abrogate any rights of the owner of the unit as against the apartment corporation;

(iii) such nonpurchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto;

(iv) the rentals of any such nonpurchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy, and any such nonpurchasing tenants 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 become effective, shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy;

(v) any tenant's renewal lease or renewal sublease may provide that eviction proceedings may be commenced for nonpayment of rent, illegal use or occupancy of the premises, refusal of access to the owner or a similar breach by the nonpurchasing tenant of his or her obligations to the landlord; and

(vi) the sections of the lease concerning nonpurchasing tenants may not be subsequently amended or deleted.

(10) State that the obligations of holders of shares of dwelling units occupied by nonpurchasing tenants, as discussed in the plan, are included in the proprietary lease.

(11) Discuss any restrictions against holders of unsold shares cancelling their proprietary lease as referred to in paragraph (w)(12) of this section.

(v) *Apartment corporation.* Describe how the affairs of the apartment corporation will be governed. Summarize the important sections of the bylaws and the certificate of incorporation, including the following:

(1) State the statutory authority under which the apartment corporation was or may be incorporated, the date of the incorporation and the number of shares which has been authorized and issued.

(2) State the number and composition of the board of directors, eligibility requirements, elections and when the first meeting will be held after the closing. If applicable, explain cumulative voting and any provisions for the indemnification of the board of directors.

(3) State the vote needed to amend the apartment corporation's bylaws.

(4) State the names of the present or anticipated first officers and directors and their relationship, if any, to sponsor, sponsor's principals and sponsor's or the apartment corporation's attorney.

(5) Describe the extent to which sponsor as holder of unsold shares or other holders of unsold shares will or may control the board of directors after closing, and the consequences to purchasers of such reservation of control, subject to the following requirements:

(i) If the plan is an eviction plan, sponsor and other holders must agree not to exercise voting control of the board of directors for more than two years after closing, or whenever the unsold shares constitute less than 50 percent of the shares, whichever is sooner. If the plan is presented as or amended to a noneviction plan, sponsor and other holders of unsold shares must agree not to exercise voting control of the board of directors for more than five years from closing, or whenever the unsold shares constitute less than 50 percent of the shares, whichever is sooner. Disclose whether sponsor represents and provides in the bylaws, that a majority of the apartment corporation board must be owner-occupants of the building or members of an owner-occupant's household, who are unrelated to the sponsor or its principals, after the end of the sponsor control period. If sponsor does not make this representation, include the warning set forth in paragraph 18.3(c)(3) of this section and discuss as a special risk.

(ii) Sponsor and other holders of unsold shares may not exercise veto power over expenses described in Schedule B or over expenses required: (a) to comply with applicable laws or regulations; (b) to remedy any notice of violation; (c) to remedy any work order by a mortgagee or an insurer; or (d) to remedy a notice of default from a mortgagee.

(iii) If the plan is an eviction plan, sponsor and other holders of unsold shares may, if the plan so provides, exercise veto power over other expenses for a period ending not more than three years after closing, or whenever the unsold shares constitute less than 25 percent of the shares, whichever is sooner. If the plan is presented as or amended to a noneviction plan, sponsor may, if the plan so provides, exercise veto power over other expenses for a period ending not more than five years after closing, or whenever the unsold shares constitute less than 25 percent of the shares, whichever is sooner.

(6) State whether officers and directors serve with or without compensation, and highlight as a special risk if officers and directors appointed by the sponsor or holders of unsold shares serve with compensation paid by the apartment corporation.

(7) State that the apartment corporation has a lien on each block of shares for payment of maintenance charges, assessments, and the replenishment of the fund to be maintained pursuant to paragraph (n)(4) of this section, and the consequences of such lien.

(8) State that a copy of the bylaws is set forth in Part II of the plan.

(9) State that all expenses of the apartment corporation accruing up to and including the closing date will be paid by the sponsor or by the apartment corporation from the proceeds of the sale of shares.

(10) State that the apartment corporation may not discriminate against any person for a reason proscribed by civil rights laws.

