

Version History Table			
Date:	Document	Changes Made:	Impacted Pages:
6/2025	Real Property Training	All deprivation information was removed from this guide. Added a link to the Deprivation of Resources Process Guide.	Pg. 11

Real Property Training

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Definitions:

Real Property: Land, including any structures, improvements, or crops growing on the land.

Assessor: The county assessor is the office that values property for the purposes of taxation. The assessor notifies an individual what amount is being taxed and issues the notice of taxes due. The person who receives the tax notice is not necessarily the property owner. Medicaid generally uses the tax assessed value of property as the basis for valuing a property interest. If there is a question as to the accuracy of the tax assessed value, verification may be obtained from a real estate agent or other appropriate source.

Grantor: The grantor of a property interest is the person who is transferring the interest to another.

Grantee: The grantee is the person who is receiving an interest in property from the grantor.

Et al.: Et al. is a Latin abbreviation which means “and others”. In the context of property, it is an indication that the ownership interests are spread among several parties. It is not specific to any form of ownership, and may refer to joint tenants, tenants in common, or life estate and remainderman.

Et ux.: Et ux. is a Latin phrase which means “and wife”. Although this is less common than et al., it is occasionally used on deeds. This phrase indicates that the person owns property with their spouse, and almost always indicates joint ownership.

Equity: is the assessed value of the real property less the total of outstanding filed encumbrances against it (mortgages, mechanic’s liens, other liens and back taxes). Encumbrances must be verified and documented in the case record.

Lessor: The owner of a property interest who is renting or leasing the interest to another party.

Lessee: An individual who is renting or leasing an interest in property. The lessee does not have the right to take possession or sell the property.

Lien: An outstanding debt secured by property or assets. Various debts can be secured by a lien, but a lien must be filed with the county to be valid. A lien holder could force a sale of the property, but often wait until the property is sold or transferred to be repaid.

Medical Institution: An institution which is organized to provide medical care, including nursing and convalescent care, and has the necessary professional personnel, equipment, and facilities to manage the medical nursing, and other health needs of patients on a continuing basis in accordance with accepted standards. The institution must be authorized under state law to provide medical care **477 NAC 11-002.05**.

Register of Deeds: This county office is where property transfers are recorded. Some counties in Nebraska have merged this office with the county assessor. The register of deeds can verify ownership and can verify whether any mortgages or liens have been filed against the property.

Purpose:

This material will provide a general background of issues that arise out of the ownership and transfer of real property. It is not possible to cover every potential situation that will come up, but this guide provides a framework for analyzing the most common circumstances.

Forms of Ownership:

Real property may include the rights to minerals on or below the land. An individual can own an interest in real property in a variety of ways.

Fee Simple: Fee simple is ownership of the entire interest in property. The owner has the right to sell, transfer, or alter the property without restriction.

Joint Tenants: Joint tenants each own an undivided interest in property. Each joint tenant is free to use the property. A joint tenant cannot generally sell their interest without the consent of the other joint tenant(s). For Medicaid, the value of jointly owned property is the whole value divided by the number of owners. If a deed lists multiple owners, Nebraska law presumes that the ownership is as joint tenants, unless the deed states otherwise. Joint tenants have a right of survivorship, so that when one dies, the remaining joint tenant(s) inherit the property. For example, if two people own property as joint tenants, when the first one dies, the second becomes the sole owner.

Tenants in Common: Tenancy in common is a form of ownership in which multiple owners each have the right to use a parcel of property. The shares of ownership do not need to be equal. A tenant in common is free to sell or transfer their share of ownership without the consent of the other owners. Tenants in common do not have a right of survivorship. When one owner dies, their share of ownership can be willed to any party.

Life Estate: A life estate is a tool used in estate planning, and splits ownership interest of real property¹. One party, called the life tenant, has current rights to use the property. The remainder (future) interest is given to another party(ies), called the remainderman. Usually, a life estate is set up for life tenant's rights to expire upon their death. However, the current interest may be limited to a term of years or until a certain occurrence (e.g., as long as the property remains the residence, or as long as there are minor children). After the life estate ends, ownership is transferred to the remainderman at which time property may become owned as Fee Simple or Joint Tenancy. An individual's ownership or life estate interest in real property is verified by obtaining a copy of both the prior and current **recorded** deeds **477 NAC 23-003.07(A)**.

