



RISK SHARING ASSET MANAGEMENT GUIDANCE

TYPE AND NUMBER	
RSAM Guidance 2013-G006	
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DATE	
June 3, 2013	
DATE OF RECISSION	
Initial Issuance	


OWNED REAL ESTATE (ORE) SALES AND MARKETING GUIDELINES

Summary: The Shared-Loss Agreements (SLAs) require Assuming Institutions (AIs) to use their best business judgment and follow prudent banking practices in managing Shared-Loss Assets, and best efforts to maximize collections. Owned Real Estate (ORE) assets are challenging to manage and liquidate, and are often unique in collateral, location, physical condition, and marketability. The attached guidance clarifies that the FDIC requires AIs to manage ORE assets in such a way as to minimize loss, maximize collections, and mitigate liability, without regard to the Termination Date of the SLAs or the end of shared-loss coverage.

Distribution:

Assuming Institutions
RSAM Specialists and Managers
Oversight Managers
Compliance Monitoring Contractors

From:

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Related Topics:

FDIC [12 CFR part 323, 364, and 365](#); OCC [12 CFR part 34](#)

[Guidance on Other Real Estate, FDIC FIL-62-2008](#)

[Interagency Appraisal and Evaluation Guidelines \(December 2010\)](#)

[Interagency Policy Statement on the Allowance for Loan and Lease Losses \(December 2006\)](#)

[OCC Comptroller's Handbook, Other Real Estate Owned](#)

[OCC Bank Accounting Advisory Series, \(June 2012\)](#)

ASC Topics 310 and 360

FFIEC Call Report 031 and 041

Highlights:

AIs are encouraged, and may be required by agreement, to implement a loss mitigation plan with respect to each Shared-Loss Asset.

While ORE assets must be disposed of within the holding period established by state law, AIs are required to exercise reasonable and prudent marketing standards to maximize collections.

AIs must maintain ORE properties in compliance with federal, state, and local laws.

Marketing efforts for ORE assets should be at fair value or market value, and not at liquidation value or disposition value.

While recognizing that some ORE assets have limited marketing appeal, some general sales guidelines apply:

- ORE assets are expected to be listed with a broker and marketed for an appropriate period given local market conditions, asset type, and asset condition.
- Auctions generally should only be considered if an ORE asset's marketing strategy is not successful. Auctions should be conducted by a reputable auction house, according to industry standards, in the local market, and provide appropriate advertising and marketing.

OWNED REAL ESTATE (ORE) SALES AND MARKETING

PURPOSE

The purpose of this guidance is to clarify that Assuming Institutions (AIs) are expected to follow reasonable best practices when managing, marketing and selling ORE assets under the terms of the Shared-Loss Agreement (SLA).

STATEMENT

Where the SLAs are specific, Article IV states, “the Assuming Institution may sell or otherwise dispose of ORE, Additional ORE or Subsidiary ORE at any time to a Person other than an Affiliate, a contractor of the Assuming Institution or any Affiliate of a contractor of the Assuming Institution, provided that such sale is conducted in an arm’s length, commercially reasonable and prudent manner.”

ORE assets are challenging to manage, market and sell. ORE can vary widely by collateral type, location, and property condition; and, some ORE (land, small-balance single family residence (SFR), environmentally or physically hazardous properties) may have limited sales appeal. A comprehensive understanding of the local market will assist AIs in determining realistic listing prices that provide for orderly resolution. However, there are general management techniques and processes which should be followed when acquiring, managing, marketing, auctioning, and disposing of ORE in shared-loss transactions.

Acquiring ORE

- When an asset is transferred from Loans to ORE, it is recorded at Fair Value less estimated costs to sell, which becomes the new cost basis for the asset.
 - Fair Value often is an ORE’s “as is” market value and, represents the asset’s value in its current “as-is” condition and given current market conditions after a reasonable marketing period; not a forced liquidation or distressed sale.
 - Costs to sell are incremental direct costs to transact a sale.
 - Estimated costs to sell should not be claimed under the SLA until actually incurred.
- ORE is presumed to be held for sale.

Managing ORE / Capital Improvements

AIs are encouraged, and may be required by agreement, to implement a loss mitigation plan with respect to each Shared-Loss Asset. Loss mitigation efforts for ORE should include prudent

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resolution plans that mitigate loss. An AI should select the resolution plan that it determines will result in the least loss, based on its estimated and documented calculations.

To maximize recoveries, AIs need to maintain and protect ORE from further deterioration. AIs should maintain ORE in compliance with federal, state, and local laws, including laws governing health and safety, property preservation, fair housing, property registration and timely payment of real estate taxes. Failure to meet these legal requirements can result in fines, litigation, and reputational damage. Further, AIs engaging third party vendors to perform these functions should ensure that third party vendors maintain appropriate compliance controls. Reliance on third-party vendors does not relieve an AI of its compliance responsibilities or liability.

