



LETTER OF COMMENT NO. 34

Good Day,

My name is Darrell Blomberg, a real estate professional and proprietary broker for AzTech Realty in Phoenix, AZ. I am also involved in real estate leadership at the local, state and national levels. However, I am not writing on behalf of any REALTOR® organization, I am writing solely of my own free will and I do not convey any obligation or onus to any association or group for my writings. I am neither an accountant nor CPA, so I have attempted to familiarize myself with the GAAP language and standards in the last few weeks. I trust you will understand the benefits of the concepts and proposals I am conveying.

Thank you for allowing me to make a public comment on FSP FAS 107-a.

America is facing an economic crisis, the like of which, many of us have never seen. I'm sure there is plenty of blame to go around but to focus on that is wasted effort. I will concentrate on some proposed changes to Financial Accounting Standards that I believe, based upon my experience as a real estate broker in the Phoenix Arizona market, would help the nation speed up the recovery process. As you are no doubt aware, the Phoenix market is one of the most troubled markets in the entire nation.

My premise is a need for two things:

1. amend how particular assets come to be marked-to-market and
2. what accommodations must be allowed once an asset is so marked.

Marking-to-market an entire level of assets is very troublesome as doing so creates a win-lose scenario for many of the parties involved. Historic tendencies have treated all assets of a certain hierarchy level the same and therefore equal. I propose that there needs to be a methodology to treat assets exhibiting specific characteristics and circumstances differently than the whole of the assets in that level.

The decision to mark-to-market an asset should NOT rest solely on the shoulders of the asset owner. Certain external events and situations may mandate that an asset be marked-to-market, even without the owners consent. Furthermore, once an asset has been marked-to-market, the owner of the asset may have a responsibility to further accommodate the underlying collateral to the new fair value. Fulfilling these duties will expedite our economic recovery and prevent a similar demise in the future.

My attempt is to tie my experience and observations as both a real estate professional and distressed homeowner with my understanding of the FASB's Financial Accounting Standards. I believe there is a strong correlation between current real estate transactional practices, the need for a revised, even more accountable financial reporting model and subsequent action based on that accounting. This belief particularly applies to distressed homeowners and residential and commercial real property investors who are often pushed through foreclosure with little apparent reason.

The specifics of my real estate observations come from diligently working with distressed homeowners and investors. AND from working with lending institutions who must follow your guidance if they wish to conform with GAAP.

The homeowners are normal people, just like you and me who have either faced a hardship, are now in default or facing an imminent threat of defaulting. Most hardships involve an interest rate escalation, a reduction of income, illness, divorce or job transfer or the high likelihood that one of these will happen soon. Many homeowners become delinquent in their monthly mortgage payments when a hardship befalls them. It is only at the point of hardship that most homeowners become painfully aware of the devaluation

of their homes. These homeowners, along with their families are at risk of being displaced from their homes. When a homeowner loses their home they will not recover any of their down payment, monthly mortgage payments or money they invested in upgrades and improvements to their property. They will truly walk away empty handed and brokenhearted. Every reasonable effort needs to be made to keep worthy homeowners in their home once a hardship has occurred. Efforts to keep homeowners in their home may include: forbearance, interest rate reduction, re-amortization, principal balance reduction or some combination thereof. An effort that helps move the homeowner forward with a moderated impact to their credit is a short sale.

If we have any hope of getting out of this current crisis, there must be a methodology created for the homeowner to expedite an effective mitigation technique and sidestep the loan servicer's administrative foibles and conflicts of interest. I propose a solution that allows the homeowner or real property owner to initiate the process of evaluating the fair value of the loan and causing both the loan and the collateralizing asset to be marked-to-market. Once the loan is marked-to-market, other events will cascade to a win-win solution for all parties involved.

Loan owners are unreachable by the homeowners, yet there needs to be a mitigated solution between them. Loan servicers have contracted with loan owners to perform certain services for them. Some loans are owned outright by a single owner but many are not. Many loans have been securitized and sold to investors. Yet another scenario involves securitizing and selling off specific performance traits of loans to different investors. These are referred to as "tranches." Tranches resemble the sports book at a Las Vegas casino. It is possible to invest (bet) on any of up to 40 different performance related scenarios of some loans or loan pools. The unfortunate reality for the tranche loan investors is that their security interest is inferior to the contractual relationship between the homeowner and the loan owner. The homeowner-to-loan owner relationship is the primary contractual relationship that dictates the priority of mitigating a solution between these parties to the exclusion of the tranche investors. Tranche investors may have made investments (bets) that have lost all value. It is not the place of this proposal to protect their interests.

