

§23-03 Legal Requirements for Private Sewers or Private Drains.

(a) *General requirements for all legal instruments.* All legal instruments required by this rule including, but not limited to, affidavits, consents, declarations, agreements, real estate instruments, sureties, bonds, indemnities, and security deposits shall be submitted on the appropriate forms supplied by the department, shall contain original signatures, and shall be properly recorded in the office of the clerk of the county in which the proposed development is located to the extent that recording is required.

(b) *General requirements for title reports and title insurance policies.* All title reports and title insurance policies required by this rule shall be prepared and written by a title insurance company licensed to do business in the State of New York. All title insurance policies shall name the city as the insured and shall contain a technical description of the metes and bounds of the proposed development and the bed of street areas for which the city has no title or opinion of dedication for public use from the corporation counsel.

(c) *Additional legal documentation requirements for drainage proposals or private sewer plans relating to the status of streets.* In addition to the requirements of §23-02, owners submitting drainage proposals or private sewer plans relating to the status of streets shall file the additional information and legal documentation as specified below.

(1) Owners proposing to construct a private sewer or private drain in a city-owned street shall also submit a letter from the office of the appropriate borough president verifying that title to the street in which a private sewer or private drain is to be constructed has vested in the city.

(2) Owners proposing to construct a private sewer or private drain in a finally mapped street owned by the owner shall also submit the following:

- (i) a title report verifying the owner's ownership of the subject street(s);
- (ii) a title insurance policy in an amount determined by the department in accordance with §23-04 of this rule insuring the city of the owner's right to construct the proposed private sewer or private drain as delineated on the drainage proposal or private sewer or private drain plan; and
- (iii) a properly recorded declaration of public use-irrevocable street opening irrevocably opening the street(s) for public use.

(3) Owners proposing to construct a private sewer or private drain in finally mapped or record street(s) owned by others shall also submit the following:

- (i) a title report verifying the ownership of the subject streets;
- (ii) a title insurance policy in an amount determined by the department in accordance with §23-04 of this rule insuring the city of the owner's right to construct the proposed private sewer or private drain as delineated on the drainage proposal or private sewer or private drain plan;

(iii) either:

(A) a properly recorded sewer easement agreement establishing and delineating a sewer easement in favor of the owner; or

(B) a properly recorded declaration of public use-irrevocable street opening irrevocably opening the street(s) for public use;

(iv) a properly recorded declaration of maintenance obligating the owner and all successors-in-interest to maintain the private sewer or private drain if the street is not to be continuously opened for public use; and

(v) a security deposit in an amount determined by the department in accordance with §23-04 of this rule if the street is not to be continuously opened for public use.

(4) Owners proposing to construct a private sewer or private drain in finally mapped or record street(s) of unknown ownership shall also submit the following:

(i) a title report verifying that the finally mapped or subject streets are of unknown ownership;

(ii) a title insurance policy in an amount determined by the department in accordance with §23-04 of this rule insuring the city of the owner's right to construct the proposed private sewer or private drain as delineated on the drainage proposal or private sewer or private drain plan;

(iii) a properly recorded declaration of maintenance obligating the owner and all successors-in-interest to maintain the private sewer or private drain if the street is not to be continuously opened for public use; and

(iv) a security deposit in an amount determined by the department in accordance with §23-04 of this Rule if the street is not to be continuously opened for public use.

(5) Owners proposing to construct a private sewer or private drain part of which will traverse the owner's property shall also submit the following:

(i) a title report verifying the ownership of the subject property;

(ii) a title insurance policy in an amount determined by the department in accordance with §23-04 of this rule insuring the city of the owner's right to construct the proposed private sewer or private drain as delineated on the drainage proposal or private sewer or private drain plan;

(iii) a properly recorded declaration of sewer easement establishing and delineating a sewer easement in favor of the department;

(iv) a properly recorded declaration of maintenance obligating the owner and all successors-in-interest to maintain the private sewer or private drain and all appurtenances thereto; and

(v) a security deposit in an amount determined by the department in accordance with §23-04 of this rule guaranteeing the continuous and proper maintenance of the proposed private sewer or private drain for as long as such private sewer or private drain remains in use.

(6) Owners proposing to construct a private sewer or private drain part of which will traverse property of another shall also submit the following:

- (i) a title report verifying the ownership of the subject property and/or street(s);
 - (ii) a title insurance policy in an amount determined by the department in accordance with §23-04 of this Rule insuring the city of the owner's right to construct the proposed private sewer or private drain as delineated on the drainage proposal or private sewer or private drain plan;
 - (iii) a properly recorded sewer easement agreement granting the owner the right to construct the proposed private sewer or private drain;
 - (iv) a properly recorded declaration of maintenance obligating the owner and successors-in-interest to maintain the private sewer or private drain and all appurtenances thereto; and
 - (v) a security deposit in an amount determined by the department in accordance with §23-04 of this rule guaranteeing the continuous and proper maintenance of the proposed private sewer or private drain for as long as such private sewer or private drain remains in use.
- (7) Owners proposing to construct a private sewer or private drain in a Record street which is not a finally mapped street shall submit all documents required by paragraphs (3) or (4) of this section and a certified copy of a variance issued by the Board of Standards and Appeals for proposed construction on lots not fronting a finally mapped street or a determination from the Department of Buildings that no such variance is required.

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