

## **New York General Business Law Article 23-A**

### **§352 Investigation by attorney-general**

1. Whenever it shall appear to the attorney-general, either upon complaint or otherwise, that in the advertisement, investment advice, purchase or sale within this state of any commodity dealt in on any exchange within the United States of America or the delivery of which is contemplated by transfer of negotiable documents of title all of which are hereinafter called commodities, or that in the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice or distribution within or from this state, of any stocks, bonds, notes, evidences of interest or indebtedness or other securities, including oil and mineral deeds or leases and any interest therein, sold or transferred in whole or in part to the purchaser where the same do not effect a transfer of the title in fee simple to the land, or negotiable documents of title, or foreign currency orders, calls or options therefor hereinafter called security or securities, any person, partnership, corporation, company, trust or association, or any agent or employee thereof, shall have employed, or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise, or that any person, partnership, corporation, company, trust or association, or any agent or employee thereof, shall have made, makes or attempts to make within or from this state fictitious or pretended purchases or sales of securities or commodities or that any person, partnership, corporation, company, trust or association, or agent or employee thereof shall have employed, or employs, or is about to employ, any deception, misrepresentation, concealment, suppression, fraud, false pretense or false promise, or shall have engaged in or engages in or is about to engage in any practice or transaction or course of business relating to the purchase, exchange, investment advice or sale of securities or commodities which is fraudulent or in violation of law and which has operated or which would operate as a fraud upon the purchaser, or that any broker, dealer, or salesman, as defined by section three hundred fifty-nine-e of this article, or any agent or employee thereof, has sold or offered for sale or is attempting to sell or is offering for sale any security or securities in violation of the provisions of said section or section three hundred fifty-nine-ee, or that any other section of this article has been violated, any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities or commodities, deceptions, misrepresentations, concealments, suppressions, frauds, false pretenses, false promises, practices, transactions and courses of business are hereby declared to be and are hereinafter referred to as a fraudulent practice or fraudulent practices or he believes it to be in the public interest that an investigation be made, he may in his discretion either require or permit such person, partnership, corporation, company, trust or association, or any agent or employee thereof, to file with him a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter which he believes it is to the public interest to investigate, and for that purpose may prescribe forms upon which such statements shall be made. The attorney-general may also require such other data and information as he may deem relevant and may make such special and independent investigations as he may deem necessary in connection with the matter.

2. The attorney-general, his deputy or other officer designated by him is empowered to subpoena witnesses, compel their attendance, examine them under oath before him or a magistrate, a court of record or a judge or justice thereof and require the production of any books or papers which he deems relevant or material to the inquiry. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the attorney-general under this article.

3. No person shall be excused from attending such inquiry in pursuance to the mandates of a subpoena, or from producing a paper or book, or from being examined or required to answer a question on the ground of failure of tender or payment of a witness fee and/or mileage, unless at the time of such appearance or production, as the case may be, such witness makes demand for such payment as a condition precedent to the offering of testimony or production required by the subpoena and unless such payment is not thereupon made. The provisions for payment of witness fee and/or mileage do not apply to any officer, director or person in the employ of any person, partnership, corporation, company, trust or association whose conduct or practices are being investigated.

4. If a person subpoenaed to attend such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce a book or paper when ordered so to do by the officer conducting such inquiry, or if a person, partnership, corporation, company, trust or association fails to perform any act required hereunder to be performed, he shall be guilty of a misdemeanor.

5. It shall be the duty of all public officers, their deputies, assistants, subordinates, clerks or employees and all other persons to render and furnish to the attorney-general, his deputy or other designated officer when requested all information and assistance in their possession or within their power. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than the attorney-general the name of any witness examined or any other information obtained upon such inquiry except as directed by the attorney-general shall be guilty of a misdemeanor.

#### **§ 352-a. Foreign corporation to make designation**

1. If the stocks, bonds or other securities of a foreign corporation, association, common law trust or similar organization are offered or advertised for sale within the state of New York and such corporation, association, common law trust or other organization has not filed pursuant to laws heretofore or hereafter existing the designation of a person upon whom process against it may be served or the designation of the secretary of state as such person pursuant to section thirteen hundred four of the business corporation law or other laws heretofore or hereafter existing or, in lieu thereof, an instrument in writing duly acknowledged and filed in the office of the secretary of state designating the secretary of state as the person upon whom may be served any subpoena, subpoena duces tecum or other process directed to such foreign corporation, association, common law trust or

similar organization and issued in any investigation, examination or proceeding pending or about to be instituted under and pursuant to the provisions of this article, the attorney-general may serve a notice upon such corporation, association, common law trust or similar organization, or upon any nonresident officer thereof, by mailing the same in a securely sealed postpaid wrapper addressed to such corporation, association, common law trust or similar organization or officer thereof at its or his last known place of business or residence, and may in such notice require that such corporation, association, common law trust or similar organization or such officer furnish a written statement, verified as required in said notice, giving the information therein specified relating to the stocks, bonds or other securities of such corporation, association, common law trust or similar organization or, in the alternative, that such corporation, association, common law trust or other organization, by its proper officer or officers, or such officer, shall appear within a reasonable time from the date of mailing of such notice at a designated place within this state for examination and shall produce at the time and place of such examination such books and papers of such corporation, association, common law trust or similar organization as may be designated in such notice.

2. If such corporation, association, common law trust or similar organization or such officer thereof shall fail to furnish the statement called for by such notice, or shall fail to appear pursuant thereto or to produce the books and papers required thereby to be produced, or refuse to submit to examination or to answer any proper question, the proof of such failure or refusal shall constitute prima facie evidence that the sale or offering for sale or advertisement of the stocks, bonds or other securities of such corporation, association, common law trust or similar organization constitutes a fraudulent practice within the meaning of this article and may in the discretion of the court be treated as a sufficient basis for a permanent injunction against the continuance of such fraudulent practice.

3. The department of state shall keep a record of each process served upon the secretary of state under this chapter, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the secretary of state under this chapter shall be destroyed by him after a period of ten years from such service.

**§ 352-b. Non-resident brokers, dealers, salesmen and investment advisors; designation of secretary of state as agent for service of process; service of process**

1. Any person, partnership, corporation, company, trust or association resident or having his or its principal place of business without the state or organized under and by virtue of the laws of a foreign state, who or which shall do business in this state as a broker, dealer, salesman or investment advisor, as defined in section three hundred fifty-nine-e or three hundred fifty-nine-eee of this article, or any partner, principal, officer or director of such broker, dealer or investment advisor shall be deemed to have irrevocably appointed the secretary of state as his or its agent upon whom may be served any summons, complaint, subpoena, subpoena duces tecum, notice, order, judgment or other process directed to

such person, partnership, corporation, company, trust or association, or any partner, principal, officer or director thereof, in any action, investigation or proceeding brought or conducted by the attorney general under the provisions of this article arising out of or in connection with any transaction, matter or thing relating to the practices, affairs, management or business of such person, partnership, corporation, company, trust or association, or any partner, principal, officer or director thereof. Any such person, partnership, corporation, company, trust or association, or any partner, principal, officer or director thereof, may file with the secretary of state a designation, in terms complying herewith, duly acknowledged, irrevocably appointing the secretary of state as his or its agent upon whom may be served any such process; provided, however, that a designation filed with the secretary of state pursuant to section three hundred fifty-two-a of this article or section thirteen hundred four of the business corporation law shall serve also as such designation.

2. Service of such process upon the secretary of state shall be made by personally delivering to and leaving with him or a deputy secretary of state a copy thereof at the office of the department of state in the city of Albany, and such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent by the attorney general to such person, partnership, corporation, company, trust or association, by registered or certified mail with return receipt requested, at his or its office as set forth in the "broker-dealer's statement", "salesman's statement" or "investment advisor's statement" filed in the department of law pursuant to section three hundred fifty-nine-e or section three hundred fifty-nine-eee of this article, or in default of the filing of such statement, at the last address known to the attorney general. Service of such process shall be complete on receipt by the attorney general of a return receipt purporting to be signed by the addressee or a person qualified to receive his or its registered or certified mail, in accordance with the rules and customs of the post office department, or, if acceptance was refused by the addressee or his or its agent, on return to the attorney general of the original envelope bearing a notation by the postal authorities that receipt thereof was refused.

3. The department of state shall keep a record of each process served upon the secretary of state under this chapter, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the secretary of state under this chapter shall be destroyed by him after a period of ten years from such service.

### **§ 352-c. Prohibited acts constituting misdemeanor; felony**

1. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to use or employ any of the following acts or practices:

(a) Any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

(b) Any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(c) Any representation or statement which is false, where the person who made such representation or statement: (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made;

where engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of any securities or commodities, as defined in section three hundred fifty-two of this article, regardless of whether issuance, distribution, exchange, sale, negotiation or purchase resulted.

2. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to engage in any artifice, agreement, device or scheme to obtain money, profit or property by any of the means prohibited by this section.

3. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, engaged in the sale of any securities or commodities, as defined in section three hundred fifty-two of this article, within or from the state of New York to represent that they are an "exchange" or use the word "exchange," or any abbreviation or derivative thereof, in its name or assumed name unless it is registered with the Securities and Exchange Commission as a national securities exchange, pursuant to section six of the Securities and Exchange Act of 1934, or unless it has been designated as a contract market by the Commodity Futures Trading Commission, pursuant to section five of the Commodity Exchange Act.

4. Except as provided in subdivision five or six, a person, partnership, corporation, company, trust or association, or any agent or employee thereof, using or employing any act or practice declared to be illegal and prohibited by this section, shall be guilty of a misdemeanor.

5. Any person, partnership, corporation, company, trust or association, or any agent or employee thereof who intentionally engages in any scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation or purchase of any securities or commodities, as defined in this article, shall be guilty of a class E felony.

6. Any person, partnership, corporation, company, trust or association, or any agent or employee thereof who intentionally engages in fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale, or who makes any

material false representation or statement with intent to deceive or defraud, while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of any securities or commodities, as defined in this article, and thereby wrongfully obtains property of a value in excess of two hundred fifty dollars, shall be guilty of a class E felony.

#### **§ 352-d. Effect of prosecution under previous section**

A person, partnership, corporation, company, trust or association or any agent or employee thereof that, having engaged in any act or practice constituting a violation of section three hundred fifty-two-c of this article, commits additional acts under such circumstances as to constitute a felony, the crime of conspiracy, petit larceny, or more than one of the aforesaid, is punishable therefor, as well as for the violation of that section, and may be prosecuted for each crime, separately or in the same information or indictment, notwithstanding any other provision of law.

