

Issue Paper No. 149

Wholly-Owned Single Real Estate Property in an LLC

STATUS

Finalized December 12, 2014

Original SSAP and Current Authoritative Guidance: SSAP No. 40R

Also refer to SSAP No. 48.

Type of Issue:

Common Area

SUMMARY OF ISSUE

1. Current statutory accounting guidance for real estate investments is in *SSAP No. 40—Real Estate Investments* (SSAP No. 40), and guidance for investments in joint ventures, partnership, and limited liability companies (LLC) is in *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies* (SSAP No. 48). Reporting entities can own real estate through an LLC to provide a liability shield against the risks of holding real estate. Single property real estate that is wholly-owned (100%) by a single reporting entity in an LLC, if specific criteria are met, is in substance a real estate investment.
2. This issue paper provides substantive revisions to incorporate individual real estate investments wholly-owned by a single entity through an LLC, which meet specific criteria, within the scope of SSAP No. 40. The revisions also exclude these investments from SSAP No. 48.

SUMMARY CONCLUSION

3. This issue paper substantively revises the scope of SSAP No. 40 and SSAP No. 48. The substantive revisions to SSAP No. 40 and SSAP No. 48 are shown below.

Substantive Revisions to SSAP No. 40:

2. Real estate investments are defined as directly-owned real estate properties and single real estate property investments that are directly and wholly-owned through a limited liability company (LLC) that meet all of the criteria in paragraph 4. ~~These~~ Real estate investments may be acquired in exchange for consideration (including but not limited to cash, a contract for deed or mortgage, or other non-cash consideration), obtained through foreclosure or voluntary conveyance in satisfaction of a mortgage loan, or received as contributed surplus. Real estate investments meet the definition of assets as defined in *SSAP No. 4—Assets*

LLC that meets the stated criteria shall follow all statutory requirements within this statement². Real estate owned through an LLC that does not meet the criteria shall be reported on Schedule BA – Other Long-Term Invested Assets. Regardless if reported on Schedule A or Schedule BA, all LLC's owned by the reporting entity shall be detailed in Schedule Y.

- a. The real estate LLC has no transactions of its own other than transactions associated with an ownership structure utilized only for the ownership and management of a single real estate investment exclusively for the reporting entity (e.g., real estate taxes). A reporting entity may have more than one LLC that wholly-owns a single real estate property investment, but each LLC must separately comply with the paragraph 4 conditions, and be separately reported on Schedule A. All transactions of the LLC shall be reported as transactions of the reporting entity pursuant to the guidance in paragraphs 15-17.
- b. The LLC only owns a single real estate property supported by an appraisal pursuant to paragraphs 13-14. A single real estate property can include multiple parcels of land and more-than-one structure; however, to be considered a single real estate property, the multiple of parcels of land and structure(s) must be contiguously located and managed together as a single asset (with reasonable allowances for public access routes). Criteria that may assist with determining a single real estate property would include the legal definition of the property, real estate tax assessments, postal address, the appraisal and the management and use of the property.
- c. The reporting entity solely controls the real estate property in a manner similar to directly-owned real estate. As such, the reporting entity controls others' access to the real estate, and the real estate must be able to be sold exactly as, and as promptly as, directly-owned real estate.
- d. The reporting entity solely and distinctly possesses all risks (other than the limitation of potential liability afforded by the LLC structure itself) and rewards of ownership of the real estate investment, without any constraints imposed by the LLC.
- e. The reporting entity is the only member of the LLC. The LLC is not comprised of any other members, including: groups, competing interests, mutual beneficial interests, or co-venturers. The single-member ownership is required even if other members in the LLC are affiliates. An LLC comprised of affilia

criteria detailed in paragraph 4 are effective as of January 1, 2015. For these investments previously reported within SSAP No. 48, and owned as of the effective date, the reporting entity shall recognize a cumulative effect of a change in accounting principle as if the entity had followed this statement since acquisition of the real estate investment property. The change from applying these substantive revisions shall be accounted for as a change in accounting principle in accordance with SSAP No. 3—Accounting Changes and Corrections of Errors.

37. To determine statement value for real estate owned through an LLC as of the paragraph 36 effective date, the reporting entity shall:

- a. Allocate the original cost of the real estate investment to land and property other-than-land pursuant to paragraph 8.
- b. To arrive at the current depreciated cost for property (excluding land), the entity shall apply the depreciation that would have occurred if this statement had been applied since acquisition, in accordance with the original expected useful life, adjusted for subsequent capital improvements pursuant to paragraph 16.
- c. The depreciated cost calculated under paragraph 37.b. shall be compared to a current appraisal to determine if an impairment assessment is required under SSAP No. 90. Recognition of impairment shall result in a new cost basis for the property, with recalculation of the depreciation based on the property's remaining useful life, as limited by the terms of this statement.
- d. The depreciated cost, reflecting any impairment from paragraph 37.c., less encumbrances, shall be recognized as the real estate investment as of the effective date.

Substantive Revisions to SSAP No. 48:

SCOPE OF THE STATEMENT

1. This statement establishes statutory accounting principles for investments in any joint ventures, partnerships, and limited liability companies, including investments in certified capital companies (CAPCO) per *INT 06-02: Accounting and Reporting for Investments in a Certified Capital Company (CAPCO)*, whether or not it is considered to be controlled by or affiliated with the reporting entity. Single real estate property int82r or not he rnt. ¶J0

Tc6(

insurer, then the accounting and reporting should be in accordance with *SSAP No. 40—Real Estate Investments* and *SSAP No. 90—Accounting for the Impairment or Disposal of Real Estate*.

5. Within the submitted agenda item, the sponsor advocated that for these transactions, the arm's length economic transaction is the purchase of real estate, not an investment in an LLC. The single member / single asset LLC is a conduit that one invests "through" not "in," and the insurer's control over the real estate is total and absolute, as control is equivalent to direct ownership. The sponsor noted that the insurer can establish absolute control equivalent to direct ownership by meeting all of the following conditions:

- a. The insurer controls others' access to the real estate to the extent that the real estate is the "asset" with an appraisal. It can be sold exactly as and, as promptly as, any other real estate sale. From the perspective of *SSAP No. 4—Assets and Nonadmitted Assets* (SSAP No. 4), it is real estate that is the asset standing ready to satisfy policy owner needs;
- b. Risks and rewards of ownership of the real estate as discussed in *SSAP No. 25—Accounting for and Disclosures about Transactions with Affiliates and Other Related Parties* (SSAP No. 25), are solely and distinctly in possession of the insurer without any constraints imposed by the LLC with constraints defined as in *SSAP No. 103—Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities* (SSAP No. 103);
- c. No members are in the single-member/single asset LLC except for the insurer itself, no "group" or competing interest, "mutual" beneficial interest or "co venturer", affiliated or

w Tthe ludalee99 TwreSchedule A;b.)Tj-0.0012 T3.279 -1.1153 Td(c.)T(No)-5(m)0 Tc 0.694 0 Tdf

Wholly-Owned Single Real Estate Property in an LLC

