ACHIEVING BEST VALUE

Good Practice for lenders in working with asset managers in Scotland

Introduction

This guidance has been adapted for Scotland by Aberdein Considine & Company (having regard to the Good Practice Guidelines for England, Wales and Northern Ireland which was drafted by the Asset Management Group, Connells Asset Management, Countrywide, Halifax, LSL, Savills and Spicerhaart). This has been facilitated and supported by the Council of Mortgage Lenders (CML). The guidance is intended to promote efficient working practices between lenders and asset managers. It has no regulatory status and some of the examples of good practice given may not be appropriate in all circumstances.

This document should be read in conjunction with chapter 13 of the Financial Services Authority's (FSA) mortgage conduct of business rules (MCOB 13), the FSA's Treating Customers Fairly (TCF) principles and the CML's industry guidance on arrears and possessions.

What is an asset manager?

An asset manager is typically an outsourced organisation appointed by a lender to optimise the financial recovery of repossessed property assets usually via a managed sale route.

What can lenders expect of an asset manager?

- To work together with the lender in achieving the best possible outcome in the sale of the property.
- To work within a clear and precise process, but allowing within that process an element of entrepreneurial flair, which exists within the asset manager's skill set.
- An innovative but considered approach when required and desired.
- To provide an outsourced service in keeping with the culture of the lender, ensuring that they provide a professional service to the ultimate benefit of the borrower and lender.
- Provide up-to-date market knowledge in helping to achieve best price and to provide an adequate, qualified resource in ensuring that the process is both adhered to/maintained.

Possible conflicts of interest (estate agent, contractors, surveyors, mortgage brokers)

- The asset manager should disclose to the lender any relationship within the parent company's group utilised in the sale process.

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1. Valuation (RICS)/Home Report/market appraisal (estate agents)

- RICS
  - All lenders will obtain at least one RICS compliant valuation. Additional valuations may be obtained.
  - All lenders must obtain a Home Report produced by a RICS qualified surveyor prior to placing a property on the market for sale.
  - Basis of valuation: Market Value (MV) or Projected Market Value (PMV)?
    - Both of these are specifically defined in the RICS Red Book. Valuations of residential property on the basis of PMV must be completed in accordance with the definition settled by RICS and CML, "The estimated amount for which a property is expected to exchange at a date, after the date of valuation and specified by the valuer, between a willing buyer and a willing seller, in an arm's-length transaction, after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion." N.B. Exchange in Scotland shall mean Conclusion of Missives.
    - Projected Market Value is recommended for this purpose because it looks forward to settlement taking place at a date in the future, whereas Market Value provides a valuation which assumes settlement taking place on the date of the valuation.
    - If additional valuations are obtained, they should be valued on the same basis, whether MV or PMV, and if PMV they should take into account the same length of time prior to settlement.
    - With PMV reports, if the lender does not specify a prospective marketing period the recommended good practice for sales of repossessed properties to be achieved is 90-days to settlement. In all PMV reports the surveyor should specify the number of days or weeks basis on which the valuation is based.
  - Established value (EV) is not a basis of valuation formally defined in the RICS Red Book but it is a term commonly used in this context as being the average of two PMV figures where the difference between the two PMV valuations is no greater than 10% (or a limit set by the lender).
  - There should be a formal process for dealing with cases where the difference is outside the specified limit. Usually this will involve contacting the individual valuers and asking them to discuss their respective opinions. In many cases additional information shared during this discussion may enable the difference

between the two figures to be reduced. However, it should not be regarded as a negotiation and valuers will rightly resist inappropriate pressure to modify their valuations or to agree with other valuers.

  - It should always be appreciated that RICS valuations are independent professional opinions carried out in accordance with stringent requirements. They are not the same as a suggested marketing figure which can simply be varied to meet the wishes of a vendor client.

  - If it is not possible to reconcile the difference between valuations it is usual for an additional RICS valuation to be sought.

- Home Report

  - It is the preferred practice that the asset manager should obtain a draft Home Report and raise with the lender such issues which would affect the marketability of the property and which the lender may wish to address prior to approval and publication of the Home Report.

  - Lenders should not normally be expected to pay for a refreshed Home Report at the request of any potential purchaser but consideration should be given to instructing a refreshed Home Report in a rising market.