A very frustrating aspect of the mitigation efforts is the disparity between the messages everybody is receiving and the realities they are experiencing. The messages one hears include; the US government is giving billions of taxpayer dollars to lending institutions, real estate inventories remain unreasonably high, home values and prices continue to freefall, foreclosure rates are a huge contributor to the price freefall and banks say they are offering effective loan modifications. The realities for homeowners include;

1. none of the bailout money has had any effect at the street level,
2. loan servicers are hoarding the bailout money,
3. loan servicers take too long to make solution-oriented math decisions,
4. loan servicers are just running up their servicing fees,
5. every foreclosure contributes to America's economic death spiral,
6. loan servicers are unaccountable,
7. by accepting bailout money, the loan servicer's fiduciary is more than ever the homeowner / taxpayer not themselves,
8. loan servicers say the loan owners won't let them perform,
9. loan owners are losing more money than they need to and
10. loan servicers appear to be indifferent to homeowners being displaced.

There are many benefits to implementing standards allowing the homeowner or property owner to manifest a solution directly with the loan owner rather than hoping they can wear down a loan servicer to perform a viable mitigation before the foreclosure date. Good solid accounting standards and concrete methodology will go a long way toward keeping worthy homeowners in their home, preserving American homeownership, reducing inventory, stabilizing real estate values and maximizing the benefits of the taxpayer funded bailout.

Taxpayers should embrace the concept of keeping existing homeowners in their home. Appropriate workout solutions would stabilize real estate prices by reducing the inventory for sale. The reduction will bring the supply down to meet what has been a relatively stable demand. When those two meet, prices will stop freefalling. This will benefit every homeowner in America. Many homeowners will still reach the foreclosure auction. They are so intimidated by the process that they either abandon their home or just freeze and are eventually evicted. To reach a solution a homeowner will have to proactively attain their mitigation.

Loan servicers are the glue that binds the homeowner to their mortgage. To secure a mortgage for their home, a relationship is created between the homeowner and the loan servicer. A loan servicer may, AT THEIR DISCRETION, elect to sell all, a portion of or one of many aspects of the homeowner's mortgage to a subsequent owner, investor(s) or pool of investors. This is purely the decision of the loan servicer; the homeowner is just along for the ride. At that point, mortgage loan servicers essentially act on behalf of the loan owner. A homeowner does not have access to the true loan owner other than what is conveyed through the loan servicer. The main asset of the loan servicer is the servicing contracts they hold for the loans they service.

In the pursuit to avoid foreclosure, loan servicers have been a hindrance to assisting distressed homeowners and real property investors. In my opinion, loan servicers appear to be intentionally standing between the homeowners and viable solutions that involve the loan owners. With the repeated exasperations and unfounded delays a distress homeowner encounters in their search for solutions, one must look to the loan servicers and ask, WHAT ARE THEY PROTECTING?

Consensus among my peers is that the loan servicers are hindering and delaying solutions in favor of building up a book of collectible fees. Such fees for a deed-in-lieu, short sale, or foreclosure have been known to include;

1. monthly servicing fees,
2. annual servicing fees,
3. real property owner fees,
4. inspection fees,
5. return payment fees,
6. delinquency penalties,
7. delinquency servicing fees,
8. document preparation fees,
9. notary fees,
10. attorney fees and
11. excess fees (with written pre-approval.)

These fees will be 100% reimbursed to the loan servicer and then topped off with a loan workout fee. That is a tidy sum of money for a loan servicer who was probably only getting a handful of dollars monthly until the homeowner became distressed. This delay-for-income tactic poses a HUGE conflict of interest between the loan servicer and the other parties who are attempting to achieve a reasonable and expedient mitigation to their situation.

When a home is foreclosed the loan servicer stands to increase their economic gain even more. Most loan owners give the foreclosed property back to the same loan servicer for subsequent sale. This sale of the real estate owned (REO) results in even more fees. This second round of fees may include;

1. eviction fees,
2. loss of mortgage interest,
3. holding fees,
4. real property securitization fees,
5. repair fees,
6. management fees,
7. REO sale fees,

8. real estate brokerage fees,
9. a second set of title fees,
10. homeowner association carrying fees,
11. property taxes,
12. insurance premiums and
13. any seller paid buyer concessions.

These fees will again be 100% reimbursed to the loan servicer. This absolute windfall of fees is what causes loan servicers to interfere with viable solutions and drive distressed homeowners through foreclosure. This is an even greater conflict of interest.

