

# ALERT

March 2020

## **Condominium Cooperative Services Alert - Coronavirus (COVID-19) MH&H Condominium & Co-Op Services Group**

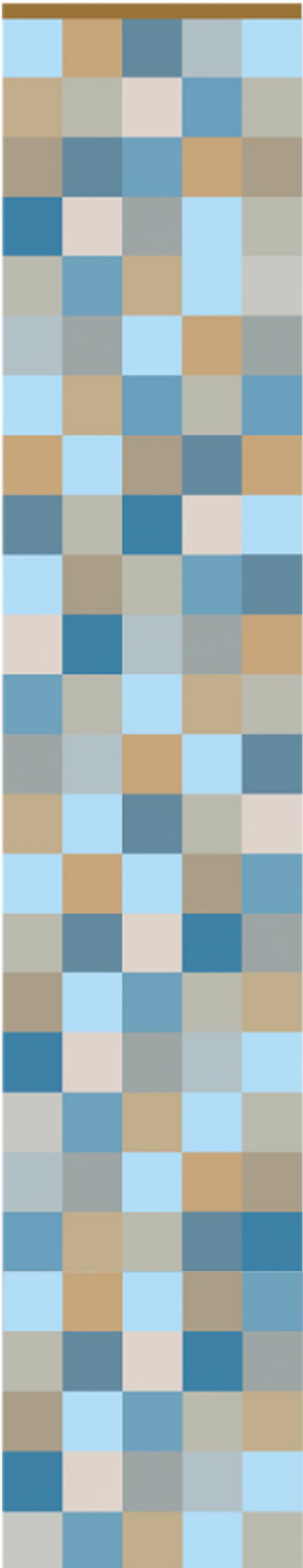
We hope this Alert finds you and your loved ones healthy and safe during these difficult times.

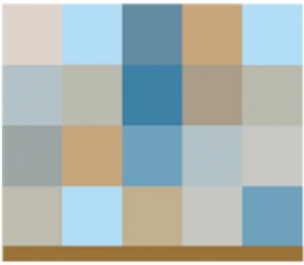
While our office is working remotely during the COVID-19 crisis, please know that we are working diligently and continuing to process files through the New York State Department of Law, Real Estate Finance Bureau (the “REF”).

To that end, the REF has issued an updated guidance memorandum, which outlines certain temporary policies (the “Relief Policies”) that have been put in place during the COVID-19 state of emergency (the “Relief Period”). The REF intends the Relief Period to remain in effect as long as NY Executive Order No. 202 – Declaring a Disaster Emergency in the State of New York remains in place, however REF has reserved its right to amend, extend or rescind the Relief Policies, at any time, in its discretion. A brief summary of the Relief Policies are set forth as follows:

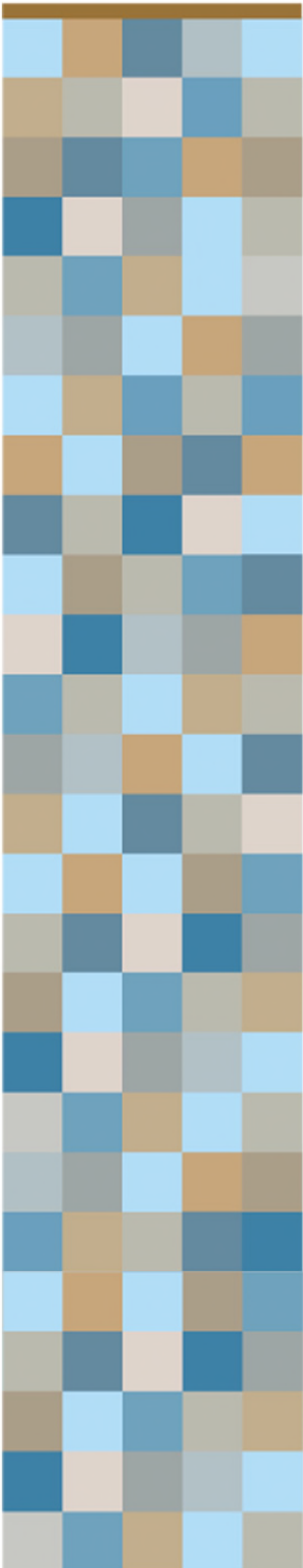
I) During the Relief Period the REF does not intend to pursue enforcement actions against Sponsors or Principals based solely upon the marketing or sale of Units/Apartments/Homes pursuant to an expired or “stale” Offering Plan. However, the REF will pursue enforcement action against Sponsors and Principals for failure to disclose material and adverse changes to Purchasers during the Relief Period. The following is a non-exhaustive list of changes the REF would deem material and/or adverse to Purchasers, which would require: an immediate amendment to the Offering Plan:

1. The Sponsor learns that the building’s actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, but including capital repairs, replacements, and improvements) for a fiscal year exceed its income by more than 15% percent.
2. Litigation is filed which may adversely affect the Sponsor’s capacity to perform all of its obligations.
3. The Sponsor learns, or should know, that the condominium, cooperative, homeowners association, timeshare, or senior residential community is not meeting its current obligations.
4. The Sponsor is not meeting its current obligations.





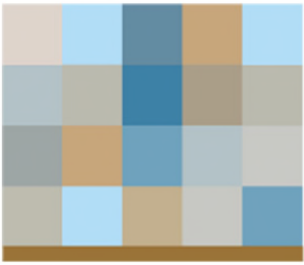
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5. The Sponsor is subjected to a judgment in any civil or criminal action or proceeding which adversely affects the Offering Plan or the Sponsor's fitness as an offeror of real estate securities.
6. The Sponsor learns, or should know, of facts or circumstances which may in reasonable likelihood result in material increases in maintenance charges or common charges because of extraordinary expenses to the condominium, cooperative, homeowners association, timeshare, or senior residential community, including, but not limited to, assessments or liabilities, outstanding uncured violations of record, dangerous and hazardous building conditions, or pending litigation.
7. There is an increase of 25% or more in the budget or projected budget of the property.
8. There is an increase of 25% or more in the property's projected or assessed property taxes.
9. The Sponsor makes a change in the size or number of Units and/or their respective percentages of common interest.
10. The Sponsor materially decreases the size or quality of common elements.
11. There is an architectural change to any common element or any Unit/Apartment/Home being offered, other than a substitution of "equal or better quality" as defined in the Offering Plan.
12. There is a material decrease in the square footage of any Unit/Apartment/Home being offered.
13. There is a change to the identities of the Sponsors or Principals of the Offering Plan.

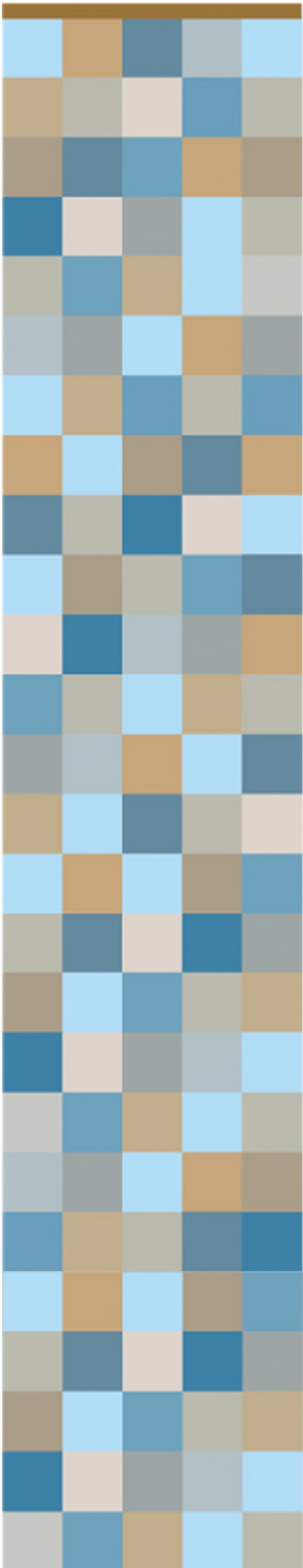
II) During the Relief Period the REF does not intend to pursue enforcement actions against Sponsors or Principals based solely upon the failure to file price change only amendments with REF prior to offering or selling Units/Apartments/Homes at prices different than the most recently disclosed and filed offering price. However, if the amendment is being submitted to disclose a material and/or adverse change AND the prices of Units are being changed, the new pricing must be included in the substantive amendment being submitted.