#### **§ 352-e. Real estate syndication offerings**

1. (a) It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to make or take part in a public offering or sale in or from the state of New York of securities constituted of participation interests or investments in real estate, mortgages or leases, including stocks, bonds, debentures, evidences of interest or indebtedness, limited partnership interests or other security or securities as defined in section three hundred fifty-two of this article, when such securities consist primarily of participation interests or investments in one or more real estate ventures, including cooperative interests in realty, unless and until there shall have been filed with the department of law, prior to such offering, a written statement or statements, to be known as an "offering statement" or "prospectus" concerning the contemplated offering which shall contain the information and representations required by paragraph (b) of this subdivision unless the security offering is exempted hereunder or under section three hundred fifty-nine-f, subdivision two, of this article by rule or action of the attorney general. The term "real estate" as used in the paragraph shall not include mineral, oil or timber leases or properties, or buildings, structures, land or other realty housing or containing business offices or industry, owned or leased by the issuer, where the issuer is not primarily engaged in the business of buying and selling such building or other realty or leases or interests therein. The circulation or dissemination of a non-firm offer (including circulation or dissemination of a preliminary prospectus pursuant to section ten (b) of the securities act of nineteen hundred thirty-three, and the rules thereto appertaining) shall not constitute making or taking part in a public offering within the meaning of this section.

(b) The detailed terms of the transaction; a description of the property, the nature of the interest, and how title thereto is to be held; the gross and net income for a reasonable period preceding the offering where applicable and available; the current gross and net

income where applicable and available; the basis, rate and method of computing depreciation; a description of major current leases; the essential terms of all mortgages; the names, addresses and business background of the principals involved, the nature of their fiduciary relationship and their financial relationship, past, present and future, to the property offered to the syndicate and to those who are to participate in its management; the interests and profits of the promoters, offerors, syndicate organizers, officers, directors, trustees or general partners, direct and indirect, in the promotion and management of the venture; all restrictions, if any, on transfer of participants' interests; a statement as to what stock or other security involved in the transaction, if any, is non-voting; a statement as to what disposition will be made of the funds received and of the transaction if not consummated, which statement shall represent that all moneys received from the sale of such securities until actually employed in connection with the consummation of the transaction as therein described, shall be kept in trust and that in the event insufficient funds are raised through the offering or otherwise to effectuate the purchase or purchases or other consummation of the contemplated transaction, or that the intended acquisition shall not be completed for any other reason or reasons, then such moneys, less such amounts actually employed in connection with the consummation of the transaction, shall be fully returned to the investor; which of the securities offered are unsecured; clearly distinguish between leasehold and fee ownership, between fact and opinion; a commitment to submit annual reports to all participants, including an annual balance sheet and profit and loss statement certified by an independent certified public accountant; clearly distinguish between those portions of promised distributions which are income and those which are a return of principal or capital; in the case of qualified leasehold condominiums, as defined in section three hundred thirty-nine-e of the real property law, a disclosure of the unique requirements imposed on the unit owners of such condominiums by the provisions of sections three hundred thirty-nine-bb and three hundred thirty-nine-cc of such law; and such additional information as the attorney general may prescribe in rules and regulations promulgated under subdivision six hereof as will afford potential investors, purchasers and participants an adequate basis upon which to found their judgment and shall not omit any material fact or contain any untrue statement of a material fact.

(c) All advertising in connection with an offering of securities described in this subdivision shall be consistent with the representations and information required to be set forth as hereinbefore in this subdivision provided.

2. Unless otherwise provided by regulation issued by the attorney general, the offering statement or statements or prospectus required in subdivision one of this section shall be filed with the department of law at its office in the city of New York, prior to the public offering of the security involved. No offer, advertisement or sale of such securities shall be made in or from the state of New York until the attorney general has issued to the issuer or other offerer a letter stating that the offering has been filed. The attorney general, not later than thirty days after the submission of such filing, shall issue such a letter or, in the alternative, a notification in writing indicating deficiencies in the offering statement, statements or prospectus; provided, however, that in the case of a building or group of buildings to be converted to cooperative or condominium ownership which is

occupied in whole or in part for residential purposes, such letter or notification shall be issued in not sooner than four months and not later than six months from the date of submission of such filing. The attorney general may also refuse to issue a letter stating that the offering statement or statements or prospectus has been filed whenever it appears that the offering statement or statements or prospectus does not clearly set forth the specific property or properties to be purchased, leased, mortgaged, or otherwise to be acquired, financed or the subject of specific investment with a substantial portion of the offering proceeds.

2-a. (a) For the purposes of this subdivision the following words shall have the following meanings:

(i) “Plan”. Every offering statement or prospectus submitted to the department of law for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership, other than a plan governed by the provisions of either section three hundred fifty-two-eee or three hundred fifty-two-eeee of this chapter, or a plan for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(ii) “Non-purchasing tenant”. A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(iii) “Eligible senior citizens”. Non-purchasing tenants who are sixty-two years of age or older on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this subdivision; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(iv) “Eligible disabled persons”. Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this subdivision; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to



sixty days following the acceptance of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit or the shares allocated thereto on the terms then offered to tenants in occupancy.

(b) The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of this section has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless the plan provides that:

(i) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability, such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(ii) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(iii) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(iv) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules,

which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(c) The provisions of this subdivision shall be applicable in any city, town or village not covered by the provisions of section three hundred fifty-two-eee of this chapter, or which has not elected to be covered by section three hundred fifty-two-eee of this chapter, provided the local legislative body elects, by majority vote to adopt by resolution, coverage provided by this section. A certified copy of such resolution shall be filed in the office of the attorney general at Albany and shall become effective on the date of such filing.

2-b. In the case of offerings of cooperatives, condominiums, interest in homeowners association and other cooperative interests in realty, including homes subject to deed or covenant or agreements requiring investment therein, the attorney general may refuse to issue a letter of acceptance unless the offering statement, prospectus or plan shall provide that all deposits, down-payments or advances made by purchasers of residential units shall be held in a special escrow account pending delivery of the completed apartment or unit and a deed or lease whichever is applicable, unless insurance of such funds in a form satisfactory to the attorney general has been obtained prior thereto. In addition to the general regulatory authority provided in this section, the attorney general is hereby authorized to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this subdivision, including, but not limited to, determining when escrow funds may be released, the nature of escrowees, and other terms and conditions relating thereto deemed necessary in the public interest.

2-c. Payment of legal fees for representation of a tenant or tenant's association in a residential building undergoing conversion to cooperative or condominium ownership shall not be made from any reserve fund, working capital fund, or other fund established to cover expenses, repairs and capital improvements of buildings converted to cooperative or condominium ownership, unless made pursuant to a retainer agreement entered into before this subdivision shall have become a law. Payment of legal fees may be made, however, from another fund specifically designated for such purpose.

2-d. (a) For the purposes of this subdivision the term "self-dealing contract" shall be defined as any contract or portion thereof which is entered into after October eighth, nineteen hundred eighty, and which:

(i) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project, or of property serving the condominium or cooperative unit owners in such projects;

(ii) is between such unit owners or such association and the developer or an affiliate of the developer;

(iii) was entered into while such association was controlled by the developer through special developer control or because the developer held a majority of the votes in such association;

(iv) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the developer or an affiliate of the developer; and

(v) may not be terminated without penalty by such unit owners or such association.

(b) In the case of offerings of cooperatives, condominiums or other interests in realty covered by the provisions of section six hundred eight of the Condominium and Cooperative Abuse Relief Act of 1980, 15 U.S.C. 3607, the attorney general shall refuse to issue a letter of acceptance unless the offering statement, prospectus or plan provides that the tenant shareholders or owners entitled to vote to terminate a self-dealing contract pursuant to such section twice be notified of such right in writing (i) once within thirty days of the date that the right to terminate pursuant to subsection (b) of such section commences and (ii) secondly at least six months prior to the date that such right to terminate will expire.

3. No offering literature shall be employed in the offering of securities as defined in subdivision one of this section except by the offering statement or statements filed in the department of law pursuant to the provisions of this section. All advertising in whatever form, including periodicals or on radio or television shall contain a statement that no offer of such securities is made except by such offering statement or statements.

4. In all literature employed in the offer and sale of securities defined in subdivision one of this section and in all advertising in connection therewith there shall be contained, in easily readable print on the face thereof, a statement that the filing of an offering statement or statements or prospectus as required by subdivision one of this section with the department of law does not constitute approval of the issue or the sale thereof by the department of law or the attorney general of this state.

5. No offering or sale whatever of securities described in subdivision one of this section shall be made except on the basis of information, statements, literature, or representations constituting the offering statement or statements or prospectus described in such subdivision, and no information, statements, literature, or representations shall be used in the offering or sale of securities described in such subdivision unless it is first so filed and the prospective purchaser furnished with true copies thereof.

6. (a) The attorney general is hereby authorized and empowered to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this section, including regulations for the method, contents and filing procedures with respect to the statements required by subdivision one and the making of amendments thereto.

(b) The attorney general is hereby authorized and empowered to adopt, promulgate, amend and rescind suitable rules and regulations relating to the information furnished to investors of the sources of any distribution or distributions made by any issuer in connection with the sale of realty securities since January first, nineteen hundred sixty-one within the provisions of section three hundred fifty-two-e and section three hundred fifty-two-g of this article.

7. (a) The department of law shall collect the following fees for the filing of each offering statement or prospectus as described in subdivision one of this section: seven hundred fifty dollars for every offering not in excess of two hundred fifty thousand dollars; for every offering in excess of two hundred fifty thousand dollars, four-tenths of one percent of the total amount of the offering but not in excess of thirty thousand dollars of which one-half of said amount shall be a nonrefundable deposit paid at the time of submitting the offering statement to the department of law for review and the balance payable upon the issuance of a letter of acceptance for filing said offering statement. The department of law shall, in addition, collect a fee of two hundred twenty-five dollars for each amendment to an offering statement. For each application granted by the department of law which permits the applicant to solicit public interest or public funds preliminary to the filing of an offering statement or for the issuance of a "no-filing required" letter, the department of law shall collect a fee of two hundred twenty-five dollars. In the event the sponsor thereafter files an offering statement, the fee paid for the preliminary application shall be credited against the balance of the fee due and payable on filing. For each application granted pursuant to section three hundred fifty-two-g of this article, the department of law shall collect a fee of two-tenths of one percent of the amount of the offering of securities; however, the minimum fee shall be seven hundred fifty dollars and the maximum fee shall be thirty thousand dollars. All revenue from that portion of any fee imposed pursuant to this paragraph, which exceeds twenty thousand dollars shall be paid by the department of law to the state comptroller to be deposited in and credited to the real estate finance bureau fund, established pursuant to section eighty of the state finance law.