(w) *Unsold shares.*

(1) State that: unsold shares shall be any shares not subscribed to and fully paid for prior to closing. At or prior to closing, unsold shares must be acquired by the sponsor or financially responsible individuals produced by the sponsor. A holder of unsold shares is the sponsor or any individual designated to hold unsold shares by the sponsor. Such shares shall cease to be unsold shares when purchased by a purchaser for occupancy.

(2) If a holder of unsold shares or a person related by blood or marriage to the holder of unsold shares takes occupancy as a bona fide resident, the shares shall cease to be unsold shares.

(3) Sponsor must guarantee payment of all maintenance charges and assessments due from a holder of unsold shares. The apartment corporation also will have a lien upon the shares to secure performance of all obligations of sponsor and holders of unsold shares under the proprietary lease.

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

(5) If applicable, sponsor must state that it will transfer unsold shares to financially responsible natural persons within three years in order to avoid jeopardizing the apartment corporation's qualifications as a cooperative housing corporation or the deductibility of interest and taxes by tenant-stockholders who itemize deductions under Internal Revenue Code section 216.

(6) If applicable, state that the consideration for the unsold shares at closing will meet the reasonable relationship stan-

dard of Internal Revenue Code section 216(b)(2).

(7) State whether unsold shares will be issued only to persons who will hold for their own account, and whether a holder may pool profits or losses with other holders of unsold shares. If holders of unsold shares may pool profits or losses, discuss the tax implications in the attorney's income tax opinion, and highlight as a special risk if the pooling extends beyond the seller's qualified holding period applicable under Internal Revenue Code section 216(b)(6).

(8) Describe any special rights or obligations of a holder of unsold shares, including, but not limited to: the right to use, lease, sublet, sell, pledge or transfer unsold shares, whether the consent of the managing agent or the apartment corporation is required for transfer, whether the apartment corporation may impose fees or charges on the holder of unsold shares for transfer, whether a holder of unsold shares may use units for models or offices and whether a holder of unsold shares may make alterations or additions to a unit without the consent of the apartment corporation. All alterations and additions must be in compliance with building codes and related laws.

(9) A holder of unsold shares shall comply with the trust fund and escrow provisions of G.B.L. sections 352-h and 352-e(2)(b).

(10) A holder of unsold shares must register as a broker-dealer pursuant to G.B.L. section 359-e unless he or she is already registered as a principal of the sponsor or otherwise. A holder of unsold shares must furnish to the Department of Law all information required for a principal of the sponsor by section 18.2(c)(4)(iv) of this Part.

(11) A holder of unsold shares shall amend the plan to provide current and accurate information about the offering, including the same information concerning all holders of unsold shares as is required for principals of the sponsor by paragraphs (cc)(1), (2), (7) and (8) of this section, until the shares held as unsold shares have been sold to bona fide purchasers. A holder of unsold shares also shall provide prospective purchasers with a copy of the offering plan and all filed amendments.

(12) Highlight as a special risk if the following provision or a more restrictive provision is no part of the proprietary lease. “Holders of unsold shares may not cancel their proprietary leases unless: (i) shareholders owning a majority of the apartment corporation's outstanding shares (other than unsold shares) shall have given notice of intent to cancel; or (ii) all unsold shares constitute 15 percent or less of the apartment corporation's outstanding shares, at least five years have elapsed since the apartment corporation acquired title to the building and on the effective date of cancellation holders of unsold shares shall pay to the apartment corporation a sum equal to the product of the then current monthly maintenance charges payable under the proprietary lease multiplied by 24”.

(x) *Purchasers for investment or resale.* A purchaser for investment or resale is a purchaser who purchases shares allocated to three or more apartments, which are not for occupancy by such purchaser or persons related by blood, marriage or adoption to such purchaser. In connection with the sale of such shares:

(1) A purchaser for investment or resale must register as a dealer pursuant to G.B.L. section 359-e (if not already registered).

(2) A purchaser for investment or resale shall comply with the trust fund and escrow provisions of G.B.L. sections 352-h and 352-e(2)(b).