III) Amendments to Offering Plans – Substantive amendments to Offering Plans, such as Effectiveness Amendments, Post-Closing Amendments and other material and/or adverse Amendments will continue to be accepted for review by the REF. As the office acceptance letters from REF will be significantly delayed in being transmitted once an amendment has been accepted, the REF will issue acceptance emails to the submitting attorney. REF has advised that the NYC Department of Finance (the "DOF") will accept



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REF's acceptance email in lieu of "official" acceptance letters during the Relief Period. As such, Sponsor's may continue to submit Declarations of Condominiums to the DOF along with a copy of the REF acceptance email of their Effectiveness Amendments.

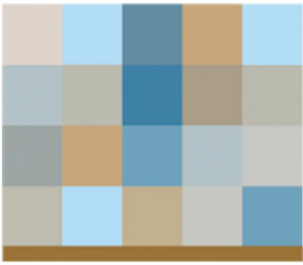
IV) Submission of New Offering Plans – The REF will continue to accept submission of new Offering Plans during the Relief Period, however, as the REF is not setup to accept full digital submission at this time, hard copies of the Offering Plan package must still be submitted. Please note, Sponsors should anticipate delays in the review of newly submitted Offering Plans by the REF during the Relief Period.

V) Pending Offering Plans and Amendments – The REF will continue to process pending Offering Plans and Amendments during the Relief Period. Furthermore, the REF will continue to accept pending Offering Plans for filing during the Relief Period, however the "official" acceptance letters will be significantly delayed. As such, the REF will issue acceptance letters for all pending Offering Plans and Amendments via email during the Relief Period, with "official" acceptance letters to be transmitted once the Relief Period is over.

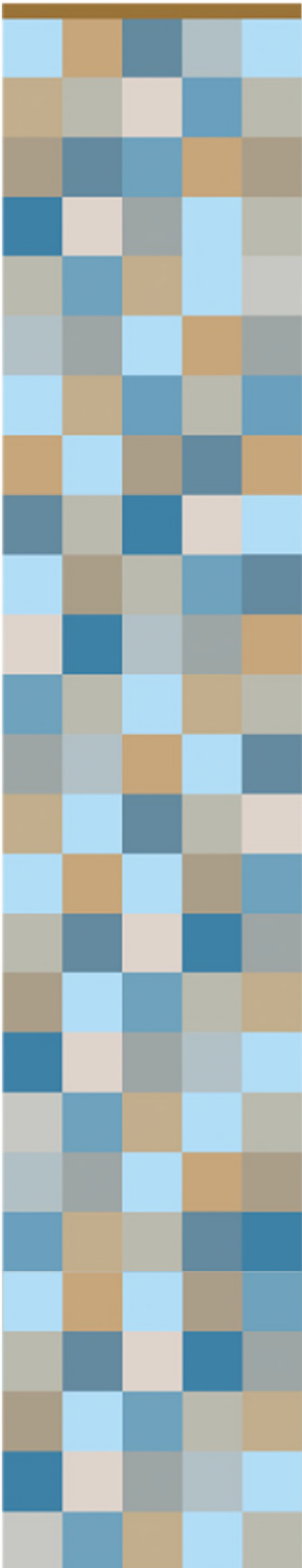
VI) No-Action Applications and Cooperative Policy Statement Exemptions – Applications for No-Action Letters and Cooperative Policy Statement Exemptions (such as CPS-1 applications "Market Test Applications") that have already been submitted to the REF will continue to be processed and granted. **However, the REF will no longer accept applications for Cooperative Policy Statement Exemptions, such as CPS-1 applications, during the Relief Period.** The REF will continue to accept applications for No-Action Letters, and REF has advised that the NYC Department of Finance (the "DOF") will accept REF's email granting a No-Action Letter in lieu of "official" No-Action Letter during the Relief Period.

