

Health Care Finance and Administration	Section: Financial Eligibility Requirements
Policy Manual Number: 110.060	Chapter: ABD Inaccessible Resources

ABD INACCESSIBLE RESOURCES

Legal Authority: 20 CFR 416.120; 20 CFR 416.1245

1. Policy Statement

A resource may be considered inaccessible if:

- An individual cannot legally access the value of the resource beyond her control and, unless undue hardship exists, all legal avenues have been exhausted in order to access the value of the resource; or
- An individual is unable to sell an asset due to limited use rights, mental impairment or due to conditions of joint ownership; or
- The resource is jointly owned real property AND sale of the property would result in the joint owner being homeless; or
- An individual is unable to locate a buyer for the asset, the conditional assistance period has expired, and the individual continues reasonable to sell the property;
- The value is unavailable due to a lien against the asset; or
- The asset's value is not accessible to the individual due to litigation.

2. Limited Use Rights

If the individual has only limited use rights to a piece of real property such as lifetime occupancy or dower rights, he is not able to sell the property; however, he can sell his use rights.

Exclude the equity value due to inaccessibility in determining countable resources if the individual can demonstrate unsaleability by providing written statements from two licensed real estate agents substantiating that, in their professional opinion, the life estate (or other use rights arrangement) is unsaleable.

Note: Record in case notes the verbal statements of those in a position to know if they refuse to give a written statement or to sign a written statement.

3. Individual's Mental Impairment (applicable to non-liquid resources only)

a. General Rule

If the individual has a guardian, conservator, power of attorney or durable power of attorney at the time of application or renewal, the assets of the individual are considered available to the individual. That person is legally appointed to act on behalf of the individual and is expected to make the individual's assets available for use by or for the care of the individual.

If the individual's mental impairment precludes her negotiating the sale of an asset, and she has no guardian or conservator to act on her behalf, exclude the asset as unavailable under certain

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conditions. It is not necessary that the individual be adjudicated incompetent by a court of law. If, in the Eligibility Specialist's opinion or that of the responsible party or person in a position to know the facts of the individual's situation, the individual is mentally impaired, apply the provision of this policy.

b. Individual's Mental Impairment at Application

i. Temporary Exemption

Exclude the asset as unavailable for up to 3 months from approval date if the individual or the person applying on his behalf agrees to the following:

- Take steps to be appointed guardian or to contact the individual's friends and relatives regarding their willingness to serve as the individual's guardian/conservator;
- See that the individual who agrees to serve takes immediate steps toward appointment;
AND
- To provide HCFA with substantial documentation of his action and that of the guardian designee.

If the individual or responsible party is unable to perform the above-cited tasks, he must provide the names and addresses of individuals who might be willing to serve as the individual's guardian. The HCFA Eligibility Specialist accepts the responsibility for contacting the named individuals in an effort to locate someone willing to act as guardian.

Contact each of the individuals by telephone or by mail explaining the situation and requesting their assistance in securing a guardianship for the individual for the purposes of making available assets which the applicant needs to meet his medical needs. Document the case thoroughly.

ii. Long-Term Exemption

An asset may continue to be considered unavailable beyond the initial 3 month period until the next renewal under the following conditions:

a. No guardian is found

If after 3 months, the efforts of the Eligibility Specialist and the person acting on the individual's behalf have failed to locate a potential guardian, document the case record establishing the asset's inaccessibility.

If the individual is otherwise eligible, continue assistance. Extend benefits if all of the following conditions are met:

- The individual requested benefits for that period;

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- The same conditions regarding the disputed asset still exist; and
- The individual is otherwise eligible.

b. Potential Guardian is Found

Exclude the asset for an additional 30 days from the date the potential guardian agrees to serve to allow him to file a petition for guardianship with the court. If after 30 days the potential guardian has not initiated guardianship procedures for any reason, exclude the resource per instruction above under No Guardian is Found section.

If after 30 days, the potential guardian has begun appointment procedures, continue to exclude the asset as unavailable until the next renewal.

Set an expected change at regular intervals (every 60 to 90 days) to follow up on the situation and to determine the court's instructions regarding the asset.

Note: If it becomes necessary to delay action on an application in order to determine an asset's availability as described in this item, secure the applicant's written permission to hold the application pending beyond the processing time limits.

c. Individual's Mental Impairment at Renewal

i. Exclusion Previously Granted

If an asset has previously been excluded as unavailable as described in this item, at least 30 days before the renewal is due, secure current information to substantiate that the asset remains inaccessible because:

- A guardian has not been located; or
- Guardianship proceedings have begun but are not complete or the court has issued no instruction regarding the asset.

ii. Initial Exclusion

If the asset has not been previously excluded as inaccessible as described, but since the last renewal its equity value along with other countable assets results in the individual's ineligibility, and the individual cannot dispose of the asset due to his mental condition, do not continue to extend TennCare Medicaid benefits until the asset's inaccessibility has been substantiated as described above.

