

Title 13 NYCRR Section 16.9
Sources of distributions.

(a) Beginning November 1, 1963, all partnerships, corporations, trusts, joint ventures, associations and other groups or entities, persons and offerors who were required heretofore since January 1, 1961 or who hereafter are required by article 23-A of the General Business Law to file an offering statement under section 352-e thereof, or who have obtained an exemption therefrom under section 352-g of article 23-A, or are granted such exemption hereafter, are hereby required to transmit to each of the then owners of securities of said issuer, who are residents of this State, at the end of each quarter thereafter of its respective fiscal year, but not later than 60 days from such date, a statement to be known as a "Source of Distribution Statement," when such owners have been paid distributions from any source by such issuer for or during such quarterly period, which shall indicate clearly to each investor in the manner and form set forth in form SD-1 issued by the Attorney-General:

(1) Whether or not any payments of cash to any investors, partners, stockholders, etc., were made from any of the following sources, and the amounts thereof with full details:

(i) borrowed monies (secured or unsecured);

(ii) loans or additional contributions from officers or partners or other principals or agents thereof;

(iii) proceeds from the sale, transfer, option, exchange or other disposition (including involuntary conversion and insurance proceeds) of property or other assets, contracts, etc. (including monies received as deposit on contracts, returnable and nonreturnable). In the determination of such "proceeds," deferred payments and purchase money mortgages should be treated on the basis of accepted installment accounting principles;

(iv) funds generated from operations, which funds should be defined to include net income as ascertained through the use of standard accounting practices adjusted so that depreciation allowances are not treated as an expense and payment of principal due on debt is deducted. However, in the case of motels, hotels, nursing homes, furnished apartment houses and similar properties, personalty recurrently acquired for use in connection with real property should be deducted as an expense;

(v) monies paid to the issuer by lessees or other obligors as a result of a transaction where rent or other obligations due are intended to be made primarily from the operations of a particular property or properties where the issuer or any principal of the issuer has a material direct or indirect interest in the lessees or obligors when it is known to the issuer or principal thereof that all or part of such monies emanated from sources other than recurrent business earnings of such obligors or lessees in connection with the operation of the particular property or properties concerned.

(2) In the event any payments of distributions were made solely from current or retained earnings (or similar classifications) for a prior fiscal or calendar year, the information required by paragraph (1) need not be given. In the determination of current or retained earnings for this purpose deferred payments and purchase money mortgages should be treated on the basis of accepted installment accounting principles.

(3) In the preparation of the information called for in paragraphs (1) and (2) above it may be assumed that such payments were made first from current earnings for the period involved to the extent available; secondly from retained earnings to the extent available; and thirdly from funds generated from operations to the extent available. In regard to distributions from sources in excess of funds generated from operations, the specific sources should be determined.

(4) Whether during the aforesaid period of time there has been any material default by the issuer in payment of any mortgage, taxes, interests or other obligation or obligations on secured or unsecured debt. If not, no express representation need be made.

(5) Whether any reserve set up for a purpose other than the payment of distributions to investors has been reduced or terminated by application of funds therein for purposes materially different from that for which said reserve was established. If not, no express representation need be made.

(6) Whether the principal officers or directors of the issuer have received any notice from any lessee or other person or firm of a material fact which may substantially affect future distributions. If not, no express representation need be made.

(7) Whether any loans or advances have been made to officers, partners, or directors of the issuer during the reporting period of time, indicating the authority upon which such monies were disbursed, and the full terms of such loans or advances. If not, no express representation need be made.

(8) Whether any general partner, officer, director or other principal has pledged or collateralized any of his stock, shares or interests in the issuer during the reporting period of time. Any such general partner, director or other principal shall provide such information to the issuer not later than 30 days from the end of each quarter of the issuer's fiscal year. If no such pledge or collateralization has taken place, no express representation need be made.