(3) A purchaser for investment or resale shall provide the following documents to a prospective purchaser at no cost to the purchaser three business days before entering a purchase agreement:

(i) copy of the most recent financial statement of the apartment corporation, if any and copy of the most recent budget of projected expenses, if any;

(ii) copy of the most recent notice from the apartment corporation of the interest and taxes deductible for income tax purposes, if any;

(iii) copies of notices from the apartment corporation concerning changes in maintenance charges, potential assessments, planned major capital improvements and proposed refinancing of the building's mortgage(s), if any;

(iv) copies of pleadings in pending lawsuits or proceedings, the outcome of which may affect the offering of the unit, the seller's capacity to perform all of its obligations under the purchase agreement or the rights of an existing tenant of the unit, if any;

(v) if the unit is occupied, copy of the tenant's lease and representation of the tenant's status under rent laws and (if applicable) as an senior citizen or eligible handicapped person or eligible senior citizen or eligible disabled person;

(vi) copies of the bylaws and proprietary lease of the apartment corporation as amended; and

(vii) copy of notice of uncured violations of record in the unit that are the responsibility of the proprietary lessee to cure, if any.

(y) *Reserve fund and/or working capital fund.* The offering plan must state whether the apartment corporation will have funds for working capital and/or as a reserve for capital expenditures. The offering plan must comply with any applicable law concerning reserve funds and/or working capital funds. If such funds are provided, state the amount of the funds; whether the sponsor and purchasers contribute to the funds; what restrictions there are on the use of each fund; and when the funds will be available to the apartment corporation. If a fund is called a reserve fund, it may be used only for capital expenditures, and the apartment corporation's bylaws shall contain a provision authorizing the establishment of such a fund. Discuss whether the reserve fund (if any) will be sufficient to pay for the replacement of capital items likely to be needed as disclosed in the Description of Property and Building Condition.

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

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

(3) Closing adjustments may only be deducted from the working capital fund. If a substantial credit to the sponsor can be anticipated with reasonable probability (for example, an escrow deposit of tax accruals, an existing FHA depositary fund for replacements, or other fund to be transferred to the apartment corporation at the closing) the approximate range or amounts of such adjustment item must be disclosed. Disclose how the net closing adjustments, if in favor of the sponsor, are to be paid. State whether there will be a minimum working capital fund regardless of the amount of closing adjustments.

(4) If, by reason of any substantial closing adjustment item in favor of the sponsor, the sponsor will be paid over a period of time, such as by an installment note, the budget in the plan (Schedule B) must reflect such proposed payment, as a separate line of the budget with a footnote disclosing the nature and purpose of the payments.

(5) Closing costs may not be deducted from the working capital fund or the reserve fund. Closing costs may be paid by the sponsor or by the apartment corporation from the proceeds of the sale of shares. The plan may provide a separate special fund, with disclosures in the manner and format of the working capital fund, to show payment of closing costs from the proceeds of sale of shares.

(z) *Contract of sale (or exchange).* State the material terms of the contract of sale or exchange under which the apartment corporation will acquire the property, including the following (unless stated elsewhere in the plan):

(1) State the date of the agreement, purchase price of the property, how the purchase price may be adjusted by changes in the offering prices, and how and when the purchase price is to be paid.

(2) State that the apartment corporation will receive the property free and clear of liens, encumbrances and title exceptions other than those described in the plan. Describe any leases, mortgages, liens, encumbrances and title exceptions that will affect the property after closing. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey would show, provided that such additional state of facts does not render title unmarketable.

(3) State that the apartment corporation's title will be insured at closing by a title company that is authorized to do business in the state where the cooperative is located. State the amount of the coverage or how the amount will be derived. For a contract of sale or exchange, coverage may not be in an amount that is less than the aggregate of: (i) the total cash payments received under all subscription agreements less the reserve and/or working capital fund; (ii) the product of the number of unsold shares multiplied by the lowest cash payment per share offered to tenants in occupancy; and (iii) the amount of the apartment corporation's mortgage indebtedness. State that sponsor will pay for the insurance or the apartment corporation will pay for the insurance from the proceeds of the sale of shares.

(4) All personal property located on the property on the date the contract of sale is signed, that is owned by the sponsor or the owner of the property if not the sponsor, is included in the conveyance unless specifically excepted in the offering plan.

(5) Describe the types of cost, fees and charges to be paid in connection with the closing. State that the working capital fund will not be reduced by costs paid by the apartment corporation.

