26. Property

26.1 Property Limits

The property reserve must be equal to or below the limit for the number of people in the MFBU. [Refer to "Property Limits," page 5-1]

26.1.1 Real Property Limits

- The principal residence is exempt regardless of value.
- The net market value limit for “Other Real Property” (property other than the principal residence) is $6,000. Other Real Property must be utilized.

26.2 Availability of Property [50402]

Property is considered to be available when the applicant has the legal right, power, and authority to liquidate the asset.

Note:
The EW is responsible for making the determination of availability.

26.3 Unavailable Property [50402]

Unavailable property is not included in determining eligibility. Property is considered to be unavailable in the following situations:
26.3.1 Intent to Liquidate or Sell the Property

While the applicant or beneficiary continues to take all the necessary steps to liquidate the asset or to otherwise fulfill the requirements of this section, the property is considered unavailable:

• Beginning the first day of the month that the person initiates the necessary steps to liquidate or to hold the property for sale and continues,

• Until the day that payment is received.

Bona Fide Effort and Good Faith

Bona Fide effort and good faith intent must be continuously demonstrated by:

• Intending to sell or liquidate the asset.
• Initiating and continuing to take all necessary steps to liquidate the asset.
• Advertising, if appropriate.
• Responding to requests for information.
• Providing verification.
• Listing the asset at fair market value (if sale is required).

26.3.2 No Ownership

If evidence clearly establishes that property held in the name of the applicant/beneficiary, or shared with others, does not belong to the applicant/beneficiary, it is not considered available.

• Evidence may include but is not limited to:
  
  • Matching withdrawals and deposits from the other person to the accounts belonging to the applicant/beneficiary, or
  
  • A postmarked envelope with a letter from the other party which discusses the use of the property in question and which corresponds with dates and amounts deposited into the client’s account, or
  
  • Copies of paystubs belonging to the other person which corresponds with dates and deposits into the account of the client.
Important:

Affidavits alone are not sufficient to establish that an asset does not belong to the applicant/beneficiary. Affidavits must be supported by other evidence, such as in the above examples.

Period of Unavailability

Property which is determined to be unavailable (with evidence):

- Is unavailable beginning the date of receipt by the applicant/beneficiary.

- Remains unavailable until the day the applicant/beneficiary’s name is removed, or his/her access to the funds or property is restricted.
  
  - The applicant/beneficiary must demonstrate good faith and bona fide effort by taking all necessary steps to separate the property in question.

  - The applicant/beneficiary has 10 days to provide verification that the necessary steps have been implemented.

  - If ownership of the property has been determined by a fair hearing prior to 1/1/90, ownership must not be reestablished.

26.3.3 Property owned by Native American Indians

The following property is exempt for purposes of determining eligibility for Medi-Cal for Native American Indians:

(1) Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian tribe’s reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

(2) For any federally recognized Indian tribe not described above, property located within the most recent boundaries of a prior Federal reservation.
(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish and shellfish) resulting from the exercise of federally protected rights.

(4) Ownership interests in or usage rights to items not covered above that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

Verification

Verification shall be sufficient to establish the exempt status. It may include a statement on Tribal Council/Government letterhead or the worker may contact the Bureau of Indian Affairs, Regional Office, in Sacramento at (916) 978-6000.

26.4 Property to Be Considered in Determining Eligibility [50401]

26.4.1 Include

- The separate property and separate share of community property of any persons included in the MFBU.

- The separate property and share of community property of any person who has responsibility for any person in the MFBU (e.g., spouse or parent for child) whether or not that person is eligible to receive Medi-Cal.
### 26.5 MFBU Determination for Property for Persons in Board and Care

**MFBU Determination: Couples-No Children-Living Together Prior to Entry into a Board and Care.**

<table>
<thead>
<tr>
<th>Family Composition</th>
<th>Separate MFBU Month Following Entry</th>
<th>Separate MFBU Month Following 6 Full Calendar Months of LTC Status/B&amp;C</th>
<th>Same MFBU</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABD-MN Spouse in B&amp;C; MI spouse at home</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MI spouse in B&amp;C; ABD-MN spouse at home</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ABD-MN spouse in B&amp;C; ABD spouse at home who does not apply or is not eligible</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>One ABD-MN spouse in B&amp;C; one ABD-MN spouse at home</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>One ABD-MN spouse in B&amp;C; MI spouse in LTC Status/B&amp;C; spouses share a room or are in separate rooms</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both spouses ABD-MN in B&amp;C; sharing a room or in separate rooms, both applying and eligible</td>
<td>*X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both spouses MI; both one/both in B&amp;C</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*Same MFBU for property evaluations only.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**MFBU Determination (Property): Families—One Parent with Child(ren) Together Prior to Entry into Board and Care.**

<table>
<thead>
<tr>
<th>Family Composition</th>
<th>Separate MFBU Month Following Entry</th>
<th>Same MFBU</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABD-MN parent in B&amp;C; AFDC-MN child(ren) at home</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>ABD-MN parent in home; AFDC-MN child in B&amp;C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>ABD-MN parent in home; AFDC-MN child in B&amp;C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>ABD-MN parent in B&amp;C; BD-MN child(ren) at home</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Family Composition</td>
<td>Separate MFBUs Month Following Entry</td>
<td>Separate MFBUs Month Following 6 Months of B&amp;C</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>ABD-MN parent at home; BD-MN child(ren) in B&amp;C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>AFDC-MN parent in B&amp;C; BD-MN child(ren) at home</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>AFDC-MN parent in B&amp;C; AFDC-MN child(ren) at home</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>One ABD-MN parent in B&amp;C; one AFDC-MN/MI parent at home; any category Medi-Cal Only child(ren) at home</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>ABD-MN parent in home; AFDC-MN/MI parent in B&amp;C; any category Medi-Cal Only child(ren) at home</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>One ABD-MN parent in B&amp;C; one ABD parent at home who chooses not to apply or is not eligible; child(ren) at home not applying</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>One ABD-MN parent in B&amp;C; one ABD-MN parent at home; any category Medi-Cal Only child(ren) at home</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>One AFDC-MN/MI parent in B&amp;C; one AFDC-MN/MI parent at home; any category Medi-Cal Only child(ren) at home</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Both parents (any category Medi-Cal Only) at home; AFDC-MN/MI child(ren) in B&amp;C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Both parents (any category Medi-Cal only) at home; BD-MN child(ren) in B&amp;C</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

**MFBU Determination (Property): Families—Two Parents with Child(ren)—Living Together Prior to Entry into Board and Care.**

<table>
<thead>
<tr>
<th>Family Composition</th>
<th>Separate MFBUs Month Following Entry</th>
<th>Separate MFBUs Month Following 6 Months of B&amp;C</th>
<th>Same MFBU</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABD-MN parent at home; BD-MN child(ren) in B&amp;C</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFDC-MN parent in B&amp;C; BD-MN child(ren) at home</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFDC-MN parent in B&amp;C; AFDC-MN child(ren) at home</td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# 26.6 Property Co-Ownership Chart

<table>
<thead>
<tr>
<th></th>
<th>TENANCY IN COMMON</th>
<th>JOINT TENANCY</th>
<th>COMMUNITY PROPERTY</th>
<th>TENANCY BY ENTIRETY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Parties</strong></td>
<td>Any number of persons (Can be husband &amp; wife)</td>
<td>Any number of persons (Can be husband &amp; wife)</td>
<td>Only husband &amp; wife</td>
<td>Only husband &amp; wife</td>
</tr>
<tr>
<td><strong>Division</strong></td>
<td>Ownership can be divided into any number of interests, equal or unequal</td>
<td>Ownership interests must be equal</td>
<td>Ownership interests are equal. Managerial responsibility is the husband’s (certain exceptions)</td>
<td>Whole title rests in both parties</td>
</tr>
<tr>
<td><strong>Title</strong></td>
<td>Equal co-owner has a separate legal title to his undivided interest</td>
<td>There is only one title to the whole property</td>
<td>Title is in the &quot;community&quot;. Each interest is separate but management is unified</td>
<td>Whole title rests in both parties</td>
</tr>
<tr>
<td><strong>Possession</strong></td>
<td>Equal right of possession</td>
<td>Equal right of possession</td>
<td>Wife’s rights subject to husband’s managerial prerogatives</td>
<td>Equal right of possession</td>
</tr>
<tr>
<td><strong>Conveyance (Sale)</strong></td>
<td>Each co-owner’s interest may be conveyed separately by its owner</td>
<td>Conveyancy by one co-owner without the others breaks the joint tenancy except where it is community property held in joint tenancy merely for purposes of convenience</td>
<td>Both co-owners must join in conveyance of real property. Separate interest cannot be conveyed.</td>
<td>One party cannot terminate the tenancy without the consent of the other party</td>
</tr>
</tbody>
</table>
### 26.7 Property Worksheet (MC 176P)

Completion of the MC 176P is not required since CalWIN calculates the countable property and determines whether the client/family is property eligible or ineligible.
26.8 Conversion of Property [50407]

26.8.1 Definition

Changing property from one form to another without changing ownership.

26.8.2 Evaluation

- Liquid Assets

**Example:**
Client withdraws $300.00 from savings account and purchases a television. Client was eligible prior to converting cash into a household item and remains eligible after the purchase.

- Life Insurance Policy

**Example:**
Client cashes in her life insurance policy and receives $489 on 4/8/06. Client deposits the money in her savings account and does not plan on spending it prior to May 1. With the inclusion of this money in the client's property reserve she will exceed the property limit. As client received payment after 4/1/06, she did not exceed the property limit for the entire month therefore, she remains eligible for April. The EW must explain the “Spend down” rules to the client. Discontinue 4/30/06 with a 10-day notice for excess property. Advise the client on the NOA that he will have to spend down the excess property before Medi-Cal can be restored.

- Insurance or other 3rd party payments for the loss or damage of property is treated as converted property rather than income.

**Example:**
Client has a fire in her home. She receives a check on 5/2 for $5,000.00 to replace damaged items. In the month client receives the insurance payment, that payment would be treated as property rather than as income. In the month following receipt, any remaining money must be treated as property.

**Note:**
Payments that do not cover loss/damage of property are treated as income.
26.9 Property Spenddown [50420, 50710]

Medi-Cal applicants and recipients must be informed about reducing excess property during any month, including the month of application.

Property spenddown is the process of reducing or converting excess non-exempt property by any means in order to become eligible for Medi-Cal. Allowable ways of doing this include:

- Paying medical bills or other debts
- To buy (for an adequate consideration) a property which would be exempt (e.g., clothing, home furnishings, burial trusts, etc.)
- Paying for some service or benefit provided that the value received equals the amount spent.

Transfer of property on or after 1/1/90 without adequate consideration may result in a period of ineligibility should the individual become institutionalized within 30 months from the date of the transfer.

Note:
An applicant may pay qualified medical expenses or prepay a future medical expense to bring his/her property within limits. For additional information, refer to [Refer to “California Partnership-Approved LTC Insurance Policy or Certificate,” page 11-39 and [Refer to “Retroactive Spenddown of Excess Property on Medical Expenses (Principe Exemption),” page 26-18.

26.9.1 Spenddown in Month of Application

If property is over the limit on the first of the month through the application date and the property is brought down to limit by the last day of the month, there is eligibility.

Example:
John Doe applies for Medi-Cal coverage on August 1. He has nonexempt property valued at $5,000. His Property Reserve Limit is $2,000. He takes $3,000 out of his savings account, spends $750 on auto repair, $1,000 for braces, $600 to replace a refrigerator, and has his roof repaired at a cost of $750. He comes back in on August 29 with proof of how he spent his money. He is eligible for Medi-Cal for August.
If the client has met the property reserve limit at any time during the month, the MFBU shall meet the property requirements for the entire month.

Example:
John Doe applies for Medi-Cal on August 10. He has nonexempt property valued at $300. His Property Reserve Limit is $2,000. On August 2, he received an income tax refund of $2,000 which put him $300 over the property limit. Since he was under the property limit on August 1, he is eligible for Medi-Cal for August. He would be eligible for Medi-Cal for September if his excess property is brought under the limits by the last day of September.

