

ADDRESSING THE CONCEPT OF “FORCED SALE”

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Guidance Papers

Objectives

The principal objective of a Guidance Paper (GP) and Resource Pack (if applicable) is to clarify professional and industry processes, best practices, and procedures and to discuss their use and implementation.

A GP is designed to be of assistance to Members and those who use Members' services. They serve as a guide and measure of acceptable professional practice and conduct of a Member.

The intention of a GP is to:

- a) provide information on the characteristics of different types of assets that are relevant to the advice.
- b) provide information on appropriate practices and their application.
- c) provide information that assists Members in exercising the judgements they are required to make in specific situations'; and
- d) convey elements of what is considered "competent professional practice" for Australian Property Institute (API) Members and "best practice" for Property Institute of New Zealand (PINZ) Members and New Zealand Institute of Valuers (NZIV) Members.

A GP is not intended to provide comprehensive training, instruction or prescriptive practices and procedures, or direct that a process, professional approach or method should or should not be used in any specific instruction or situation.

Member Obligations

The Member is responsible for choosing the most appropriate approach in a matter based upon the task and instruction. It is a matter for each Member to decide the appropriate practice in any situation, and if they are unclear, seek professional advice from others, or contact the Institute(s). Members have the responsibility of deciding when it is appropriate to depart from the guidance and practices contained in a GP.

The Institute(s) do not warrant that anything contained in this, or any GP is the definitive or final statement on any issue. Members must perform their own work pursuant to their own professional expertise and experience and if required, seek additional advice which might include legal advice.

Court or Tribunal Reliance

A court or tribunal may consider the contents of any relevant GP or other document relating to a recommended professional practice published by Institute(s) in deciding whether the member acted to a standard required by law.

Currency of Publication

Case law and relevant legislation may change over time and whilst the Institutes(s) consider this GP current at the time of publication, Members and those who use Members' services should have regard to legislative changes and new rulings and if necessary, seek further advice prior to having regard to this GP.

Departure or Non-Compliance

Where a Member considers that a circumstance exists that warrants the departure from or non-compliance with any of this GP, the Member's report (or other advice) must include a statement that outlines:

- a) the reasons for the departure or non-compliance with this GP; and
- b) any impact the Members departure or non-compliance may have on the content of the report.

Members are advised to seek legal and/or other advice before departing from practice recommended in a GP.

Enquiries

If any Member considers any information or advice in this GP to not be accurate or up to date, or wish to raise any issue for consideration arising from the contents of this GP, please refer this to

API contact: standards@api.org.au

PINZ contact: standards@property.org.nz

1.0 Introduction

1.1 Scope of this Guidance Paper

This GP applies to Institute Valuer Members (Valuers) who are requested to consider 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 the Institutes. However, advice prepared by a Valuer 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.

This GP is to address circumstances whereby Valuers are instructed to provide an assessment subject to an agreed set of circumstances that is not consistent with Market Value.

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

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

It should be read in conjunction with other GPs and/or professional standards documents which are either overarching or directly applicable to the type of asset, purpose or issues involved.

1.2 International Valuation Standards

International Valuation Standards (IVS) published by the International Valuation Standards Council (IVSC) are adopted by the Institute(s).

It is the Member's responsibility to comply with the IVS applicable at the date of valuation, keep informed of any changes and, apply them appropriately and consistently when providing valuations.

This GP is also intended to be consistent with the concepts and definitions contained in the IVS, however, there may be departures from the IVS to reflect Australian law and practice. This GP refers to and uses IVSC definitions to promote consistency.

1.3 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 Valuers on a Market Value basis. A professional market valuation of an asset will be consistent with the Market Value definition adopted by the Institutes.

2.0 Definitions

The definitions contained below and used in this GP are applicable to this GP and have been included to assist with the interpretation and understanding of certain stated terms used within this GP. Where a defined term is included in this GP it is identified as a capitalised term.

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| Institute(s) | All references to Institute(s) mean, as the context requires, the API, PINZ and/or NZIV. |
| 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 |
| Member(s) | A Member(s) of the API and/or PINZ and NZIV. |
| 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)

3.1 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:

- a) Shortened or limited marketing campaign.
- b) Inappropriate or sub-optimal selling method; and
- c) Anxious or unwilling vendor.

Whilst not extensive, the list creates many 'grey' areas of interpretation which should lead Valuers 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 four (4) week selling campaign and auction for a property that is normally sold on a six (6) month campaign by tender, is a constraint.

3.2 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 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 consider or disregard. Common examples include, but are not limited to, the following:

- a) Inadequate exposure to the market.
- b) Unreasonably short period in which to achieve a sale.
- c) Inappropriate sale method.
- d) A vendor with a need to liquidate an asset in a sub optimal manner; and
- e) 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 and Territories in Australia, 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. In these circumstances the Valuer should quantify, 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 realisable value, or a best price reasonably obtainable, a Valuer may wish to limit their liability for such advice given the risk involved.

3.3 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

4.1 Difference

Valuers and their instructing parties should be aware of the difference between providing a market valuation in accordance with the adopted 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 client's 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 to avoid any confusion.

4.2 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 considering 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.

4.3 Market Evidence

Most of the transactions exchange between willing buyers and sellers in arms-length transactions, after proper marketing whereby each party has acted knowledgeably, 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 and NZIV Members the New Zealand Accounting Standards Board (NZASB) Standard *NZIFRS 13 Fair Value Measurement*.

These Standards make particular reference to 'market participants' and 'orderly transactions' and can be accessed from the websites of the relevant standards board.

6.0 Effective Date

This GP is effective from 1 July 2021. Earlier adoption is permitted and encouraged.

This GP replaces *ANZVTIP 3 – Addressing the Concept of “Forced Sale”* which was in effect from 1 July 2015 and was withdrawn 30 June 2021.