ORE is typically sold “as is, where is.” However, when properties under construction are at a stage where the costs to continue construction to protect ORE are less than the loss in value and costs to demolish, appropriate steps must be taken to preserve value. In some cases, simply installing a fence around the property will suffice. In other cases, capital improvements are necessary, such as finishing construction to a “dried in” state (where the roof, walls, doors, and windows are all completed). AIs also may need to protect the structure from the weather and securing it from vandals. Advances to preserve or protect the value of ORE may be required and are reimbursable as a Permitted Advance. Reimbursement of these advances is conditional based on the definitions and provisions within the SLAs.

Marketing ORE

ORE has characteristics that make orderly sales challenging. ORE must be disposed of within the holding period established by state law. AIs are required to manage ORE in such a way as to minimize loss, maximize collections, and mitigate liability without regard to the Termination Date of the SLAs or the end of shared-loss coverage. An AI’s use of reasonable and prudent marketing standards should maximize recoveries and minimize disruptions to the local market.

AIs should have a policy for periodically determining the fair value of ORE. The frequency of such valuations should be based on the AI’s policies and procedures and conform to state law, if applicable. ORE should be reappraised or revaluated if there have been material changes to the assumptions that may have affected the original or prior value estimate. A sale or disposition of ORE that qualifies as a federally related transaction requires an appraisal or an evaluation that conforms to the agencies’¹ appraisal regulations² and related guidance.

AIs should maintain sufficient documentation reflecting their efforts to dispose of ORE property which should include, but is not limited to:

- a record of inquiries and offers made by potential buyers,

¹ The financial regulators consist of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Federal Financial Institutions Examination Council (FFIEC) State Liaison Committee (collectively, the agencies).

² See FDIC 12 CFR part 323, OCC 12 CFR part 34, and FRB 12 CFR 208 subpart E and 12 CFR 225 subpart G)

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- methods used in advertising the property for sale whether by the AI or its agent, or
- other information reflecting sales efforts.

While no one strategy is applicable to all assets, there are some best practices which should be followed to the extent possible:

- ORE should be assigned to a broker and listed with MLS and with proper signage on the property for an appropriate period of time given local market conditions, asset type, condition, and location.
- ORE should be listed at market value based on a recent appraisal or evaluation, and should not be marketed at liquidation value, or with the application of an automatic or pre-defined discount from market value.
- Auctions should generally be utilized only after the AI's best efforts to maximize collections have been unsuccessful.
- ORE management and marketing efforts should conform to the AI's established policy.

Auctioning Process

In the event marketing and sales efforts by the AI have been unsuccessful, an auction of ORE property may be a possible liquidation strategy. Some possible auction marketing techniques are described below:

- Open outcry auctions using the services of a professional and licensed auctioneer are conducted on a local or regional basis. The location of the auction should be within a reasonable proximity to the ORE being sold. Improved properties should have a local auction representative or broker involved to show the property.
- Generally, deciding which ORE to auction is determined by looking at concentrated areas of assets, both by geography and collateral.
- Reserve auctions. Auctions typically establish a pre-approval reserve price based on three components:
 - Time the property has been on the market: > than six months vs. < six months
 - Property type
 - Stratification of asset value:
 - \$50,000 - \$100,000
 - \$100,000 - \$250,000
 - \$250,000 - \$500,000

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- \$500,000 - \$1,500,000

Disposing ORE

Claims submitted for Covered Losses on the transfer or sale of ORE should be based on the fair value appraisal of the collateral or an appropriate valuation of the real property that is consistent with safe and sound banking practices. Adjustments to the final disposition collateral evaluation and marketing efforts must be thoroughly documented and justify any changes to the fair value estimation of the collateral. Claims submitted for ORE expenses are based on actual, reasonable and necessary out of pocket expenses incurred in the usual, prudent and lawful management of the Shared-Loss Asset.

References

Further information is available from:

- FDIC 12 CFR part 323, 364, and 365; OCC 12 CFR part 34
 - Guidance on Other Real Estate, FDIC FIL-62-2008
 - Interagency Appraisal and Evaluation Guidelines (December 2010)
 - Interagency Guidance on Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices (December 2010)
 - Interagency Policy Statement on the Allowance for Loan and Lease Losses (December 2006)
 - Frequently Asked Questions on Residential Tract Development Lending and FAQs on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions (September 8, 2005)
<http://www.fdic.gov/news/news/financial/2005/fil2005.html>
 - OCC Comptroller's Handbook, Other Real Estate Owned
 - OCC Bank Accounting Advisory Series, (June 2012)
 - ASC 310-40, Receivables-Troubled Debt Restructurings by Creditors
 - ASC 360-10-30, Property, Plant and Equipment-Initial Measurement
 - ASC 360-10-35, Property, Plant and Equipment-Subsequent Measurement
- FFIEC Call Report FFIEC 031 and 041, Glossary

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