26.9.2 Spenddown for Three-Month Retroactive Medi-Cal

Property reserves must be within the property limit for one day in the month for each month retroactive aid is requested. Property spenddown does not apply to three-month retroactive applications.

Example:
An applicant applies for Medi-Cal on April 3, also asking for retro Medi-Cal for January, February and March. The CSV of the client's life insurance was $3,000 in January and February. In March, the client applied for a loan against the policy, bringing the CSV to $10.00 by the end of March.

The client is eligible for March retro, April and continuing, assuming all other factors are clear. He is not eligible for January and February, because his property reserve was over the limit for the entire month.

26.9.3 Ongoing Medi-Cal Cases

For ongoing Medi-Cal cases, if property reserve exceeds the limit for the entire month:

- Case is ineligible and there is an overpayment. Refer to [Refer to “Overpayments,” page 65-1 for procedures.
- Discontinue the case. Advise client on the NOA that they will have to spenddown the excess before Medi-Cal can be restored.
- Institutionalized individuals must receive adequate consideration for property that has been spentdown. Refer to [Refer to “Excess Property Applied To Medical Bills [50421; MEPM 9L],” page 26-12.
- Documentation:
Property

- Have the client write a declaration regarding the amount and stating how the money was spent down and provide verification.

- Document on the [Maintain Case Comments] clarification of the spenddown and substantiate the decision to approve or deny.

26.9.4 LTC Insurance Exemption

Applicants/beneficiaries are not required to spend down their "protected assets" under the provision of California Partnership-approved LTC insurance policy or certificate. "Protected assets" equal to each dollar of benefit payment paid by the LTC insurance to the LTC provider is protected against Medi-Cal "spenddown" rules. The exemption applies as long as the applicant/beneficiary lives and regardless of whether or not the individual is currently in LTC or not [[Refer to “California Partnership-Approved LTC Insurance Policy or Certificate,” page 11-39]

26.10 Excess Property Applied To Medical Bills [50421; MEPM 9L]

26.10.1 Rule

Clients who have excess property in a month for which Medi-Cal is requested must spend down their excess property within that month to be eligible for Medi-Cal. If they use their excess property to pay all or a portion of their medical expenses and a Medi-Cal card is issued:

- The provider may not bill Medi-Cal and then reimburse the client for services which were paid by the client to reduce "excess property" in order to be eligible for Medi-Cal; and

- Any amount previously paid on a medical expense to reduce the client's "excess property" cannot be reapplied to meet the client's share of cost (if there is one).

Welfare and Institutions Code, Section 14019.3(d), specifically prohibits billing Medi-Cal and reimbursing beneficiaries for services paid for, or obligated by an applicant/beneficiary to meet the share of cost or to establish eligibility.
EWs must therefore compute the amount of excess property applied to medical bills and inform providers not to bill Medi-Cal for services when clients have spentdown, encumbered or liened excess property to be eligible for Medi-Cal for the month the services were provided.

[Refer to “Retroactive Spenddown of Excess Property on Medical Expenses (Principe Exemption),” page 26-18 for rules on spenddown of excess property on medical bills after the month of application.]

26.10.2 When It Applies

There are three situations in which the client, rather than Medi-Cal, remains liable for his/her medical expenses incurred in a month for which Medi-Cal is requested.

• An applicant states that excess property was reduced during the month of application, by payment of, or encumbrances or liens against medical expenses, either in the interview and/or on the Statement of Facts form.

• An applicant requests retroactive Medi-Cal and indicates that excess property was reduced, encumbered, or liened to pay all or part of those medical expenses before the end of that retroactive month.

Note:

There is no retroactive spenddown. The client must be within the property limit during the retroactive month to be eligible.

• A period of ineligibility due to a transfer of property occurring before January 1, 1990 has been established and:

  • The period of ineligibility expires mid-month; and
  • Actual medical expenses in that month were used to reduce the period of ineligibility. This is not likely to occur now. Refer to MEPM 9L if a case meets this criteria.]

26.10.3 Income v Property

Remember, when determining the household's current property, do not include any income that is received within the month in the property balance. Income becomes property the month after receipt if it is still available.
EWs must send a “Medi-Cal Information Notice to Providers - Clarification of Liability” (MC 174) to providers when a medical expense (or a portion of a medical expense) was used by a client to reduce excess property in order to establish or maintain Medi-Cal eligibility.

Example:
Excess Property Paid on Medical Expenses in Month of Application

On 2/10 Susan B. applies for Medi-Cal on behalf of her aged mother, who entered Sunny Hills nursing home on 2/3. During the initial intake interview on 2/27, the EW determines that the client currently has $1700 in her checking account and no other countable property. The client also had $2,500 in a savings account at the beginning of February. Her daughter withdrew this money, closed the account, and paid the nursing home $2,500 for her mother’s care.

The client is eligible for Medi-Cal in February as she is within the property limit; however, the EW must also:

- Determine what portion of the $2,500 paid on medical expenses incurred in February was “excess property”; and

- Send an MC 174 to the provider (Sunny Hills).

| Property spent in February medical care: | $2500 |
| Checking Account: | +1700 |
| Total: | $4200 |
| Property Limit: | -2000 |
| Excess Property applied to February medical bills: | $2200 |

Sunny Hills may not bill Medi-Cal for the $2,200 that was used to establish Medi-Cal eligibility and then later reimburse the client when the Medi-Cal payment is received. Any additional medical expenses may however, be billed. Also, the $2,200 previously used to reduce excess property cannot be used again to meet the client’s share of cost.

The EW must document the computation of excess property on the [Maintain Case Comments] window.
Example:
Excess Property Paid on Medical Expenses in Retroactive Month

A child was hospitalized in March due to an accident, then was discharged later that month. Her hospital bill is $25,000. Her mother paid $5,000 to the hospital in March, then decided to apply for retroactive Medi-Cal in April. There is one other child in the home (MFBU = 3, Property Limit $3,150).

When reviewing the MC 210, the EW notes that the client has used her savings to pay for medical care. She currently has $2,000 remaining in her savings account and $100 in a checking account.

The EW must determine what portion of the $5,000 paid to the hospital in March is excess property.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Savings spent in March medical care</td>
<td>$5,000</td>
</tr>
<tr>
<td>Savings Account (lowest March balance)</td>
<td>+ 2,000</td>
</tr>
<tr>
<td>Checking Account (minus March income)</td>
<td>+ 100</td>
</tr>
<tr>
<td>Total</td>
<td>$7,100</td>
</tr>
<tr>
<td>Property Limit</td>
<td>- 3,150</td>
</tr>
<tr>
<td>Excess Property applied to March medical bills</td>
<td>$3,950</td>
</tr>
</tbody>
</table>

$3,950 of the $5,000 that mom paid towards the hospital bill was “excess property” and cannot be reimbursed to her. The EW must send an MC 174 to the hospital. The hospital can then bill Medi-Cal $21,050 ($25,000 - $3,950) and must reimburse $1,050 to the client once Medi-Cal has paid the claim.

Note:
If the client also has a share of cost, none of the $3,950 which was used to reduce excess property can be applied to the share of cost. The share of cost could be collected from the additional $1,050 that the client has already paid.

26.10.5 Hunt v Kizer

The “excess property applied to medical bills” rule applies to situations where the client has spent excess resources on medical expenses to be eligible for Medi-Cal in the month that those expenses are incurred. This will usually occur at application. This change does NOT affect the Hunt v. Kizer provisions, which allow old medical bills to be used to offset a current or future share of cost.
26.10.6 Reviewing Property Balance at Intake

There is no change to the rule which states that if the property reserve limit is met at any time during the month, the MFBU is "property eligible" for the entire month.

**Over Limit**

If, at the point of the intake interview, the client has excess property, the EW will explain property spenddown rules. Issue an MC 174 if the client chooses to reduce excess property by paying medical bills. Refer to [Refer to “Procedure,” page 26-16.

**Under Limit**

If, at the time of the intake interview, the property is within the limit, the EW must ask the client if property was used to pay any medical expenses incurred in the month(s) for which Medi-Cal is being requested:

<table>
<thead>
<tr>
<th>If...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>The client has paid medical bills incurred in the month(s) for which Medi-Cal is being requested,</td>
<td>The EW will need to determine if the money spent on medical bills when added to the lowest property balance results in &quot;excess property applied to medical bills&quot;. Refer to [Refer to “Procedure,” page 26-16.</td>
</tr>
<tr>
<td>No medical expenses were paid,</td>
<td>This section does not apply. Review expenditures if there is any indication that property was transferred without adequate consideration, as a period of ineligibility may result if the client enters LTC.</td>
</tr>
</tbody>
</table>

**Procedure**

EWs shall follow this procedure to:

* Determine if excess property has been applied to medical bills;
* Compute the amount of excess property used; and
• Notify the provider that Medi-Cal is not liable for those services.

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
</table>
| 1    | Ask the client and review the MC 210 (currently question 47) to determine if excess property was spent on medical bills to establish Medi-Cal eligibility or if any nonexempt property was encumbered or liened due to medical expenses.  

NOTE: While the client's property may be within the property limit at the time of the intake interview, the EW will need to ask if property was used to pay for any medical expenses for the month(s) that Medi-Cal is being requested. Refer to [Refer to “Reviewing Property Balance at Intake,” page 26-16.](#) |
| 2    | Verify any paid medical expenses (to whom paid, for what, how much, who received the care and on what date). |
| 3    | Compute and document on the [Maintain Case Comments](#) window the amount of excess property used to pay medical expenses incurred in the month that Medi-Cal is being requested. The full amount paid does not necessarily equal “excess property”. The client may have paid more than was necessary to qualify for Medi-Cal.  

- Add current nonexempt property (lowest balance) to the property that was paid on medical expenses.  
- Subtract the applicable property limit from the total (above).  
- The difference is the “excess property applied to medical bills” that must not be billed to Medi-Cal. |
| 4    | Complete an MC 174, with the information obtained from the client and your computation, for each provider that has been paid for services that cannot be billed to Medi-Cal. |
| 5    | Have the client complete, sign and date the authorization for release of information at the bottom of each MC 174. |
| 6    | Distribute each MC 174 as follows:  

- The original to the provider.  
- A copy to the client.  
- Scan (via IDM) or file a copy in the case record, fastener 5, bottom. |
26.11 Retroactive Spenddown of Excess Property on Medical Expenses (Principe Exemption)

26.11.1 Overview

Effective 2/1/98, the Principe v. Belshe court settlement allows retroactive spenddown of excess property on medical expenses in order to establish Medi-Cal eligibility. Individuals who are determined to have excess property are now able to spend that excess property on “qualified medical expenses” in a later month to establish Medi-Cal eligibility back to the month of application.

Excess property (and its conversion to cash for payment) actually spent on qualified medical expenses is treated as exempt property in prior months beginning with the month of application. The otherwise excess property must have existed for the entire month in which it is being exempted. Medi-Cal may then be granted for the month(s) in which the exemption is applied if the individual is otherwise eligible. This exemption is known as the Principe Property Exemption.

Note:
The procedure used when an individual reduces excess property in a month by paying, in that SAME month, current or future medical expenses in order to establish Medi-Cal eligibility has not changed. Refer to "Excess Property Applied To Medical Bills [50421; MEPM 9L]," page 26-12. The Principe procedure is similar although it applies when an individual reduces excess property in one month by paying qualified medical expenses in a LATER month.

26.11.2 Impact

The Principe Exemption does NOT impact individuals who:

• Have excess property, but are able and do reduce that excess property during the same month (spenddown), or
• Do not have the legal capacity to spenddown excess property.

Reminder:
EWs must continue to consider availability before including property in the property reserve. An individual who is unconscious, comatose or incompetent at any time during the month is considered to not have the legal capacity to liquidate property and the property is considered unavailable.
The Principe Exemption affects individuals who:

- Are not unconscious, incompetent or comatose, AND
- Are unable to reduce excess property during the month of application or subsequent months, for any reason.

26.11.3 Definitions

Qualified Medical Expense

Bills incurred in any month by:

- The individual,
- Any member of the individual’s Medi-Cal Family Budget Unit (MFBU), or
- The individual’s children who are not members of the MFBU but who are living with the individual.

