ADDRESSING THE CONCEPT OF FORCED SALE

Reference:	ANZVGP 103 – Addressing the Concept of Forced Sale
Published Date:	14 December 2022
Effective Date:	1 July 2023
Exposure Draft Period:	Open: 2 November 2022 | Closed: 18 November 2022
Review Date:	12 – 18 months after the effective date
Owner:	Manager Professional Standards

Table of Contents

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';

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 legal advice. *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 this *GP* to be relevant when deciding whether a *Member* acted to a standard required by law.

Currency of Publication

This *GP* current at the time of publication, based on current case law and legislation.

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) should 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.

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 GP

This *GP* addresses the concept of forced sale and the issues *Valuers* should consider when requested to provide their opinion of a ”forced sale price estimate” for an asset.

The *Institutes* recommend *Valuers* should not use the term “forced sale value” in any valuation report or other written advice.

This *GP* should be read in conjunction with any other relevant *GPs*, professional standards papers, and any other relevant professional guidelines published or adopted by the *Institute(s)*.

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 *Valuers* responsibility to comply with the *IVS* applicable at the date of valuation, keep informed of any changes and, apply them appropriately and consistently when undertaking 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 and New Zealand law and practice. This *GP* refers to and uses *IVSC* definitions to promote consistency.

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 stated terms used within this *GP*.

Whilst a defined term used in this GP may also have a common meaning or interpretation, their use in this GP is so limited.

Where a defined term is included in this *GP* it is shown in italics.

Institute(s)	All references to *Institute(s)* mean, as the context requires, the *API*, *PINZ* and/or *NZIV*.
Member(s)	An individual who is a member(s) of the *API, PINZ* and/or *NZIV*.
Market Value (IVS)	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 knowledgably, prudently and without compulsion.

Special Assumption(s)	An assumed fact that is not consistent with or differs from a fact that might exist at the date of valuation. In a forced sale scenario, the *special assumptions* may reflect a perspective that would not be taken by all market participants.
Valuer	In Australia, means a *Member* who holds the certification of CPV, RPV or CPV (P&M). In New Zealand, means a *Member* who is a Registered Valuer under the *Valuers Act 1948*

3.0 Forced Sale

3.1 Concept of Forced Sale

The concept of forced sale is a description of a scenario under which an exchange of a asset may take place subject to circumstances that may not reflect a hypothetical willing seller as contained in the *IVS* conceptual framework that is applied to the definition of *market value*.

Forced sale is a premise of value under the *IVS;* it represents a scenario under which the exchange of an asset takes place and is not a distinct basis of value.

The terms "forced sale price" and "distressed sale price" represent the price achieved under restricted/constrained selling conditions due to the seller's compulsion to sell. These terms are interchangeable and have similar meaning.

The "forced sale price estimate" by a Valuer represents their opinion of the most probable price that would be negotiated between market participants for an asset subject to the specific instruction from their client including any *special assumptions*.

3.2 The Term Forced Sale Value Should be Avoided

The *Institutes* recommend *Valuers* should avoid the use of the term "forced sale value" in any valuation report or other written advice.

The *Institutes* recommends that *Valuers* use the term "forced sale price estimate" or "most probable forced sale price" to describe their opinion of the price that would most likely be negotiated between the seller and buyer of an asset subject to the specific instruction from their client including any *special assumptions*.

Where a client has requested a "forced sale value" the *Institutes* recommend that *Valuers* explain to their client that they are able to provide a "forced sale price estimate" subject to *special assumptions* agreed between the client and the Valuer.

3.3 What is Forced Sale?

Forced sale is a premise of value under the *IVS*.

As outlined in **IVS 104 Bases of Value, section 170 Premise of Value – Forced Sale** the sale of an asset under a forced sale scenario does not meet all the criteria of usual market transactions, in that there is an element of undue compulsion or influence affecting the seller. In a forced sale scenario one or more of the essential elements of the concept of *market value* is missing.

The restrictions/constraints of a forced sale scenario can potentially exclude appropriate marketing period and method of sale for the asset.

The circumstances affecting a forced sale usually involve the owner of the asset under some form of duress or pressure, financial or otherwise, to sell the asset.

The price that the seller is willing to accept in a forced sale scenario will reflect the seller's particular circumstances at the time.

The terms "forced sale" and "distressed sale" are often used interchangeably and have a similar meaning. The term "fire sale" is considered by the *Institutes* to have less certainty of meaning in the marketplace, and the *Institutes* recommend that its use in relation to real property assets should be avoided.

3.4 Marketing Conditions

A forced sale of an asset may involve a variety of circumstances that differ from normal marketing conditions, including but not limited to:

- an inadequate exposure to the market;
- an unreasonably short period in which to achieve a sale;
- an inappropriate method of sale for the market (e.g. multiple property auctions rather than individual private treaty);
- a seller under duress to sell;
- potential buyers not having time to undertake proper due diligence; or
- potential buyers being aware of the circumstances of the sale and the seller's weakened bargaining position; and
- other unusual factors.