Submit out of state property questions to [DHHS Medicaid Policy Questions](#)

¹ On rare occasion life estates include financial accounts as property.

Verification:

Deed: A recorded deed verifies ownership of a property interest. The deed will generally indicate who transferred what type of property interest, and who it was transferred to. In some cases, it may be necessary to obtain a copy of a prior deed in order to determine what interest the grantor had. For example, if a deed transfers “my interest” to a grantee, the previous deed will be needed in order to determine what that interest was.

Stamp: A stamp is placed on a deed at the time that the deed is recorded to show that it has been registered and any taxes have been paid. The date on the stamp is the date that the property is considered to have been transferred, regardless of when the deed was written. For example, a deed written in 2010 that is recorded in 2018 would be considered to have transferred ownership in 2018. A deed which does not have a stamp is not considered verification of a transfer of ownership.

Mortgage or Deed of Trust: Property is often sold with either a mortgage or a deed of trust. The mortgage holder or trustee will sometimes hold the deed until the debt is paid. It may be necessary to obtain verification from the mortgage holder or trustee to verify the current state of ownership and the amount remaining to be paid.

Contract: Property can be sold or leased on contract. A contract sale typically happens between private parties. A copy of the land contract and a payment schedule may be needed in order to ensure that the sale complies with the requirements at [477-000-031](tel:477-000-031). A seller may delay transferring ownership of the property until the debt is paid. For land rented on contract, a copy of the current contract is needed in order to verify the terms of the agreement and determine the amount of countable income from the lease.

Wills and Trusts: Property is commonly transferred through a will or a trust agreement. Property transferred this way must still be recorded and stamped by the register of deeds for the interest to transfer. Property transferred to a trust typically lists the trustee as the grantee of the property. Listing property on a trust’s schedule of assets is insufficient to complete a transfer; it must be recorded. A copy of the will or trust may be necessary in order to verify the property interest which was transferred, if it is not already in the case record.

Real property must be verified at application, renewal, or if a change occurs for Non-MAGI participants, unless they are current pay SSI or are in 1619(b) status.

See [Medicaid Resource Verification Plan](#).

Real property being added to the expert system must include the appropriate exclusion reason, when applicable.

Excluded Property:

Property is not considered a countable resource in the following situations:

Life Estate: A life tenant or a remainderman may become a Medicaid beneficiary. Once the deed is recorded, a life estate cannot be sold or transferred without the consent of the life tenant(s) and remaindermen, as all parties must agree to sell or transfer the property.

- Therefore, a life estate is generally an unavailable resource for the life tenant.
- Remaindermen do not have rights to the property, the value is unavailable for the duration of the life estate.

Property Without Equity Value: If the value of all loans, liens, or mortgages exceeds the market value of the property, then there is no countable value.

Cost Exceeds Value: If the individual would have to spend more money to sell the property than would be gained by its sale, there is no countable value. Some examples may be the costs of initiating court action before a property can be sold or the cost of removing structures from the property.

Owner Occupied: Property owned and occupied by the individual. Unless the individual is entering a nursing facility, intermediate care facility, or an assisted living facility with Waiver services, this exclusion ends the month after the individual moves from the home. Lots adjacent to the home are not excluded as an available resource if they can be sold separately.

Dependent Relative Occupied: Property occupied by a spouse or other dependent relative. If the spouse or dependent relative moves from the home, then this exclusion ends. This information would need to be reevaluated at each renewal **477 NAC 23 003.05(B)(iii)(4)**.

Undue Hardship: If property is jointly owned, and forcing a sale of the property would cause undue hardship to the other owner, then the value of the property can be disregarded. This information would need to be reevaluated at each renewal.

Self-Employment: Property which is used in self-employment that the individual is actively engaged in as the primary means of earning a livelihood is excluded [477-000-050](#).

The expectation is that the client, their spouse, or financially responsible parent is doing the labor and tasks as “work activity” (See Appendix [477-000-050](#) for examples).

- Filing a self-employment tax return alone is not sufficient to meet this criteria.
- Making management decisions alone is not sufficient to meet this criteria.
- Leased/rented out land or land enrolled in an Agricultural Program does not meet this criteria.

Property Used for Self-Support: The first \$6,000 in equity value of property which is used to support the individual is excluded [477-000-050](#).

Native American Property: Certain property owned or managed on behalf of Native Americans can be excluded **477 NAC 23 003.06(B)**.