(b) The attorney general may, in his discretion, require an inspection to be made by the department of law in connection with a real estate syndication, cooperative, or condominium offering, of lands and property thereon, situated outside of the state of New York, involved in such offering. In such case, prior to the acceptance of such filing, there shall be remitted to the department of law an amount equivalent to the cost of travel from New York to the location of the property involved in the offering and return, as estimated by the department of law, and a further reasonable amount estimated to be necessary to cover the additional expenses of such inspection. The department of law shall return to the person making the remittance any amount advanced in excess of the actual expenses incurred, and where there is a deficiency, the department of law shall be empowered to collect the difference between the actual expenses and the amount advanced.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, the department of law shall not collect any fees for the filing of an offering statement or prospectus or any amended filings thereto as described in subdivision one of this section whenever a

conversion of a mobile home park, building or group of buildings or development from residential rental status to cooperative or condominium ownership is being made pursuant to article eighteen, nineteen or twenty of the private housing finance law.

8. Within four months after the end of its fiscal year, every syndicate which shall have been required to file an offering statement or statements or prospectus under subdivision one of this section shall file with the department of law at its office in the city of New York an annual report of the syndicate operation, including an annual balance sheet and profit and loss statement certified by an independent certified public accountant. The department of law shall collect a fee of five dollars for the filing of each such annual report.

9. Each offering statement or prospectus as described in subdivision one of this section, and all exhibits or documents referred to therein shall be available for inspection by any person who shall have purchased a security described in this section or shall have participated in the offering of such security.

### **§ 352-ee. Conversion of non-residential property to residential cooperative or condominium ownership**

1. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units located in a city of over one million in population pursuant to a plan for the alteration or conversion of the building to residential use under cooperative or condominium ownership, other than a plan relating to a building already in compliance with section three hundred one of the multiple dwelling law, unless the offering statement or prospectus contains the following:

(i) a statement that a copy of plans for such alteration or conversion, approved in accordance with section three hundred of the multiple dwelling law, has been submitted to the attorney general prior to the issuance by the attorney general of a letter stating that the offering statement or prospectus has been filed;

(ii) a report prepared by an architect or engineer licensed by the state which sets forth such alterations to the public portions and common areas of the building and such alterations to individual spaces or dwelling units as may be necessary to obtain a permanent certificate of occupancy for permanent residential use of the premises;

(iii) a statement, satisfactory to the attorney general, that it is the obligation of the sponsor to complete all alterations and improvements to the public portions and common areas of the building in compliance with such approved plans within the time specified in the plan;

(iv) a statement, satisfactory to the attorney general, that it is the obligation of the sponsor to complete all alterations and improvements to individual spaces or dwelling units in

compliance with such approved plans within the time specified in the plan or, if the sponsor does not undertake such obligation, that it is the obligation of the individual owners of shares in the cooperative corporation or of condominium units, under the supervision of the cooperative corporation or, in the case of a condominium, under the supervision of the board of managers, to complete such alterations and improvements within the time specified in the plan; and

(v) a statement that a permanent certificate of occupancy is required for permanent residential use of the premises, that a temporary certificate of occupancy may only be renewed for a total period of two years from the date of its original issuance and that, if the temporary certificate of occupancy shall have expired prior to obtaining a permanent certificate of occupancy, residential occupancy of the premises will be in violation of the multiple dwelling law, subjecting the occupants and the cooperative corporation and its board of directors or, in the case of a condominium, the unit owners and board of managers, to penalties under the multiple dwelling law including eviction of residential occupants.

2. “Residential use” shall mean, for the purposes of this section, space to be used for either living or joint living-work and shall be presumed if the offering statement or prospectus sets forth items which relate to residential use of the space, including but not limited to, income tax benefits under section two hundred sixteen of the internal revenue code, real property tax benefits available to residential property or alterations required for the issuance of a permanent certificate of occupancy for permanent residential use of the premises.

### **§ 352-eee. Conversions to cooperative or condominium ownership in certain cities, towns and villages located in the counties of Nassau, Westchester and Rockland**

<[Eff. until and including June 15, 2015, pursuant to L.1983, c. 402, § 4.]>

1. As used in this section, the following words and terms shall have the following meanings:

(a) “Plan”. Every offering statement or prospectus submitted to the department of law pursuant to section three hundred fifty-two-e of this article for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership or other form of cooperative interest in realty, other than an offering statement or prospectus for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(b) “Non-eviction plan”. A plan which may not be declared effective until at least fifteen percent of those bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the plan is declared effective shall have executed and delivered written agreements to purchase under the plan. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting the

plan for filing, the purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements.

(c) “Eviction plan”. A plan which, pursuant to the provisions of this section, can result in the eviction of a non-purchasing tenant by reason of the tenant failing to purchase pursuant thereto, and which may not be declared effective until written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements shall have been executed and delivered by: (i) at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons; and (ii) at least thirty-five percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general including, for the purposes of determining the number of bona fide tenants in occupancy on such date eligible senior citizens and eligible disabled persons.

(d) “Purchaser under the plan”. A person who owns the shares allocated to a dwelling unit or who owns such dwelling unit itself.

(e) “Non-purchasing tenant”. A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(f) “Eligible senior citizens”. Non-purchasing tenants who are sixty-two years of age or older on the date the plan is declared effective and the spouses of any such tenants on such date; provided that such tenant shall not be precluded from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(g) “Eligible disabled persons”. Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty

days following the acceptance of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit or the shares allocated thereto on the terms then offered to tenants in occupancy.

2. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this chapter has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless:

(a) The plan provides that it will be deemed abandoned, void and of no effect if it does not become effective within twelve months from the date of issue of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing and, in the event of such abandonment, no new plan for the conversion of such building or group of buildings or development shall be submitted to the attorney general for at least fifteen months after such abandonment.

(b) The plan provides either that it is an eviction plan or that it is a non-eviction plan.

(c) The plan provides, if it is a non-eviction plan, as follows:

(i) The plan may not be declared effective until at least fifteen percent of those bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the plan is declared effective shall have executed and delivered written agreements to purchase under the plan. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan for filing, the purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements.

(ii) No eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto; and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(iii) Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to the conversion of the building or group of buildings or development to cooperative or condominium ownership shall continue to be subject thereto.



(iv) The rentals of non-purchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing by the attorney general shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. In determining comparability, consideration shall be given to such factors as building services, level of maintenance and operating expenses.

(v) The plan may not be amended at any time to provide that it shall be an eviction plan.

(vi) The rights granted under the plan to purchasers under the plan and to non-purchasing tenants may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(vii) After the issuance of the letter from the attorney general stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been filed, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth day after such date and at least once every thirty days until the plan is declared effective or is abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the plan, (1) file with the attorney general a written statement, under oath, setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development who have executed and delivered written agreements to purchase under the plan as of the date of such statement, (2) before noon on the day such statement is filed post a copy of such statement in a prominent place accessible to all tenants in each building covered by the plan.

(d) The plan provides, if it is an eviction plan, as follows:

(i) The plan may not be declared effective unless: (1) at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons; and (2) at least thirty-five percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general including, for the purposes of determining the number of bona fide tenants in occupancy on such date eligible senior citizens and eligible disabled persons; shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements.

(ii) No eviction proceedings will be commenced against a non-purchasing tenant for failure to purchase or any other reason applicable to expiration of tenancy until the later

to occur of (1) the date which is the expiration date provided in such non-purchasing tenant's lease or rental agreement, and (2) the date which is three years after the date on which the plan is declared effective. Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to conversion shall continue to be subject thereto during the period of occupancy provided in this paragraph. Thereafter, if a tenant has not purchased, he may be removed by the owner of the dwelling unit or the shares allocated to such dwelling unit.

(iii) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability, such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto; and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(iv) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(v) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(vi) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(vii) After the issuance of the letter from the attorney general stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been accepted for filing, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth days after such date and at least once every thirty days until the plan is declared effective or abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the plan, (1) file with the attorney general a written statement, under oath, setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general who have executed and delivered written agreements to purchase under the plan as of the date of such statement, and (2) before noon on the day such statement is filed post a copy of such statement in a prominent place accessible to all tenants in each building covered by the plan.

(viii) If the plan is amended before it is declared effective to provide that it shall be a non-eviction plan, any person who has agreed to purchase under the plan prior to such amendment shall have a period of thirty days after receiving written notice of such amendment to revoke his agreement to purchase under the plan.

(ix) The tenants in occupancy on the date the attorney general accepts the plan for filing shall have the exclusive right to purchase their dwelling units or the shares allocated thereto for ninety days after the plan is accepted for filing by the attorney general, during which time a tenant's dwelling unit shall not be shown to a third party unless he has, in writing, waived his right to purchase; subsequent to the expiration of such ninety day period, a tenant in occupancy of a dwelling unit who has not purchased shall be given the exclusive right for an additional period of six months from said expiration date to purchase said dwelling unit or the shares allocated thereto on the same terms and conditions as are contained in an executed contract to purchase said dwelling unit or shares entered into by a bona fide purchaser, such exclusive right to be exercisable within fifteen days from the date of mailing by registered mail of notice of the execution of a contract of sale together with a copy of said executed contract to said tenant.

(e) The attorney general finds that an excessive number of long-term vacancies did not exist on the date that the offering statement or prospectus was first submitted to the department of law. "Long-term vacancies" shall mean dwelling units not leased or occupied by bona fide tenants for more than five months prior to the date of such submission to the department of law. "Excessive" shall mean a vacancy rate in excess of the greater of (i) ten percent and (ii) a percentage that is double the normal average vacancy rate for the building or group of buildings or development for two years prior to the January preceding the date the offering statement or prospectus was first submitted to the department of law.

(f) The attorney general finds that, following the submission of the offering statement or prospectus to the department of law, each tenant in the building or group of buildings or development was provided with a written notice stating that such offering statement or prospectus has been submitted to the department of law for filing. Such notice shall be

accompanied by a copy of the offering statement or prospectus and a statement that the statements submitted pursuant to subparagraph (vii) of paragraph (c) or subparagraph (vii) of paragraph (d) of this subdivision, whichever is applicable, will be available for inspection and copying at the office of the department of law where the submission was made and at the office of the offeror or a selling agent of the offeror. Such notice shall also be accompanied by a statement that tenants or their representatives may physically inspect the premises at any time subsequent to the submission of the plan to the department of law, during normal business hours, upon written request made by them to the offeror, provided such representatives are registered architects or professional engineers licensed to practice in the state of New York. Such notice shall be sent to each tenant in occupancy on the date the plan is first submitted to the department of law and to the clerk of the municipality wherein such building or group of buildings or development is located.