The bill(s) must be unpaid in a month where excess property existed for the entire month beginning with the month of application.

Note:

The same medical expense cannot be applied under Principe v. Belshe and also used to meet the share of cost or applied to share of cost under Hunt v. Kizer.

Principe Property Exemption

The Principe Property Exemption is an exemption of otherwise excess property which is spent in a later month on qualified medical expenses. The otherwise excess property must have existed for the entire month or months beginning with the month of application.

- In some instances, otherwise excess property may have to be converted to cash before it is spent on qualified medical expenses. The Principe property exemption also applies to the cash conversion.

- The exemption cannot exceed the amount of otherwise excess property. If an individual pays medical expenses with property which is not excess property, he/she may be entitled to a reimbursement from a medical provider if Medi-Cal eligibility is later established for the month in which the service was rendered.
Note:
Once steps are taken to liquidate property, it is considered unavailable. The EW may be able to establish Medi-Cal eligibility, if otherwise eligible.

Principe Month

Month(s), no earlier than the month of application, to which the Principe property exemption has been applied.

Note:
The exemption may not be applied to any Retroactive Medi-Cal months (three months immediately preceding the month of application).

26.11.4 Principe v. Belshe

The Principe v. Belshe court settlement:

- Applies to individuals with excess property for an entire month, but who are otherwise eligible.

- Limits the use of the Principe property exemption to months no earlier than the month of application (i.e. can NOT be applied to a Retroactive Medi-Cal month).

- Allows individuals to retroactively spenddown excess property by paying qualified medical expenses. The actual payment must be verified.

26.11.5 Verification of Payments

The actual payment of qualified medical expenses must be verified prior to applying the Principe Property Exemption.

The Medi-Cal application must be approved/denied timely [Refer to “Timeframes for Processing Applications,” page 5-25 If the applicant provides verification of the qualified medical expense payment at a later date (up to 3 years from the date of the denial notice of action), the EW must rescind the denial, apply the Principe Property Exemption and approve Medi-Cal back to the date of original application, if otherwise eligible.

Note:
It may be necessary to complete a “Letter of Authorization Request” (SC 1594) in this situation. [Refer to “Non SSI/SSP Letter of Authorization (LOA) Process,” page 64-15
26.11.6 MC 174

EWs must send a "Medi-Cal Information Notice to Providers - Clarification of Liability (MC 174) to providers when payment of a medical expense (or portion of a medical expense) is used to reduce excess property to establish Medi-Cal eligibility. The MC 174 informs the provider that Medi-Cal is not liable for these medical expenses.

Any medical expenses paid by the beneficiary from property that is not considered excess property is not to be included on the MC 174. The provider may bill Medi-Cal for these services and then reimburse the beneficiary. The EW must inform the client of the possible reimbursement.

Example:

Excess Property Paid on Medical Expenses in Month After Application

Susan B., a single mother of two children, was hospitalized from 1/10 thru 2/3. During January she incurred $10,000 worth of medical bills. An outstationed hospital EW took a Medi-Cal application on 1/11.

During the intake interview on 2/5, Susan verifies the total hospital bill and informs the EW that on 2/4 she closed her savings account ($5,000) and paid part of the bill. Her property reserve also included a $10,000 life insurance policy with a cash surrender value of $300 and a checking account with $500. Her total nonexempt property during January was $5,800. By February it had been reduced to $800.

The EW determines what portion of the $5,000 spent on qualified medical
expenses represented otherwise excess property.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Spent on Qualified Medical Expenses (savings account)</td>
<td>$5,000</td>
</tr>
<tr>
<td>Cash Surrender Value &amp; Checking Account</td>
<td>+ 800</td>
</tr>
<tr>
<td>Total Property in January</td>
<td>$5,800</td>
</tr>
<tr>
<td>Property Limit for MFBU of 3</td>
<td>-3,150</td>
</tr>
<tr>
<td>Amount of Otherwise Excess Property (List on MC 174)</td>
<td>$2,650</td>
</tr>
<tr>
<td>Amount Spent on Qualified Medical Bills</td>
<td>$5,000</td>
</tr>
<tr>
<td>Amount of Principe Exemption</td>
<td>- 2,650</td>
</tr>
<tr>
<td>Amount That May be Reimbursed or Used to Meet SOC (Do not list on MC 174)</td>
<td>$2,350</td>
</tr>
</tbody>
</table>

Only $2,650 of the $5,000 spent on qualified medical bills was otherwise excess property. Under Principe, the EW must:

- Exempt $2,650 of the savings account during January.
- Approve Medi-Cal effective the date of application, if otherwise eligible.
- Complete the MC 174 informing the hospital that Medi-Cal is not liable for $2,650 of the $10,000 bill. The hospital may bill Medi-Cal for the services in excess of $2,650 and reimburse $2,350 ($5,000 - $2,650) to the beneficiary once Medi-Cal pays the claim, if there is no share of cost.
- Inform Susan of the possible reimbursement from the provider.

26.11.7 3-Month Retroactive Medi-Cal

The Principe property exemption does not apply to the 3 month Retroactive Medi-Cal period. The exemption must not be allowed in months prior to the month of application.

26.11.8 Informing Requirement

The EW must inform applicants of the Principe v. Belshe provision as a means to establish Medi-cal eligibility whether or not there appears to be excess property. The EW must provide the property limit for the applicant’s MFBU and paraphrase the following:
“If you have property which exceeds the property limit for an entire month for which Medi-Cal is being requested, you may still be able to receive Medi-Cal benefits for that month(s) if you are otherwise eligible and you reduce your excess property by paying qualified medical expenses. Qualified medical expenses are bills that are incurred in any month by you, your spouse or any member of your Medi-Cal Family Budget Unit (MFBU), or your children who are living with you but who are not members of your MFBU. These are bills which were unpaid in the same month where there was also excess property for the entire month beginning with the month of application. You may not establish eligibility for Medi-Cal in this way for any of the three months immediately preceding the month of application.”

26.11.9 Continuing Beneficiary

Principe v. Belshe does NOT apply to Medi-Cal recipients who are suddenly found to have excess property during an entire month. Instead, the current procedure for determining overpayments due to excess property is followed. The Medi-Cal usage amount is compared to the excess property amount and the overpayment amount is whichever is less. If the excess property is the lesser amount, the beneficiary pays the excess property back to DHCS in order to reduce his/her property reserve.

26.12 Transfer of Property by Persons not in LTC

26.12.1 Transfers by Others (Not Currently in LTC facility)

Transfers made by persons who are not institutionalized DO NOT result in ineligibility. However, EWs must take the following actions:

• Document in the [Maintain Case Comments] window each transfer for QC purposes because the information is needed should the person who transferred property later become institutionalized. Once the client becomes institutionalized, the EW would have to look back 30 months prior to date of institutionalization to see if a disqualifying transfer has occurred.

• Verify that the individual actually no longer owns the assets, using all information available from IEVS, that which is provided on the Statement of Facts form, information obtained in the interview, and so on.
26.12.2 General

EWs must carefully document in [Maintain Case Comments] window all of the circumstances pertaining to a transfer and why. If the EW is not establishing a period of ineligibility for LTC services, then the reason must be clearly documented (e.g., not in LTC, or “non-disqualifying transfer because...”).

Sometimes the transferee may be willing to give back the asset.

If it appears that a person in LTC is being exploited and there is no other relative to contact, the EW should make a referral to Adult Protective Services (APS) and contact the LTC Ombudsman. [Refer to “Inquiries and Resources,” page 3-1 for phone number.

26.13 Probate/Estate Recovery [MEPM 16H]

In October 1993, federal law was enacted mandating all states to establish Estate Recovery (ER) Programs. The ER Program has existed in California since 1981. Through this program, efforts are made to recoup the cost of Medi-Cal services received after the age of 55 from the estate of a deceased Medi-Cal recipient.

The three major components of the program are:

- Estate Recovery Claims,
- Hardship Waivers, and
- Liens.

26.13.1 Estate Recovery Claims

The State Department of Health Care Services (DHCS) Estate Recovery (ER) Unit cannot file any estate claim for reimbursement of benefits properly paid until the death of the Medi-Cal recipient.

The ER Unit makes a claim against the estate of deceased clients:

- For the amount of Medi-Cal paid services on or after the client’s 55th birthday, and
Property

• The claim is limited to the fair market value of the client’s assets at the time of death less any encumbrances, or the amount of the medical services paid by Medi-Cal, whichever is less.

Exception:

The amount of assets exempted under the provision of California Partnership for LTC is exempt from estate recovery. [Refer to “Transfer of Property by Persons not in LTC,” page 26-23]

Claims Included in the Estate Recovery

The State’s claim includes, but is not limited to, the following health care services paid on behalf of the deceased Medi-Cal recipient:

• Nursing facility services,
• Home and community-based services,
• Related hospital and prescription drug services, and
• Health insurance premiums, including Medicare Part A and B, and Delta Dental premiums.

Claims that are Not Included in the Estate Recovery

The State’s claim does not include the following health care services paid on behalf of the deceased Medi-Cal recipient:

• In-Home Supportive Services (IHSS) is not included if the Medi-Cal client died after September 1, 2000,

• Cost of Medicare premiums, co-payments, and deductibles paid on behalf of either Qualified Medicare Beneficiary (QMB) or Specified Low-Income Medicare Beneficiary (SLMB), since the clients are not entitled to, or receiving, any Medi-Cal services which are subject to recovery.

Notification of Client’s Death

When a Medi-Cal client dies (or the surviving spouse of the Medi-Cal client dies), the person handling the assets of the deceased client MUST provide written notice of the death within 90 days. The notice and a photocopy of the death certificate must be sent to the State. Refer to.

Note:

A phone call or written notice to the County, Social Security Administration, or the Office of Vital Statistics, does not satisfy this requirement.
Claims that the State May Not Pursue

Once the notice is received, the State makes its claim against probated and non-probated estates within four months. The State may NOT make a claim:

- During the life time of the surviving spouse
- For services provided before the Medi-Cal recipient’s 55th birthday
- If there is a surviving child who is under the age of 21
- If there is a surviving child of any age who, as of the date of the State’s claim, is blind or disabled.

When the surviving spouse dies, Medi-Cal may bill the estate of the surviving spouse for the lessor of:

- The amount paid by Medi-Cal for medical assistance, or
- The value of assets received by the surviving spouse.

Definition of Estate

An ESTATE is defined as those assets owned by the Medi-Cal client at the time of death, including assets distributed through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement. DHCS will issues regulations at a later time to specify what includes “other arrangement.”

Most assets (i.e., home, real property, or bank accounts), considered exempt during the eligibility process, are not exempt from ER once the Medi-Cal client dies, if the property is still in the client’s name.

DHCS Informing Notice

DHCS sends the “Important Notice Regarding The Medi-Cal Estate Recovery Program” twice a year to all Medi-Cal recipients describing the ER program and informing them that Medi-Cal may make a claim against any assets owned by the Medi-Cal client at the time of his/her death.

DHCS Informing Brochure

The “Medi-Cal Estate Recovery Program” Brochure must be provided in all Medi-Cal Intake Packets for Adults.
26.13.2 Hardship Waiver

Any person affected by the estate recovery claim can file for a hardship waiver. The Estate Recovery Unit will waive or reduce its claim if an individual can establish that an undue hardship exists due to the enforcement of the claim. Undue hardship usually exists only in “very limited financial circumstances”.

Application for Hardship Waiver

For consideration of a waiver or reduction, an applicant must submit an “Application for Hardship Waiver” within 60 days of the date of the State’s claim. The State includes an application with information regarding how to apply for a waiver when a claim is first presented. If the application for waiver is denied, the applicant then has appeal rights through an estate hearing. The procedure for obtaining a hardship waiver and the criteria for the State to grant a waiver are outlined in Medi-Cal regulations. See Title 22, California Code of Regulations (CCR), Section 50960.

26.13.3 Liens

The State may record a lien against the client’s principal residence and request that the property be sold when a Medi-Cal client enters a Long Term Care (LTC) facility unless the client indicates an intent to return home.

