



**STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
REAL ESTATE FINANCE BUREAU
28 LIBERTY STREET
NEW YORK, NY 10005**

**EXEMPTION FROM FILING UPDATE AMENDMENTS
COOPERATIVE POLICY STATEMENT #5
WITH REQUIRED FORMS¹
(Applicable to Cooperatives, Condominiums, and Homeowners
Associations)**

¹ Updated January 2017. This version supersedes and replaces all previously issued versions of the CPS-5.

COOPERATIVE POLICY STATEMENT #5
EXEMPTION FROM FILING UPDATE AMENDMENTS
**(APPLICABLE TO COOPERATIVES, CONDOMINIUMS,
AND HOMEOWNERS ASSOCIATIONS)**

Applicability: A sponsor/successor sponsor(s)/holder(s) of unsold shares may apply for an exemption from filing further amendments to a cooperative, condominium, or homeowners association offering plan if the sponsor and/or all successor sponsor(s) and/or holder(s) of unsold shares in the aggregate, own 10% or less of the shares in the cooperative, or units in the condominium or homeowners association. In addition, the building must be covered by a Permanent Certificate of Occupancy² and either:

- (i) five or more years have elapsed since the acceptance of the post-closing amendment for filing; or
- (ii) three or more years have elapsed since the sponsor relinquished control of the Board of Directors or Board of Managers.

Please note that the Cooperative Policy Statement #5 (“CPS-5”) exemption is granted to the *entire* cooperative interest in realty, not to any single entity or individual. Thus, all parties bound by the sponsor’s representations regarding its commitment to sell units/shares must be included in the CPS-5 application.

Procedure: A sponsor/successor sponsor(s)/holder(s) of unsold shares that meets all of the above criteria may apply for an exemption from the requirement that it file updated amendments annually by submitting an affidavit stating:

- (a) that it will provide each subsequent offeree with the following information:
 - (1) the purchase price and maintenance charges or common charges of the unit or lot;
 - (2) a copy of the financial statements of the apartment corporation, condominium, or homeowners association for the two most recent fiscal years of operation, unless not provided by the non-sponsor-controlled Board to owners;
 - (3) a copy of the most recent budget of projected expenses, unless not provided by the non-sponsor-controlled Board to owners;
 - (4) a copy of the offering plan with all amendments;

² If a Permanent Certificate(s) of Occupancy is not required by law for the building(s), the sponsor/successor sponsor(s)/holder(s) of unsold shares must provide an explanation in the affidavit.

- (5) information, if any, known to the sponsor/successor sponsor(s)/holder(s) of unsold shares which may in reasonable likelihood result in an increase of 15% or more in expenses for shareholders, unit owners or lot owners or for the apartment corporation, condominium, or homeowners association, including, but not limited to, planned, projected, or reasonably anticipated increases in maintenance charges, assessments, planned major capital improvements or repairs, refinancing of a mortgage, or the correction of code violations or dangerous and hazardous building conditions;
 - (6) summaries of any material pending litigation or administrative proceedings and, if requested, copies of pleadings in such litigation or proceedings, or any orders and judgments, the outcome of which may materially affect the apartment corporation, condominium, or homeowners association or the rights of an existing tenant of the unit;
 - (7) if the unit is occupied, a copy of the tenant's lease and a representation of the tenant's status under applicable rent laws and, if applicable, as an "eligible senior citizen" or "eligible disabled person";
 - (8) a copy of the notice of any uncured violations of record in the unit that are the responsibility of the proprietary lessee or unit owner to cure;
 - (9) a copy of the letter conferring an exemption from amendment filings;
 - (10) a statement that the actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements and improvements) of the building or development did not exceed its income by more than 15% for the most recently concluded fiscal year; *and*
- (b) that if, after an exemption from filing amendments is granted, any of the following circumstances arise, the sponsor/successor sponsor(s)/holder(s) of unsold shares shall file an amendment to the Department of Law before offering for sale or entering into a contract for sale of any remaining shares, units, or lots:
- (1) the sponsor/successor sponsor(s)/holder(s) of unsold shares learns that the actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements, and improvements) of the building for a fiscal year exceed its income by more than 15%;
 - (2) litigation is filed which may adversely affect the sponsor's/successor sponsors'/holders' of unsold shares capacity to perform all of its obligations;

- (3) the sponsor/successor sponsor(s)/holder(s) of unsold shares learns or should know that the apartment corporation, condominium, or homeowners association is not meeting its current obligations;
- (4) the sponsor/successor sponsor(s)/holder(s) of unsold shares is not meeting its current obligations;
- (5) the sponsor/successor sponsor(s)/holder(s) of unsold shares is subjected to a judgment in any civil or criminal action or proceeding which adversely affects the offering plan or the sponsor's/successor sponsors'/holders' of unsold shares fitness as an offeror of real estate securities; or
- (6) the sponsor/successor sponsor(s)/holder(s) of unsold shares learns or should know of facts or circumstances which may in reasonable likelihood result in increases in maintenance charges or common charges of 15% or more because of extraordinary expenses to the apartment corporation, condominium, or homeowners association, including, but not limited to, assessments or liabilities, outstanding uncured violations of record or dangerous and hazardous building conditions, or pending litigation.

