

Condo Lifestyles[®]

THE SOURCE FOR INFORMATION ON COMMUNITY ASSOCIATIONS, CONDOS, TOWNHOMES, CO-OPS & HOAS \$8.95

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A Cooperative's Guide To Navigating Lending Disclosure Requirements

Following the tragic condominium building collapse in Surfside, Florida, lenders began requesting certain disclosures related to deferred maintenance, safety and habitability of condominium and cooperative buildings in connection with unit and apartment sales and financing to meet the Fannie Mae guidelines.

In addition, substantive changes were made to the statutory disclosure requirements under the Illinois Condominium Property Act, 765 ILCS 605/22.1 (“Act”) and Illinois Common Interest Community Association Act, 765 ILCS 160/1-35 (“CICAA”). While these statutory provisions do not apply to housing cooperatives, nonetheless, the shift in lender disclosure requests and substantive changes to both the Condo Act and CICAA have created confusion for cooperative boards as to their obligations and potential liability for providing these types of disclosures that warrants discussion.

First, absent a specific provision in their governing documents, Cooperatives have no legal obligation to provide any disclosures to a potential shareholder who is considering purchasing an apartment.

Many of the disclosure requests received by cooperatives specifically rely on statutory provisions that are not applicable to cooperatives or expressly exempt cooperatives. In contrast, most Illinois cooperatives are governed by the Business Corporation Act, which does not contain any disclosure requirements. Accordingly, the decision as to what disclosures should be made, if any, typically rests solely within the discretion of each individual cooperative board.

Despite there being no legal obligation to provide any disclosures to a potential shareholder, cooperative boards may want to provide certain reasonable disclosures to prospective buyers in order to facilitate sales in their buildings or to help current shareholders with refinancing opportunities. Despite this, it is important to keep in mind that disclosures of any kind can subject a

corporation to potential liability if the disclosures are inaccurate and a buyer, lender or shareholder relies upon such disclosures to their detriment. Below are some recommended guidelines for cooperative boards that wish to make limited disclosures:

- 1. Utilize a Standard Uniform Disclosure Form Approved by the Board:** There are many different types of forms and disclosure requests. In many instances, lenders have taken portions of Section 22.1 of the Act and portions of the Fannie Mae Disclosure Form 1076 to create their own form which expands the requirements set forth in various statutes or lending guidelines. These individualized forms create opportunities for inconsistency and inaccurate disclosures as well as more work for property managers and cooperative boards to review each form on a case-by-case basis. To avoid this, cooperative boards can create and use their own uniform disclosure form rather than responding to various individualized forms.

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2. **Limit Disclosures to Factual Information Rather than Opinions:** Many disclosures request opinions or predictions relating to safety, future repairs or possible assessments. Disclosures should contain factual information rather than the opinions of a cooperative board. We also recommend including specific disclaimer language drafted by counsel to be included with any disclosures.
3. **Limit Disclosures to Only the Standard Disclosures Approved by the Board:** Lenders often call or e-mail follow-up questions after a disclosure form is provided or request that boards copy the approved disclosures into their individualized form. Providing additional information via e-mail or telephone could lead to potential liability if the questions are not carefully analyzed or responses are misinterpreted or misunderstood.
4. **Do Not Respond to Disclosures Titled as 22.1 Requests:** Cooperative disclosures should not be made pursuant to Section 22.1 of the Act or any other statute that is not applicable to cooperatives. While some of the information required under Section 22.1 of the Act may be information a cooperative board is willing to provide as part of a standard approved disclosure, the information should never be provided under the guise of Section 22.1 of the Act.
5. **Review the Standard Disclosure Form at each Cooperative Board Meeting:** While most disclosures do not change on a monthly basis, cooperative boards should review and approve their standard disclosure form at every meeting. This reduces the chance of inaccurate, outdated disclosures being made.
6. **Engage Legal Counsel if Needed:** Cooperative boards should seek the advice of their legal counsel if any questions arise regarding disclosures, or the language contained within the same. ■

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