Income From Property:

Life Estate Income: Income from a life estate is generally considered unearned income **477 NAC 22 004.01(N)**. The life tenant is entitled to the income (if any) which may be generated from the real property. The department has no legal authority to force the production of income. The agreement that is in place for income to a life tenant (e.g., lease, cash rent, crop share, etc.) is used and must be verified and documented in the case file. Passive receipt of income from a resource does not constitute self-employment **477 NAC 22 003.03**

If income is received periodically, and the most recent periodic payment was spent prior to eligibility:

- This unearned income may be considered unavailable and not used in the initial budget.
- A worker alert must be set to verify and add the income when the next periodic payment is expected to be received.
- All periodic payments received after eligibility is approved are prorated on a monthly basis and used for ongoing eligibility **477 NAC 22 004.02(A)**.

Expenses Related to Property:

Life Estate Expenses: It is the responsibility of the life tenant(s) to maintain property for the remainderman. The geographical location and method to produce unearned income from a life estate may result in an array of expenses. If paid by the client (life tenant), and verified, the following are allowed expenses from the life estate income **477 NAC 22 004.04(f)**:

- Property insurance
- Property taxes
- Portions of a mortgage payment may be excluded upon policy review
- Maintenance
- Repair costs
- A permanent alteration that substantially increases the overall life estate value is a capital improvement. Depreciation and capital improvements on a life estate property are generally not allowable expenses to offset income. The worker must enter the net life estate unearned income in NFOCUS and document the details of each expense used. See [477-000-030](tel:477-000-030) for examples.

Submit questions about mortgage payments, capital improvements and additional expenses to DHHS.MedicaidPolicyQuestions@Nebraska.gov.

Liquidation of Property:

When an individual has excess resources due to ownership of real property, the individual may be eligible if an agreement to sell real property (form IM-1) is signed. A separate signed form is required for each parcel of property which causes the individual to have excess resources. If an individual is moving from their home into a medical institution, up to six months is given to determine whether or not the individual will be able to return to the home before it is counted as an available resource. If the individual is a joint owner of the property, then permission of the other owners to sell or court action to make the property eligible for sale may be necessary. The liquidation process cannot be used to exclude property in order to begin a deprivation of resources sanction period.

Liquidation Process:

- Property cannot be excluded as a resource until the IM-1 form is signed.
- The liquidation period begins the month after the month in which the IM-1 is signed.
- It is important to make sure that the correct time period is shown on the form in order to give proper notice to the beneficiary of how much time is available to sell the property.
- Only the individual, their spouse, or a legal representative can sign the IM-1 form.
- The liquidation process is only allowable if the individual or their spouse are the sole owner(s) of the property, unless the case file has a written statement from all other owners that they are willing to sell.
- If an IM-1 cannot be completed because of multiple owners, then a requirement may be imposed to make the resource available by filing a partition action in County Court based on the client's equity interest **477 NAC 23 003.05(B)(iii)(3)**.
- For an IM-1 in a spousal impoverishment case, the property must be solely owned by institutional spouse. The process is not available if any of the proceeds will go to the community spouse. The community spouse is not an applicant, therefore the IM-1 process is not available for them.
- There is no retroactive eligibility if the client had excess resources during the retroactive period due to real property other than their home **477 NAC 23 003.05(B)(iv)**. However, prospective eligibility may be determined if an IM-1 is signed.

Process for Reviewing Ownership of Real Property:

1. Review the documentation to determine the client's ownership interest and the equity value of the property.
 - a. If information is questionable or unclear, submit a policy question to [DHHS Medicaid Policy Questions](#).
 - b. Request additional verification if needed to determine ownership or equity value.
 - c. If the equity value of the property will not affect eligibility, enter the resource with verified encumbrance(s) in expert and process as normal.
2. Determine if the client has legal authority to sell the property.