- Estate agents

  - The asset manager must appoint the most appropriate estate agent(s) for the property, regardless of ownership – based on location, past performance, market share and overall success with the type of property concerned.

  - The asset manager will look for an achievable marketing value within a reasonable timescale that may be set by the lender (where none is set 90 days is recommended) and a recommended asking price (RAP).

  - The asset manager will periodically review the performance of the estate agent and make any changes as appropriate, including moving properties to a new agent.

2. Methods of sale

- Private Treaty – must be the first option considered for all properties where there is a reasonable prospect of sale.

- Auctions – should normally only be an initial option in circumstances such as structural repair issues, secondary locations, sub-standard properties or where subsequent problems or issues become apparent.

3. Assisted voluntary sale

- Assisted voluntary sales may be considered by lenders in conjunction with the borrower. This might be an ideal option for those borrowers who are realistic about their circumstances and are supportive of the process, which will be defined prior to agreeing an AVS.

- A properly managed AVS scheme offers a controlled environment within which the lender, through their asset manager, if this is their chosen route, can ensure that the property is being actively marketed at the correct price, with the most appropriate estate agent and that the borrower is fully co-operating with the marketing effort.

3(a). Outline AVS process

- Lender discusses AVS option with customer, explains scheme benefits and anticipated outcomes including expected timelines (include backstop date) and consequences of non-compliance.

- Explanatory literature issued to customer.

- Lender arranges for a debt counsellor to discuss and explain AVS offering with customer and obtains signed consent for inclusion into AVS scheme.

- Lender instructs asset manager and provides full contact details of the customer.

- Asset manager contacts customer, explains involvement and arranges estate agent appraisal.

- Asset manager agrees marketing price with customer. Letters issued.

- Asset manager monitors marketing activity and provides regular updates and feedback on progress.

4. Possession process

- Instructing the asset manager

  - The lender or their litigating solicitors should ensure that a valid Extract Decree or matured, valid Calling up Notice is obtained prior to instructing the asset manager.

  - The lender or their litigating solicitors should provide clear and precise documentation of the property, including any issues about communal access with ideally a title plan (for example, which identifies a garage in a block) when instructing the asset manager.

- Securing the property

  - The asset manager will ensure through their database of approved contractors that the property is properly secured. Individual details will be agreed with the lender but will include, for example:

    - Replacing all external locks;

    - Draining of all water systems;

    - Initial gardening; and

    - Clearance of property in preparation of marketing.

  - The asset manager will provide a report with evidence of works completed.

- Moveables

  - In terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 as amended, lenders have the legal right to remove immediately moveables remaining in the property upon taking possession. For the avoidance of doubt no notices relative to moveables are required. However the lender should formulate a clear policy with the asset manager which should address the disposal or otherwise of:-

    - Perishables and rubbish;

    - Items of little or no value;

    - Items of some value; and

    - Items of significant value.

  - The asset manager should ensure that the contractors prepare a full inventory of all moveables of any value which remain in the property at possession.

  - The lender or their litigating solicitors should inform the asset manager if any notice has been lodged in terms of Section 218 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 prior to possession.

- Contractors
    - The asset manager should appoint an approved contractor to secure, clear and maintain the property within an agreed pricing bandwidth. The fee payable by the lender to the asset manager for the provision of services at possession and during management will be set at a level that enables the services to be delivered by the contractor to an agreed standard and timescale with due regard to statutory regulations relating to the treatment and disposal of waste and reflect the local environmental charges.
    - The asset manager will be accountable for contractors and ensure that the correct procedures are in place and are carried out as specified.
    - The asset manager will ensure that the contractors adhere to TCF principles and best practice guidelines.
- Presentation of the property
    - The asset manager will ensure that the property is presented in the most appropriate way to achieve the best price.