Situations When Liens May Not Be Recorded

The State may not record a lien against the principal residence of an institutionalized client in the following situations:

• If the Medi-Cal client or the client's personal representative declares an intent to return home, even if the return is not likely,

• If there is a surviving spouse, dependent relative, or co-owner residing in the home,

• If there is a surviving child of any age who is blind or disabled within the meaning of Section 1614 of the Federal Social Security Act,

• If there is a surviving child under the age of 21, or

• If a sibling with equity interest in the home resided in the home for one year immediately prior to the date of the client’s admission to the medical institution and continues to lawfully reside there.
Property Lien Referral to the State

EWs must use a “Property Lien Referral” (DHCS 7014) to notify the State whenever an institutionalized beneficiary declares that he/she does not intend to return to his/her principal residence. [Refer to “List and Lien Requirements (LTC),” page 11-75] In response to the receipt of the DHCS 7014, DHCS places a statutory lien on the real property. A statutory lien is not a recorded lien.

The Estate Recovery Unit will seek reimbursement upon the Medi-Cal recipient’s death through the presentation/filing of a claim demand. The statutory lien will only then become a recorded lien against the real property by voluntary action of the heir(s) as an alternate method of payment or through court judgement.

Voluntary Repayments

The State cannot accept voluntary repayments from a Medi-Cal client prior to his/her death for medical assistance paid or to be paid on his/her behalf.

Post-Death Claim

The sale of a deceased client’s home to pay the estate claim is usually not necessary. If one or more of the dependents, heirs, or survivors, is unable to pay the State’s claim in full, and can demonstrate he/she is unable to obtain financing to satisfy the claim, the State may offer to accept a post-death lien against the home. A post-death lien is used as means to secure the State’s claim and is voluntary in nature. If a request for hardship waiver has been received, the State must render its decision regarding hardship, independent of any discussion of a voluntary post-death lien. While the hardship waiver is pending, no interest accrues on the State’s claim.

Monthly Payments

Based on the survivor’s financial ability to pay, the State may accept monthly payments from the survivor, in addition to the placement of a lien against the estate property. The lien will accrue interest and become due and payable upon the death of the survivor; the sale, refinance, transfer, or change in title to the estate property; escrow funding; or a default in payments.
### 26.13.4 What Happens When a Medi-Cal Recipient Dies

The following actions occur when a Medi-Cal beneficiary dies:

<table>
<thead>
<tr>
<th>Stage</th>
<th>Who</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>EW</td>
<td>Discontinues deceased Medi-Cal beneficiary.</td>
</tr>
<tr>
<td>2.</td>
<td>DHCS</td>
<td>Receives information of Medi-Cal beneficiary’s death. This may be reported by the:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Representative of the deceased Medi-Cal beneficiary,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• California Health Services Department,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Public Health Department - Vital Statistics, and/or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• MEDS System.</td>
</tr>
<tr>
<td>3.</td>
<td>DHCS</td>
<td>Sends an inquiry notice to the last known address.</td>
</tr>
<tr>
<td>4.</td>
<td>Heirs, executor, administrator,...</td>
<td>Completes and returns inquiry letter with a copy of the death certificate attached.</td>
</tr>
<tr>
<td>5.</td>
<td>DHCS</td>
<td>Determines if an estate recovery claim will be filed against the estate of the deceased. If filed, an informing notice is sent to the person handling the estate including:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The basis for the estate claim.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The specific statutes and regulations supporting the claim.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• A hardship waiver application and an explanation of the right to seek a waiver of or to contest the Department’s claim.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• An explanation of the right to request an estate hearing if dissatisfied with the request for a waiver decision.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Timeframes for requesting a waiver or estate hearing.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• A summary of the basis for the applicant to seek a waiver or estate hearing due to undue hardship.</td>
</tr>
</tbody>
</table>

NOTE: Hardship requests are determined on an individual basis, depending on circumstances.

### 26.13.5 Estate Recovery Questions

All questions regarding Probate and Estate Recovery, including Hardship Waiver Requests, are to be referred to the DHCS Estate Recovery Unit. [Refer to “Probate/Estate Recovery,” page 3-12.]
26.14 Personal Property

Personal property is defined as possessions or interests, exclusive of real property, that may be easily transported or stored.

Encumbrances of record on any item shall be verified and deducted from the Gross Market Value in order to obtain the Net Market Value (NMV).

26.15 Motor Vehicles, Boats, Campers, Trailers and Mobile Homes [Procedures 9B, 50461, 50463]

26.15.1 Exempt

One motor vehicle, either an automobile, motor home or motorcycle, may be exempted. If the client has more than one vehicle, he/she may choose which vehicle to exempt. It is NOT required that the exempt motor vehicle be “used for transportation”, currently registered and in working condition.

Note:
Recreational and commercial vehicles shall be considered exempt only if other vehicles are not available.

26.15.2 Nonexempt

All other vehicles. Include the Net Market Value (NMV) in the property reserve. This includes boats, campers and trailers.

Exception:
A motor vehicle used as a principal residence is exempt.
26.15.3 Determination of Value

The EWs have the responsibility to determine a reasonable value for motor vehicles. The applicant does not need to obtain three appraisals by auto dealers, insurance adjustors, or personal property appraisers. Some of the methods which may be used to determine the reasonable value include, but are not limited to:

- The market value determined by the wholesale “Kelley Blue Book.” The Kelley Blue Book’s website is: http://www.cars.com/go/kbb/kbblnput.jsp

- The market value determined by the “National Auto Dealers Association (NADA) Guide.” The website is http://www.nadaguides.com/autohome2.aspx?Lnk=1&wSec=10&wPr=0&wPg=211

- An estimate of the Market Value obtained by the client from a disinterested, knowledgeable source, or

- Department of Motor Vehicle (DMV) License Fee Rate Table. The website is http://www.dmv.ca.gov/forms/reg/vlf_chart_2005.pdf.

26.15.4 Determination of Value Using DMV License Fee Rate Table

The DMV License Fee Rate (VLF) chart is updated by the DMV and not by the Department of Health Care Services. The current 2% VLF chart has now been replaced with a 0.65% VLF chart. This percentage change has superseded prior instruction in California Code of Regulations Title 22, Section 50485. The license fee is no longer multiplied by $50 to derive the market value of the motor vehicle. The new procedure for determining the market value using the VLF chart is as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1)</td>
<td>Obtain the “class” and “Asterisk (<em>) Year” from the registration. If no “Asterisk (</em>) Year” is given, use the “Date First Sold Year”. Contact the Department of Motor Vehicles (DMV) for this information if the registration is not available.</td>
</tr>
<tr>
<td>2)</td>
<td>Based on the “class” and “Asterisk (*) Year,” locate the value on the DMV License Fee chart.</td>
</tr>
<tr>
<td>3)</td>
<td>Divide the vehicle license fee by 0.0065.</td>
</tr>
</tbody>
</table>

(Chart page 1 of 2)
26.16 Cash [50451]

26.16.1 Exempt

- Current month’s income.

  The client’s current month’s income must be identifiable. If the client claims that the cash on hand are proceeds from his income for the current month (either the client is getting paid in cash of the client had already cashed the check, or deposited the money in the bank and made subsequent cash withdrawals), then the cash on hand is not counted as property. If there is contradicting information (for example, cash on hand is a lot greater than the declared monthly income), then the EW should clarify just like in any other situations.

  Example: Client deposited his current month’s income of $1000 (per the bank statement) and made a cash withdrawal of $800 which now becomes cash on hand. Based on client’s statement, the cash on hand of $800 is exempt.

- Savings of a child from exempt earnings for future education or future identifiable needs.

26.16.2 Nonexempt

All cash in the possession of the client not already exempted.

Note:

When determining the value of a motor vehicle that is specially equipped for a disabled individual (e.g. wheelchair lift), the special adaptive equipment is not considered to increase the value of the vehicle.

[Refer to “Specially Equipped Motor Vehicle,” page 26-74.]
26.16.3 Verification

Client's statement.

26.17 Bank or Credit Union Accounts

26.17.1 Exempt

- Current month's income.

The current month’s income must be identifiable. The bank statement must clearly show that the client’s income (e.g. Social Security income, etc.) is being directly deposited monthly, or a clear description of deposit indicates the client’s monthly income, then the identifiable current month's income should not be counted as property. If the client subsequently withdrew money from his/her bank accounts which now is considered exempt cash on hand, the current month’s income that was withdrawn must be deducted from the bank balance.

- All or a portion of the funds which the client can establish as the property of a person who is not a family member.

- Proceeds from the sale of real property retained by the client if used to purchase a home or apply on the balance due on a home already purchased within six months of the date of the sale or date of application for Medi-Cal, whichever is later.

Note:
The purchase of a home would include cost of moving, necessary furnishings, and repair or alteration to home.

26.17.2 Nonexempt

All funds not specified as exempt. [Refer to “Exempt,” page 26-33.]

26.17.3 Verification

- Current statement from bank.
- Signed statement from bank on bank stationery, including the account number.
• SC 1280, Release of Information, Financial Institution.
• An ATM Computer receipt may be used only as a temporary verification when
  the last routine bank statement is not current and the client is waiting for a new
  statement.

**Note:**
A passbook should not be used unless it shows current updated balance
entered by computer or bank teller.

Intake — “Current” means that the bank balance must be verified in either the
application month or the month in which Medi-Cal eligibility is established.

Continuing — “Current” means that a verified bank balance must be on file
which falls in the period beginning 30 days before the date the MC 210
interview takes place, or the date the MC 210 or MC 262 is date stamped in
the office, and ending 30 days after that date.

**Example:**
Redetermination interview is April 23.

• Bank statement balance dated March 30 is current.
• Balance dated May 20 is current.
• Balance dated March 19 is not current.

**Note:**
When no current balance is on file, the redetermination is still considered
complete if:

• An SC 1280 has been sent to the bank, and
• An SC 1280 tickler has been set for the following month. The “pending” SC
  1280 is acceptable for 30 days past the date the renewal MC 210 is signed.

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**26.18 Stocks, Bonds, Mutual Funds [50456]**

**26.18.1 Exempt**

Shares of stock in a village corporation held by natives of Alaska.
26.18.2 Nonexempt

All others.

26.18.3 Verification

Obtain the certificate. If unable to determine value, obtain a signed statement from the issuing institution showing:

- The description of the investment, and
- The number of shares owned.

26.18.4 Determination of Value

Complete one of the following actions:

- Make telephone contact with a recognized stock exchange broker to establish the current selling price of the property, or
- Establish the current selling price of the property through listings in a current newspaper.

26.19 Oil Leases and Mineral Rights

26.19.1 Exempt

None

26.19.2 Nonexempt

All

26.19.3 Verification

- Obtain the certificate, or
- View records maintained by the county tax assessor where the lease or right is located.
Determine the value of oil leases or mineral rights by following one of these procedures:

- Obtain documents from, or make a telephone contact with, a member of a recognized professional appraisal society which establishes the current market value of the lease or right, or

- Obtain documents from, or make a telephone contact with, the company/organization developing the natural resource which establishes the current market value.

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26.20 Savings Bonds [50457]

All U.S. savings bonds shall be considered non-exempt personal property.

- Verification shall be completed by viewing the bond.

- Determine the value of U.S. savings bonds by contacting any bank or institution where such bonds may be liquidated.

- If the bond is not mature, use only the amount that is available to the client by first subtracting penalties.

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26.21 Trust Deeds, Mortgages, Notes, RAMs [PROC 9D, 9-G, 50425, 50441]

26.21.1 Exempt

Deeds of trust, mortgages and promissory notes shall be considered.

Exempt as “other real property” only when received through the sale of real property owned by the applicant/beneficiary and either of the following conditions are met:
• If the net market value is $6,000 or less and utilization requirements are met, the property is exempt.

• If the net market value is over $6,000, the first $6,000 of the net market value is exempt and the excess is included in the property reserves if utilization requirements are met.

26.21.2 Nonexempt

Deeds of trust, mortgages and promissory notes shall be considered nonexempt property if:

• Not received through the sale of real property owned by the applicant or beneficiary AND can be sold or discounted.

• Is “other real property” and
  • Over the property limit, or
  • Within the property limit, but not meeting utilization requirements.