(6) List items to be apportioned and set forth the basis for apportionment. The disclosures in this section, with respect to closing costs and closing adjustment provisions, should be consistent with the requirements in subdivision (y) of this section.

(7) Describe the type of deed. Highlight as special risk if the deed is not a full warranty deed or a bargain and sale deed with covenants against grantor's acts.

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

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

(10) State what will happen to the security deposits of purchasing and non-purchasing tenants. Set forth the obligations concerning security deposits under General Obligations Law section 7-103.

(11) State that all representations under the offering plan, all obligations pursuant to the G.B.L., and such additional obligations under the offering plan which are to be performed subsequent to closing date, will survive delivery of the deed.

(12) State that the sponsor will maintain the property until the closing is substantially the same condition and manner as on the date of presentation.

(aa) *Special tax consequences of contract of exchange.*

(1) For a contract of exchange, which refers to either a transfer by individual owners to a corporation controlled by them or to another type of nontaxable exchange, explain what the apartment corporation's tax basis in the property would have been (in approximate amount) on the projected date of closing under an ordinary contract of sale in comparison to the corporation's projected tax basis under the Internal Revenue Code sections making the exchange nontaxable.

(2) Discuss the impact, if any, that structuring the transaction as an exchange will have on the depreciation available to the apartment corporation, and on tax deductions available to particular tenant-stockholders (for example, self-employed persons depreciating a home office), and on the possibility of income being taxable to the apartment corporation.

(3) Discuss the apartment corporation's tax liability in the event the property is ever sold or liquidated either voluntarily or involuntarily (such as upon a mortgage foreclosure) including the possibility that the unpaid principal balance of the mortgage will exceed the apartment corporation's basis.

(4) If the transaction is structured as an exchange, sponsor shall indemnify the apartment corporation and purchasers against any liability incurred after title is transferred to the apartment corporation and before the stock certificates and proprietary leases are delivered to purchasers under the offering plan. Such indemnification shall not be required in cases where the shares are issued to purchasers simultaneously with the transfer of title to the apartment corporation. Sponsor must update the title search before the first closing to a purchaser and if there are any judgments or liens or if litigation has been commenced, sponsor must amend the plan before the first closing to a purchaser. The apartment corporation must have public liability insurance after it takes title to the property and before the first closing to a purchaser.

(bb) *Management agreement, contracts and leases.*

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

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

(ii) the term of the management agreement and the agent's right (if any) to cancel the agreement;

(iii) all fees and other compensation for services;

(iv) the major duties and services to be performed by the managing agent, including whether bookkeeping, payroll, income tax deduction calculation and maintenance collection are provided;

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

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

(2) Plans subject to the provisions of G.B.L. section 352-eee(3) or 352-eeee(3) shall refer to the applicable G.B.L. provision and comply with it.

(3) If not described in detail in the footnotes to the budget, summarize all agreements or leases that will be binding on the apartment corporation, including the name of the contractor or lessee, the services rendered or received, the annual income or cost and the expiration date of the contract or lease.

(4) Highlight as a special risk if any contract is binding on the apartment corporation for more than five years after the anticipated closing date, unless it is customary in the area to enter a long-term contract for the service rendered, e.g., a cable TV contract. Note whether the contract is with a business affiliate of the sponsor or its principals.

(5) Disclose the material terms of all leases with the apartment corporation other than proprietary leases, including but not limited to the following:

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

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

(iii) Highlight as a special risk if: (a) any lease has a term exceeding 10 years; (b) if the lease generates or is expected to generate less income than the pro rata share of expenses attributable to the leased space now or in the future; or (c) if the ratio of income generated by the lease to the share of expenses fairly attributable to the leased space may decline in the future. Describe the potential burden to the apartment corporation of these risks. Disclose the basis for projecting the share of expense attributable to the leased space, and estimate the income and expenses for the lease term.

(iv) Explain the apartment corporation's rights and obligations under the lease with regard to making ordinary or structural repairs, rebuilding after a casualty, retaining insurance or condemnation proceeds, limiting use to those compatible with a first-class residential building, and barring offensive uses. State whether consent of the apartment corporation is required before the lessee can assign or sublet space, change the current uses, alter the structure, or perform work that may result in mechanics' liens.

