

RULE REVIEW

DEPARTMENT OF LAW

As required by Chapter 262 of the Laws of 1996, the following is a list of rules which were adopted by the Department of Law, (Real Estate section of the Investment Protection Bureau) in calendar year 1997 which were to be reviewed in calendar year 2002. Public comment on the continuation or modification of these rules is invited. Comments may be directed to: Kenneth Demario, Department of Law, Investment Protection Bureau, 120 Broadway, 23rd floor, New York, New York 10271.

13 NYCRR Part 24 (Regulations Governing Timeshare Offering Plans).

Part 24, setting forth the disclosures required in offering plans for interests in timeshare projects, was originally promulgated in January, 1985. It was amended in April, 1997 in response to various changes in the timeshare industry and as a result of the Real Estate Financing Bureau's experience in reviewing timeshare plans over the prior twelve years.

The following sections of Part 24 were amended in 1997:

Section 24.1(a) - to explicitly exempt resales of timeshare intervals from filing requirements;

Section 24.1(c)(2) - to broaden the definition of "principal";

Section 24.1(d) - to provide for expedited review of plan amendments for out-of-state projects where the amendment was already accepted in the situs state;

Section 24.1(g) - to allow the sponsors of out-of-state timeshare plans to submit a New York addendum to an offering plan previously accepted in the situs state;

Sections 24.3(e)(4) and 24.3(g) - to revise the description of property and improvements required in an offering plan;

Section 24.3(m)(8) - to provide an alternative means of securing the funds of New York purchasers in out-of-state offering plans;

Section 24.4(c)(4) - to provide an alternative form for an engineer or architect's certification regarding plans and specifications for construction of the project;

Section 24.5(b)(6) - to require evidence of approval of amendments to out-of-state plans by the situs state;

Section 24.6(a) - to revise the legend on advertisements for timeshare sales;

Section 24.6(k)(2) - to require specification of premiums and their retail value, given to prospective purchasers;

Section 24.6(1) - to require that all communications by sponsor to contract-vendees be consistent with the offering plan;

Section 24.7(bb) - to provide an alternative to the submission of an architect or engineer's report;

Analysis of the need for these regulations: These regulations were necessary to insure that disclosure in offering plans for timeshare projects was complete and to take into account problems that had arisen in the review of offering plans since Part 24 was originally promulgated. They provide for greater specificity on several aspects of disclosure as well as flexibility in the review of out-of-state timeshare projects which are

already the subject of filed plans in the situs state.

Legal basis for the rule: General Business Law, Section 352-e(6).
13 NYCRR Part 20 (Regulations Governing Newly Constructed, Vacant or Non-Residential Condominiums).

Part 20, setting forth the disclosures required in offering plans for newly constructed, vacant or non-residential condominiums, was originally promulgated in July, 1991. It was amended in May, 1997, based on the recommendations of a task force of representatives of the real estate industry and bar, attorneys who represented consumers and Department of Law staff.

The following sections of Part 20 were amended in 1997:

Sections 20.3(q)(1), (2) and 20.5(e)(1) to simplify the manner of declaring a plan for a small condominium (containing five or fewer units) effective.

Analysis of the need for these regulations: These regulations were needed to relieve sponsors of small condominium offering plans of the more onerous aspects of declaring their plans effective. In a new construction context, the relaxation of the more stringent requirements for small buildings was thought to enhance efficiency, without diluting consumer protection.

Legal basis for the rule: General Business Law, Section 352-e(6).
13 NYCRR Parts 18, 20, 21, 22, 23 and 24

Sections 18.3(hh)(6) and 18.7(bb)

Sections 20.3(gg)(6) and 20.7(dd)

Sections 21.3(bb)(4) and 21.7(aa)

Sections 22.3(y)(6) and 22.7(w)

Sections 23.3(kk)(6) and 23.7(dd)

Sections 24.3(g)(11) and 24.7(cc)

These amendments to cooperative, condominium, homeowners association and timeshare regulations, adopted in June, 1997, require disclosure of the existence of applicable federal, state and local laws concerning lead-based paint and whether sponsor will comply with such law; and any information known to sponsor concerning the presence of lead-based paint in the property which is the subject of the offering plan.

Analysis of the need for the regulations: These amendments to cooperative, condominium, homeowners association and timeshare regulations were needed to reflect the promulgation of a new federal rule regarding lead paint hazards in residential housing.

Legal basis for the rules: General Business Law, Section 352-e(6).
13 NYCRR Parts 18, 20, 21, 22, 23 and 24

Section 18.2(c)(4)(iv)(D-1)

Section 20.2(c)(5)(iv)(D-1)

Section 21.2(c)(3)(iv)(b)

Section 22.2(c)(6)(iv)(a)

Section 23.2(c)(5)(iv)(a)

Section 24.2(c)(4)(d)(D-1)

These amendments to cooperative, condominium, homeowners association and timeshare regulations, adopted in June, 1997, provide exemptions from the filing of broker-dealer statements for selling agents and salespersons, as a result of a statutory amendment of General Business Law Section 359-e.

Analysis of the need for the regulations: These regulations were needed to reflect an amendment to General Business Law Section 359-e which exempts real estate brokers licensed with the Department of State, who are acting as selling agents in an offering of real estate securities, from filing a broker-dealer statement (Form M-10) with the Department of Law.

Legal basis for the rules: General Business Law, Section 352-e(6).