The interest portion of payments is unearned income. The principal portion is property, and may be spent down within any given month to retain property eligibility.

26.22 Home Equity Conversion (HEC) Plans

Home Equity Conversion (HEC) Plans allow homeowners age 65 and over to convert the equity in their homes to cash, allowing elderly homeowners to increase their available monthly income. These plans are used infrequently by Medi-Cal applicants.

Since these plans are loans requiring repayment, the proceeds are considered available property. Some HEC plans may provide that part of the purchase price of the home be used to purchase an annuity payable to the homeowner for life. These annuity payments shall be unearned income in the month of receipt.

As there are many variations of these plans, each plan should be examined on an individual basis. The most common HEC plans are:
1. Reverse Annuity Mortgage (RAM) allows a homeowner to borrow, through a formal mortgage contract, 60-80% of the appraised value of the home equity for a specified period of time. The homeowner receives funds periodically for the duration of the lending period. At the end of the lending period, the loan must be repaid.

2. Deferred Payment Loan (DPL) is similar to a RAM but differs in the following ways:
   - Rather than being used as supplemental monthly income, the proceeds from the DPL are used for some specific purpose, such as payment of property taxes, home repairs or personal expenses
   - The DPL is received from the lender in one lump sum rather than periodic payments.
   - The DPL is secured by placing a lien on the property
   - The amount of the loan may be recovered from the estate upon the homeowner's death.

3. Sale-Leaseback. This is an arrangement where an investor (buyer) purchases the home from an elderly person (seller) and as part of the sales agreement, leases the home back to the seller. The lease allows the seller to live in the home either for life or until a specified time. The buyer usually pays the seller a down payment and monthly installments on an interest-bearing promissory note.
   - The interest on the note is considered unearned income in the month of receipt. If the note can be sold, it is counted as a resource under Title 22, California Code of Regulations, Section 50441
   - The buyer is responsible for payment of real estate taxes, major maintenance costs and casualty insurance. The value of these in-kind items is not considered In-Kind Support and Maintenance to the seller who is paying rent.
   - The seller pays the buyer rent. If the payments on the note are greater than the rental fee, the difference minus the interest portion of the monthly payment is treated as cash on hand under Section 50451 and included in the property reserve (i.e., monthly note payment minus rent minus interest portion of monthly note payment equals cash on hand).

4. Time Sale. An elderly homeowner contracts to sell his/her home at death. In the meantime, he/she retains title and the right of continued residence in the home. In effect, the homeowner retains a life estate.
   - The buyer usually agrees to pay property insurance, property taxes, and certain maintenance and repair costs, plus a monthly cash amount to the homeowner during his/her lifetime.
   - These proceeds are considered property conversion whether paid in cash or in-kind.
Note:
HEC Plans are not considered available property UNTIL the fund is withdrawn AND retained for a full calendar month. If the client fails to report the receipt of HEC funds in a timely manner, a potential overpayment exists.

Additional information on how to treat HECs for Property and Income determination is contained in the Medi-Cal Eligibility Procedures Manual, Article 9 D-3.

26.22.1 Verification

Obtain documents which give a description of the item.

26.22.2 Value

Determine the value by following one of the procedures:

• Obtain documents from the lender which establishes the principal amount remaining, or

• Obtain an appraisal from a party qualified to appraise mortgages, notes, and annuities, or

• Make a telephone contact with a recognized broker who buys, sells or appraises such items.

Annuities may have a penalty for early withdrawal. Use only the amount that is available to the client, subtracting any penalties charged against the value.

26.23 Tax Refunds [50454]

26.23.1 State Refunds

State tax refunds shall be considered as follows:

• The portion of the State tax refund which is renter's credit payment shall be considered exempt property.

• The remaining portion of the State tax refund shall be considered nonexempt property.
Federal tax refunds shall be considered as follows:

The Earned Income Tax Credit (EITC) portion of the federal tax refund shall be considered exempt property in the month of receipt and for one month following the month of receipt.

Note:
EITC, whether received as an advance payment or as a tax refund, shall be considered exempt income in the month received.

Any remaining portion of the federal tax refund shall be considered property.

The following are acceptable verifications of tax refunds:

- Copy of the refund check
- Statement from IRS
- Copy of client's tax return.

Effective December 17, 2010, all Federal Income Tax credits and refunds are exempt as income and property for 12 calendar months from the date of receipt. The exclusion refers to any federal tax refund including, but not limited to, Income Tax Refund (ITR), Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Making Work Pay Credit (MWPC), or other tax refunds/credits. These provisions only apply to Federal income tax refunds and credits received between December 31, 2009 and December 31, 2012.

In addition, penalties cannot be imposed upon Long Term Care applicants for transfer of property (for less than fair market value) of all or part of a refund and/or credit received between December 31, 2009 and December 31, 2012.

Similarly, a refund or credit received between December 31, 2009 and December 31, 2012, and placed in a trust fund, may not be counted as available, and no transfer of asset penalties apply. Funds placed in a trust or disposed of after December 31, 2012, are subject to transfer penalties and counted as available under Medi-Cal Trust provisions.
26.242009 ARRA Making Work Pay Credit

The American Recovery and Reinvestment Act (ARRA) of 2009 allows a tax credit (Making Work Pay Credit) for the 2009 and 2010 tax years in an amount equal to the lesser of:

- 6.2% of the earned income, or
- $400 ($800 for joint returns).

All credits/refunds allowed under ARRA shall be exempt as property for the following two months for purposes of determining Medi-Cal eligibility. This will not apply to tax years beginning after December 31, 2010.

Applicants or beneficiaries who report the receipt of a tax credit/refund must be asked if all or part of their payment is from a “Making Work Pay Credit.” The client must provide verification from the Internal Revenue Service or tax documents to verify the amount of the credit/refund.

26.25 Loans [50483]

Loans may be made on the basis of a written agreement or, except as prohibited by state law, an oral agreement.

26.25.1 Exempt

Loans shall be exempt as property in the month in which they are any of the following:

- Exempt as income in Section 50533 (Student loans and grants).

Exempt student loans and grants remain exempt even if the time which they were intended to cover has passed. The client must produce evidence of the source of the funds and show that expenses during the above time period did not exceed the amount of the loans and grants.

- Treated as income in the month of receipt, because no repayment is required.
26.25.2 Nonexempt

Loans which require repayment shall be included in the property reserve beginning the month of receipt.

Exception:
Student loans and grants which must be repaid are exempt.

26.25.3 Verification

A statement from the borrower and the lender which documents:

- The amount of the loan.
- The conditions of the loan, e.g., timetable or plan for repayment.
- The acknowledgment by the borrower of their intent to repay and method of repayment, e.g., anticipated income or the pledge of collateral. No specific time is required.

26.26 Lump Sum Payments [50445, 50455, 50507]

26.26.1 Exempt

- The Social Security Protection Act of 2004 amended the Social Security Act as follows: Retroactive benefit payments from Title II (RSDI) and Title XVI (SSI/SSP) are not included in the property reserve for a period of nine (9) months following the month in which the payment is received. This applies to Pickle, Disabled Adult Child(ren), Disabled Widow(er)s, Medically Needy/Medically Indigent Programs and other programs following Medically Needy Property rules.

Exception:
For MN/MI programs only, effective October 1, 1990, retroactive Title XVI payments shall be exempt without a time limit and not considered income or property.

Note:
Any interest received from these exempt funds is considered as unearned income when determining the share of cost.
Example:
Client receives retroactive SSA benefits in January and deposits the amount in her savings account. She is now in excess of the property limit for one person. The amount of her deposit that is from the retro benefits will not be included in her property reserve for the months of February through October (inclusive).

Determine eligibility for November. Clients planning on keeping these funds in a bank account for some time should be advised not to co-mingle these funds with any existing funds. They may open another account specifically for the lump sum funds.

- Federal payments to Indians and Alaska Natives are exempt when the total nonexempt personal property plus the payment does not exceed $2,000 for each individual.
- *King v McMahon* payments—These payments, which are made by the SDSS to clients who have not received their decision within a timely manner (60 days) after completing a State Hearing, are exempt in the month of receipt. Beginning the month following the month of receipt, any portion retained is counted in the property reserve.
- *Ball v Swoap* payments—These payments are made by DHS to beneficiaries who have not received their state hearing decision in a timely manner (90 days). The payments are exempt as both income and property.
- Retroactive Court-ordered reimbursements.
- Retroactive Corrective Payments are exempt as property in the month of receipt and in the month following the month of receipt. Any amount remaining thereafter is included in the property reserve.

EXAMPLE: A retroactive CAPI Payment is issued in August. The lump sum retroactive corrective payment is exempt as property in August and September. Any amount remaining in October is included in the property reserve.

### 26.26.2 Nonexempt

Lump Sum Payments from the following are included in the property reserve effective the month of receipt:

- Annuities
- Veteran’s Payments
- Pensions
- Railroad Retirement
Property

- Unemployment Benefits
- Non-SSA Disability payments
- Non-SSA Retirement payments.

26.26.3 Exception

Any other source of income received in a lump sum payment is NOT considered property.

Note:
That portion of the lump sum payment that is the benefit amount for the current month is unearned income in the month of receipt.

26.26.4 Verification

- Copy of check
- Statement from source.

26.27 Life Insurance [50475]

The following rules apply to all life insurance EXCEPT for Endowment life Insurance Contracts.
[Refer to “ Endowment Life Insurance Contracts (ELIC),” page 26-85.]

26.27.1 Exempt

- Term insurance (with no CSV).
- Policies which have a CSV and the combined face value of all policies owned by the insured individual is $1,500 or less.

Note:
The $1,500 exemption applies to each member of the MFBU who owns a policy(ies).
26.27.2 Nonexempt

When the combined face value of all of the policies, including term insurance with CSV, for an insured individual exceeds $1,500, the net cash surrender value (CSV) of all policies shall be counted in the property reserve.

Example:
Mr. X has three life insurance policies:

<table>
<thead>
<tr>
<th>Face Value</th>
<th>CSV</th>
</tr>
</thead>
<tbody>
<tr>
<td>$700.00</td>
<td>$0</td>
</tr>
<tr>
<td>$500.00</td>
<td>$50.00</td>
</tr>
<tr>
<td>$500.00</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

Total $1,700.00 $100.00

Since the total face value exceeds $1,500, the $100 CSV must be included in the property reserve. The CSV of the nonexempt policies are counted, not the face values.

Reminder:
Dividends which have been accruing to the policy shall be included in the CSV. The client is responsible for keeping the CSV under the property limits. A loan may be made against the CSV to accomplish this. Verification of how the money was spent is required, if the CSV amount was over the property limit. Property spenddown rules apply. [Refer to “Treatment of Property,” page 45-1.]

26.27.3 Verification

The CSV nonexempt life insurance policies shall be verified by viewing either of the following:

- The value tables included in the policy, or
- Signed correspondence from the carrier indicating the current value.

26.27.4 Determination of Value

When using the cash value table to determine the CSV, the EW must be aware of the amount of the face value of insurance that the table is based on, full or partial value.
Example:
The cash value usually is given for each $1,000 of the face value of the policy. The CSV of a policy with a face value of $2,000 is two times the indicated chart value.

- Determine the age of the owner of the policy on the date of the policy issuance.
- Determine the years that the policy has been in force.
- Use the chart usually attached to the policy to compute the value per $1,000, or other stated amount.
- Multiply the value per $1,000, times the number of thousands in the face value of the policy.
- The result is the CSV of the policy.

26.27.5 Availability of CSV

- The CSV of the life insurance policy is considered unavailable once an applicant/beneficiary has taken the necessary steps to make the CSV available.
  - The client must provide verification that the necessary steps to liquidate the policy have been initiated.
  - He/she must continue to make a good faith effort to liquidate the policy, and provide additional verification if requested by the EW.
- The CSV will remain unavailable until it is actually received.
  - Once the client receives the money (usually the month following the month the request to liquidate it is initiated), it becomes available.
  - If the client is property eligible for at least one day in the month of receipt, he/she is eligible in that month.
  - The CSV can be considered unavailable in a retroactive month only if the client initiated steps to liquidate it during, or prior to, the retroactive month.
26.28 Burial Insurance [50476]

Burial insurance with no cash surrender value shall be exempt. Burial insurance with a cash surrender value shall be considered a revocable burial fund. [Refer to “Revocable Burial Funds,” page 26-49 for treatment of revocable burial funds.]