(v) When the lessee or sublessee is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or is related to the sponsor, the selling agent or any principal of the sponsor or selling agent, by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner, the following provisions shall apply:

(a) The lease may not contain any unconscionable terms, including but not limited to any provision pursuant to which the rent payable may be less than expenses fairly attributable to the leased space.

(b) The lease must contain escalator clauses which ensure that the rent payable by the lessee for the term of the lease will be sufficient to cover the expenses fairly attributable to the leased space, such as expenses for real estate taxes, labor, insurance, heating and utilities, except as provided in clause (c) of this subparagraph.

(c) The terms of the lease may not jeopardize the apartment corporation's qualification under section 216 of the Internal Revenue Code, unless the possibility of disqualification under section 216 of the IRC is highlighted as a special risk and the cover prominently displays the legend: PERSONAL INCOME TAX DEDUCTIONS MAY NOT BE AVAILABLE TO PURCHASERS UNDER THIS PLAN. See Pg. _____. (Refer to the Tax Opinion.)

(d) Any lease that comes within subdivision (bb)(5)(v) of this section must be noted in the transmittal letter to the Department of Law required by section 18.2(c)(1).

(cc) *Identity of parties.*

(1) State the names and business addresses, backgrounds and experience of the sponsor and principals of sponsor, as defined in section 18.1(c) of this Part. If the sponsor is a contract vendee, such information shall also be provided with respect to the owner of the property to be conveyed to the cooperative and principals of the present owner, and any relationship between the owner of the property and the contract vendee shall also be disclosed. Describe: (i) any prior felony convictions of sponsor and/or any principals of sponsor; and (ii) any prior convictions, injunctions and judgments against the sponsor and/or any principals of sponsor that may be material to the offering plan or an offering of securities generally, and that occurred within the 15 years prior to the submission of the proposed offering plan.

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

(3) Identify each cooperative, condominium or homeowners association, other than the subject building(s), where the sponsor, general partner or principal of the sponsor, or the holder of unsold shares, owns 10 percent or more of the unsold shares or units as an individual, general partner or principal, and state whether the sponsor, general partner, principal or holder of unsold shares is current in its financial obligations, including, but not limited to, payment of maintenance or common charges, taxes, reserve or working capital fund payments, assessments, payments for repairs and improvements promised in the plan, payment of underlying mortgages, and payment of loans for which shares or units have been

pledged as collateral or mortgaged. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(4) State the name and address of the sponsor's attorney, the apartment corporation's attorney, if any, and identify which attorney prepared the offering plan. If an attorney represents the apartment corporation, describe the scope of the attorney's responsibilities.

(5) If there is or will be a managing agent or manager for the property, include the name, address and experience of the managing agent or manager and a representative list of other properties being managed by the managing agent or manager. If the managing agent or manager has no comparable experience, so state. Describe: (i) any prior felony convictions of the managing agent or any principals of the managing agent; and (ii) any prior convictions, injunctions and judgments against the managing agent or any principals of the managing agent that may be material to the offering plan or an offering of securities generally, that occurred within the 15 years prior to the submission of the proposed offering plan.

(6) State the name, address and experience of the selling agent. Describe: (i) any prior felony convictions of the selling agent, or any principals of the selling agent; and (ii) any prior convictions, injunctions and judgments against the selling agent, or any principals of the selling agent that may be material to the offering plan or an offering of securities generally, that occurred within the 15 years prior to the submission of the proposed offering plan.

(7) State the name, address and experience of the sponsor's professional engineer or registered architect.

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

(9) If applicable, state that the Secretary of State is designated to receive service of process for an out-of-state sponsor, or for out-of-state principals of the sponsor, or for an out-of-state selling agent and its principals.

(dd) *Sponsor's profit.*

(1) If sponsor, a principal or principals of sponsor have had any ownership interest in the property for three years or less prior to submission of the proposed offering plan to the Department of Law, estimate the amount of total profit the sponsor will make on the conversion.