5. Mandates/relationship management

- Some lenders will control this process totally within their own organisation. The decision by the lender to fully, or partly, mandate the asset manager is by individual discussion and agreement. In all cases a totally transparent audit process and service level agreement should be agreed.
- The asset manager, if mandated, will set the initial asking price at a realistic level to achieve at least the EV.
- The initial marketing period should allow sufficient time to gauge market reaction and feedback by potential buyers. Thereafter, the marketing should be reviewed at regular intervals. The review should include consideration of the appointed estate agent and an assessment of whether they should retain the instruction. This should be based on their overall performance, number of viewings achieved and their general approach to the overall marketing. Price reviews may also be appropriate.
- Where a mandate has been given, this allows the asset manager to react quickly to circumstances that can be critical to the sale process especially when dealing with offers. Sustaining momentum at offer stage is paramount in maintaining motivated positive buyer interest and in helping to achieve the best price. If, ultimately, it is decided that a mandate is not given then the lender should have in place a process for key stage decisions without undue delay.
- Offer referrals outside of the mandate should be presented to the lender by the asset manager with supporting market evidence and recommendations.
- Payment of accounts should be on a timely basis, within realistic timescales considering third party involvement. This is an important factor in keeping costs competitive especially with suppliers. If accounts are paid within the agreed timescales this helps in keeping costs down especially so with contractors at times of supplier pricing review. The asset manager will pay all third party suppliers for any work undertaken on a property, such as contractors initial repossession visit, valuation fees, emergency works, along with any other associated costs. This allows for one consolidated invoice to be raised on exchange of contracts which will itemise all costs individually and prevent the need for multiple invoices and payments being issued by the lender.
- There should be regular reviews between asset managers and lenders. Reviews should normally cover issues such as performance, TCF, stock portfolio review, projected volumes, service capacity and market conditions.

6. Advertising and marketing

- The asset manager should be able to recommend and demonstrate the most appropriate use of whichever media gives the best coverage for a particular property. This might be through newspapers and/or the internet. The asset manager should ensure that the property is advertised in such a manner to ensure that a valid Certificate of Advertising can be obtained and delivered to the Keeper of the Land Register of Scotland as sufficient evidence to enable a valid, clear Land Certificate to be issued in favour of any purchaser.

- All properties should have a 'for sale' board or auction notification, unless there are exceptional circumstances.

- All property schedules should contain an appropriate disclaimer relative to any moveables which may remain in the property following possession.

- The asset manager should ensure that all viewings conducted at the property are accompanied by the selling agent. No persons should attend at the property unaccompanied other than authorised RICS surveyors or contractors.

7. Sales to related parties

- The asset manager should use its best endeavours to ensure that no offer for a property is considered or accepted from any party ,acting in any capacity, involved in the repossession or selling process, without prejudice to the foregoing generality, to include - staff , partners and also, where the party is a private limited company or partnership , directors and shareholders, of the lender, asset manager, selling agent or conveyancing solicitor or any close relative or nominee of any such party.

8. Cancellations

- Pre-possession – If the lender comes to an arrangement with the borrower there should be timely notification of the asset manager to ensure unnecessary charges are not incurred. The asset manager should be aware of the policy of the lender about payment of arrears on the day of repossession and the process to be adopted.

- Post-possession − The asset manager should be aware of the policy of the lender about accepting payment of arrears post-possession and the process to be adopted for handing back the property.

9. Fees

- All fees and charges debited during the sale process should be agreed, clear, fair and not misleading and regularly reviewed to reflect the service provided.

10. Legals

- Pre-sale work
  - The lender should ensure that their conveyancers are aware of the timescales imposed on the buyer and therefore have the relevant title deeds, conveyancing drafts and reports ready in anticipation of purchase.
  - The lender's legal teams should contact managing agents or residents' association where they exist to determine service charge, insurances, etc, while the possession process is continuing.
  - The lender's legal teams should inform the asset manager if any Notice of Potential Liability has been lodged against the property and provide clear guidance as to whether or not any sums relative to such notice will be met by the lender.

11. Record keeping

- An asset manager will be able to provide an audit trail to the lender (and any other associated parties as directed by the lender) to demonstrate the correct procedures, TCF, duty of care and having obtained best price reasonably attained.

12. Insurance / deterioration of the property

- The lender shall set out their insurance terms to the asset manager detailing the following:-
  - The nature of insurable events which may be claimed for at possession.
  - The nature of insurable events which may be claimed for post-possession.
- The asset manager should ensure that the property is inspected on a weekly basis and that the lender is immediately notified of any deterioration in the property during possession.

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