26.29 Burial Plots, Vaults, Crypts and Related Items [50477]

26.29.1 Exempt

A burial space and related items are exempt if they will be used by a member of the family. “Member of the family” as it applies to this section only includes the applicant/beneficiary and his/her:

- Spouse
- Adult or minor children (including adopted and stepchildren)
- Siblings
- Parents, including adoptive parents
- The spouses of any of the individuals listed above

Family members are not required to be living in the same household as the client in order for the burial space to be exempt.

The following items shall be exempted as a burial space and/or related items:

- Plots or gravesites
- Crypts
- Mausoleums
- Caskets
- Urns, niches or other repositories customarily and traditionally used for the deceased’s bodily remains.
- Vaults or liners
- Headstones
- Markers
- Plaques
Property

- Burial containers (for caskets)
- Arrangements for opening and closing of the gravesite
- Contracts for care and maintenance of the gravesite (endowment care)

26.29.2 Verification

Obtain copy of contract. If burial space and related items are being purchased by installment payments, the funds applied towards the value of these items, including the interest earned on burial space funds, is exempt.

26.29.3 Nonexempt

Burial plots which are not retained for use by a family member are treated as Other Real Property. Other nonexempt burial vaults, crypts, etc., shall have their market value included in the property reserve.

26.30 Burial Funds [50479]

26.30.1 Irrevocable Burial Funds

All of the following irrevocable burial funds, trusts or contracts for an individual shall be exempt, regardless of value:

Exempt

- Money or securities placed in an irrevocable trust for funeral, cremation, or interment expenses with the following trustees:
  - Any banking institution or trust company empowered by the State of California to act as trustee in the handling of trust funds.
  - A cemetery authority which has established an endowment care fund.
  - Not less than three persons, one of whom may be in the employ of a funeral director.
Property

- Money or securities placed in an irrevocable trust created by the deposit in an insured savings institution made by one person of his or her own money, in his or her own name as trustee, for a funeral director to provide payment for funeral services rendered by the funeral director upon the depositor's death.

- Life or burial insurance purchased specifically for funeral, cremation, or interment expense, which is placed in an irrevocable trust, or which has no loan or surrender value available to the recipient.

- Securities issued by a licensed cemetery authority which by their terms are convertible only into payment for funeral, cremation or interment expenses.

Note:
The irrevocable burial contract limit for SSI/SSP recipients (and “Pickle” eligibles) is $1800. [Refer to “Court Orders: Lynch v. Rank - Pickle Amendment,” page 68-1 for Pickle resource rules.]

Interest

Interest earned on or appreciation in value of an irrevocable burial fund shall be exempt if it is allowed to accumulate and become part of the separately identifiable burial fund.

Changing the Fund

The client may have a burial trust or contract changed from revocable to irrevocable, without penalty. There is no period of ineligibility.

26.30.2 Revocable Burial Funds

The first $1500 paid for a designated burial fund for funeral, cremation or interment expenses is exempt when the fund is revocable.

Exempt

An individual may have both an exempt irrevocable burial fund (any amount) and an additional $1500 in an exempt revocable burial fund.

Designated burial funds include burial trusts, prepaid burial contracts, burial insurance, annuities, or any separately identifiable assets which are clearly designated as set aside for the expenses connected with the individual's burial, cremation or other funeral arrangements.
All applicants/beneficiaries must be advised of this provision.

Designated burial funds must be separately identifiable funds that are clearly designated for burial expenses. This includes:

- Revocable burial contracts.
- Revocable burial trusts.
- Other revocable burial arrangements.
- Cash-on-hand can be designated as a burial fund provided it is not commingled with other nonburial-related funds.

Savings or checking accounts, stocks, bonds, certificates of deposit and other financial instruments with a definite cash value may be exempted if designated as a burial fund. However, other “non-liquid” assets, such as a car or real property, cannot be designated for burial expenses.

**Interest**

Interest earned on or appreciation in value of a revocable burial fund shall be exempt if it is allowed to accumulate and become part of the separately identifiable burial fund.

**Verification**

Verification must show proof that the funds have been designated for burial expenses, including:

- Verification of the owner and the value of the designated asset.
- Verification that the funds have been designated for burial purposes, which may be either of the following:
  - The designation is clearly indicated on the negotiable instrument (e.g., bank account), or
  - An affidavit (for example, for cash on hand or for other liquid assets when the asset is not clearly designated for burial expenses). An “Affidavit for Designated Burial Funds” (SC 1614) shall be used for this purpose.
Converting to New Rules

Property that was previously exempt as designated burial funds but does not meet the new criteria must be converted to an allowable form of property in order to continue to be exempted as a designated burial fund.

If an individual has designated burial funds which result in excess property under the new rules, the EW must inform the individual (at application or redetermination) that the property must be converted or separated in order to remain exempt. The client shall be allowed until the end of the month following the month of the notification to complete the conversion or separation of property.

Example:
When conducting the annual redetermination in October, the EW finds that an old car valued at $1400 was previously exempted as it would eventually be sold and used for burial expenses. An SC 1614 is on file, declaring the car as a “designated burial fund”. The EW then contacts the client on 10/15 to explain the available options as the car, when included with other nonexempt assets, now results in excess property. The client shall be allowed until the end of November to convert the car or other liquid assets into an exempt burial fund, or to otherwise spenddown the excess property. On 12/1 the car becomes nonexempt property.

26.30.3 Commingled Burial Funds

If burial funds are commingled with other nonpareil related assets, the exemption does not apply.

Not Allowed

Example:
A bank account contains $1200, $500 of which is designated for burial and $700 of which is used by the client for living expenses. The $500 cannot be exempted as a burial fund, unless it is moved to a separate account.

Individuals who were previously approved under the old rules shall be allowed a full calendar month following the month of notification to convert or separate their burial funds.
Note:
If eligibility was established prior to August 1, 1990 and the burial funds were exempted prior to August 1, 1990 but they do not meet the new exemption criteria, contact the Medi-Cal Program Coordinator if there are circumstances beyond the client’s control that make separation or conversion of funds impossible.

Allowable

The $1500 designated burial fund may be commingled with other burial-related assets.

Example:
An individual has a single revocable burial contract for $3500, which includes $2000 in burial space items that are listed separately and the value of each item is stated in the contract.

- Apply the burial space exemption to the itemized burial space items.
- Apply the $1500 designated burial fund exemption to the remainder of the contract.

26.30.4 Use for Another Purpose

At any time the exempt assets in a designated burial fund, irrevocable burial trust or prepaid burial contract are used for another purpose, these assets will no longer be considered exempt:

- The amount withdrawn from the account and used toward a purpose other than burial arrangements is considered nonexempt property, unless the funds were used to purchase property which is otherwise exempt.
- Any amount which is retained for burial expenses shall remain exempt.
- If the amount withdrawn/converted when added to the existing property reserve makes the applicant/beneficiary ineligible, a potential overpayment may result and a period of ineligibility would be calculated if the individual is in LTC.
26.30.5 Designating the CSV of Life Insurance

The cash surrender value (CSV) of a life insurance policy may not be designated as a burial fund since the CSV is only available during the lifetime of the individual, and therefore cannot be specifically for the individual's burial. However, the life insurance policy itself may be designated as a revocable burial fund:

- The combined face values of the life insurance policies which are being designated as “burial funds” must be equal to or less than $1500.
- Then, the CSV of each policy must be determined and applied toward the $1500 revocable burial trust limit, as the CSV is the net market value of the policy.

Refer to the chart below to determine when and how to count the value of life insurance when the client chooses to designate the policy as a revocable burial fund:

<table>
<thead>
<tr>
<th>If...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>The life insurance policy has a face value</td>
<td>It cannot be designated as a burial fund, regardless of its cash surrender value (CSV).</td>
</tr>
<tr>
<td>over $1500,</td>
<td></td>
</tr>
<tr>
<td>The life insurance policy has a face value</td>
<td>Determine the CSV. Only the amount of CSV in excess of $1500 (if any) must be counted as net nonexempt property and included in the property reserve.</td>
</tr>
<tr>
<td>of $1500 or less,</td>
<td></td>
</tr>
<tr>
<td>The client has two life insurance policies,</td>
<td>Determine the CSV of each. Only the amount of CSV in excess of $1500 must be counted as net nonexempt property and included in the property reserve.</td>
</tr>
<tr>
<td>one with a face value of $1000 and the other</td>
<td></td>
</tr>
<tr>
<td>with a face value of $500,</td>
<td></td>
</tr>
</tbody>
</table>

An “Affidavit for Designated Burial Funds” (SC 1614) is required.

The “Affidavit for Designated Burial Funds” (SC 1614) is to be used by an applicant who has funds specifically designated for burial use.

26.31 Life Estate Interest (Personal Property) [50442]

Interest in personal property life estate is treated the same as any other personal property.
26.31.1 Nonexempt/Exempt

The value must be included in the personal property reserves if the property is not considered exempt.

26.31.2 Verification

Obtain the legal document of life estate.

26.31.3 Determination of Value

Determine the value of interest in personal property in the same manner as any other personal property.

26.32 Business Property [50485]

26.32.1 Exempt

Any property, regardless of value, that is used in a business (e.g., self-employment) is considered business property and is exempt. This includes, but is not limited to:

- Merchandise inventory (finished goods/materials)
- Business licenses/permits
- Tools and equipment (e.g., computers, fax machines)
- Business bank accounts (e.g., checking, savings, money market)
- Real estate (e.g., warehouse, offices)
- Vehicles (if used other than for commuting to and from work)
- Cash on hand (necessary for the operation of the business).

Property Intended for Self-Employment

A property is exempt if it is necessary:

- For training which will lead to self-employment, or
- In preparation for future self-employment.
Example:
In May 2001, Mr. A bought photography items (e.g., computers, printers, scanners, video camcorders, digital/photographic cameras, etc.) with the intent of establishing a photography business of his own. He applied for a business license. He also signed up for photography and computer classes in preparation for his business. The business was expected to be operational in November 2001. In August 2001, he developed health problems which made him unable to officially open his business. In January 2002, he applied for Medi-Cal. He has fully recovered and is ready to start his business in February 2002. All the properties he purchased which are intended for future self-employment business are exempt.

26.32.2 Nonexempt

Stocks, bonds and other similar items of personal property, including stock in the business, is not considered necessary for the business.

26.32.3 Rules for Business Property

The following rules apply to business property:

• It is not countable property regardless of how ownership was acquired.

• There is no utilization requirement in order for the business property to be exempt. This means that business property does not have to earn an annual income of at least 6% of its net market value.

• Personal involvement in the day-to-day operation of a business is not necessary for the property to be exempt as business property.

Example: Mrs. B established and personally managed her laundromat business for several months; then she had a stroke and could no longer perform her daily business routine. Even though she is no longer personally involved in the day-to-day operation of her business, the business property is still not a countable property.
26.32.4 Period of Exemption

Business property is exempt as follows:

<table>
<thead>
<tr>
<th>Maximum Period of Exemption</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indefinitely</td>
<td>As long as the property is currently used for business.</td>
</tr>
<tr>
<td>One year</td>
<td>When the business is not in operation and the client can provide evidence that BOTH of the following conditions are met:</td>
</tr>
<tr>
<td></td>
<td>• The business is not in operation due to reasons beyond the owner’s control, and</td>
</tr>
<tr>
<td></td>
<td>• The business will be resumed within one year from the date the business operation stopped.</td>
</tr>
<tr>
<td>Two years</td>
<td>When the business operation stopped due to the client’s illness or disability and the client can provide verification of:</td>
</tr>
<tr>
<td></td>
<td>• The illness or disability, or</td>
</tr>
<tr>
<td></td>
<td>• A plan to resume operation within two years from the date the business operation stopped.</td>
</tr>
</tbody>
</table>

26.32.5 Verifications

In order for any property to be exempt as business property, the client must provide verification that a:

• Business or self-employment does exist, or
• Property is intended to be used for self-employment.