(2) Include the following information in describing the profit:

(i) the date that the sponsor acquired or will acquire an ownership interest;

(ii) the purchase price of the ownership interest (and when the purchase price is payable if not yet paid), the amount of any purchase money mortgage(s) on the property, and the amount of any mortgage(s) that the sponsor assumed or took subject to;

(iii) the approximate cost of capital expenditures undertaken or to be undertaken by sponsor;

(iv) the costs associated with acquisition and ownership of the property, including financing costs; and

(v) the aggregate amount for costs incurred in connection with the conversion, such as sales commissions, attorneys' and engineers' fees, printing, advertising, title insurance for the apartment corporation, government filing fees and transfer taxes.

(3) In estimating the sponsor's profit, assume that the sponsor will become the holder of all unsold shares and that all shares of the apartment corporation will be sold. Unless the assumption would be misleading for a particular property,

assume that 100 percent of the shares allocated will be sold at the price per share in Schedule A for tenant purchasers.

(4) If sponsor, a principal or principals of sponsor have had an ownership interest in the property for more than three years prior to the submission of the proposed offering plan to the Department of Law, state whether the sponsor expects to make a profit on the conversion.

(ee) *Reports to shareholders.* State that it is the obligation of the apartment corporation to give all shareholders annually:

(1) a statement of the amount deductible for income tax purposes by a specified date that shall be no later than March 15th;

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

(3) prior notice of the annual shareholders' meeting.

(ff) *Documents on file.* State that sponsor shall keep copies of the plan, all documents referred to in the plan and all exhibits submitted to the Department of Law in connection with the filing of the plan, on file, and available for inspection without charge, and copying at a reasonable charge, at a specified location for six years from the date of closing.

(gg) *General.* Describe any other material facts concerning the sponsor, the selling agent, the managing agent, any of their principals, the property, the offering and a prospective purchaser's rights and obligations, including the following:

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

(2) Disclose whether the property was the subject of any prior cooperative or condominium offerings. Disclose whether any preliminary binding agreements have been entered or whether money has been collected from prospective purchasers.

(3) Represent that the sponsor, its agents and sponsor as holder of unsold shares will not discriminate against any person on any basis prohibited by civil rights laws.

(4) Note subscribers' rights to rescind subscriptions following adverse amendments; see section 18.5(a)(5) of this Part.

(5) Disclose any circumstances which may affect use or enjoyment of the property and appurtenances, such as reciprocal convenants or easements, impending adjacent high-rise construction, any usage restriction by statute, ordinance or zoning resolution such as specified occupancy percentage by certified artists, or historic district or landmark designation, unless disclosed elsewhere in the plan.

(hh) *Sponsor's statement of building condition.* Include the following provisions:

(1) Sponsor must adopt the Description of Property and Building Condition set forth in Part II of the plan and represent that sponsor has no knowledge of any material defects or need for major repairs to the property except as set forth in the Description of Property and Building Condition.

(2) State whether the property is offered in “as is” condition as of a specified date, subject to (i) the sponsor's obligation to maintain the property until the closing in substantially the same condition and manner as on the date of presentation, (ii) reasonable wear and tear, and (iii) sponsor's obligation described in paragraph (3) of this subdivision, to cause violations of record to be cured. To the extent not reported in the Description of Property and Building Condition, describe

any rehabilitation to be completed by sponsor and the timetable for completion.

(3) State that prior to closing or within a reasonable period of time thereafter, sponsor will cause to be cured all violations of record as of the closing date (except violations caused by acts or omissions of tenants of the building in their own units), and will eliminate all dangerous or hazardous conditions that sponsor has notice of, and comply with all work orders from mortgagees.

(4) If not stated in the Description of Property and Building Conditions, state whether the number of units offered is identical to the number of units stated on the certificate of occupancy, whether the proposed use of the units is the same as the use indicated in the certificate of occupancy, and whether property interests that are offered, such as roof gardens or basement facilities, are provided for in the certificate of occupancy.

(5) Note any official inspection reports reflecting upon condition of the premises, such as notices of building code violations, or any reports required by local law, including, if applicable, the report required by C26-105.3 of the Administrative Code of the City of New York, which shall each be reproduced in Part II of the plan; and disclose the existence and availability of any inspection reports by a professional engineer or a registered architect retained by a group or association of tenants.

(6) Disclose the existence of any applicable federal, State or local laws concerning lead- based paint and whether the sponsor will comply with such laws and regulations promulgated thereunder.