

Condo Insights

#73 – Completing the Condominium Project Questionnaire – Form 1076 Part 1

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.

These new requirements came into effect in early 2022 in response to the collapse of Champlain Towers Condominiums. The main contributing factor to the collapse was long term deterioration and degradation of the structure, specifically water intrusion that affected the concrete and steel structure. These concerns were identified years prior in building inspections, but nothing was done about it.

Before the collapse and subsequent changes to the condo questionnaire, the mortgage on a condo was predominantly based on the individual borrower, with little consideration for the condo association. However, since Champlain Towers, mortgage companies are reviewing the association actions to ensure the mortgage company's investment is not put at risk due to the association's inaction or failure to maintain the building and association common elements. The Questionnaire asks for disclosure of any issues that may affect the overall safety, soundness and habitability of the building.

The updated Questionnaire and Addendum asks when the building was last inspected, if the inspection revealed any problems and if the board is aware of any problems or items that need to be repaired. The Questionnaire also asks if there are any outstanding code violations related to the safety, soundness, structural integrity or habitability of the building; if it is anticipated that there will be violations in the future, if the association has a funding plan for its deferred maintenance components, if the association has had a capital reserve study completed within the past 3 years, the balance in the association's reserve account, if there is a maintenance plan for the building, and if the association has any current or planned loans or special assessments.

A condo board may not have all the answers. Some of these questions can be confusing, and board members may be unsure as to how to handle this form. Some of the questions require the board to develop a plan for both short term and long term maintenance and repair of common elements; to schedule work, and prepare a budget for capital expenditures and deferred maintenance. Some of these plans can be prepared relatively quickly, but some of these take time. It is reasonable to expect that maintenance plans will change and evolve from year to year.

Some of these questions may be more applicable to multi-family, mid-rise and high-rise condominium buildings, less so for townhouse or homeowner's associations where the association may not be responsible for building integrity.

It is reasonable to expect that condo board members should be aware of the general condition of their building as well as any current or planned capital projects and maintenance work, but condo board members are not experts in their building's structural condition. Board members should disclose the inspections and provide copies of reports, but may also include disclaimers that they are not aware of any unsafe or unsound conditions. In most cases, board members can't attest to something they don't know about their building.

One question asks when the last time the building was inspected by a licensed architect, licensed engineer or other building inspector, and did the inspection have any findings related to the safety, soundness, structural integrity or habitability of the building. This question relates to the building, not to the individual condominium unit. The answer to this is fairly straightforward – just the date of the most recent inspection, if the building has ever been inspected. The New Jersey Structural Integrity Act (the "Act") now requires many associations in New Jersey to have a structural inspection (depending on building type) and will likely guide this response for many associations. The question stipulates an inspection by a qualified person. The Questionnaire requests a copy of the inspection along with association meeting minutes documenting the inspection findings and an action plan to address deficiencies.

Keep in mind that the inspection inquiry doesn't just apply to structural inspections and capital reserve studies but may also apply to violations cited in State elevator inspections, municipal building and fire inspections and the 5-year inspections performed by the New Jersey Department of Community Affairs Division of Housing.

The Questionnaire asks if the association has a schedule and funding plan for deferred maintenance components. Form 1076 defines deferred maintenance as the postponement of normal maintenance that results in advanced deterioration or reduced operational efficiency. This refers to delaying repairs that would typically be done as part of routine maintenance, and as a result, there is deterioration of the building and its components that has affected operational efficiency. It's not isolated, minor damage like a small leak in one unit, but systemic issues affecting the entire project. Form 1076 focuses on material deferred maintenance that threatens the building's core functions. It is quite likely that disclosure of significant deferred maintenance needs would make it much more difficult for any bank to approve a mortgage in said association.

Part 2 of this article will review the remaining questions on Form 1076 regarding building inspections, reserve studies, and deferred maintenance.

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