Take action to close the case observing the adequate and advance notice requirements. Once the asset's inaccessibility is verified and the individual has reapplied, benefits may be extended retroactively to the date of closure provided the individual is otherwise eligible.

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4. Joint Ownership

a. General Rule

If an asset cannot be sold or converted due to the conditions of joint ownership, exclude the individual's equity value in determining resource eligibility. The individual's equity value in a jointly owned asset can be excluded under the following conditions:

- The resource is jointly owned with a person or persons who are not the individual's Financially Responsible Relative (i.e., spouse or parent); and
- The joint owner refuses to consent to the sale of the asset or to purchase the individual's interest.
- Even though the individual is free to sell his own individual interest in the property, he is unable to find a buyer.

Note: Any portion of real property owned through "tenancy-in-common" or "joint tenancy" arrangements is available to each owner for sale or transfer without the consent of the other (joint) owner(s).

b. Joint Ownership Policy at Initial Application

Do not extend TennCare Medicaid benefits until the asset's inaccessibility to the individual has been substantiated by the following:

- The co-owner(s) written refusal to consent to the sale of the asset and to purchase the individual's share, if applicable; or
- Substantiation (by deed or the written statement of a licensed real estate agent or an attorney) that the individual is unable to sell his interest in the asset without the consent of the co-owner(s) OR that his individual share is unsaleable.

Note: If it is necessary to hold the application pending beyond the processing time limits, secure the individual's written permission to do so.

c. Joint Ownership Policy at Redetermination

If the asset has not previously been excluded as described in this item, do not continue to extend benefits at review until the asset has been demonstrated to be unavailable as described above.

Take steps to close the case observing standard adequate and advance notice requirements. Once the asset's inaccessibility has been verified and the individual has reapplied, benefits may be extended retroactively to the date of closure provided the individual was otherwise eligible.

At least 30 days before the review is due, secure the joint owner's written statement regarding his position on the sale of the asset and the purchase of the individual's share, if applicable. Request

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that the individual present written substantiation of his inability to sell the asset as described above. Continue to exclude the value of the asset if the individual's claim of inaccessibility is supported by the joint owner's statement.

5. Ownership Interest in an Unprobated Estate

If the individual has inherited an interest in real property that is part of an estate still in probate, her interest is a countable asset because she can legally sell it. It may, however, be difficult to do so.

Exclude the value of the asset if the individual can demonstrate that he is unable to sell his interest by providing statements from two knowledgeable sources, e.g., an attorney or real estate agent, that his interest cannot be sold. The exclusion can be applied to the asset only while it remains in probate.

Extend benefits only after the inaccessibility of the asset is substantiated as described above. Secure the individual's written permission to hold the application pending beyond the processing time limits, if necessary. Do not continue to extend benefits until receipt of current verification that the asset is unavailable.

6. Inability to Locate a Buyer

a. Policy Statement

If the individual owns an asset for which he has full use rights and the unrestricted right to sell, and he is making reasonable efforts to sell the resource, but he is unable to locate a buyer, his equity value may be excluded as a countable resource. Before the property may be excluded, the individual must agree to a conditional assistance period (see *ABD Conditional Assistance* policy chapter). If the conditional assistance period expires without a sale, the property can be considered inaccessible. However, attempts to sell the property must continue.

b. Defined Terms

Offered for sale - means listing the property with a licensed real estate agent, advertising the property for sale using at least two alternate methods such as a sign on the property (real or personal) and a newspaper ad in a newspaper that serves the area where the property is located, or placing the property on auction.

Reasonable asking price - means a price that is not inflated, i.e., not in excess of 100% of the real value.

Legitimate offer - means one that is at least equal to the reasonable asking price, does not require the individual to extend credit, and does not result in a net loss to the individual. No reasonable offer to buy may be refused by the individual or his/her authorized representative.

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Mortgage or Promissory Note - A reasonable effort to sell a mortgage or Promissory note exists when all the following conditions are met:

- The individual has made an effort to offer the instrument to a bank or other financial institution;
AND
- The best offer he received is more than 10% below the actual value of the remaining principal;
AND
- The individual presents written verification from the representative of at least two financial institutions that the mortgage or note could only be sold if discounted by more than 10%.

c. Policy Implementation-At Application

i. Initial Exclusion-Conditional Assistance

Once property is exempt under the provisions of this policy, it must remain on the market at a reasonable asking price until it is sold OR the individual is no longer eligible for and a recipient of TennCare Medicaid benefits.

ii. Mortgage or Promissory Note

Before excluding the value of a mortgage or promissory note, entered into on or after February 8, 2006, the repayment terms must be actuarially sound. The actuarial standards to be applied are those determined by the Office of the Chief Actuary of the Social Security Administration (SSA, the table called the Period Life Table can be found on Sosa's Actuarial Publications Standard Table and can be assessed at (<http://www.ssa.gov/OACT/STATS/table4c6.html>). The agreement must provide for payments to be made in equal amounts during the term of the loan and with no deferral or balloon payments. It must prohibit the cancellation of the balance upon the death of the lender. If the required criteria are not met, the purchase of the promissory note, loan or mortgage's outstanding balance that is owed at the time of application must be treated as a transfer of assets.