- a. If the client does not have legal authority to sell, it is required they be given 60 days to initiate the legal action to obtain the authority to liquidate the property. See **477 NAC 23 003.05(B)(iv)(1)** and send a 60 day VR.
 - b. If the client owns the home with other persons, see **477 NAC 23 003.05(B)(ii)**.
3. If the client has legal authority to sell the property, complete the top section and send the IM-1, Agreement to Sell Real Property for each applicable property.
 - a. The period of liquidation field begins the month after the month the IM-1 is signed and **must** list the beginning and ending dates.
 - b. The legal description of the property (not the street address) is to be entered in the description field on the form.
 - c. If the client refuses to sign the IM-1, the case **must** be closed due to excess resources.
 - d. If signed and returned, the property is exempt for six months to allow for a sale.
4. A transfer or sale of a property for less than fair market value is subject to a deprivation of resources penalty unless an exception at **477 NAC 23 003.04(K)** or **477 NAC 23 003.04(L)** is applicable. [See Policy Memo 23-16](#) for additional information.
 - a. [See also, Policy Memo 25-01](#) effective February 1st, 2025 for eligibility groups that are no longer subject to a deprivation of resources review when requesting or receiving HCBS services.
 - b. See the [AVS Procedural Guide](#) for additional information regarding AVS Property Search functionality.

If the client has moved to a medical institution, view the section:
[Verifying Home Ownership When Client Moves to a Medical Institution.](#)

Extension of Time Limit:

If the client is unable to liquidate the property in six calendar months, the supervisor may authorize an additional **three calendar months**. In determining whether to allow a three-calendar-month extension, the supervisor shall consider:

1. If the property has been placed on the market;
2. If the client is asking a fair price for the property;
3. If the asking price has been reduced;
4. If the client understands the requirement for liquidation of the property;
5. If the client has not refused a reasonable offer to purchase. If there is not a better offer, a reasonable offer is defined as at least 2/3 of either the estimated current market value or the proven actual value; or
6. The economic conditions in the area and if real estate is selling.

If the property is not liquidated prior to the end of the exclusionary period, the individual's equity value must be added to the budget, unless an exception is found making the resource unavailable.

Spousal Impoverishment:

In a spousal impoverishment case, the assessment and designation of resources forms may include real property. It is not necessary to include property which is not countable on either form (see Excluded Property, above). Some important points to remember:

- Property can lose its exclusion:
 - Property excluded on the assessment of resources which loses its exclusion must be included on the designation of resources.
 - Property excluded at the time that the designation of resources is completed, but later loses its exclusion, is countable if owned by the institutional spouse.
 - Property excluded at the time that the designation of resources is completed, which later loses its exclusion, does not count toward the community spouse resource limit if owned by the community spouse.
- Property transferred between spouses does not trigger deprivation of resource provisions, but property transferred to other parties may. See the [Deprivation of Resources Guide](#) for additional information.
- The assessment of resources is completed for the first month that an individual met the 30 day institutionalized care criteria. If property is transferred or sold during the first month of institutionalization, then countable property held as of the day of institutionalization is included on the assessment.
- Property owned by a trust must not be included on the designation of resources form.
- Life estate interest must not be included on the assessment or designation of resources.
- Properties owned jointly with other individuals must not be included on the assessment, unless we have verification from the other owners they are willing to sell.

NOTE: Deprivation of Resources information was removed from this guide and moved to the [Deprivation of Resources Processs Guide](#).

Verifying Home Ownership When Client Moves to a Medical Institution:

A report or application is received indicating a client has moved to a medical institution. Review the case to determine if home ownership is known or alleged. Review county assessor and/or other online records specific to the client's known addresses and counties of residence (both current and previous), to determine if there are leads about potential property ownership. If ownership is unclear, then contact the client or representative to clarify ownership and request additional documentation, as needed.

1. If the home is owned by the client, then contact the client or representative to ask if anyone else is currently living in the home, and, if so, what their relationship to the client is.

- a. Review **477 NAC 23 003.05(B)(iii)(4)** to determine if there is a relative living in the home which would allow the home to remain exempt. If there is a relative living in the home who meets the criteria, then-the home remains exempt. The exemption continues unless/until the relative moves away from the home.
2. A client's home remains exempt as a resource for the first six months that they are in a medical institution in order to give time to see if they will be able to return home **477 NAC 23 003.05(B)(iii)(5)**.
 - a. The six months of exemption begin the month after the month that the client moved to the medical institution, regardless of whether the case is active or pending.
 - b. An alert must be set for the beginning of month 5 so that ownership and equity can be determined and the liquidation process initiated, if applicable.
 - c. If we receive medical documentation that the client will not be able to return home, a signed statement from the client or representative that the client will not return home, or the home is put on the real estate market, then the exemption ends.
 - d. If the client has not returned home by the fifth month, send a VR for property ownership and equity value documentation.
 - e. When property ownership and equity value documentation has been received, refer to the section [Process for Reviewing Ownership of Real Property](#) for additional actions.