

Australian Property Institute Limited

# VALUATION PROTOCOL

# SYNDICATED LOANS - THIRD PARTY DISCLAIMER

<b>Reference</b>	Syndicated Loans - Third Party Disclaimer
<b>Effective Date</b>	1 July 2022
<b>Owner</b>	General Manager – Standards and Compliance

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## Valuation Protocol

### Syndicated Loans - Third Party Disclaimer

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#### 1. Objective

The objective of this Valuation Protocol (VP) is to provide a consistent practice across the industry to enable a Valuer Member (Member) to include an appropriate third-party disclaimer clause in the valuation report, in order to limit the Member's exposure to third parties who are not agreed by the Member as permitted to rely on the valuation.

Members should also have regard to other relevant papers published or adopted by the API.

#### 2. Scope

This VP is intended for use by Members who are providing a valuation for first mortgage security purpose in a syndicated lending transaction.

#### 3. Commencement Date

The effective date for this VP is 1 July 2022. Early adoption is permitted and encouraged.

#### 4. International Valuation Standards

This VP recognises the International Valuation Standards (IVS) which are prepared by the International Valuation Standards Council (IVSC) and which are adopted by the Institute. 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 VP 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. Where appropriate, this VP refers to and uses IVSC definitions to promote consistency.

This VP is to be read in conjunction with the IVS, in particular the *General Standards IVS 101 Scope of Work* and *IVS 103 Reporting*.

#### 5. Syndicated Lending

The Member will typically be asked to address a valuation for first mortgage security purpose to the security trustee for the benefit of the beneficiaries of a security trust and/or the facility agent for the benefit of syndicate financiers. In some cases, the Member may also be asked to also address the valuation to the original financiers.

## 6. Sample Third Party Disclaimer

The API recommends that Members include a standard third-party disclaimer in the valuation report limiting reliance to only those parties agreed, in writing, between the Member and the instructing party as specified in the valuation instructions and valuation report.

### **The sample third party disclaimer recommended by the API is set out as follows:**

*This valuation may only be used and relied upon by the agreed reliant parties as specified within this report (the Agreed Reliant Parties) for first mortgage purposes only.*

*No responsibility is accepted by the Valuer and/or Valuation Firm in the event that the instructing party or any Agreed Reliant Parties relies, uses, distributes, publishes and /or otherwise represents anything contained in the valuation for any other purpose.*

*No responsibility is accepted by the Valuer and/or Valuation Firm to any other parties who receive, rely on or use the valuation for any purpose.*

*The Agreed Reliant Parties acknowledge and agree that they may use and rely on the valuation report for first mortgage purposes on the following basis:*

- (a) their interests are a joint interest under the applicable professional standards legislation, in all states and territories of Australia, and any claim by one or more of the parties will be dealt with as a single claim with the intention of joining all the Agreed Reliant Parties to a single claim where that claim was related to reliance for first mortgage purposes. For the avoidance of doubt, a joint interest cannot be split and are to be treated as a single claim. Only an Agreed Reliant Party is entitled to bring a claim for and on behalf of the Agreed Reliant Parties.*
- (b) the interests of the Agreed Reliant Parties are a joint interest in a cause of action founded on the same act or omission and any claim by one or more of the Agreed Reliant Parties will be dealt with as a single claim including for the purpose of any applicable professional standards legislation.*

If you have any questions or concerns in relation to this paper, please contact us at [standards@api.org.au](mailto:standards@api.org.au).

This VP does not constitute legal or professional advice. Members are advised to seek legal and/or other advice with regards to the drafting of third-party disclaimers and should not rely on the content of this VP in isolation.