The requirement to file an amendment disclosing the circumstance(s) listed above shall not automatically terminate the exemption from filing future amendments; the exemption shall continue after the filing of such amendments, unless otherwise revoked by the Department of Law.

Conditions:

- (a) The granting of an exemption is on such terms and conditions as the Department of Law may impose, in its discretion, in order to protect the public interest. It may be revoked summarily if the Department of Law determines that the filing of amendments should be required. The Department of Law also reserves the right to request additional material information in its review of the CPS-5 application.
- (b) The granting of an exemption is based solely upon the information provided by the sponsor/successor sponsor(s)/holder(s) of unsold shares in its application. Any material misstatement or omission of a material fact in the application may render the exemption void **ab initio**.
- (c) The granting of an exemption shall not be construed to be a waiver of or a limitation on the Department of Law's authority to take enforcement action pursuant to Article 23-A of the General Business Law and any other applicable provisions of law, except as expressly stated in the letter granting such exemption.

- (d) Department of Law reserves the right to request an affidavit of compliance with the terms of the exemption, along with any supporting documents, at any time.

Fee: As the exemption is being granted in lieu of the filing of an amendment, the statutory filing fee for an amendment shall be required with an exemption application which shall be retained whether the exemption is granted or denied.

Effective Date: Applications for exemptions may be made on or after July 1, 1989.

Note: The following model Application for Exemption from Filing Update Amendments, with appropriate modifications, must be used in applying for an exemption from filing update amendments. However, applicants should ***not*** fill in the blanks on a copy of the model; a ***fully completed and edited*** Application for Exemption from Filing Update Amendments should be prepared and typed by the applicant.

Submit this application to:
Department of Law
Real Estate Finance Bureau
28 Liberty Street, 21st Floor
New York, New York 10005

Decisions on applications will be made within 30 days of submission. No offeror should consider an exemption to be granted until a letter granting the exemption is received. No exemption will be granted for offering plans that are currently expired. In these cases, a new amendment should be submitted. After the amendment is accepted for filing, an application pursuant to CPS-5 may be submitted prior to the expiration of terms of the offering plan. An exemption will not be granted in phased homeowners associations until sales are taking place pursuant to filed amendments in the last phase of the development.

Please be advised that (i) ***all*** sponsor(s), successor sponsor(s) and/or holder(s) of unsold shares; and (ii) a principal from each sponsor, successor sponsor and/or holder of unsold shares must sign the CPS-5 affidavit.

1. For Cooperatives:

I am _____, with business
(Title of the affiant)

address _____, the sponsor/a holder of unsold shares for the cooperative, who was disclosed as such in amendment # _____ of the offering plan filed on _____. I am a registered broker-dealer whose registration is still current and will keep my broker-dealer registration accurate, complete, and current until all units are sold. (**Note:** Please be advised that if there are multiple holders of unsold shares, all holders of unsold shares must state that they will only conduct sales activities with an accurate, complete, and current broker-dealer registration.)

Please select the applicable statement from the following: (i) I am the only holder of unsold shares; or (ii) I have been joined by all other holders of unsold shares to submit this application. (**Note:** Submit a copy of the current broker-dealer registration for all holders of unsold shares as a supporting document.)

The names and addresses of the other holders of unsold shares are:

2. The offering plan was filed on _____.
3. The effectiveness amendment was accepted for filing on _____ and the closing or first closing occurred on _____.
4. The last amendment to this offering plan was filed on _____.
5. The Permanent Certificate of Occupancy was procured on _____. (**Note:** Include as an exhibit a copy of the Permanent Certificate of Occupancy. If no Permanent Certificate of Occupancy is required by law, please provide an explanation of the circumstances. Please be advised that the Department of Law will not grant an exemption for a building with only a Temporary Certificate of Occupancy.)
6. The offering plan is presently current and up-to-date and no sales have occurred during a period of time when the offering plan had expired.
7. There are _____ units/shares which are the subject of the offering plan. The sponsor/successor sponsor(s)/holder(s) of unsold shares own _____ shares or units.

(Note: Include as an exhibit a copy of the Cover Page of the offering plan or any proof of total number of units/shares offered.)

8. The sponsor/successor sponsor(s)/holder(s) of unsold shares own in the aggregate ten percent or less of the shares in the cooperative, or units in the condominium or homeowners association. **(Note:** Include as an exhibit a list of the units/shares owned by the sponsor/successor sponsor(s)/holder(s) of unsold shares.)
9. If this is a phased homeowners association, the sponsor in amendment # disclosed that lots or units were being offered in the last (#_____) phase of the association offering.
10. The post-closing amendment #_____ was filed on _____. At least five years have elapsed since the acceptance of the post-closing amendment for filing.