3. All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such services and facilities until such time as the offeror surrenders control to the board of directors or board of managers, at which time the cooperative corporation or the condominium association shall assume responsibility for the provision of all services and facilities required by law on a non-discriminatory basis.

4. It shall be unlawful for any person to engage in any course of conduct, including, but not limited to, interruption or discontinuance of essential services, which substantially interferes with or disturbs the comfort, repose, peace or quiet of any tenant in his use or occupancy of his dwelling unit or the facilities related thereto. The attorney general may apply to a court of competent jurisdiction for an order restraining such conduct and, if he deems it appropriate, an order restraining the owner from selling the shares allocated to the dwelling unit or the dwelling unit itself or from proceeding with the plan of conversion; provided that nothing contained herein shall be deemed to preclude the tenant from applying on his own behalf for similar relief.

5. Any local legislative body may adopt local laws and any agency, officer or public body may prescribe rules and regulations with respect to the continued occupancy by tenants of dwelling units which are subject to regulation as to rentals and continued occupancy pursuant to law, provided that in the event that any such local law, rule or regulation shall be inconsistent with the provisions of this section, the provisions of this section shall control.

6. Any provision of a lease or other rental agreement which purports to waive a tenant's rights under this section or rules and regulations promulgated pursuant hereto shall be void as contrary to public policy.

7. The provisions of this section shall only be applicable in the cities, towns and villages located in the counties of Nassau, Westchester and Rockland which by resolution adopted by the respective local legislative body of such city, town or village, elect that the provisions hereof shall be applicable therein. A certified copy of such resolution shall be filed in the office of the attorney general at Albany and shall become effective on the date of such filing.

**§ 352-eeee. Conversions to cooperative or condominium ownership in the city of New York**

<[Eff. until and including June 15, 2015, pursuant to L.1982, c. 555, § 10.]>

1. As used in this section, the following words and terms shall have the following meanings:

(a) “Plan”. Every offering statement or prospectus submitted to the department of law pursuant to section three hundred fifty-two-e of this article for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership or other form of cooperative interest in realty, other than an offering statement or prospectus for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(b) “Non-eviction plan”. A plan which may not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building or group of buildings or development by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family intend to occupy the unit when it becomes vacant. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan for filing, the purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements.

(c) “Eviction plan”. A plan which, pursuant to the provisions of this section, can result in the eviction of a non-purchasing tenant by reason of the tenant failing to purchase pursuant thereto, and which may not be declared effective until at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general (excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons) shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements.

(d) “Purchaser under the plan”. A person who owns the shares allocated to a dwelling unit or who owns such dwelling unit itself.

(e) “Non-purchasing tenant”. A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(f) “Eligible senior citizens”. Non-purchasing tenants who are sixty-two years of age or older on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(g) “Eligible disabled persons”. Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit or the shares allocated thereto on the terms then offered to tenants in occupancy.

2. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this chapter has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless:

(a) The plan provides that it will be deemed abandoned, void and of no effect if it does not become effective within fifteen months from the date of issue of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing and, in the event of such abandonment, no new plan for the conversion of such building or group of buildings or development shall be submitted to the attorney general for at least twelve months after such abandonment.

(b) The plan provides either that it is an eviction plan or that it is a non-eviction plan.

(c) The plan provides, if it is a non-eviction plan, as follows:

(i) The plan may not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building or group of buildings or development subscribed for by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan for filing, the purchase agreement shall be executed and delivered pursuant to an offering made without discriminatory repurchase agreements or other discriminatory inducements.

(ii) No eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto; and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(iii) Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to the conversion of the building or group of buildings or development to cooperative or condominium ownership shall continue to be subject thereto.

(iv) The rentals of non-purchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing by the attorney general shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. In determining comparability, consideration shall be given to such factors as building services, level of maintenance and operating expenses.

(v) The plan may not be amended at any time to provide that it shall be an eviction plan.

(vi) The rights granted under the plan to purchasers under the plan and to non-purchasing tenants may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(vii) After the issuance of the letter from the attorney general stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been filed, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and

ninetieth day after such date and at least once every thirty days until the plan is declared effective or is abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the plan, (1) file with the attorney general a written statement, under oath, setting forth the percentage of the dwelling units in the building or group of buildings or development subscribed for by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant as of the date of such statement and, (2) before noon on the day such statement is filed post a copy of such statement in a prominent place accessible to all tenants in each building covered by the plan.

(d) The plan provides, if it is an eviction plan, as follows:

(i) The plan may not be declared effective unless at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general (excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons) shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements.

(ii) No eviction proceedings will be commenced against a non-purchasing tenant for failure to purchase or any other reason applicable to expiration of tenancy until the later to occur of (1) the date which is the expiration date provided in such non-purchasing tenant's lease or rental agreement, and (2) the date which is three years after the date on which the plan is declared effective. Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to conversion shall continue to be subject thereto during the period of occupancy provided in this paragraph. Thereafter, if a tenant has not purchased, he may be removed by the owner of the dwelling unit or the shares allocated to such dwelling unit.

(iii) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability, such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto.



(iv) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(v) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(vi) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(vii) After the issuance of the letter from the attorney general stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been accepted for filing, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth days after such date and at least once every thirty days until the plan is declared effective or abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the plan, (1) file with the attorney general a written statement, under oath, setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general who have executed and delivered written agreements to purchase under the plan as of the date of such statement, and (2) before noon on the day such statement is filed post a copy of such statement in a prominent place accessible to all tenants in each building covered by the plan.

(viii) If the plan is amended before it is declared effective to provide that it shall be a non-eviction plan, any person who has agreed to purchase under the plan prior to such amendment shall have a period of thirty days after receiving written notice of such amendment to revoke his agreement to purchase under the plan.

(ix) The tenants in occupancy on the date the attorney general accepts the plan for filing shall have the exclusive right to purchase their dwelling units or the shares allocated thereto for ninety days after the plan is accepted for filing by the attorney general, during which time a tenant's dwelling unit shall not be shown to a third party unless he has, in writing, waived his right to purchase; subsequent to the expiration of such ninety day period, a tenant in occupancy of a dwelling unit who has not purchased shall be given the exclusive right for an additional period of six months from said expiration date to

purchase said dwelling unit or the shares allocated thereto on the same terms and conditions as are contained in an executed contract to purchase said dwelling unit or shares entered into by a bona fide purchaser, such exclusive right to be exercisable within fifteen days from the date of mailing by registered mail of notice of the execution of a contract of sale together with a copy of said executed contract to said tenant.

(e) The attorney general finds that an excessive number of long-term vacancies did not exist on the date that the offering statement or prospectus was first submitted to the department of law. "Long-term vacancies" shall mean dwelling units not leased or occupied by bona fide tenants for more than five months prior to the date of such submission to the department of law. "Excessive" shall mean a vacancy rate in excess of the greater of (i) ten percent and (ii) a percentage that is double the normal average vacancy rate for the building or group of buildings or development for two years prior to the January preceding the date the offering statement or prospectus was first submitted to the department of law.

(f) The attorney general finds that, following the submission of the offering statement or prospectus to the department of law, each tenant in the building or group of buildings or development was provided with a written notice stating that such offering statement or prospectus has been submitted to the department of law for filing. Such notice shall be accompanied by a copy of the offering statement or prospectus and a statement that the statements submitted pursuant to subparagraph (vii) of paragraph (c) or subparagraph (vii) of paragraph (d) of this subdivision, whichever is applicable, will be available for inspection and copying at the office of the department of law where the submission was made and at the office of the offeror or a selling agent of the offeror. Such notice shall also be accompanied by a statement that tenants or their representatives may physically inspect the premises at any time subsequent to the submission of the plan to the department of law, during normal business hours, upon written request made by them to the offeror, provided such representatives are registered architects or professional engineers licensed to practice in the state of New York. Such notice shall be sent to each tenant in occupancy on the date the plan is first submitted to the department of law.

3. All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such services and facilities until such time as the offeror surrenders control to the board of directors or board of managers, at which time the cooperative corporation or the condominium association shall assume responsibility for the provision of all services and facilities required by law on a non-discriminatory basis.

4. It shall be unlawful for any person to engage in any course of conduct, including, but not limited to, interruption or discontinuance of essential services, which substantially interferes with or disturbs the comfort, repose, peace or quiet of any tenant in his use or occupancy of his dwelling unit or the facilities related thereto. The attorney general may

apply to a court of competent jurisdiction for an order restraining such conduct and, if he deems it appropriate, an order restraining the owner from selling the shares allocated to the dwelling unit or the dwelling unit itself or from proceeding with the plan of conversion; provided that nothing contained herein shall be deemed to preclude the tenant from applying on his own behalf for similar relief.

5. Any local legislative body may adopt local laws and any agency, officer or public body may prescribe rules and regulations with respect to the continued occupancy by tenants of dwelling units which are subject to regulation as to rentals and continued occupancy pursuant to law, provided that in the event that any such local law, rule or regulation shall be inconsistent with the provisions of this section, the provisions of this section shall control.

6. Any provision of a lease or other rental agreement which purports to waive a tenant's rights under this section or rules and regulations promulgated pursuant hereto shall be void as contrary to public policy.

7. The provisions of this section shall only be applicable in the city of New York.

#### **§ 352-f. Description of realty bonds**

Whenever hereafter any person, partnership, corporation, company, trust or association, or any agent or employee thereof, makes or takes part in an offering or sale of securities described in subdivision one of section three hundred fifty-two-e of this article, and such securities consist of bonds or other evidence of indebtedness, there shall be included in numeral form, in bold print on the first page of all offering literature employed in the solicitation and sale of such securities, the actual interest rate payable on such securities. Such rate shall not include any return of principal.

#### **§ 352-g. Exemptions**

The attorney general, upon application, may exempt from the provisions of sections three hundred fifty-two-e, three hundred fifty-two-f and three hundred fifty-two-h any offerings of securities (1) made to persons not exceeding forty in number or (2) which securities have been fully registered with the securities and exchange commission of the United States of America or have received an exemption therefrom for reasons other than said offering is an intrastate offering to residents of the state of New York only.

