

Condo Insights

#74 – Completing the Condominium Project Questionnaire Form 1076 Part 2

Since the Champlain Towers building collapse in Surfside, Florida in 2021, completing the Form 1076 Condominium Project Questionnaire, otherwise known as the condo questionnaire, has become more challenging, confusing to some, and even onerous for volunteer board members. New requirements on mortgage approvals for condominium units are being imposed based on building inspections and capital reserve studies as a result of changes in the Fannie Mae and Freddie Mac secondary loan markets. Part 2 of this article will review the questions on Form 1076 regarding building inspections, reserve studies, and deferred maintenance.

These new requirements place a priority on structural inspections and fiscal stability. All buildings need maintenance. Associations are best served to have a maintenance plan, a schedule of standard procedures for preventive and routine maintenance, a current reserve study and adequate reserves, and establish a schedule for periodic structural inspections and capital reserve study updates. Action plans for maintenance, structural inspections and capital reserve studies take time. Follow-up to address concerns, deficiencies and violations also take time, anywhere from a few days to a few months.

Documentation is important, so all pertinent paperwork (financial statements, engineering reports and inspections, reserve studies, meeting minutes) must be carefully maintained and available to lenders. Boards should have their buildings inspected, get a current reserve study, develop a maintenance plan, gather pertinent documents, prepare a detailed annual budget, and consider preparing a building history binder that includes major and significant maintenance, repairs and asset replacements.

In summary, the Form 1076 questionnaire wants to find out when the building was last inspected; if the board is aware of any defects, damage or violations of code requirements, and if so, is there a plan and budget to get things fixed. The Form also wants confirmation that the association board has a maintenance plan, including schedules and that the board includes maintenance in the annual operating budget.

Form 1076 asks if the association has had a reserve study done in the past 3 years. This requires a simple yes or no response. Under the Structural Integrity Act, the vast majority of associations in New Jersey will have a reserve study, but the Act only requires reserve studies every five years. Banks will make their own determination as to how to respond to this discrepancy.

Quite likely, the next question in this section asking for the total reserve account balance may raise a few eyebrows among the bank's underwriters, depending on the response. It is reasonable to expect that the likelihood for loan approval for individual units is restricted if the association reserve balance is low. Simply put, banks may decline lending if the association does not maintain adequate funding for the long-term maintenance and replacement of association assets.

Another question asks of the association has or is expected to have any planned special assessments or has any loans for work on the property. While not necessarily a disqualifier, the bank may want to make sure the individual borrower can pay any assessments necessary for maintenance to the property.

Form 1076 addendum includes one question in particular that created potential liability concerns for associations. That question asks if the condo board expects there will be future deferred maintenance or code violations. How can a volunteer association board member be expected to answer that question? As stated previously, condo board members aren't experts in their building's structural issues and may hesitate to make definitive statements or representations. It's okay to state if the Board hasn't received any information that there are any unsafe or unsound conditions. But to avoid liability, associations should honestly and accurately respond to disclosing inspection reports and any potential claims.

There is a difference between misrepresentation and not answering. Boards that are aware of unsafe conditions or code violations should disclose same. But associations should be careful not to promise that the building doesn't have some issues somewhere.

Will the Form 1076 and subsequent responses affect the association? It's possible, depending upon the lender. Depending on the responses, the mortgage approval process may take longer, or even be delayed. There is no predetermined process for how a lender will consider the responses. Some lenders may be more relaxed; some may be stricter. The association history may affect the process. Buyers with a larger down payment may see relaxed or faster review and approval.

Looking ahead, associations that are well maintained, are up to date on inspections and have their documents in place can help owners sell their condos and expedite the mortgage and loan approval process for buyers, which can create higher property values within an association.

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