Any of the above factors could have a negative impact on the realisable price.

3.5 When Requested to Provide a Forced Sale Price Estimate

Valuers should not be providing a forced sale price estimate unless they have received specific instruction to provide the same, including the relevant *special assumptions*.

Unless the nature of, and the reason for, the constraints on the seller are known, the price obtainable under a forced sale scenario cannot be realistically estimated. The instructions should clearly set out the relevant *special assumptions* relating to the restrictions / constraints on the sale that the *Valuer* is to consider.

A *Valuer* may provide an opinion of a forced sale price estimate and/or a most probable forced sale price in the form of a price range based on the *special assumptions*.

The *Valuer* should ensure that the assessed forced sale price estimate or range is clearly labeled as such in the valuation report or other written advice so as not to be confused with *market value*.

3.6 Forced Sale Price Estimate Inconsistent with Market Value

Special assumptions that assume conditions or facts that do not reflect an arms-length transaction or restrictions/constraints on the marketing period such as those outlined in Section 3.4 may result in the assessment by the *Valuer* not meeting the requirements in the conceptual framework of *market value* as detailed in *IVS* [1]. The Valuers opinion of the forced sale price estimate for an asset should not be regarded as a distinct basis of value and are in fact noted as a premise of value in the *IVS*. [2]

The *Institute(s)* consider that single figure assessment should only be used to reflect the *Valuers* opinion of *market value*.

A forced sale scenario may mean that the property has not been exposed to the market in the most appropriate manner to facilitate its disposal at the highest price reasonably obtainable in accordance with the conceptual framework for *market value*. The method of sale may not be the most appropriate to obtain the highest price in the market. The length of exposure time to the market may impact potential market participants ability to negotiate in an open and competitive market where all participants are acting freely.

Any forced realisation of a property will usually reflect the particular and specific marketing circumstances of that transaction. The sale price achieved in these circumstances is not generally considered indicative of prices achieved for similar properties sold under normal marketing conditions.

3.7 Relevant Date

When a Valuer is requested to provide a forced sale price estimate it is important that the instructions are clear on the date of assessment required. In most instances the date of inspection will be the date of assessment.

There may however be circumstances where the instructions from the client require a retrospective assessment to be carried out.

Valuers should always investigate, interpret, and reflect market conditions and sentiments as at the relevant/valuation date when forming their opinion of value.

Any assessed value should reflect known or observable events and circumstances existing at the relevant date. Notwithstanding the above post valuation events or circumstances may be commented upon when considered relevant.

---

1 see IVS 104 Bases of value, section 30 IVS-Defined Basis of Value – Market Value

2 IVS 104 Bases of Value, section 170 Premise of Value

4.0 Instructions

4.1 In Writing

Instructions to provide a forced sale price estimate for a specific asset must be agreed and be in writing prior to the *Valuer* beginning work. The instructions should clearly outline the professional services agreement between the *Valuer* and the client.

Instructions must cover the items listed in **IVS 101 – Scope of Work, paragraph 20.3**.

It is critical that the instructions outline the *special assumptions* that the *Valuer* is to assume in relation to;

- the marketing period;
- the proposed method of sale; and
- the market that the proposed sale is to take place in.

There must be no ambiguity in the instructions relating to the specific *special assumptions*. Where the *Valuer* perceives ambiguity, the instructions must be referred to the instructing party/client to resolve any ambiguity.

Alternately, to resolve any ambiguity a *Valuer* may suggest a combination of *special assumptions* to the client for their agreement.

Any variations to instructions, at any time, during the course of work, must also be in writing.

4.2 Role of Valuer

The *Valuer's* role is to provide their opinion as to the most likely sale price that would be realised for the asset subject to the (*special assumptions*) restrictions or constraints on the sale that the seller is willing to accept and that are outlined in the written instructions to the *Valuer*.

The *Valuer* should make it clear in the valuation report or other written advice that the forced sale price estimate may not represent *market value*.

4.3 Accepting Instructions

Prior to accepting any instructions, the *Valuer* must possess the necessary skill, knowledge and experience to competently provide the requested forced sale price estimate as at the relevant/valuation date, unless the *Valuer* obtains fully informed written consent from the client to undertake the valuation in conjunction with another *Valuer* having the required competence.

The instruction should provide the *Valuer* with sufficient information and details to enable the *Valuer* to provide a forced sale price estimate subject to the *special assumptions* outlined.

If the *Valuer* has not been provided with sufficient information or details with the instructions, the instructions;

- should be declined; or
- must be returned to the client/instructing party seeking further information or clarity.

5.0 Valuation Approaches and Methods

5.1 Valuation Approaches

As per the *IVS*, valuation approaches utilised in assessing value are "based on the economic principles of price equilibrium, anticipation of benefits or substitution." [3]

"The principal valuation approaches as noted in the *IVS* are;

(i) market approach;

(ii) income approach; and

(iii) cost approach." [3]

Within these approaches, there are various methodologies that can be applied.