#### **§ 352-h. Trust funds**

Whenever hereafter any person, partnership, corporation, company, trust or association, offers or sells securities described in subdivision one of section three hundred fifty-two-e of this article to the public in or from the state of New York, then all moneys received in connection therewith, including deposits or advances therefor, shall continue to be the

money of the person making such purchase, deposit or advance, and shall be held in trust by the person, partnership, corporation, company, trust or association offering or selling such securities and shall not be commingled with the personal moneys or become an asset of the person, partnership, corporation, company, trust or association receiving the same, and shall not be subject to attachment, levy or other encumbrance in any action by a third party against such person, partnership, corporation, company, trust or association; and said funds shall remain in trust until actually employed in connection with the consummation of the transaction; and in the event insufficient funds are raised to effectuate the consummation of the transaction, or if the transaction does not result in the acquisition of the real estate, mortgage or lease involved for any reason or reasons, then all moneys so collected less such amounts actually employed in connection with the consummation of the transaction shall be fully returned to the investors. Any provision of any contract or agreement or understanding, whether oral or in writing, whereby a person who so purchases such securities waives any provision of this section is absolutely void. Nothing herein contained shall be deemed to preclude an action against a defaulting investor.

#### **§ 352-i. Injunctive relief**

Any person, partnership, corporation, company, trust or association, or any agent or employee thereof, who violates any of the provisions of sections three hundred fifty-two-e, three hundred fifty-two-ee, three hundred fifty-two-f, three hundred fifty-two-g, three hundred fifty-two-h or three hundred fifty-nine-ff of this article or of any regulations issued by the attorney general pursuant thereto shall be deemed to have committed a fraudulent practice, upon which the supreme court may issue a permanent injunction, as provided in section three hundred fifty-three of this article, upon application by the attorney general.

#### **§ 352-j. Application of article**

All the provisions of this article shall be fully applicable to real estate syndication offerings and security transactions described in subdivision one of section three hundred fifty-two-e of this article, with the exception that the additional provisions contained in sections three hundred fifty-two-e, three hundred fifty-two-ee, three hundred fifty-two-f, three hundred fifty-two-g, three hundred fifty-two-h and three hundred fifty-two-i shall also be applicable to such transactions.

#### **§ 352-k. Broker dealer minimum capital requirements**

1. Every broker-dealer registered or required to be registered in this state shall have and maintain a net capital of not less than five thousand dollars. The term net capital shall be deemed to mean the net worth of a broker or dealer (that is, the excess of total assets over total liabilities), adjusted by

- (a) adding unrealized profits (or deducting unrealized losses) in the accounts of the broker or dealer and, if such broker or dealer is a partnership, adding equities (or deducting deficits) in accounts of partners, as hereinafter defined;
- (b) deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness secured thereby) including, among other things, real estate; furniture and fixtures; exchange memberships; prepaid rent, insurance and expenses; good will; organization expenses; all unsecured advances and loans; customers' unsecured notes and accounts; and deficits in customers' accounts, except in bona fide cash accounts within the meaning of section 4(c) of regulation T of the board of governors of the federal reserve system;
- (c) deducting the percentages specified below of the market value of all securities, long and short (except exempted securities) in the capital, proprietary and other accounts of the broker or dealer, including securities loaned to the broker or dealer pursuant to a satisfactory subordination agreement, as hereinafter defined, and if such broker or dealer is a partnership, in the accounts of partners, as hereinafter defined:
- (1) in the case of non-convertible debt securities having a fixed interest rate and a fixed maturity date which are not in default, if the market value is not more than five per cent below the face value, the deduction shall be five per cent of such market value; if the market value is more than five per cent but not more than thirty per cent below the face value, the deduction shall be a percentage of market value, equal to the percentage by which the market value is below the face value; and if the market value is thirty per cent or more below the face value, such deduction shall be thirty per cent;
- (2) in the case of cumulative, non-convertible preferred stock ranking prior to all other classes of stock of the same issuer, which is not in arrears as to dividends, the deduction shall be twenty per cent;
- (3) on all other securities, the deduction shall be thirty per cent; provided, however, that such deduction need not be made in the case of (1) a security which is convertible into or exchangeable for other securities within a period of thirty days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible, or for which it is exchangeable, are short in the accounts of such broker or dealer or partner, or (2) a security which has been called for redemption and which is redeemable within ninety days.
- (d) deducting thirty per cent of the market value of all "long" and all "short" future commodity contracts (other than those contracts representing spreads or straddles in the same commodity and those contracts offsetting or hedging any "spot" commodity positions) carried in the capital, proprietary or other accounts of the broker or dealer and, if such broker or dealer is a partnership, in the accounts of partners as hereinafter defined;
- (e) deducting, in the case of a broker or dealer who has open contractual commitments, the respective percentages specified in subparagraph (c) above of the value (which shall

be the market value whenever there is a market) of each net long and each net short position contemplated by any existing contractual commitment in the capital, proprietary and other accounts of the broker or dealer and, if such broker or dealer is a partnership, in accounts of partners, as hereinafter defined; provided, however, that this deduction shall not apply to exempted securities, and that the deduction with respect to any individual commitment shall be reduced by the unrealized profit, in an amount not greater than the percentage deduction provided for in subparagraph (c), (or increased by the unrealized loss) in such commitment; and that in no event shall an unrealized profit on any closed transactions operate to increase net capital;

(f) excluding liabilities of the broker or dealer which are subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement as herein defined; and

(g) deducting, in the case of a broker or dealer who is a sole proprietor, the excess of (1) liabilities which have not been incurred in the course of business as a broker or dealer over (2) assets not used in the business.

(h) For the purposes of this section only the term “exempted securities” shall mean:

(1) obligations issued or guaranteed by the United States, a state, territory or any political subdivision thereof, or of any instrumentality, authority, commission, or agency, of the United States, a state, territory, or any political subdivision thereof, and

(2) any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, and which is such as is sold in the open market in the usual course of business of broker-dealers.

(i) the term “accounts of partners”, where the broker or dealer is a partnership, which shall mean accounts of partners who have agreed in writing that the equity in such accounts maintained with such partnership shall be included as partnership property;

(j) the term “contractual commitments” shall include underwriting, when-issued, when-distributed and delayed delivery contracts, endorsement of puts and calls, commitments in foreign currencies, and spot (cash) commodities contracts, but shall not include uncleared regular way purchases and sales of securities and contracts in commodities futures; a series of contracts of purchase or sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment;

(k) the term “satisfactory subordination agreement” shall mean a written agreement between the broker or dealer and a lender, which agreement is binding and enforceable in accordance with its terms upon the lender, his creditors, heirs, executors, administrators, and assigns, and which agreement satisfies all of the following conditions:

(1) it effectively subordinates any right of the lender to demand or receive payment or return of the cash or securities loaned to the claims of all present and future general creditors of the broker or dealer;

(2) it is not subject to cancellation at the will of either party and is for a term of not less than one year;

(3) it provides that it shall not be terminated, rescinded or modified by mutual consent or otherwise, if the effect thereof would be to make the agreement inconsistent with the conditions of this rule, or to reduce the net capital of the broker or dealer below the amount required by this section;

(4) it provides that no default in the payment of interest or in the performance of any other covenant or condition by the broker or dealer shall have the effect of accelerating the maturity of the indebtedness;

(5) it provides that any notes or other written instruments evidencing the indebtedness shall bear on their face an appropriate legend stating that such notes or instruments are issued subject to the provisions of a subordination agreement which shall be adequately referred to and incorporated by reference;

(6) it provides that any securities or other property loaned to the broker or dealer pursuant to its provisions may be used and dealt with by the broker or dealer as part of his capital and shall be subject to the risks of the business;

(7) the term "customer" shall mean every person except the broker or dealer; provided, however, that partners who maintain "accounts of partners" as herein defined shall not be deemed to be customers insofar as such accounts are concerned.

2. Every broker-dealer shall file, as required by the attorney-general, a financial statement setting forth its assets, liabilities and net worth as computed in subdivision one above.

3. The provisions of this section shall not be applicable to issuers of their own securities who are deemed to be broker-dealers solely for such reason or to banks, private banks, trust companies or other organizations engaged in a banking business and in the conduct of such banking business are subject to examination, supervision and control of the banking authorities of any state or of the United States or any insular possession thereof.

4. Upon a showing by the attorney-general that a broker-dealer has failed to maintain a net capital as hereinbefore prescribed, the supreme court after a hearing may issue an injunction in the form and manner provided for in subdivision one of section three hundred fifty-three of this article in the case of one who actually has or is engaged in any fraudulent practice, for such period of time during which such broker-dealer shall not have and maintain such minimum net capital. The failure, without reasonable cause therefor, of a broker-dealer to file financial statements as may be required by the

attorney-general, shall be prima facie proof that such broker-dealer has failed to maintain the minimum net capital required hereunder and an injunction may issue from the supreme court as hereinbefore set forth without any further showing by the attorney-general.

5. The attorney-general may from time to time in the public interest make, amend and rescind such rules, regulations and forms as are necessary to carry out the provisions of this section, including rules, regulations and forms governing financial statements and filings thereof. For the purpose of such rules, regulations and forms, the attorney-general may classify securities, persons and matters within his jurisdiction and may prescribe different forms and requirements for different classes.

6. Any false statement of a material fact contained in any such financial statement, in any certificate attached thereto or any papers submitted in connection therewith shall constitute a violation of this section within the meaning of section three hundred fifty-nine-g of this article.

### **§ 352-l. Cooperative corporations**

1. For the purposes of this section, “non-occupying owner” shall mean the owner of shares in a cooperative corporation who does not occupy the dwelling units to which his or her shares are allocated.

2. If a non-occupying owner rents any dwelling unit to a tenant and then fails to make payments due for maintenance, assessments or late fees for such unit within sixty days of the expiration of any grace period after they are due, upon notice in accordance with subdivision three of this section, all rental payments from the tenant shall be directly payable to the cooperative corporation.

3. If the maintenance, assessments or late fees due for any unit have not been paid in full within sixty days after the expiration of any grace period of the earliest due date, the board of directors shall provide written notice to the rental tenant and the non-occupying owner providing that, commencing immediately and until such time as all payments for maintenance, assessments or late fees are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the cooperative corporation at the address listed on the notice. Where a majority of the board of directors has been elected by and from among the owners who are in occupancy, the board may elect not to require that rental payments be made payable to the cooperative corporation. At such time as payments for maintenance, assessments and late fees from the non-occupying owner are once again current, notice of such fact shall be given within three business days to the rental tenant and non-occupying owner. Thereafter all rental payments for such unit shall be made payable to the non-occupying owner or to a designated agent. A non-occupying owner who disputes the cooperative corporation's claim to rental payments pursuant to this section shall be entitled to present facts supporting such owner's position at the next scheduled meeting of the board of directors,



which must be held within thirty days of the date that such board receives notice that such owner seeks to dispute such claim.

