

What about filling out a lender's form?

There is no legal requirement that we are aware of for an Association to complete a lender's form. In fact, most management contracts do not provide for signing any document without the Board of Director's prior approval.

Many of the forms submitted could be construed as contracts, or at the very least they are creating a document that a third party (the lender) will rely upon to make the loan.

Signing or completing a third party form could place the Association in a position in which it has no legal obligation to be in, and only creates additional potential liability.

Civil Code § 4525, does not require the Association to fill out lender questionnaires.

Will I still get the loan if the Association doesn't fill out the form from the lender?

We have successfully provided documentation and information to more than 17,000 escrows, all without filling out a form provided by a lender.

The lender may prefer to have it as it appears to bind the Association, but in the end it has been our experience that the loan does go through anyway. It isn't the Association that the loan is secured with, it is the value of the property and the borrower's ability to repay the loan.

Cases to support their position

Ostayan v. Nordhoff,

The Association cannot be expected to make disclosures so as to impart information in relation to every possible sale of a unit within the development. Were there such a requirement, the Association's time could be consumed with the preparation of disclosure statements. Any such rule would also render redundant the procedure of annual reports, meetings, and the disclosures of budgets established by statute.

Kovich v. Paseo Del Mar Homeowners Association

appellant impliedly agreed that the property rights being sold were subordinate to the interest of the homeowners association as a whole. Paseo's fiduciary duties ran to the association members, not prospective purchasers.