

# A Buyer Value Option with A ‘Sunset Clause?’

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*As organizations and transferees confront the realities of a slow and uneven housing market recovery, including longer home marketing times and negative equity positions, Bianucci writes that attaching a “sunset clause” to buyer value option programs can help manage the risks inherent in these properties languishing on the market.*

**D**uring the first half of the past decade, buyer value option (BVO) programs produced successful results with lower costs to the client. This program had been widely used in relocation home purchase programs. Homes sold within the first 120 days of listing the majority of the time, provided the home was priced properly within the market and was in top showing condition when the employee marketed their home.

The BVO program is common throughout the relocation industry, and is nothing more than a properly structured amended value transaction without an up-front appraisal of the home. It is not a special or distinct type of program. It is understood that the employer intends to purchase the home once the employee has tested the market and, in doing so, receives a purchase offer.

## IRS Revenue Ruling 2005-74

While BVO programs are subject to a degree of interpretation, there are parameters which should be followed to ensure the program is tax-protected while facilitating employee mobility. In Rev Rul 2005-74, IRS holds that properly structured amended value programs result in two separate, independent sales and that the costs incurred are not taxable to the employee. IRS did not

specifically rule on BVO programs, either positively or negatively, with this ruling. A BVO program that follows all the approved procedures of an amended value program, except for the buyout offer based on appraisals, should be held within Rev Rul 2005-74. Two separate sales should occur, and costs should not be treated as wages to the employee.

However, the tax risk is higher in a BVO program. Because there is no guaranteed buyout offer, a BVO is more subject to challenge by IRS and less likely to be respected than an amended value transaction. The tax advantage obtained by a BVO is neither more nor less than that obtained in a regular purchase or amended value purchase; all require that the company assume the benefits and burdens of real homeownership.

## One-Year Rule

Ideally, relocations should be completed within a one-year time frame. There are tax benefits to the employer but the longer a relocation lingers, all parties involved are exposed to the potential for increased stress. However, a move that takes more than a year to complete is not “illegal” in any sense. Certain costs of moving are deductible under IRS Code Section 217 (e.g., shipment



of household goods and final move travel), in addition to itemized deductions or the standard deduction in calculating federal income taxes. Reimbursements of such expenses or direct payments of them by the employer are not taxable to the employee.

The one-year rule of this regulation is not carved in stone. If it can be shown that circumstances existed that prevented the taxpayer from incurring the expenses of moving within the one-year period allowed, then tax liability will be waived.

### The Sunset Clause?

A BVO with a “sunset clause” has an essential element, the buyout, which will occur if the employee cannot locate a buyer during the time designated by the company’s policy for marketing the home. To parallel as closely as possible the provisions of the tax-compliant amended sale, unsuccessful home marketing should be followed by an offer to purchase from independent appraisals.

As markets soften, correct and/or decline, client corporations should consider a sunset clause for a guaranteed buyout offer (GBO) at some time during the BVO process. Some key drivers for the sunset clause include:

- Companies that currently offer BVO as the only homesale option are becoming challenged with an increase in exceptions for temporary living, duplicate housing and storage costs.
- An employee’s move is not complete until they are relieved of the home disposition process and the family is all in one location.
- Although not a mandatory procedure, according to IRS Revenue Ruling 2005-76, Worldwide ERC® tax counsel recommends client orga-

nizations provide a GBO at the end of the BVO process in order to operate in the most favorable way to protect the tax-exempt status of the third-party relocation homesale program.

And, in challenging housing markets, a sunset clause removes the possibility that the employee will be unable to dispose of their home, which results in increased stress, leading to less productivity and potential work and family effects.

Companies may be hesitant to incorporate a sunset clause into the BVO programs as they assume it will automatically increase costs. However, when properly administered, the BVO, even with the sunset clause buyout offer, is often less expensive than one that asks employees to manage their own homesale and then reimburse the employee for costs incurred (provided the company will provide tax assistance).

### Implementing the Sunset Clause

The sunset clause could take effect after the home has been on the market for six months; however, this is a client prerogative. Many clients choose mandatory marketing times between 120 and 180 days, but some may want to extend the time even more or opt for fewer days on market. Following the mandatory marketing period, appraisals would be ordered so that a guaranteed offer could be established no more than 30 days later. On receiving the guaranteed offer, the transferee should have 30 to 60 additional days to aggressively market their property before having to fall back on the guaranteed offer, thereby bringing conclusion to the homesale for the employee.

Another consideration for this type of program is to base the guaranteed

offer on a percentage of the appraised value. The same process for determining the value is followed, except at the time of calculation, an employee is offered, for example, 95 to 97 percent of the appraised value, resulting in the GBO amount.

Transferees will more than likely be discouraged and frustrated, as they often are not thrilled to hear of their guaranteed offer amount in the first place. However, it does give them at least something to fall back on, because by this point their home has been on the market for an extended period of time with little success. In addition, this approach may allow for an employee to have more incentive earlier in the process and facilitate a change in the strategies for selling a home prior to having to accept a GBO.

### A Setting Sun

As the horizon on economic and real estate market improvement continues to stretch farther ahead into the future, and organizations confront the realities of a slow and uneven recovery, domestic mobility program solutions are increasingly moving away from quick fixes to those that target program resiliency in the longer term. With longer average time to sell departure location residences, coupled with diminished or even negative equity position, comes an array of difficult decisions for most organizations. Companies that are instituting the “sunset clause” indicated it was primarily to avoid the dual risks of an IRS audit and letting homes languish in slow markets. ■

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