4. Nothing in this section shall limit any rights of shareholders or of the board of directors existing under any other law or agreement.

5. Payment by a rental tenant to the cooperative corporation made in connection with this section shall relieve that rental tenant from the obligation to pay such rent to the non-occupying owner and shall be an absolute defense in any non-payment proceeding commenced by such non-occupying owner against such tenant for such rent.

### **§ 353. Action by attorney-general**

1. Whenever the attorney-general shall believe from evidence satisfactory to him that any person, partnership, corporation, company, trust or association has engaged in, is engaged or is about to engage in any of the practices or transactions heretofore referred to as and declared to be fraudulent practices, he may bring an action in the name and on behalf of the people of the state of New York against such person, partnership, corporation, company, trust or association, and any other person or persons theretofore concerned in or in any way participating in or about to participate in such fraudulent practices, to enjoin such person, partnership, corporation, company, trust or association and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or, if the attorney-general should believe from such evidence that such person, partnership, corporation, company, trust or association actually has or is engaged in any such fraudulent practice, he may include in such action an application to enjoin permanently such person, partnership, corporation, company, trust or association, and such other person or persons as may have been or may be concerned with or in any way participating in such fraudulent practice, from selling or offering for sale to the public within this state, as principal, broker or agent, or otherwise, any securities issued or to be issued. In said action an order or a judgment may be entered awarding the relief applied for or so much thereof as the court may deem proper. Upon a showing by the attorney-general in his application for a permanent injunction hereunder that the defendant named in the action or an officer thereof has refused to be sworn or to be examined or to answer a material question or to produce a book or paper relevant to the inquiry when duly ordered so to do by the officer or judge duly conducting an inquiry into the subject matter forming the basis of the application for such injunction, such refusal shall be prima facie proof that such defendant is or has been engaged in fraudulent practices as set forth in such application and a permanent injunction may issue from the supreme court without any further showing by the attorney-general. In such an action, the court may award to the plaintiff a sum not in excess of two thousand dollars as an additional allowance.

2. Upon a showing by the attorney-general in an application for an injunction that any person engaged in the purchase, sale, offer to purchase or sell, issuance, exchange, promotion, negotiation, advertisement or distribution within this state of any security or securities, either as principal, partner, officer, agent, employee or otherwise, has ever

been convicted by a court of competent jurisdiction in any state or country of any felony; or of any other criminal offense by any such court, whether or not constituting a felony, involving securities, the supreme court after a hearing may issue a permanent injunction awarding the relief applied for, or so much thereof as the court may deem proper, against such person shown to have been so convicted, in the form and manner provided for in subdivision one of this section in case of one who actually has or is engaged in any fraudulent practice.

3. Upon a showing by the attorney general that a fraudulent practice as defined by this article has occurred, he may include in an action under this article an application to direct restitution of any moneys or property obtained directly or indirectly by any such fraudulent practice.

### **§ 353-a. Receivers**

In any action brought by the attorney-general as provided in this article, the court at any stage of the proceedings may appoint a receiver of any and all property derived by the defendant or defendants or any of them by means of any such fraudulent practices, including also all property with which such property has been mingled if such property can not be identified in kind because of such commingling, together with any or all books of account and papers relating to the same. The judgment entered in such action may provide that such receiver shall take title to any or all such property and books of account and papers relating to the same and liquidate such property or any part thereof for the benefit of all persons intervening in the said action and establishing an interest in such property. The judgment may also provide that all such property, the title to or interest in which has not been established in such action by intervenors or otherwise by due process to be in a person or persons other than defendant or defendants, shall be returned to the defendant or defendants as their interest may appear. Such receiver shall be subject to all the duties of receivers appointed in a civil action as far as practicable except that such provisions relating to commissions or compensation of receivers shall not be applicable to receivers appointed pursuant to this section, but such commissions or compensation shall be fixed by the court in any amount which it may determine to be just and equitable. In any action brought by the attorney-general as provided in this article the court may grant such other and further relief as may be proper.

### **§ 354. Examination of witnesses and preliminary injunction**

Whenever the attorney-general has determined to commence an action under this article, he may present to any justice of the supreme court, before beginning such action, an application in writing for an order directing the person or persons mentioned in the application to appear before the justice of the supreme court or referee designated in such order and answer such questions as may be put to them or to any of them, or to produce such papers, documents and books concerning the alleged fraudulent practices to which the action which he has determined to bring relates, and it shall be the duty of the justice of the supreme court to whom such application for the order is made to grant such

application. The application for such order made by the attorney-general may simply show upon his information and belief that the testimony of such person or persons is material and necessary. The provisions of the civil practice law and rules, relating to an application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examination, shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made with such preliminary injunction or stay as may appear to such justice to be proper and expedient and shall specify the time when and place where the witnesses are required to appear. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him and all must be filed in the office of the clerk of the county in which such order for examination is filed.

### **§ 355. Procedure on hearing**

The order for such examination must be signed by the justice making it and service of a copy thereof with an endorsement by the attorney-general signed by him or his deputy, to the effect that the person named therein is required to appear and be examined at the time and place and before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce at such examination all books, papers and documents in his possession or under his control relating to the subject of such examination. The order shall be served upon the person named in the endorsement aforesaid by delivering to and leaving with him a certified copy thereof, endorsed as above provided, subject to the payment of witness fees and mileage as and when provided to be paid by section three hundred fifty-two, subdivision three of this article in connection with attendance pursuant to subpoenas authorized to be issued under said action. Service of an order pursuant to section three hundred fifty-four of this article may be made under section three hundred fifty-two-b of this article in cases falling thereunder.

### **§ 356. Powers of referee**

The referee appointed as provided in this article possesses all the powers and is subject to all the duties of a referee appointed in a civil action, so far as practicable, and may punish for contempt a witness duly served with the papers as prescribed in this article for non-attendance or refusal to be sworn or to testify or to produce books, papers and documents according to the direction of the endorsement aforesaid, in the same manner and to the same extent as a referee to hear, try and determine an issue of fact or of law.

### **§ 357. Application of provisions of civil practice law and rules**

The provisions of the civil practice law and rules shall apply to all actions brought under this article except as herein otherwise provided.

### **§ 358. Criminal prosecution**

The attorney-general may prosecute every person charged with the commission of a criminal offense in violation of the laws of this state, applicable to or in respect of the practices or transactions which in this article are referred to as fraudulent practices. In all such proceedings, the attorney-general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform; or the attorney-general may in his discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted shall forthwith proceed to prosecute any corporation, company, association, or officer, manager or agent thereof, or any firm or person charged with such violation. In any such proceeding, wherein the attorney-general has appeared either in person or by deputy, the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney-general or the deputy attorney-general so appearing.

### **§ 359. Immunity**

Upon any investigation before the attorney-general or his deputy or other officer designated by him, or in any criminal proceeding before any court or grand jury, pursuant to or for a violation of any of the provisions of this article, the attorney-general, his deputy or other officer designated by him, or the court or grand jury, may confer immunity in accordance with the provisions of section 50.20 or 190.40 of the criminal procedure law.

### **§ 359-a. Appointment of deputies**

For the purposes of this article, the attorney-general may in his discretion, and without civil service examination, appoint and employ, and at pleasure remove, such deputies, officers and other persons as he deems necessary, and determine their duties and fix their compensation.

### **§ 359-b. Effect of unconstitutionality of part of article**

Should any section or provision of this article be declared unconstitutional, by the decision of any court, such decision shall affect the section or provision so declared unconstitutional and shall not affect any other section or provision of the article.

### **§ 359-c. Publication of state notices**

1. Every state notice filed in the department of state pursuant to this article shall be published by such department in the next issue of the state bulletin following the receipt thereof, except that a notice received by the department less than five days before the next issue may be published either in such next issue or the next issue but one, at the convenience and in the discretion of such department.

2. The department of state shall collect a fee of seventy-five dollars for filing and publishing each state notice and each further state notice.

**[§ 359-d. Repealed. L.1928, c. 710, § 2, eff. July 15, 1928]**

### **§ 359-e. Definitions. Registration requirements**

1. The following terms, whenever used or referred to in this article, shall have the following meaning unless a different meaning clearly appears from the context:

(a) A “dealer” shall mean and include any person, firm, association or corporation engaged in the business of buying and selling securities from or to the public within or from this state for his or its own account, through a broker or otherwise, except a bank unless such bank is considered a dealer under the federal securities exchange act of 1934, but does not include any person, firm, association or corporation in so far as he or it buys or sells securities for his or its bona fide investment account, either individually or in some fiduciary capacity. The term “dealer” shall, except as otherwise provided in this article, also include a person, firm, association or corporation selling or offering for sale from or to the public within or from this state securities issued by it. No person shall be deemed to be a “dealer”, as defined in this subdivision, or a broker, as defined in subdivision (b) of this section, solely by reason of the fact that he is engaged in the business of (i) selling, offering for sale, purchasing or offering to purchase any security or securities to, from or through any bank, dealer or broker, or to or from any syndicate, corporation or group formed for the specific purpose of acquiring such securities for resale to the public directly or through other syndicates or groups, or (ii) any offer, sale or distribution by an issuer of stock dividends, nontransferable warrants or transferable warrants exercisable within ninety days of their issuance to existing stockholders, securities issued upon conversion of convertible securities and exercise of warrants and securities issued as part of a recapitalization or reclassification to existing stockholders of the same issuer, or (iii) selling, offering for sale, purchasing or offering to purchase any security or securities on the floor of any securities exchange registered as a national securities exchange under the securities exchange act of nineteen hundred thirty-four. No person, firm, association or corporation shall be deemed to be a “dealer”, as defined in this subdivision, solely by reason of selling or offering for sale any security or securities to any bank, corporation, savings institution, trust company, insurance company, investment company, as defined in the federal investment company act of nineteen hundred forty, pension or profit-sharing trust, or other financial institution or institutional buyer, whether the purchaser is acting for himself or itself or in some fiduciary capacity, as part of a private placement of securities.

(b) A “broker” shall mean and include any person, firm, association or corporation, other than a dealer, engaged in the business of effecting transactions in securities for the account of others within or from this state, but does not include a bank unless such bank is considered a broker under the federal securities exchange act of 1934.