VII) During the relief period, REF does not intend to pursue enforcement actions against broker-dealers or salespersons based solely upon the failure to timely file a broker-dealer or salesperson registration statement or supplemental broker-dealer or salesperson registration statement with REF. However, Broker-Dealer Statements (Form M-10) are required to be submitted with all new Offering Plan submissions.

VIII) During the relief period, REF (1) does not intend to pursue enforcement actions against Sponsors or Principals based solely upon furnishing Purchasers with digital copies of the Offering Plan and/or Amendments prior to submitting a CPS-10 application to REF, and (2) will not consider Sponsor or Principals furnishing Purchasers with digital copies of the Offering Plan and/or Amendments to be an act triggering a right of rescission for purchasers, provided the following conditions are met:



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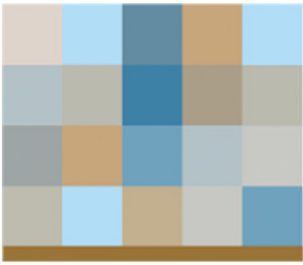
1. The digital copy of the Offering Plan and/or Amendment(s) is identical to the final version of the Offering Plan or Amendment(s) accepted for filing by REF;
2. The Sponsor provides a paper copy of the Offering Plan and/or Amendment(s) to any Purchaser who requests it;
3. The Sponsor provides all Purchasers with paper copies of any and all documents previously distributed digitally within thirty (30) business days after the conclusion of the Relief Period; and
4. The Sponsor includes a cover letter with the digital copy of the Offering Plan and/or Amendment(s), which includes the appropriate disclosures **(please contact our office for further information and assistance)**

IX) Original Signatures and Notarized Documents – During the Relief Period the REF will deem a photocopy or scanned copy of an original signature to be an original signature and will not require a “wet ink” signature to be provided. Furthermore, during the Relief Period the REF will not require notarization on any documents that it usually would require to be notarized provided the appropriate self-certification language is included in the document **(please contact our office for further information and assistance)**. Additionally, during the Relief Period the REF will also accept documents that are notarized in accordance with the NYS Executive Order No. 202.7.

While this Alert is intended to provide our clients and friends with a brief summary of some of the new policies and procedures put in place by the REF during this difficult time, this is by no means an exhaustive list of what must be done to ensure that your projects continue to comply with current filing requirements. The attorneys and staff in our Condominium and Cooperative Services Group are here to assist you in any way possible, please feel free to contact us at any time during this crisis with questions.

Moritt Hock & Hamroff, LLP is a full service law firm and our attorneys and staff continue to be available throughout this crisis to assist you in all of your legal needs. Our Labor and Employment attorneys have been working tirelessly to assist our clients through the process of the many difficult layoff and furlough situations, which have arisen during the COVID-19 outbreak. Similarly, our Bankruptcy and Restructuring practice group has been assisting many of our clients and friends work on restructuring loans and negotiating forbearance agreements during this difficult time. Additionally, our Real Estate Practice and Landlord/Tenant Groups are available to assist with lease restructuring and landlord/tenant related issues. Especially during these difficult times, with good health being of utmost concern to all, rest assured our Trust & Estates practice is available to review your health care proxy and powers of attorney, as well as address any of your other estate planning needs.





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*Moritt Hock & Hamroff LLP is a broad based commercial law firm with more than 75 lawyers and a staff of patent agents and paralegals. The firm's practice areas include: alternative dispute resolution; business succession planning; commercial foreclosure; commercial lending & finance; construction; copyrights, trademarks & licensing; corporate & securities; creditors' rights & bankruptcy; cybersecurity; privacy & technology; employment; healthcare; landlord & tenant; litigation; marketing, advertising & promotions; mergers, acquisitions & private equity; not-for-profit; patents; real estate; secured lending, equipment & transportation finance; tax; and trusts & estates.*

We are available for you, so please feel free to contact us at any time with any questions or concerns you may have. Below is the contact information for our Condo & Co-op Services Group:

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Please stay safe.



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