

Navigating The Attorney General Process

By Steven Kratchman

As all new residential condominium developers know (or will eventually learn), their condominium declaration, commonly known in the industry as “the Dec,” which must be filed with the New York State Attorney General, contains two parts. One is submitted by the developer’s attorney with all essential and required legal information, and the second, which is more graphic, is created and submitted by the architect of record and is comprised of a lengthy list of carefully researched architecture and engineering (A/E) details.

Section 20.7 of the New York State Attorney General’s Offering Plan requirement states that condominium developers must include with their offering plan “a comprehensive narrative description of the building(s) and property” and that “the condition of all systems and materials must be fully described.”

In short, this information is a kind of “truth in packaging” report created and certified by the architect of record. This report is required by the AG in order to inform and, therefore, protect buyers while at the same time controlling a developer’s work product. The developer may not offer any units for sale without first filing and getting the Attorney General’s review and approval of this report.

This architect’s segment of the AG Report, or “Dec,” is a descriptive architecture and engineering document of detailed text accompanied by precise, measured drawings and illustrations that describe and give a total checklist of nearly 200 components and elements of the building. This list includes size, location and date of construction to detailed descriptions of the condition of dozens of exterior and interior elements from roof, windows, stairs and parapets to lobbies, walls, ceilings, floors, public corridors, service hallways, appliances, elevators, plumbing, heating, ventilation, fire escapes, landscaping, the cellar, laundry, intercom, garage and any auxiliary facilities plus any violations, necessary corrections and permits, liability insurance and anticipated finish dates.

The complexity, detail, accuracy and timeliness of the architect’s A/E report required by the Attorney General shouldn’t become a burden to residential condominium developers, for either new, from-the-ground-up buildings or for condo conversions. Yet, late, incomplete, inadequate or inaccurate architect’s A/E reports can necessitate re-filings and cause time-consuming repeat inspections and costly sales delays, all of which can significantly erode developers’ profits and lengthen their selling timetables.

As part of an architect’s total services, the architect’s A/E report is a very important document for the sponsor and the developer, because there is typically a six-month turnaround process before the Attorney General reviews and

finally approves it.

During this waiting time, the sponsor cannot sell or go to the market with any units, so it’s imperative and in the best interests of the developer that these documents are submitted as quickly and accurately as possible.

This can be a very difficult task, because at the same as this document must be researched and created, the building is also being designed, multiple changes are typically being made, and yet the architect’s A/E document must be totally accurate and up-to-date so that the architect of record can sign off and affirm that “what’s drawn is what’s actually being built.”

What are the keys to success in this process? Most critical of all, developers are advised to select architects who can both create appealing aesthetic designs and who can manage the overall project, and who also have engineering know-how and a thorough knowledge of NY codes and regulations.

Another key to success is to make certain that, throughout the design process, the architect’s A/E document is totally and currently integrated into the project schedule, so that all information is both accurate and up-to-date at all times as the design and the construction of the building go forward.

By holding joint meetings and/or telephone calls that include both their attorney and their architect, developers can stay well informed regarding which party does what, with what detail and on what schedule, in order to comply fully with the Attorney General’s requirements.

It is always important to keep in mind that not a single unit can be offered for sale until after the Attorney General has reviewed and approved this document. —RENY

The views expressed in this article are those of the author and not those of Real Estate Media or its publications.

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