(c) A “salesman” shall mean and include every person employed by a broker or dealer as said terms are defined in this section, for the purpose of representing such broker or dealer in the sale or purchase of securities to or from the public within or from this state.

(d) A “principal” shall mean and include every person or firm directly or indirectly controlling any broker or dealer.

(e) A “bank” shall mean and include a state or national bank, trust company or savings institution incorporated under the laws and subject to the examination, supervision and control of any state or of the United States or of any insular possession thereof.

2. No dealer or broker shall sell or offer for sale to or purchase or offer to purchase from the public within or from this state, as principal, or broker, any securities issued or to be issued unless and until a notice, to be known as the “state notice,” containing the name, business or post office address of such dealer or broker and if a corporation the state or country of incorporation thereof, and if a partnership the names of the partners, shall have been filed in the department of state. Such notice shall be in the following form:

STATE NOTICE

Name(s) of dealer(s), broker(s)

.....

Business address(es) or post office address(es) (state which)

.....  
.....

If a corporation, the state or country in which incorporated.

.....  
.....

If a partnership, the names of the partners

.....

3. It shall be unlawful for any dealer, broker or salesman to sell or offer for sale to or purchase or offer to purchase from the public within or from this state, any securities issued or to be issued, unless and until such dealer, broker or salesman shall have filed with the department of law a registration statement as provided herein. A real estate

broker or salesman licensed under article twelve-A of the real property law who is not acting as a dealer shall be deemed to be in compliance with such registration statement filing requirements with respect to the sale of securities constituting cooperative interests in real estate, including shares of cooperative apartment corporations, commercial cooperative corporations, condominiums, and interests in homeowners associations.

(a) The registration statement relating to dealers and brokers, to be known as the “broker-dealer statement” shall contain such information pertaining to the business history for the last preceding five years, criminal record, and educational background of the applicant and his or its partners, officers, directors or other principals thereof deemed pertinent by the attorney-general. The attorney-general may prescribe forms for the use of such applicants.

(b) The registration statement relating to salesmen, to be known as the “salesman's statement,” shall contain such information pertaining to the business history for the last preceding five years, criminal record and educational background of the applicant deemed pertinent by the attorney-general. The attorney-general may prescribe forms for use of such applicants and, as a condition of registration, shall require that prior to the filing of such a registration statement any such applicant shall undertake and successfully complete the uniform securities agent state law examination (“series 63”) or the uniform combined state law examination (“series 66”) as administered by or on behalf of the North American Securities Administrators Association, Inc. (NASAA) by any national securities association or national securities exchange; provided that, if an applicant registers with the attorney-general solely for the purpose of selling condominiums, shares of cooperative apartment corporations or commercial cooperative corporations, interests in homeowners associations or interests in timeshare projects, such applicant shall not be required to undertake the aforementioned examination as a condition of registration.

(c) The registration of brokers, dealers and salesmen shall be for periods of four years commencing on January fifth, nineteen hundred sixty. Such statements for brokers, dealers or salesmen shall be filed every four years within sixty days prior to the expiration of the four year period, provided that previously filed statements shall continue to be effective for a period of ninety days following the end of the four year period. Initial statements for those having no previous filing may be made at any time and shall be effective from the date of filing for a period of four years. All statements filed pursuant to prior provisions of law shall remain in effect until January fifth, nineteen hundred sixty.

4. The attorney-general may by rule or order provide for the filing of supplemental statements prescribed by him which shall contain such information as the attorney-general may deem necessary to keep reasonably current the information on file.

5. The department of law shall collect the following fees: (a) twelve hundred dollars for each broker-dealer's statement; (b) twelve hundred dollars for each broker-dealer's statement filed by a person, firm, association or corporation selling or offering for sale from or to the public within or from this state securities issued by it for any amount in excess of five hundred thousand dollars; (c) three hundred dollars for each broker-dealer's

statement filed by a person, firm, association or corporation selling or offering for sale from or to the public within or from this state securities issued by it for any amount of five hundred thousand dollars or less; (d) three hundred dollars for each broker-dealer's statement filed by a person, firm, association or corporation solely for the purpose of selling or offering for sale from or to the public within or from this state securities consisting of condominiums, shares of cooperative apartment corporations or commercial cooperative corporations, interests in homeowners associations or interests in timeshare projects, plus fifteen dollars for each partner, officer, director or principal of any such firm, association or corporation; (e) one hundred fifty dollars for each salesman's statement; (f) thirty dollars for each supplemental statement; (g) three hundred dollars for each application granted pursuant to subdivision two of section three hundred fifty-nine-f of this article; and (h) two hundred twenty-five dollars for the issuance of a "no filing required letter"; these fees shall obtain for both original statements and their renewals. No fee, however, shall be collected for filing a supplemental statement by a salesman cancelling his prior registration as such salesman.

Any partner, officer, director or principal who is named as such in a broker-dealer statement and who shall act as a salesman for such broker or dealer, shall not be required to register as a salesman.

6. Any false statement of a material fact contained in any such broker-dealer or salesman's statement or supplemental statement or in any certificate attached thereto shall constitute a violation of this section within the meaning of section three hundred fifty-nine-g of this article.

7. Any person, partnership, corporation, company, trust or association representing in any manner that the state, the department of law or any officer thereof has recommended the purchase of any stocks, bonds, or other securities, in advertising or offering such stocks, bonds or other securities for sale shall be guilty of a misdemeanor punishable as provided in subdivision two of section three hundred fifty-nine-g of this article.

8. After this subdivision as hereby amended takes effect no dealer shall sell or offer for sale to the public within this state as principal or agent, any securities issued or to be issued which are not exempted from the provisions of this subdivision by section three hundred and fifty-nine-f hereof unless and until such dealer shall cause to be filed a "further state notice" containing the information, other than the names of partners, required to be published by subdivision two of this section, but opposite the heading "name of dealer", if the person or persons causing such notice to be filed are acting pursuant to the provisions of this subdivision, there shall be added either the words "syndicate manager" or "syndicate managers" as the case may be; and in addition thereto and as part of each such further state notice the name of the security or securities, name, post office address and state or country of incorporation or organization of the corporation, association, common law trust or similar organization issuing or to issue the security or securities to be sold or offered for sale, in the following form:

FURTHER STATE NOTICE



Name of security or securities

.....

Name of issuer of securities

.....

Post Office address of issuer of securities

.....

.....

.....

The state or country in which organized

.....

.....

.....

Two or more dealers may jointly file such further state notice required by this subdivision, and a dealer or exchange must file a further state notice for each issue about to be offered which has not heretofore been published by the issuer. A syndicate manager or co-manager with an office in this state may file on behalf of an entire syndicate.

9. A broker-dealer or salesman registration statement or any other document is filed when it is received in the New York city office of the attorney-general.

10. The attorney-general may from time to time in the public interest make, amend, and rescind such forms as are necessary to carry out the provisions of this act, including forms governing registration statements and applications. For the purpose of forms, the attorney-general may classify securities, persons and matters within his jurisdiction, and may prescribe different forms and requirements for different classes.

11. It is unlawful for any broker or dealer to employ a salesman unless the salesman is registered. The registration of a salesman is suspended during any period when he is not associated with a particular broker or dealer registered under this act or a particular issuer. When a salesman begins or terminates a connection with a broker or dealer, or begins or terminates those activities which make him a salesman, the salesman as well as the broker or dealer shall promptly notify the attorney-general.

12. All persons, including partners, officers, directors and salesmen employed by a member or a member organization of a national securities exchange, a national securities association, or any other broker-dealer, registered with the federal securities exchange commission or any broker or dealer required to be registered with the department of law pursuant to this article except those dealers required to be registered solely by reason of the fact that they are engaged in selling or offering for sale securities issued by

themselves, and any employee of a clearing corporation affiliated with any such registered national securities exchange or with any national securities association registered with the federal securities exchange commission, employed on or after September first, nineteen hundred sixty-nine, who are regularly employed within the state of New York shall, as a condition of employment, be fingerprinted. Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the attorney general for appropriate processing, except that individuals fingerprinted in compliance with the rules of the securities and exchange commission need not file with the attorney general so long as records of those fingerprints, as well as information received in response to their filing, are available to the attorney general for inspection. The department of law shall collect from a member or member organization of a national securities exchange, a national securities association, or any registered broker-dealer as described above or a clearing corporation affiliated with any such registered national securities exchange or with any such registered national securities association submitting fingerprints to the attorney general for processing a fee in the amount prescribed therefor by the division of criminal justice services for each set of fingerprints submitted. Failure to comply with this section shall be deemed a violation of and a fraudulent practice within the meaning of this article.

12-a. Any employee of a national securities exchange or national securities association registered with the federal securities and exchange commission, and any employee of a clearing corporation or securities information processor affiliated with any such registered national securities exchange or national securities association, and who are regularly employed within the state of New York, shall, as a condition of employment, be fingerprinted. Every national securities exchange, national securities association, clearing corporation or securities information processor that is required to submit fingerprints pursuant to this section shall also obtain fingerprints from any individual not employed by such organization who provides services to such organization within the state of New York provided that the individual has access to records including electronic records, as defined by section three hundred two of the state technology law, or other material or secure buildings or secure property, which place the security of such organization at risk.

Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the federal bureau of investigation for the purpose of a nationwide criminal history check. Such reports received from the federal bureau of investigation shall be kept confidential, although the contents of any such report may be disclosed to exchange officials involved in personnel and security matters, to the attorney general, to law enforcement authorities and to the securities and exchange commission. Unless inconsistent with federal law, fingerprints supplied by such employee or employment applicant shall be returned to such person upon termination or denial of such employment. Fingerprints supplied by such other individuals providing services shall be returned upon completion of such services.

12-b. Any employee of a designated contract market, as that term is defined in the Commodity Exchange Act, under the authority of the federal Commodity Futures Trading Commission, and any employee of a derivatives clearing organization, as that

term is defined under the Commodity Exchange Act, that is affiliated with any such designated contract market, and who are regularly employed within the state of New York, shall, as a condition of employment, be fingerprinted. Every designated contract market and derivatives clearing organization that is required to submit fingerprints pursuant to this section shall also obtain fingerprints from any individual not employed by such organization who provides services to such organization within the state of New York provided that the individual has access to records including electronic records, as defined by section three hundred two of the state technology law, or other material or secure buildings or secure property, which place the security of such organization at risk.

Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the federal bureau of investigation for the purpose of a nationwide criminal history check. Such reports received from the federal bureau of investigation shall be kept confidential, although the contents of any such report may be disclosed to designated contract market or derivatives clearing organization officials involved in personnel and security matters, to the attorney general, to law enforcement authorities and to the Commodity Futures Trading Commission. Unless inconsistent with federal law, fingerprints supplied by such employee or employment applicant shall be returned to such person upon termination or denial of such employment. Fingerprints supplied by such other individuals providing services shall be returned upon completion of such services.

13. (a) The attorney general may by regulation, rule or order provide an alternative method of registration by which any dealer, broker or salesman acting as such or as principal in more than one state or who engages in multi-state securities offerings may supply the information otherwise required to be furnished in the state notice, registration statement, supplemental statements and further state notice mandated by subdivisions two, three, four and eight of this section. Such alternative method, when complied with, shall be deemed to fulfill the filing requirements of subdivisions two, eight and nine of this section, and shall be in lieu thereof. The regulation, rule or order of the attorney general may also provide for alternative filing periods and expiration dates and an alternate method for the payment of fees, to be known as "in lieu filing fees", which shall be collected pursuant to such regulation, rule or order of the attorney general in the same amounts as, and for the same information otherwise required to be collected for statements filed as specified by subdivision five of this section.

(b) No alternative method may be provided by the attorney general which does not have, as its purpose, the facilitation of a central registration depository whereby brokers, dealers or salesmen can centrally or simultaneously register and pay fees for all states in which they plan to transact business which requires registration. The attorney general is hereby authorized to enter into an agreement or otherwise facilitate such alternative method with any national securities association, national securities exchange, national association of state securities administrators or similar association or agents thereof to effectuate the provisions of this subdivision.

(c) Any false statement of a material fact contained in any substitute for a broker-dealer statement or salesman's statement or supplemental statement which is provided pursuant

to the attorney general's regulation, rule or order specified in paragraph (a) of this subdivision, shall constitute a violation of this section within the meaning of section three hundred fifty-nine-g of this article.

(d) It shall be unlawful for any dealer, broker or salesman to sell or offer for sale to or purchase or offer to purchase from the public within or from this state, any securities issued or to be issued, unless and until such dealer, broker or salesman shall have complied with the requirements of either: (i) the regulation, rule or order of the attorney general specified in paragraph (a) of this subdivision; or (ii) the filing of a state notice and registration statement and supplemental statements and further state notice as applicable to said dealer, broker or salesman, in accordance with subdivisions two, three, four and eight of this section.

(e) To the extent inconsistent therewith, the provisions of this subdivision shall supersede the provisions of any other subdivision of this section.

14. (a) Definitions. For purposes of this subdivision the following definitions shall apply:

(i) "Commodity" means, except as otherwise specified by the attorney general by rule, regulation or order, any agricultural, grain, animal, chemical, metal or mineral product or byproduct, any gem or gemstone (whether characterized as precious, semi-precious or otherwise), any fuel (whether liquid, gaseous or otherwise), any foreign currency, and any other good, article, or material.

(ii) "Commodity contract" means any account, agreement or contract for the purchase or sale of, or any option or right to purchase or sell, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, one or more commodities, whether for immediate or subsequent delivery or for storage and whether or not delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise. Any commodity contract offered for sale or sold to a person other than a producer, processor, merchant, handler, commercial user or ultimate consumer of the commodity shall, in the absence of evidence to the contrary, be presumed to be offered for sale or sold for speculation or investment purposes.

(iii) "Commodity broker-dealer" means any person engaged in the business of selling or offering to sell commodities through commodity contracts to the public within or from the state of New York.

(iv) "Commodity salesperson" means any person employed by or representing a commodity broker-dealer in selling or offering for sale commodities through commodity contracts to the public within or from the state of New York.

(v) “Commodity investment advisor” means any person who, for compensation, within or from the state of New York, engages in the business of advising members of the public, either directly or through publications or writings, as to the advisability of investing in, purchasing, selling or holding commodity contracts.

(b) Any person acting as a commodity broker-dealer, commodity salesperson or commodity investment advisor and any person who manages or supervises any such broker-dealer, salesperson or investment advisor shall file a registration statement with the attorney general as a commodity broker-dealer, commodity salesperson, or commodity investment advisor relating to the activity actually engaged in.

(c) The attorney general may adopt rules and regulations governing the form and content of such registration statements for each such activity which may include information pertaining to the business history for the last preceding five years, record of criminal convictions, litigation history, and educational background of the registrant and the registrant's partners, officers, directors or other principals deemed pertinent by the attorney general and the names of persons employed as commodity salespersons or commodity investment advisors by the registrant.

(d) The registration statement shall be effective for a period of one year from the date of filing.

(e) The attorney general shall by rule or regulation provide for the method of renewing such registration statements and may require the filing of supplemental statements which shall contain such information as the attorney general may deem necessary to keep reasonably current the information on file.

(f) The attorney general shall collect the following annual fees: one hundred dollars for each commodity broker-dealer registration statement or commodity investment advisor registration statement; twenty-five dollars for each commodity salesperson registration statement; and ten dollars for each supplemental statement.

(g) The provisions of this subdivision shall not apply to (i) any person who is a member or member firm of a national securities exchange, board of trade designated as a contract market by the Commodity Futures Trading Commission pursuant to the commodity exchange act, as amended, the National Association of Securities Dealers, Inc., or the National Futures Association, Inc., or is an affiliate of such a member or member firm, or employed by such a member or member firm or by an affiliate of such a member or member firm; (ii) any board of trade designated as a contract market as aforesaid; (iii) any other person registered, temporarily licensed, or exempt from registration under the commodity exchange act, as amended, or the rules and regulations promulgated thereunder where such registration, license or exemption relates directly to the activity engaged in; and (iv) any bank or trust company as defined in this article or any person acting as an employee of any bank or trust company or any licensed money transmitter or employee thereof.

(h) In addition to those persons exempt under paragraph (g) of this subdivision, no person shall be required to register as a commodity investment advisor pursuant to paragraph (b) of this subdivision who is (i) a lawyer, accountant, engineer, or teacher who renders investment advice solely incidental to the practice of his or her profession; (ii) a broker or dealer in securities or a commodity broker-dealer or a commodity salesperson who renders investment advice solely incidental to the conduct of his or her business as a broker or dealer in securities or a commodity broker-dealer or a commodity salesperson respectively, and who receives no special compensation for such advice; (iii) a publisher of, editor of, or writer for a bona fide newspaper or news magazine, whether published in print or by electronic means; or (iv) a person who during the course of the preceding twelve months has not advised more than fifteen persons as to the advisability of investing in, purchasing, selling or holding commodity contracts and who does not hold himself out generally to the public as engaging in any of the activities set forth in subparagraph (iii), (iv) or (v) of paragraph (a) of this subdivision.

(i) The provisions of this subdivision shall not apply to any contract or transaction involving the sale of commodities by the owner or lessee of real property upon which such commodities are grown or raised, the sale of items by art dealers or licensed auctioneers at public auction or the sale or resale by a distributor or wholesaler of goods for consumption by the public.

(j) Any person required to be registered by this subdivision who is not registered shall be guilty of a misdemeanor punishable as provided in the penal law.

(k) Any person who engages in a business requiring registration under this article and who knowingly employs two or more persons for the purpose of engaging in conduct requiring registration as a commodity broker-dealer, commodity salesperson or commodity investment advisor under this article with the knowledge that they are not so registered shall be guilty of a class E felony.

(l) A violation of this subdivision shall constitute a fraudulent practice as that term is used in this article.

(m) If any provision of this subdivision or the application thereof to any persons or circumstances is held invalid, the validity of the remainder of this subdivision or of the application of such provision to other persons and circumstances shall not be affected thereby.

### **§ 359-ee. Report of existence**

1. Every person, partnership, corporation, company, trust or association which caused to be filed in the department of law a "dealer's statement" on or before June thirtieth, nineteen hundred fifty-three, shall on or before February first, nineteen hundred fifty-nine, file in the department of law a certificate which shall be entitled and endorsed, "Certificate of Report of Existence of ..... (state name of dealer), pursuant to section

three hundred fifty-nine-ee, of the general business law” and shall state: (a) The name of the dealer, and if it was changed, the name under which last registered. (b) The date of the last filing of the dealer's statement in the department of law. (c) That its existence is hereby continued. Such certificate shall be signed and certified by the dealer or any principal officer thereof.

2. On or before January first, nineteen hundred fifty-nine, notice of the enactment of this section shall be given by the attorney-general to each dealer to which this section applies by mailing a copy of such notice to said dealer directed to said dealer at the address stated in the “dealer's statement” filed by said dealer in the department of law and then on file there. A copy of this section shall be endorsed or annexed to each such notice.

3. On March fifteenth, nineteen hundred fifty-nine, the attorney-general shall make a list containing the names of all such dealers, who have not filed the certificate of report of existence required by subdivision one of this section.

4. The attorney-general shall make a proclamation under his hand and seal of office as to the dealers whose names are included in such list, declaring the “dealers' statements” theretofore filed by such dealers as void pursuant to the provisions of this section. He shall file the original proclamation in his office and shall publish a copy thereof in the April or May issue of the state bulletin in the year nineteen hundred fifty-nine.

5. Upon the publication of such proclamation in the manner aforesaid, the “dealer's statement” of each dealer named therein shall be deemed void as of May thirty-first, nineteen hundred fifty-nine, without further proceedings, except as otherwise provided in subdivision six of this section.

6. After this section takes effect, no dealer whose statement has been voided by subdivision five of this section shall sell or offer for sale to the public within this state, as principal, broker or agent, or otherwise, any securities issued or to be issued, unless and until such dealer shall have caused to be filed in the department of law a new “dealer's statement” as required by section three hundred fifty-nine-e of this article.

7. After this section takes effect, no dealer whose statement has been voided by subdivision five of this section shall sell or offer for sale to the public within this state, as principal, broker or agent, or otherwise, any securities issued or to be issued, unless and until such dealer shall have caused to be filed in the department of state a new “state notice” as required by section three hundred fifty-nine-e of this article, and, as to any securities which are not exempted from the provisions of subdivision eight of section three hundred fifty-nine-e of this article by section three hundred fifty-nine-f hereof, until and unless such dealer shall have caused to be filed in the department of state a further “state notice” as required by such section three hundred fifty-nine-e.

8. The fee of the attorney-general for filing a certificate under subdivisions one or six of this section shall be five dollars, and the fee of the department of state for filing any notice under subdivision seven of this section shall be two dollars.

