

## New Condominium Sponsor-Developers Guidelines Go Into Effect November 1: Certificates of Occupancy

Earlier this week, the Real Estate Finance Bureau of the New York State Office of the Attorney General (REF) provided significant guidance on several issues facing sponsor-developers of new construction and gut-renovation condominiums. These new guidelines will go into effect on November 1, 2015.

Under New York General Business Law (GBL) § 352-e(2-b), sponsor-developers of new construction and gut-renovation condominiums are required to hold all deposits, down payments and advances made by buyers of residential units in a special escrow account pending delivery of the completed unit. This section of the GBL is designed to prevent sponsor-developers from using down payments for construction purposes, and to ensure that projects are completed. In New York City, a unit is deemed completed when the Department of Buildings (DOB) issues a final certificate of occupancy (PCO). The PCO is issued when the DOB declares the building complete and in substantial conformance with the approved plans. Therefore, sponsor-developers of new construction or gut-renovated condominiums are required to obtain PCOs to cover all components of the new buildings if they want the ability to withdraw funds held in the special escrow account.

Previously, the REF provided an olive branch to sponsor-developers by allowing them to draw down funds from these special escrow accounts as long as the amounts remaining in the accounts were sufficient to complete the work necessary to obtain a PCO. In order to do so, an architect or engineer hired by the sponsor-developers had to certify the amounts.<sup>1</sup>

The foregoing regulations and practices have resulted in disputes between sponsor-developers and boards and has caused delays for sponsor-developers. To address this, the REF now offers new guidelines which will become effective in a couple of short weeks. To summarize:

1. Sponsor-developers must disclose the details of the special escrow account or other collateral, as such details are deemed material by REF.
2. Sponsor-developers who intend to sell units as “white space” will have heightened disclosure requirements.
3. Sponsor-developers may not link their relinquishment of board control to procurement of a PCO.
4. Sponsor-developers must specifically disclose in the amendment, immediately following the first closing, numerous details pertaining to the status of the certificate of occupancy and the special escrow account.

Because these guidelines will greatly impact the practices of new construction and gut-renovation condominium sponsor-developers, their disclosure requirements and liability, it is important that sponsor-developers are aware of these changes before they go into effect next month. It is equally important that boards and professionals who serve as advisers to boards understand the sponsor-developers' obligations with respect to PCOs.

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**To discuss any questions you may have regarding New York General Business Law (GBL) § 352-e(2-b), please contact a Cozen O'Connor Real Estate Attorney.**

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<sup>1</sup> In lieu of the special escrow account, REF will accept unconditional and irrevocable letters of credit, surety bonds or other collateral.