Here are a few other observations I have had about loan servicers. Many of the staff members at the loan servicer mitigation departments are poorly equipped or trained to make the caliber of decision they are expected to make. There is no economic distinction for the servicer's employees whether a homeowner's distress is mitigated or they are foreclosed. They get a pay check every payday regardless of the outcome of the homeowner's efforts. Loan servicers continue to make economic decisions based on administrative minutia rather than good solid math and accounting principals. It is virtually impossible to get anything in writing from a loan servicer. Without ever producing any policies or guidelines in written form, homeowners and their professional real estate representatives are at the whim of fluky administrative hearsay. These are practices that serve no one except the loan servicer. It definitely does not, in my opinion, serve the loan servicer's clients, the note holders.

One of the difficult-to-obtain but viable mitigation solutions is a short sale. This solution displaces the homeowner. Short sales have their place because many homeowners have made a conscious decision to vacate their home. In order to minimize the impact to their credit and finalize the dismal experience of losing their home they attempt to sell their home on the open market. That is a solution where the loan owner agrees to work with the homeowner and accept a reduced payout from the proceeds of a sale in which there are not enough funds to pay the outstanding balance of the loan and transaction sales costs in full. Due to the complexities of emotions and attempting to short sale a home while avoiding a foreclosure, many homeowners employ the services of a professional real estate broker. Brokers attempt to assist in the negotiations between potential buyers and the homeowner while negotiating through the loan servicer for a favorable workout. Real estate professionals in these scenarios often meet the same roadblocks homeowners meet.

The techniques that keep distressed homeowners in their homes and avoid foreclosures are known as a forbearance or a loan modification. A forbearance involves having the homeowner either make up delinquent mortgage payments over the next 3-12 months or adding the missed payments to the principal balance of the loan and continuing to make extra payments or a balloon payment at the end of the usual amortization period. Loan modifications usually involve a temporary or permanent interest rate change, the change can be a rate reduction or a conversion from an adjustable rate to a fixed rate or the modification will extend the amortization period of the loan. Currently, these types of loan modifications are experiencing a high rate of recidivism as over 50% of modified loans are back in default within six months. A little used but highly effective type of loan modification is a principal reduction loan modification. For this type of loan modification, the principal amount of the loan balance is reduced to more accurately reflect the market fair value of the collateralizing asset which secures the loan. The true benefit of a forbearance or a loan modification is that it keeps the homeowner in their home. Forbearances and loan modifications cost taxpayers less in the long run because they are not recorded as sales. If they are not recorded as a sale they do not contribute to the devaluation of the taxpayers own home. This is an excellent benefit for the taxpayers.

Absent success with a short sale, a forbearance or a loan modification attempt, most sellers are faced with the reality of a foreclosure. This does the most damage to the former homeowner's credit and displaces them and their family. Some homeowners make a last minute effort to minimize the damage to their credit

by sending the home's keys to the lender or signing a deed-in-lieu. Neither of these techniques has proved any less damaging to the former homeowner's credit.

A loan is deemed impaired when the probable amount due according to the contract terms won't be collected. Impairment commonly occurs when there is an interruption in the payment stream from the homeowner or there is an imminent or reasonably foreseeable threat that the payment stream will be interrupted. The impairment is not required to be a permanent impairment but it also may not be a temporary impairment. The magnitude of fair value decline also substantiates the other-than-temporary impairment. Additionally, the present value of remaining cash flows must be less than present value of current cash flows. Since the impaired asset is the loan and it is collateral dependant, the measure of the impairment to the loan is determined by measuring the fair value of the collateral. The impaired asset takes on the value of the collateral which is the real property or the homeowner's home. Therefore, the fair value of the loan would now reflect the fair value of the collateral.

Measuring the amount of the loss in fair value of the loan by measuring the fair value of the home can be reasonably determined with an appraisal. Fair value is the price received to sell an asset or transfer a liability in an orderly transaction between market participants on a given date. In reviewing real estate markets, an appraisal is the perfect instrument for meeting these criteria. A real estate appraisal is performed by a independent third-party who takes into consideration all aspects of the current housing market where the loan collateral is situated. The aspects of the market are observable and readily available in the form of recently sold comparable data combined with active listing data. Consideration of market trends, property condition, property location, neighborhood amenities, ingress and egress, and availability of financing all enhance the quality and accuracy of the appraisal. This appraisal measures the fair value of the collateral which equates to the precise value of the loan.

Once the loan has been impaired and the fair value has been established it is imperative that the asset be marked-to-market by the loan owner. All foreclosure proceedings must be postponed until the loan and collateralizing asset have been amended to the established fair value. Such a marking-to-market requires that the loan owner reflect the new fair value on their next financial reporting statement.