The following Internal Revenue Service (IRS) tax forms are acceptable verifications:

<table>
<thead>
<tr>
<th>IRS Form</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule C</td>
<td>Profit or Loss from Business or Profession</td>
</tr>
<tr>
<td>Schedule SE</td>
<td>Computation of Social Security for Self-Employment</td>
</tr>
<tr>
<td>Schedule F</td>
<td>Farm Income and Expenses</td>
</tr>
<tr>
<td>Form 4562</td>
<td>Depreciation and Amortization</td>
</tr>
<tr>
<td>Form 1065</td>
<td>U.S. Partnership Return of Income</td>
</tr>
</tbody>
</table>
If the business tax returns are not available, the client may provide other documentation that is sufficient to verify the existence of a business, or a plan of intended business. This includes but is not limited to the following:

- Business receipts, checks, invoices, sales slips or bank statements
- Business flyers
- Commercial Advertisements (e.g., newspaper, yellow pages).

26.33 Jewelry [50467]

26.33.1 Exempt

- Wedding or engagement rings.
- Heirlooms. [Refer to “Heirloom [50043],” page 1-9 for a definition of heirloom.]
- Any other item of jewelry valued at less than $100 NMV.
- All jewelry belonging to an institutionalized spouse and community spouse is exempt, regardless of its value, when determining the Community Spouse Resource Allowance (CSRA).

Note:
This provision does not apply when an institutionalized person has no community spouse, or to persons who are not institutionalized.

26.33.2 Nonexempt

Jewelry which has a NMV of over $100.

26.33.3 Determination of Value

- Use the value as determined by one of the following:
  - One written appraisal of current market value from:
    - A jeweler, or
    - An insurance adjustor, or
    - A personal property appraiser.
  - Proof of purchase price in the form of a sales slip which shall establish the market value.
26.34 Veterans' Educational Assistance Plan (VEAP)

Benefits received under VEAP include the veteran’s voluntary contribution while on active military duty and matching funds provided by the VA. The VA contributes $2 for every $1 contributed by the veteran. The portion of VEAP contributed by the VA shall be treated as unearned income. The veteran’s contribution is treated as follows:

26.34.1 Exempt

The veteran’s contribution, or one-third of the benefit amount, when the veteran is pursuing an education.

26.34.2 Nonexempt

When the veteran withdraws his/her contribution, these funds are no longer earmarked specifically for educational purposes and shall be counted as property.

26.34.3 Verification

Award letter and/or any other written statement from the VA, including a CA 5.

26.35 Holocaust Restitution Payments

These include all restitution payments received by an eligible individual who was persecuted on the basis of race, religion, physical or mental disability, or sexual orientation by Nazi Germany, any other Axis regime, or any other Nazi-controlled or Nazi-allied country. Payments may be made periodically or in a lump sum.
26.35.1 Exempt

- Exemption applies to interest which is payable as part of any payment or distribution or a restitution payment.

- Federal provision also permits this property exemption to include the individual’s heirs and the individual’s estate. (This exemption applies to the individual that actually receives the payment.)

- Exemption continues when the holocaust restitution payments have been converted to another form of resource or commingled with other funds.

- Exempt as a resource in the month following receipt, as long as these funds are kept separately identifiable.

Note:
If these exempt funds are commingled with nonexempt property, it is the beneficiary’s responsibility to identify and keep track of the exempt portion. It is presumed that withdrawals from commingled funds were made from the nonexempt funds first.

26.35.2 Nonexempt

N/A.

26.35.3 Verification

Verification of payment can include a grant award letter, a copy of the check, or other documentation sufficient to verify the receipt of the holocaust restitution payment.

26.36 Japanese-American and Aleutian Restitution/Reparation/Redress Payments

Restitution payments may be made to Japanese-Americans and Aleuts (or if deceased, to their survivors) who were interned or relocated during World War II.
26.36.1 Exempt

- These payments are exempt as income in the month of receipt and exempt as property beginning the month following receipt, as long as these funds are kept separately identifiable.

**Note:**
If these exempt funds are commingled with nonexempt property, it is the beneficiary’s responsibility to identify and keep track of the exempt portion.

**Important:**

The transfer of exempt property does not affect Medi-Cal eligibility.

- Property purchased with reparation payments is NOT included in the property reserve. The exemption carries over to property which is acquired with the funds.

- Redress/reparation payments remaining in the beneficiary's name at the time of death are NOT subject to estate recovery. Individuals having questions should be referred to the Probate/Estate Recovery Section of DHS. [Refer to “Inquiries and Resources,” page 3-1 for phone number.]

26.36.2 Nonexempt

Interest earned on reparation payments is counted as unearned income in the month the interest is posted.

26.36.3 Verification

- The applicant/recipient must provide copies of grant award letters, approved grant forms or other documents.

- Persons without documentation can obtain it from:
  
  Office of Redress Administration  
  U.S. Department of Justice  
  P.O. Box 66260  
  Washington, D.C. 20035-6260

- Requests for verification must include the individuals name, date of birth, and SSN.
Medi-Cal Handbook

- In the case of a survivor receiving benefits, the name, birthdate and SSN of the deceased person must also be included.

26.37 Cash Payments for Medical and Social Services [50455.5]

26.37.1 Definitions

For purposes of this exemption, the following definitions apply:

**Medical Service**

Services which are directed toward diagnostic, prevention, therapeutic, or palliative treatment of a medical condition and are performed, directed or supervised by a State licensed health professional.

**Social Service**

A service (other than medical) intended to assist a handicapped or socially disadvantaged person to function in society at a level comparable to a person without such handicap or disadvantage.

26.37.2 Exempt

- Cash payments for a medical or social service paid by governmental medical or social services programs are exempt for one calendar month following the month of receipt. (e.g., California Children's Services, programs under Lanterman Development Disabilities Services Act of 1976, Vocational Rehabilitation programs, etc.)

**Note:**

- Payment from a governmental program which is disbursed by a nongovernmental agency is considered to be a payment from a governmental program.

- Cash from a nongovernmental medical or social services organization is exempt for one calendar month following the month of receipt when:
• It is to pay for a medical/social service already received by the individual and approved by the organization; OR

• The payment is restricted for the future purchase of a medical/social service.

• Examples of nongovernmental medical or social service organizations include the American Red Cross, Easter Seals, Shriners, private medical and liability insurance, etc.

26.37.3 Nonexempt

• Cash from an agency or insurance policy which pays a flat rate benefit to the recipient without regard to the actual expenses. (e.g., per diem employment, hospitalization or disability insurance, cancer policies.)

• Incentive payments.

• Payments for sheltered workshop or work activities center.

• Cash payments received as reimbursements for medical/social services which the beneficiary has already paid.

  • If the payment is retained in the following month, determine if it results in excess property.

  • If there is excess property, determine if it is a payment for a specific medical or social service or a reimbursement.

• Any amounts of the payment which are not specifically for a medical/social services (e.g., a Workers Compensation payment which includes regular monthly income and funds to pay for a medical exam and transportation).

26.37.4 Verification

The following rules apply:

• Verify the source of the payment.

• If the fundamental services of the agency or program are not clear, obtain a statement to verify that the purpose is to provide medical or social service assistance.
• Verify the purpose of the payment, and that the provider requires follow up to verify that the funds were spent for the stated purpose.

• If unclear, verify which portion of the cash payment is specifically for a medical/social service.

26.38 Pension Funds (i.e., IRAs, Keogh) [50402, 50458]

26.38.1 Definition

Pension funds

Pension fund are held in:

• Individual Retirement Accounts (IRAs).

• Funds that are administered by an employer or union, including Deferred Compensation Plans and Thrift Plans; for providing income when employment ends.

• Keogh plans, for self-employed persons.

Work-related pension funds may be annuities but are NOT subject to the annuity guidelines mentioned in the Medi-Cal Handbook Chapter 47. For Medi-Cal eligibility determination, when clients receive periodic payments, the fund is considered properly annuitized as long as the distribution includes both principal and interest.

Periodic payments received by the client is always considered available income.

Good Faith/Bona Fide Effort

A good faith/bona fide effort exists when the Medi-Cal applicant/recipient is taking reasonable steps to pursue or receive payments from the work-related funds.

A verification of a good faith bona fide effort may include, but is not limited to:

• Letters sent by clients to their employer or fund manager, requesting release of the funds, or
• Verbal verification by the employer or fund manager. The EW must have a release of information from the client to obtain this.

26.38.2 Exempt

Retirement funds are sometimes referred to as exempt and other times referred to as unavailable. If it is either exempt or unavailable, it is NOT counted in the property reserve.

Work-related pension funds are exempt/unavailable in the following situations:

• It is exempt if funds are held in the name of a:
  • Parent, step-parent, spouse, community spouse, or child who are otherwise eligible for Medi-Cal but choose not to apply nor receive Medi-Cal.
  • Parent, step-parent, spouse, or community spouse who are ineligible for Medi-Cal (e.g., no linkage).

They are included in the Maintenance Need Level, and property limit. Their NONEXEMPT property/income are counted toward the property reserve.

• It is unavailable if funds are held in the name of the Medi-Cal applicant/recipient AND meets any of the following conditions. The Medi-Cal applicant/recipient:
  • Is receiving periodic payments, or systematic withdrawals from each fund, or
  • Is receiving minimum mandatory distributions from his/her total fund at age 70 and one half or older, or
  • Has requested release of the funds either in the form of periodic payments or lump sum. The balance of the fund is considered unavailable property from the first of the month that a request for release of funds is made, until the funds are received, or a good faith/bona fide effort to receive payments continues and is verified, or
  • Was denied on his/her petition for the release of the funds, or
  • Must terminate employment to access the funds, or
• Has no sole authority to access or request the release of the funds (i.e., funds are jointly held with a third party and/or an employer and that party refuses to grant access to the funds).

Only the balance of the fund may be considered unavailable if any of the above criteria is met.

### 26.38.3 Nonexempt

The work-related pension funds are considered nonexempt in the following situations:

• Pension funds continue to be nonexempt for purposes of determining if an interspousal agreement was equally divided.

• When an individual received a lump sum payment of both the principal and interest of the pension fund, it is considered as converted property.

• When an individual chooses to defer payments (allowed under IRS Code) from his/her work-related pension plans, IRA, Keogh or other retirement funds, the cash surrender value is considered available and must be included in the property reserve.

However, if the individual chooses NOT to receive Medi-Cal, the value of the pension fund becomes EXEMPT and NOT counted in the property reserve.

**Example:** A family applies for AFDC-MN. The mother has linkage (absent parent) and she wishes to receive Medi-Cal. She has established an IRA, with contributions totalling $4,200; however, she has not net reached retirement age. The pension fund is considered available. The current value, minus the penalties for early withdrawal shall be included in the property reserve. She could, however, refuse Medi-Cal for herself and apply only for her children. The pension fund, in her name only, is then exempt. She would still be included in the MFBU, and her other resources and income are used to determine eligibility for her children.

### 26.38.4 Verification

Verification must be obtained in the following situations:

• Initial Medi-Cal application

• To establish good faith bona/fide effort in requesting release of the funds
• Petition for release of funds was denied. The client does NOT have to repeat the request until the client reaches age 55 or terminates employment. The funds are considered unavailable and are not counted in the property reserve.

• The client starts receiving periodic payments. The following chart identifies the verification requirement of periodic payments for the following age group:

<table>
<thead>
<tr>
<th>Under Age 70 and one-half</th>
<th>Age 70 and one-half or Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>The EW MUST obtain verification from the financial broker or fund manager that the:</td>
<td>Verification of early distribution based upon IRS life expectancy table, or principal/interest combination is NOT required. The amount reported by the client is deemed to meet the minimum mandatory distribution requirement.</td>
</tr>
<tr>
<td>• Distribution meets the requirements for early distribution based upon Internal Revenue Service (IRS) life expectancy tables, OR</td>
<td></td>
</tr>
<tr>
<td>• Periodic payments from each fund include principal and interest.</td>
<td></td>
</tr>
</tbody>
</table>

---

### 26.39 Excess Property Due to SSI Overpayments

Many Medi-Cal applicants (mostly those residing in nursing homes) have difficulty getting SSA to stop their SSI/SSP payments for which they are no longer eligible. These individuals feel obligated to keep the money in order to repay SSA.

