ANZVTIP3

ADDRESSING THE CONCEPT OF 'FORCED SALE'

Technical Information Papers

The principal objective of a valuation Technical Information Paper (TIP) is to reduce diversity of practice by identifying commonly accepted processes and procedures and discussing their use. A TIP is designed to be of assistance to professional valuers and informed users of valuations alike.

A TIP will do one or more of the following:

- provide information on the characteristics of different types of asset that are relevant to their value,
- provide information on appropriate valuation methods and their application,
- assist the consistent application of an International Valuation Standard (IVS) by dealing with matters identified in the Standard in greater detail,
- provide information that is helpful to valuation professionals in exercising the judgements they are required to make during the valuation process in specific situations.

A TIP does not:

- provide valuation training or instruction,
- direct that a particular approach or method should or should not be used in any specific situation.

The contents of a TIP are not intended to be mandatory. Responsibility for choosing the most appropriate valuation approach is the responsibility of the valuer based on the facts of each task.

Whilst TIPs are not mandatory, it is likely they will serve as a comparative measure of the level of performance of a Member. They are an integral part of “Professional Practice”.

The reader should understand that legislation may change and whilst this TIP is accurate and relevant at the time it was completed, relevant referred reading and legislation should be investigated at the time of relying on this TIP.

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1.0 Introduction

1.1. Objective

The objective of this TIP is to address circumstances whereby API and PINZ members are requested to take into account an actual or anticipated constraint which is inconsistent with 'market value'.

The terms 'forced sale value', 'fire sale value' and/or 'distressed sale value' are considered inappropriate and not supported by this Institute. However advice prepared by a Certified Practising Valuer (Australia) / Registered Valuer (New Zealand) estimating a likely realisable price, based on an agreed set of circumstances may be provided, subject to agreeing and detailing all assumptions and any necessary qualifications.

1.2. Scope of TIP

Whilst this TIP primarily applies to Members advising banks and lending institutions for mortgage related purposes it can also apply to other forms of advice such as

- Divorce /asset property settlements
- Trustee winding up deceased estates
- Vendors under pressure to liquidate assets for financial, health, circumstantial reasons
- Aged persons compelled to sell when entering Aged Care arrangements
- Resumption dispossessed owners forced to sell / negotiate under duress

It should be used in conjunction with other TIPs and/or practice standards which are either over-arching or directly applicable to the type of asset, purpose or issues involved.

1.3. International Valuation Standards

This TIP recognises the International Valuation Standards prepared by the International Valuation Standards Council. The guidance in this paper presumes that the reader is familiar with the International Valuation Standards and Technical Information Papers.

This TIP is also intended to be consistent with the concepts and definitions contained in those Standards, however, there may be departures from IVSC Standards to reflect Australian and New Zealand law and practice.

Particular IVSC reference to forced sale is made within IVS 2013 under:

- IVS Framework
- IVS 220 Plant and Equipment
- IVS 300 Valuations for Financial Reporting
- IVS 310 Valuations of Real Property for Secured Lending
- IVSonline Frequently Asked Questions

1.4. Market Value Policy [Def. Market Value]

It is the policy of the Institutes that valuations assuming an actual or hypothetical sale of the asset(s) should be provided by Members on a Market Value basis. A professional market valuation of an asset will be consistent with the Market Value definition adopted by the Institute.

2.0 Definitions

The following defined words and terms have particular relevance to this TIP. Other words and terms that are also defined in the IVS Glossary and / or the joint API / PCA / REIA 2007 Glossary of Property Terms may be used but are not listed below in the interests of brevity.

Please note any IVSC definition included in the 2007 Glossary of Property Terms will be superseded by the current IVS Glossary.

Market Value	The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
Special Assumption	An assumption that either assumes facts that differ from the actual facts existing at the valuation date or that would not be made by a typical market participant in a transaction on the valuation date.

3.0 Market Constraints (Special Assumptions)

1.5. Market Constraints Inconsistent with Market Value

Providing an estimated realisable price reflective of a market constraint (commonly termed 'forced sale') is inconsistent with the concept of 'market value' and represents an expression of the likely price attainable in a 'non-market' environment.

Broad examples or instances of special assumptions that are inconsistent with the market value premise of value include the following:

- Shortened or limited marketing campaign;
- Inappropriate or sub-optimal selling method; and
- Anxious or unwilling vendor

Whilst not extensive, the aforementioned list creates many 'grey' areas of interpretation which should lead Members to seek further particulars and clarification from their instructing party. For example, the "stigma" associated with a property because of its recent history is part of the inherent value of the property and not a market constraint, whereas being instructed to assume a 4 week selling campaign and auction for a property that is normally sold on a 6 month campaign by tender, is a constraint.

1.6. Advising On Properties with Constraints Inconsistent with Market Value

Valuers may, when requested, provide an estimate of the likely realisable price of an asset or best price reasonably obtainable, when it is agreed between the Valuer and the instructing party that the advice is required to reflect an actual or anticipated market constraint.