This marking-to-market also validates a loan modification or short sale for the homeowner. If the homeowner is pursuing a loan modification they must be able to minimally overcome their hardship with the new marked fair value. It is only just to honor a loan modification by modifying the principal to reflect the new value. Such a principal reduction loan modification must be completed within 30 days of establishing the new fair value and any foreclosure auction dates are postponed to allow time for completion. This modification serves to keep the homeowner in their home, reestablishes a cash flow for the loan owner and loan investors, lowers the for sale inventory, keeps an REO off of the loan owners books so they have less reserve requirements and more money to lend and it preserves the credit worthiness of the homeowner. This is not an opportunity for the loan owner to raise the loan interest rate or change the amortization unless it is necessary to meet the housing payment-to-income ratio. All back payments, fees and penalties are waived in favor of the homeowner. The homeowner is required to occupy the home and meet a maximum housing payment-to-income ratio (no minimum ratios are allowed.) All interest rates should be amended to fixed current market rate for the life of the loan. If the loan owner fails to contest the appraised value established by the homeowner's appraisal within the allotted 30 days, the fair value will be marked-to-market at the value established in that appraisal.

Likewise, it is just to honor the homeowner with a short sale at the new fair value if one is in the works. The 30 day requirement to close and any necessary foreclosure postponement will apply here as well. A homeowner's credit will reflect that all loans were paid in full as the loan is marked-to-market prior to being paid off.

If the homeowner is pursuing a loan modification for an impaired loan, the homeowner has a right to submit an appraisal to initiate the process to establish the mark-to-market fair value for the loan. For real

property investors to initiate the process, two independent appraisals are required with the average being the mark-to-market fair value. For short sale transactions, the buyer's lender's appraisal shall be the mark-to-market fair value. If the buyer is paying cash there is again a requirement for two appraisals. The loan owner has a 30 day (from notice) right to secure their own independent third-party appraisal which may be averaged with the homeowner / investor submitted appraisal to establish the mark-to-market fair value. When the mark-to-market fair value is established, there are 30 days to close the transaction and any foreclosure auction dates are postponed to allow time for completion. Once the homeowner experiences a hardship and the loan owner is notified that the fair value needs to be marked-to-market the loan owner must honor the request for short sale or loan modification and postpone any pending foreclosure date to allow time for this process to manifest.

When nothing is done to prevent a foreclosure or all efforts are snubbed, the real property will revert to the loan owner. The loan owner will then have the loan servicer market the property for sale. This is an unfortunate situation in that time is the enemy to securing a significant value for the home. Often, the homeowner produced an offer for a short sale or modification that was higher than the subsequent offering price or the eventual sale price received after the foreclosure. The missed opportunity is because all parties were not able to reach an intelligent compromise and the real property market continues to slide. This needless foreclosure has now contributed to the spiraling price declines.

As a distressed homeowner and real estate professional, it has been very frustrating to deal with loan servicers that appear to just want to sit in the middle of a transaction. I for one would like to complete a higher percentage of transactions for the clients I represent. Creating a viable and direct method for real estate professionals and homeowners to transact business swiftly with loan owners in the face of an over-supplied market is much appreciated.

Giving a distressed homeowner or real property owner the ability to notice the loan owner of a challenge to fair value of their asset is wise and prudent. Currently, homeowners have no ability to initiate the process and are usually caught in a classic "Catch 22" situation. That "Catch 22" is submitting information to the loan servicer that the loan servicer ignores and the homeowner not having access to the loan owner. Notice to initiate a challenge to the fair value of the loan owner's asset must be allowable in the form of noticing the loan servicer who is the contractual representative of the loan owner. Once the notice is served to the loan servicer, the 30 day time limit for performance will begin.

The application of appropriate financial accounting standards, that only marks-to-market, assets that exhibit particular characteristics and circumstances will benefit all affected parties. This will avert the need to mark-to-market an entire group or level of assets. This proposal will only affect a small portion of the assets held as most do not meet the stringent requirements necessary to warrant a search for a new fair value. All affected parties will benefit from these standards if they are clearly defined and publicized.

With the possibility that next wave of TARP funds will be more directed to preserving homeownership it is important that these standards be updated quickly. When the TARP funds start to reach the homeowner level it will begin to turn around the real estate market. Your expeditious efforts to make these standards and proposals an easy to understand methodology will certainly have a huge impact on the American economy.

Thank you,
Darrell Blomberg