OR

10. The sponsor and/or holder(s) of unsold shares relinquished control of the Board of Directors or Board of Managers on _____ as disclosed in amendment #_____. At least three years have elapsed since the sponsor and/or holder(s) of unsold shares relinquished control of the Board of Directors or Board of Managers.
11. The actual cash operating expense (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements and improvements) of the building or development did not exceed its income by more than 15% for the most recently concluded fiscal year.
12. The sponsor/successor sponsor(s)/holder(s) of unsold shares represent(s):
 - (a) that it/they will provide each subsequent offeree with the following information:
 - (i) the purchase price and maintenance charges or common charges of the unit;
 - (ii) a copy of the financial statements of the apartment corporation, condominium, or homeowners association for the two most recent fiscal years of operation, or a statement that such statements were not provided by the non-sponsor-controlled Board to owners;
 - (iii) a copy of the most recent budget of projected expenses, or a statement that such budget was not provided by the non-sponsor-controlled Board to owners;

- (iv) a copy of the offering plan with all amendments;
 - (v) information, if any, known to the sponsor/successor sponsor(s)/holder(s) of unsold shares which may in reasonable likelihood result in an increase of 15% or more in expenses for shareholders, unit owners, or lot owners or for the apartment corporation, condominium, or homeowners association including, but not limited to, planned, projected or reasonably anticipated increases in maintenance charges, assessments, planned major capital improvements or repairs, refinancing of a mortgage, or the correction of code violations or dangerous and hazardous building conditions;
 - (vi) summaries of any material pending litigation or administrative proceedings and, if requested, copies of pleadings in such litigation or proceedings, or any orders and judgments, the outcome of which may materially affect the apartment corporation, condominium, or homeowners association, or the rights of an existing tenant of the unit;
 - (vii) if the unit is occupied, a copy of the tenant's lease and representation of the tenant's status under applicable rent laws and, if applicable, as an "eligible senior citizen" or "eligible disabled person";
 - (viii) a copy of the notice of any uncured violations of record in the unit that are the responsibility of the proprietary lessee or unit owners to cure;
 - (ix) a copy of the letter conferring an exemption from amendment filings;
 - (x) a statement that the actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements, and improvements) of the building did not exceed its income by more than 15% for the most recently concluded fiscal year; and
- (b) that if, after an exemption from filing amendments is granted, any of the following circumstances arise, the sponsor/successor sponsor(s)/holder(s) of unsold shares shall file an amendment to the Department of Law before offering for sale or entering into a contract for sale of any remaining shares, units, or lots:

- (i) the sponsor/successor sponsor(s)/holder(s) of unsold shares learns that the actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, including capital repairs, replacements, and improvements) of the building for a fiscal year exceed its income by more than 15%;
- (ii) litigation is filed which may adversely affect the sponsor's/successor sponsors'/holders' of unsold shares capacity to perform all of its/their obligations;
- (iii) the sponsor/successor sponsor(s)/holder(s) of unsold shares learns or should know that the apartment corporation, condominium, or homeowners associations not meeting its current obligations;
- (iv) the sponsor/successor sponsor(s)/holder(s) of unsold shares is not meeting its current obligations;
- (v) the sponsor/successor sponsor(s)/holder(s) of unsold shares is subjected to a judgment in any civil or criminal action or proceeding which adversely affects the offering plan or the sponsor's/successor sponsors'/holders' of unsold shares fitness as an offeror of real estate securities; or
- (vi) the sponsor/successor sponsor(s)/holder(s) of unsold shares learns or should know of facts or circumstances which may in reasonable likelihood result in increases in maintenance charges or common charges of 15% or more because of extraordinary expenses to the apartment corporation, condominium, or homeowners association, including, but not limited to, assessments or liabilities, outstanding uncured violations of record or dangerous and hazardous building conditions, or pending litigation.

The requirement to file an amendment disclosing the circumstance(s) listed above shall not automatically terminate the exemption from filing future amendments; the exemption shall continue after the filing of such amendment, unless otherwise revoked by the Department of Law.

13. Neither the sponsor/successor sponsor(s)/holder(s) of unsold shares nor any principal thereof has entered into an Assurance of Discontinuance (“AOD”) with the New York State Attorney General pursuant to N.Y. Exec. Law § 63(15), or been named as a party in an action or proceeding commenced pursuant to any provision of N.Y. Gen. Bus. Law §§ 353, 354, 359-g and/or N.Y. Exec. Law § 63(12). (**Note:** If there are any AODs that have been executed, provide relevant facts and submit a copy of the AODs as a supporting document.)

14. The sponsor/successor sponsor(s)/holder(s) of unsold shares make the above representations knowing that the Department of Law is relying on the accuracy of these statements in granting an exemption from filing update amendments to the subject offering plan.

Signature(s) of all sponsor(s), successor sponsor(s), and/or holder(s) of unsold shares and at least one principal from each sponsor, successor sponsor(s), and/or holder(s) of unsold shares

By: (Signature of authorized signatory of sponsor(s), successor sponsor(s), and/or holder(s) of unsold shares)

(Printed name and title of authorized signatory)

By: (Signature of at least one principal of sponsor(s), successor sponsor(s), and/or holder(s) of unsold shares)

(Printed name of principal)

Sworn to before me this

_____ day of _____, 20__

Notary Public