

To: Property Appraisers
From: James McAdams
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FLORIDA DEPARTMENT OF REVENUE PROPERTY TAX INFORMATIONAL BULLETIN

Transfers Related to Actual or Potential Foreclosure

Recent economic conditions have caused a significant increase in the number of real property transfers related to actual or potential foreclosure. The majority of such transfers involve real property in statutory stratum one (residential – one primary living unit). These trends complicate the identification of open market, arm’s-length sales and the use of these sales in the just valuation process and in the Department’s assessment roll review process.

Real property market conditions will vary by market segment. Thus, it is important to identify sub-markets and conduct research and analyses for these sub-markets to determine the conditions affecting particular market segments. It is very important to avoid assuming that trends and conditions within a particular single family market segment exist equally in other such market segments. The research and analysis of trends in sale listing prices within sub-markets can be useful for understanding economic conditions within those sub-markets.

Just Value and Arm’s-Length Transactions

Florida law requires an annual just valuation of real property parcels as of January 1. The Florida Supreme Court has held that just value is synonymous with fair market value, and has defined just value as the “*amount one willing but not obliged to buy would pay to one willing but not obliged to sell.*” Inherent within this definition is an open market, arm’s-length transaction. An arm’s-length transaction is one between unrelated parties where the parties are not affected by undue stimuli from family, business, financial, or personal factors. Section 193.011(1), Florida Statutes, specifically refers to “*a transaction at arm’s length*” as a required consideration for just valuation by a Property Appraiser.

Provisions of Law for the Department’s Use and Review of Sales

For its reviews of assessment rolls, section 195.096(2)(c), Florida Statutes, requires the Department to rely primarily on an assessment-to-sales-ratio study in those statutory strata for which there are adequate market sales. The statutory use of the term “market sales” relates to open market, arm’s-length transactions as described in the preceding section above.

For statutory stratum one property, the Department relies heavily on sale ratio studies to determine a county’s compliance with requirements for just valuation level and uniformity. To meet its oversight responsibilities under Florida law using sale ratio studies, the Department relies upon samples of sales that were qualified by the Property Appraiser and reported to the Department.

Section 195.0995(1), Florida Statutes, provides the following: *“For each sales transaction disqualified by a property appraiser, the property appraiser shall document the reason for disqualification of the sale in a manner prescribed by the department.”*

Section 195.0995(2), Florida Statutes, provides the following: *“The department shall randomly sample all sales in the county to determine whether those sales were properly qualified or disqualified.”*

Rule 12D-8.011(m)(3), Florida Administrative Code, provides general guidance for sale qualification decisions. In part, this rule specifically states, “a transfer should be considered for disqualification if any of the following apply: Deeds to or from banks; loan or mortgage companies; Sheriffs; and Trustees in Bankruptcy.” Any deviation from the guidance provided by Rule 12D-8.011(m)(3) should be based on a documented verification process.

Properly qualifying sales and providing the required associated documentation is critically important for the Department to: 1) find the county in substantial compliance with Florida law during assessment roll reviews, and 2) conduct assessment ratio studies as provided by law.

Examples of Real Property Transfers Related to Actual or Potential Foreclosure

Foreclosure is a legal process where a lender takes action to liquidate real property that secures an obligation to pay debt for which the borrower is in default. Title to the property is taken from the defaulted borrower. Then, the title is transferred to a bidder as a result of an auction. Because it does not involve open market exposure and does not meet requirements for an arm’s-length transaction consistent with just value, the Department will not accept this type of real property transfer as a qualified sale.

Other types of real property transfers may occur prior to a foreclosure action. These include short sales and deeds in lieu of foreclosure. A description of short sales and their proper qualification and disqualification was discussed in a memo to Property Appraisers dated October 10, 2008. A deed in lieu of foreclosure is a transfer of real property title where the borrower voluntarily transfers title to the lender to avoid a potential foreclosure action by the lender. In such transfers, a bank or other lending institution typically appears on the deed as the grantee. Because it does not involve open market exposure and does not meet requirements for an arm’s-length transaction consistent with just value, the Department will not accept deeds in lieu of foreclosure as a qualified sale.

Another type of real property transfer may occur after a lender takes title to real property. In such transfers, a bank or other lending institution transfers title to another party in exchange for monetary consideration. Some of these transfers may be known as “REO sales”, where REO stands for “real estate owned”, a term used by lenders to denote ownership in such cases. Before qualifying any such sales, the Property Appraiser must conduct the necessary research and analysis and be able to produce credible, verifiable, and documented evidence proving that the sale is an open market, arm’s-length transaction consistent with just value. Property Appraisers should determine whether a REO sale resulted from a listing with a real estate broker in a Multiple Listing Service at a listing price based on typical marketing times and conditions for the property type in the area in which it is located.

Physical Condition of Real Property Related to Actual or Potential Foreclosure

When a county is conducting research into real property transfers related to actual or potential foreclosure, it is very important to determine and consider the physical condition of the property at the time of the transfer. Such properties may be in poor physical condition as compared to other similar property not related to the foreclosure process. An inspection of the property at or near the time of sale, to ascertain the condition of the property, is an important step in the verification process. To maintain equity in the assessment roll, a Property Appraiser must avoid applying market evidence from a sale of property in inferior condition to other property in superior condition without first making appropriate adjustments for property condition.

Conclusion

Since market conditions vary between market segments, it is important to identify sub-markets and conduct research and analyses for these sub-markets to determine the conditions affecting particular market segments. It is very important to not assume that trends and conditions within one market segment for single family dwellings exist equally in other such market segments. The efficiency of the market analysis process relies upon the accurate and uniform coding of relevant property characteristics and real property transfers.

If your office would like to request further assistance from the Department on the issues discussed in this memo, please contact the persons listed below.

As always, we encourage you to communicate with the Department regarding your ideas, questions, and concerns. Please contact Sue Harlan or Joel Schubert at 850.488.3338 or email: DORPTO@dor.state.fl.us should you have further questions about this issue.