Importantly, from the point of engagement, the parties need to agree and nominate the particular constraint(s) which are inconsistent with 'market value'. That is, at instruction the parties must clearly acknowledge the specific assumptions by which the Valuer is to take into account or disregard. Common examples include, but are not limited to, the following:

- Inadequate exposure to the market;
- Unreasonably short period in which to achieve a sale;
- Inappropriate sale method;

- A vendor with a need to liquidate an asset in a sub optimal manner; and
- Other unusual factors.

The constraint(s) to be assumed by the Valuer should be acknowledged and agreed by the parties in detail. For example, liquidators, receivers and administrators do not constitute a constraint per se. In most States liquidators, receivers and administrators have a duty to take reasonable care to sell the property for not less than market value, as per section 420A(a) of the Corporations Act. However, they are also permitted to sell at the best price reasonably obtainable having regard to the circumstances existing when the property is sold, as provided for in section 420A(b) of the Corporations Act.

As such, a liquidator, receiver or administrator, may well instruct a valuer that because default interest rates apply, it is most cost effective to sell within a shorter than usual marketing campaign and the liquidator wants an opinion as to the best price reasonably obtainable on a shorter than usual sale campaign. A valuer can express a view as to the best price reasonably obtainable in accordance with those instructions, noting that this opinion is not an assessment of market value in accordance with the usual definition. It is desirable in these circumstances that the valuer quantify, if possible, the difference between market value and best price reasonably achievable, so that the client can assess the most appropriate course of action.

In agreeing to provide likely reaslisable value, or a best price reasonably obtainable, a Valuer may wish to limit their liability for such advice given the risk involved..

1.7. Plant & Machinery

It is noted that liquidators, receivers and administrators often instruct valuers, to assess and advise on the market value, or best price reasonably obtainable, for a range of plant and equipment. A common sale technique, is to auction a range of equipment at the one time, which is often the most reasonable way to obtain the best price across the portfolio, even though some items might arguably sell for less than market value and others for more.

Once again, the valuer is entitled to express an opinion in accordance with their instructions, always taking care to make a client aware of circumstances where those instructions will, in the opinion of the valuer, produce a result that is lower than market value.

4.0 Market Value vs Likely Realisable Price Assuming Constrained Circumstances

1.8. Difference

Valuers and their instructing parties should be aware of the difference between providing a market valuation in accordance with the approved definition of ‘market value’ compared with providing advice as to the likely realisable price achievable in constrained circumstances or ‘non-market’ conditions (special assumption).

The Institute does not approve of the term ‘forced sale valuation’ or other similar terms.

Where necessary, Valuers can provide advice with respect to defined and agreed assumptions which are inconsistent with ‘market value’. This advice should not be construed as a valuation but rather an opinion based on the clients specific instructions whereby the valuer can only rely on experience and an appreciation of the market together with the circumstances at hand. This advice should be appropriately supported by a relevant explanation outlining the basis and reliability of the advice.

In providing advice subject to a constraint, it is recommended that the Valuer also provides an assessment in accordance with 'market value' in order to avoid any confusion.

1.9. Relevant Date

In providing a valuation in accordance with 'market value' or advice as to the likely realisable price subject to constraint(s), in each instance, the Valuer must undertake the task at the relevant date taking into account the market conditions existing at that time.

The impact of the constraint(s) on price is more difficult to assess where the constraint does not exist at the date of the valuation, but is a foreseeable consequence of a specific future event. In these cases the Valuer can only rely upon market conditions which exist at that time. It should be brought to the attention of the instructing party that market conditions can change and can consequently impact on price.

1.10. Market Evidence

The vast majority of asset transactions exchange between willing buyers and sellers in arms-length transactions, after proper marketing whereby each party has acted knowledgably, prudently and without compulsion.

It is therefore difficult to source evidence of transactions which have occurred outside of the normal realms of 'market value'. It is even more difficult to research sales evidence of transactions which have occurred with comparable constraints to those a Valuer may be requested to assume. In these cases it is important for the Valuer, when providing a likely realisable price subject to a constraint, to provide the instructing party with explanation surrounding the available evidence, reliability and basis of the advice.

The reporting of a price range rather than a single figure is appropriate in constrained circumstances due to insufficient directly comparable evidence and circumstances.

5.0 Fair Value

In valuing for financial reporting purposes API members need to consider the Australian Accounting Standards Board (AASB) Standard AASB 13 Fair Value Measurement and PINZ members the New Zealand Accounting Standards Board (NZASB) Standard NZIFRS 13, Fair Value Measurement.

The Standards make particular reference to 'market participants' and 'orderly transactions' and can be viewed at www.aasb.gov.au / www.xrb.govt.nz respectively.

6.0 Effective Date

This TIP is effective from 1 July 2015. Earlier adoption is permitted.