Valuers should be familiar with the whole of **IVS 105 Valuation Approaches and Methods**.

It is incumbent on the *Valuer* to identify what the key market drivers (value determinants) are for the subject asset class. *Valuers* should consider the detail and accuracy of information available and ensure that whichever approach is selected, it is supported through the analysis of the most appropriate evidence.

In the case of a valuation report which contains the *Valuers* opinion of the forced sale price estimate the selection of the valuation approach should take in account the difficulty in identifying market evidence which has transacted on the same basis as the *special assumptions* that the subject asset is proposed to be transacted.

The valuation approach chosen by the *Valuer* should also consider the purpose for which the valuation is undertaken and the client's requirements.

5.2 Valuation Methodology

The assessment of a forced sale price estimate may have a higher degree of uncertainty as the assumed circumstances (*special assumptions*), as outlined in the instructions, may be unique to the proposed transaction and because of this there are often insufficient sales available that are transacted on the same basis. This often means sales evidence is not available for comparison purposes, and the *Valuer* is required to make adjustments to account for the forced sale scenario to be assumed.

As noted previously, there are various methods or methodologies that can be applied under the three (3) principal valuation approaches. Notwithstanding the difficulty in sourcing comparable sales transacted on the same basis as the forced sale scenario, it is the *Valuers* responsibility to choose the appropriate method(s) of valuation.

[3] IVS 105 Valuation Approaches and Methods, paragraph 10.1

6.0 Valuation Considerations

6.1 General Matters

The assessment of a forced sale price estimate based on the *special assumptions* contained in the instructions from the client requires the *Valuer* to ascertain all the value determinants (components of value) that would normally be considered when undertaking a *market value* assessment, and then making appropriate adjustments to take into account the assumed *special assumptions*.

The usual valuation process requires the *Valuer* to undertake a number of enquiries, investigations and procedures which include, but are not limited to;

- inspection of the subject asset and supporting market evidence,
- inquiries relating to the asset and market that the asset is transacted in,
- analysis of market evidence and all relevant data, and
- computation and calculations to assess the differences between the market evidence and the subject asset to arrive at a conclusion, as to the *Valuers* opinion, of the value of the asset.

There is often not comparable market evidence available that transacted on the same basis as the assumed sale transaction for the subject asset which is based on the *special assumptions* contained in the client's instructions. The *Valuer* should consider a variety of factors to understand and interpret the market, including sales of similar assets in the locality that have transacted recently, or prior to the relevant date in the case of a retrospective valuation.

When analysing market evidence, *Valuers* are required to make adjustments for differences in any physical and legal characteristics between the comparable sale(s) compared to the subject asset, and also, where appropriate, make allowances for market and economic changes since the sale(s) took place.

In the case of a forced sale scenario, the restrictions/constraints on the assumed transaction, requires the *Valuer* to consider what additional adjustments should be applied to account for the restrictions and constraints imposed by the client's *special assumptions* requirements. The result of these adjustments is the forced sale price estimate.

6.2 Market Evidence

Specific constraints such as improper marketing periods or restricted non-arms-length transactions can be unique. Similarly, directly comparable sales transactions sold under identical market circumstances subject to the same specific *special assumptions*, as required under the *special assumptions* outlined in the instructions from the client, will most likely be rare. It is therefore important for the *Valuer*, when providing a likely forced sale price estimate to provide a clear explanation in relation to available sales evidence and the basis of their comparison to the *special assumptions* forming the basis of the instruction.

7.0 Reporting Forced Sale Price Estimates

7.1 General requirements

Valuation reports should have regard to the requirements contained within **IVS 103 Reporting**.

Reports should satisfy any requirements contained within the instructions agreed between the *Valuer* and the instructing party/client, as well as contain the following minimum information:

- Reference to the instructions received;
- Details of the asset that is the subject of the valuation;
- Purpose;
- Client and any other parties who can use or rely on the valuation;
- An appropriately worded third party disclaimer;
- Valuation date, inspection date and date of issue of the report;
- The valuation approach selected, and method or methods applied;
- Supporting evidence for compassion purposes (e.g. sales evidence);
- Details of any assumptions or *special assumptions* made;
- The conclusion of forced sale price estimate and explanation for any conclusion(s) reached; and
- Details of any limitations, conditions, or qualifications on the report or conclusions contained therein.

7.2 Reporting Forced Sale Price Estimate Range

It is the *Institutes* position that a forced sale price estimate range is appropriate rather than a single figure assessment (forced sale price estimate).

8.0 Effective Date

This *GP* is applicable from 1 July 2023. Earlier adoption is permitted and encouraged.

This *GP* replaces ANZVGP 103 Addressing the Concept of Forced Sale which was in effect from 1 July 2021 and was withdrawn 30 June 2023.