EXAMPLE: Ms. Jones made an application for nursing home Medicaid on November 8, 2006. She sold her home to her daughter that same day, for \$80,000. Her daughter agrees to pay \$100 per month for 19 years and 11 months with a balloon payment in the last month of the term loan. Their agreement was notarized by a notary republic. Because this loan was not actuarially sound and had a balloon payment on the end, this loan must be treated as a transfer of asset.

Exclude the value of the mortgage or note effective the date of application unless the individual can establish that the same conditions existed in the retro period. On excluded notes, any payments made by the debtor towards the principle or interest are counted as unearned income to the individual in the month of receipt.

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If a buyer cannot be found, before excluding the value of the loan or promissory note, the individual must provide written substantiation from two knowledgeable sources that the note could be sold only if discounted by more than 10%.

The importance of timely reporting any change of status regarding the sale of the property must be discussed and emphasized with the individual or his/her authorized representative. An Expected Change must be scheduled to review the progress of the sale no later than three months from the date the property is placed for sale or from the date of approval if the case continues to be active.

d. At Redetermination - Reasonable Efforts to Sell

i. Initial Exclusion

If the asset has not previously been excluded based on the offer and acceptance of a conditional assistance period, do not continue to extend benefits until such an offer and acceptance occurs (see *ABD Conditional Assistance* policy chapter). If the individual does not agree to the conditional assistance period, take steps to close the case observing standard adequate and advance notification procedures.

NOTE: Property cannot be exempt as homestead while it is being offered for sale. A property's exemption as homestead is voided by an attempt to sell it.

ii. Real Estate

Once the asset has been proven unavailable, exclude the individual's equity value in real estate effective the date it was placed for sale. This will allow any subsequent approval and include benefits retroactively to the date of closure. In order for the real property to continue in its exclusion status, it must remain on the market until it is sold or until the individual's case is closed.

iii. Mortgage

Exclude the value of a mortgage or note effective the date of the written verification or prior to that date if similar (documented) conditions existed, whichever is earlier.

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iv. Asset Previously Excluded

At least 30 days before the redetermination is due, begin the review of asset availability. In order for property to retain its exclusion under the terms of this item, it must remain on the market until sold or the individual is no longer eligible. The individual must provide current verification of the following regarding the property:

- The property is advertised for sale using at least two methods of advertisement OR is listed with a broker; AND
- Is listed with a reasonable asking price; AND
- The individual has not declined any reasonable offers.

In order to continue exclusion of the unpaid principal on a mortgage or promissory note, the individual must provide current (no older than 30 days) verification of his reasonable effort to sell as defined above.

7. Lien

Consider unavailable to the individual any portion of real or personal property against which a legal lien has been filed. The equity value in the remaining portion is an available asset. Do not exempt any portion of an asset under the provisions of this item until it is established that the lien is legal, i.e., filed, UNLESS the lien is one pending filing by the Department of Disability and Aging (DDA). Deduct the amount of the legal (filed) lien from the individual's equity value in the asset to determine the portion that remains a countable asset.

Record the following information regarding the lien in the eligibility system:

- Name of the party filing the lien;
- Total amount of the lien;
- Filing date; and
- Place filed.

a. DDA Liens

Exclude as unavailable an amount equal to the amount of the pending lien if there is written assurance from the DDA's Office of General Counsel that a claim will be filed within 90 days is received. Do not extend or continue benefits until confirmation of the DDA's intent to file a lien is confirmed.

If a temporary 90 day exemption is extended, set up an expected change effective the 90th day. On the 91st day, secure a copy of the lien for the case record. If one has not been filed, discontinue the exemption and consider the entire amount of the applicant's resources available to him.

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8. Litigation

The equity value of any resource involved in litigation is considered to be unavailable to the individual. Litigation means involved in a lawsuit or some type of court action. Verify with the individual's attorney that litigation is ongoing or secure written documentation that substantiates the individual's allegation that the asset is involved in litigation. The asset is considered unavailable to the individual effective the date it became involved in the litigation action.

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11.1.2016	2	Limited Use Rights	1	Non-Substantive Change	NF
11.1.2016	3	Individual’s Mental Impairment (applicable to non-liquid resources only)	1-3	Non-Substantive Change	NF
11.1.2016	4	Joint Ownership	4-5	Non-Substantive Change	NF
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11.1.2016	6-b	Inability to Locate a Buyer-Defined Terms	5-6	Policy Change	LW
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