



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Clarification of Procedure for
Changes to Sponsor Entities and/or
Principal(s) Thereof in Cooperative
Interests in Realty with CPS-5 Exemption**

Date: May 9, 2017

The Department of Law publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act (“S.A.P.A.”) § 102(14).

On January 13, 2017, the New York State Department of Law (“DOL”) updated its Cooperative Policy Statement #5 (“CPS-5”). CPS-5 grants an exemption from filing future amendments if a cooperative interest in realty satisfies certain requirements. Since the update to CPS-5 in January 2017, the DOL has received a number of inquiries regarding the proper procedure involving a change to the sponsor(s) and/or successor sponsor(s) and/or holder(s) of unsold shares (collectively “Sponsor Entities”) and/or the principal(s) thereof in a cooperative interest in realty with CPS-5 exemption. This memorandum clarifies the proper procedure involving a change to the Sponsor Entities and/or principal(s) in a cooperative interest in realty with CPS-5 exemption.

The DOL grants a CPS-5 exemption to an entire cooperative interest in realty, not to any single Sponsor Entity or principal. Accordingly, the CPS-5 affidavit requires signature(s) of *all* Sponsor Entities of a cooperative interest in realty. In addition, CPS-5 states that the granting of the exemption is on such terms and conditions as the DOL deems necessary to protect the public interest, and the DOL may revoke the exemption if it determines that the Sponsor Entities should be required to file amendments to the offering plan. Thus, a new amendment to the offering plan and new CPS-5 affidavit are required when there is a change to the Sponsor Entities and/or principals(s) in a cooperative interest in realty with a CPS-5 exemption. If the change to the Sponsor Entities and/or principal(s) are not timely disclosed in a new amendment and a new CPS-5 affidavit is not submitted, it is an omission of material fact and, therefore, a violation of

the Martin Act. The Attorney General has the authority under Article 23-A of the General Business Law to investigate and strictly enforce such violations.

Sponsor Entities must complete the following procedures when there is a change to the Sponsor Entities and/or principal(s) in a cooperative interest in realty with a CPS-5 exemption. First, Sponsor Entities must file an amendment to the offering plan disclosing such change. This amendment must include a broker-dealer registration statement (“Form M-10”) or a supplemental broker-dealer registration statement (“Form M-3”) as applicable. This amendment must be submitted within sixty (60) days from the date of a change of Sponsor Entities and/or principal(s).

If Sponsor Entities would like the CPS-5 exemption to continue after the DOL has accepted the new amendment for filing, Sponsor Entities must then submit to the DOL a new CPS-5 affidavit, signed by all Sponsor Entities and at least one principal of each of the Sponsor Entities. If the new CPS-5 affidavit is not submitted within twelve (12) months from the date the most recent amendment was filed, the CPS-5 exemption shall be revoked and Sponsor Entities shall be required to regularly amend the offering plan pursuant to DOL regulations if engaging in sales activities. The attorney transmittal letter accompanying the new CPS-5 affidavit must note that (i) a CPS-5 application was previously filed for the cooperative interest in realty, (ii) a new affidavit is required because of a change in Sponsor Entities and/or principal(s), and (iii) the DOL has accepted for filing the new amendment disclosing the change in Sponsor Entities and/or principal(s). There is no fee for submitting this new CPS-5 affidavit.

Once the new amendment and new CPS-5 affidavit are filed with the DOL, Sponsor Entities will be exempted from filing future amendments pursuant to CPS-5, unless otherwise determined by the DOL. The granting of an exemption shall not be construed to be a waiver of or a limitation on the DOL’s authority to take enforcement action pursuant to Article 23-A of the General Business Law and other applicable provisions of law, except as expressly stated in the CPS-5 exemption letter.

CPS-5 can be accessed via:

<https://ag.ny.gov/sites/default/files/cps-5.pdf>

Form M-10 (broker-dealer registration) can be accessed via:

https://ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/m_10.pdf

Form M-3 (supplemental broker-dealer registration) can be accessed via:

https://ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/m_3.pdf