• Excess resources due to the fact that SSA has not yet terminated SSI/SSP monthly payments shall be considered unavailable property if:

  • The applicant verifies that SSA has been notified that he/she is now in a nursing facility, OR

  • The applicant has a notice which states that he/she is no longer eligible for SSI.

• The amount of the SSI overpayment is calculated by multiplying the monthly award:

  • By the number of months that the LTC person has been institutionalized, OR

  • From the date of ineligibility stated on the SSI notice of action.
26.40 *Miller v Woods* (IHSS Payments)

Retroactive IHSS payments made to a spouse, or to a housemate who lived with the IHSS recipient and who provided protective supervision to him/her during the retroactive period, shall be:

- Exempt as income the month of receipt.
- Exempt as property for the month following the month of receipt.

26.41 Agent Orange Payments

26.41.1 History

These are payments made to veterans who have illnesses resulting from their exposure to Agent Orange. Agent Orange payments originate from a fund created by the manufacturers which is administered by the Agent Orange Veteran Payment Program. The program is not part of the Veterans Administration or the Social Security Administration.

- Payments to veterans are annual or semi-annual for six years.
- Survivors receive a single payment.

26.41.2 Exempt

Effective August 1, 1990, these payments are exempt as income in the month of receipt and exempt as a resource in the month(s) following receipt, as long as these funds are kept separately identifiable.

*Note:*

If these exempt funds are commingled with nonexempt property, it is the beneficiary's responsibility to identify and keep track of the exempt portion.
26.41.3 Nonexempt

- Interest earned on Agent Orange payments is counted as unearned income in the month received.

- Property purchased with reparation payments shall be included in the property reserve unless otherwise exempt.

26.41.4 Verification

- The applicant/recipient must provide copies of an award letter or other documentation.

- EWs should assist persons without documentation by obtaining a release and requesting verification from the:

  Agent Orange Payment Program  
P.O. Box 110  
Hartford, CT 06101  
1-800-225-4712

26.42 Disaster Assistance

Effective December 1, 1988, disaster assistance funds from federal state, or local government agencies, or disaster assistance organizations, are exempt:

- As income in the month of receipt and
- As a resource indefinitely in the month(s) following receipt.

Any interest earned on these funds is also exempt income and resource. If the exempt funds have been commingled with nonexempt funds, then the interest accrued on the accounts must be prorated to determine which portion of it is exempt as disaster assistance.
26.43 Replacement of Exempt Property

Cash payments (including funds received for the purchase of temporary housing) or in-kind property replacements received to repair or replace exempt property that is lost, damaged, or stolen is considered exempt property in the month of receipt and for nine months from the month of receipt.

• The client is entitled to the nine-month exclusion period, regardless of what he/she intends to do with the funds.

• Any of the cash that is not used to repair or replace exempt property will be countable property beginning with the tenth month.

• Interest earned from these exempt payments shall be exempt as income and as a resource during the period in which these funds themselves are excluded resources.

26.43.1 Good Cause

Good cause may be granted to extend the initial nine-month period for a second nine-month period.

• Good cause exists when circumstances beyond a client’s control prevent the repair or replacement of the exempt property.

• To qualify for an extension of the original nine-month period, the client must intend to use the funds for their designated purpose.

<table>
<thead>
<tr>
<th>IF the client is...</th>
<th>THEN the EW shall...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granted good cause,</td>
<td>Extend the exclusion period up to an additional nine months, after discussing with the client how much additional time is needed and why. Count any unused cash in the property reserves in the month following the month in which the extension period ends.</td>
</tr>
<tr>
<td>Not granted good cause,</td>
<td>Include the unspent payments in the property reserve, beginning with the tenth month from the month of receipt.</td>
</tr>
</tbody>
</table>
26.43.2 Verification

Obtain evidence which shows the source, value, dates and intended purpose of the item or cash received. If client cannot provide the information required, the EW may obtain the information from the payor. Collateral information received through telephone contact is acceptable verification. A signed “Release of Information” must be obtained prior to the telephone call. Document carefully.

26.44 Payments to Crime Victims

Payments made under the Victims Compensation Program from ANY state shall be considered exempt personal property in the month of receipt and for the nine-month period thereafter.

26.45 Prop 103 Refunds

Refunds of insurance premiums made under Proposition 103 shall be considered available property in the month received. Proposition 103 is the California initiative enacted to reduce insurance premiums for insured persons, providing potential refunds to those who are determined to have paid too much for insurance coverage.

Note:
Refunds from Proposition 103 will not be considered income as these premium refunds were originally paid by clients from their income or property, and it would be incorrect to count as income twice.

26.46 Senior Citizens Rent Assistance

Rebates issued according the Senior Citizen's Property Tax Assistance Law to a renter who is 62 or older, blind or disabled are considered property beginning the first of the month following the month of receipt.
Note:
These rent rebates are considered exempt income in the month received.

26.47 Filipino Veterans Equity Compensation Fund

Division A, Title X, Section 1002 of the American Recovery and Reinvestment Act (ARRA) of 2009 provides a one-time only payment from the Filipino Veterans Equity Compensation Fund in the amount of:

- $9,000 for eligible persons who are not U.S. citizens, or
- $15,000 for eligible persons who are U.S. citizens.

These payments are exempt as property as long as they are separately identifiable. If these funds are co-mingled with other monies, it is the client’s responsibility to maintain records or other means of distinguishing the payment. Any interest earned on these funds is considered unearned income in the month of receipt.

If the client is unable to provide verification (award letter, claim form, etc.) advise the client or their representative to contact the Department of Veterans Affairs at (800) 827-1000 to obtain written verification.

26.48 Austrian Social Insurance Payments

26.48.1 Description

Payments made according to the Austrian General Social Insurance Act (GSIA), paragraphs 500-506, are exempt. Paragraphs 500-506 authorize payments to persons who suffered a loss resulting from imprisonment, flight from Austria, or other reasons related to political, religious or ethnic persecution, during the period from March 1933 through May 1945.

Note:
Austrian social insurance payments received for other reasons are not exempt.
26.48.2 Verification

To exempt an Austrian GSIA payment, the client must provide:

- An award letter from an Austrian pension insurance agency which includes the following or equivalent language, “the regulations which give preferential treatment for persons who suffered because of political or religious reasons or reasons of origin were applied (Section 500FF ASVG)”, or

- If the client is unable to provide an award letter with the above language, obtain any other verification (corroborating statements from bankers, family members, guardians, conservators, etc.) which states that the client was imprisoned or unemployed in, or forced to flee from Austria during the period 1933-1945 because of political or religious reasons, and that the Austrian check represents compensation according to Section 500FF ASVG of the GSIA.

Note:
Austrian social insurance payments may also be exempt as income. [Refer to “Exempt Income,” page 54-1 for additional information.]

26.49 Relocation Assistance Payments

26.49.1 Description

Relocation assistance payments are provided to persons displaced from their homes due to the acquisition of real property by federal, state or local projects.

26.49.2 Exempt

Federal, state and local government relocation assistance payments are treated as:

- Exempt property in the month of receipt.
- Exempt property beyond the month of receipt as long as they are kept identifiable, but not necessarily separate.
Note:
It is the applicant's/beneficiary's responsibility to maintain records or other means of distinguishing the relocation assistance payments, if these funds have been commingled with other funds.

26.49.3 Treatment of Interest

Interest earned on unspent federal, state and local government relocation assistance payments is NOT exempt.

Treat interest payments as unearned income. [Refer to “Nonexempt Unearned Income [50507],” page 57-1 (Section 21-1, page 4).]

26.49.4 Effective Date

Effective May 1991, all state and local government relocation assistance payments received shall be treated as exempt property.

Effective January 2, 1971, all federal government relocation assistance payments received shall be treated as exempt property.

26.50 Specialized Adaptive Equipment

All specialized adaptive equipment, including wheelchairs and other devices, required for use by a Medi-Cal applicant or recipient are exempt property and are NOT included in the property reserve.

Specialized adaptive equipment is exempt as:

• A household item if used to equip a home, or
• A personal effect.

[Refer to “Other Items,” page 26-80 for a list of exempt personal property items.]
26.50.1 Specially Equipped Motor Vehicle

When determining the value of a motor vehicle that is specially equipped for a disabled person, the special equipment is not considered to increase the value of the vehicle. [Refer to “Motor Vehicles, Boats, Campers, Trailers and Mobile Homes [Procedures 9B, 50461, 50463],” page 26-30 for additional information.]

26.51 Susan Walker v. Bayer Corporation Payments

26.51.1 Description

Susan Walker v. Bayer Corporation payments are a result of a class action lawsuit and are paid to persons who received contaminated blood products in the process of medical treatments.

26.51.2 Exempt

Payments made from any fund established pursuant to the settlement in the case of Susan Walker v. Bayer Corporation are:

- Exempt as property.
- Exempt as income.

Note:

Interest resulting from these funds is nonexempt unearned income. [Refer to “Susan Walker v. Bayer Corporation Payments,” page 54-15 for additional income information.]
26.52 Quilling v. Belshe Payments

26.52.1 Description

*Quilling v. Belshe* payments are a result of a class action lawsuit and are paid to persons who incurred out-of-pocket medical costs for the purchase of methadone maintenance treatment services during the period from July 1, 1993 - June 30, 1994, and for a few individuals during the period from July 1, 1992 - June 30, 1994. *Quilling v. Belshe* payments are reimbursements and are treated as property.

26.52.2 Exempt

Per the court order, *Quilling v. Belshe* payments are:

- Exempt for four calendar months from the date of receipt.
- Nonexempt beginning with the fifth month after receipt. Include only the portion remaining, if any, in the property reserve.

26.52.3 Verification

The EW must verify the amount and date of issuance. The following can be accepted as verification:

- Documentation provided by the customer which sufficiently establishes that a payment is the result of a claim filed under *Quilling v. Belshe* (e.g. award letter, check stub).
- EW collateral contact with the Department of Alcohol and Drug Programs at (916) 323-0447.
- [Refer to “Quilling v. Belshe Payments,” page 54-15 for income information.]
26.53 Restricted Accounts for CalWORKs or Former CalWORKs Recipients

26.53.1 Background

Pursuant to Section 404(h)(4) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), CalWORKs recipients are allowed to retain cash reserves totaling up to a maximum of $5,000 in one or more restricted accounts. These funds:

- Are in addition to the $2,000 ($3,000) CalWORKs property limit.
- Must NOT be commingled with other funds.
- Must be maintained at a financial institution (e.g. bank, credit union). Any type of account (e.g. checking, savings, CD) may be used.
- Must be declared as a restricted account.

26.53.2 Description

Once a restricted account is established by a CalWORKs recipient, it continues to be exempt for Medi-Cal purposes when:

- There is at least one CalWORKs Assistance Unit (AU) member who would be in the Medi-Cal MFBU if he/she were not receiving CalWORKs, and
- The account is maintained in accordance with the CalWORKs rules.

[Refer to CalWORKs Handbook, “Rule [EAS 42-213.23],” page 17-1]

26.53.3 Example

A CalWORKs parent is discontinued from CalWORKs due to time limitations and is set up on a Medi-Cal Only case. While on CalWORKs, he/she established a restricted account. Since his/her child(ren) remain eligible for CalWORKs, the restricted account is exempt when determining Medi-Cal eligibility for the parent as long as the account is maintained in accordance with the CalWORKs rules. It remains exempt until all children are ineligible for CalWORKs and the CalWORKs case is closed.
26.53.4 Interest Payments

Interest earned on a CalWORKs restricted account is treated as follows:

<table>
<thead>
<tr>
<th>If the Interest Is...</th>
<th>Then the...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposited directly into the restricted account by the financial institution,</td>
<td>The interest is exempt as income.</td>
</tr>
<tr>
<td>NOT deposited directly into the restricted account by the financial institution,</td>
<td>Interest is considered a nonqualifying withdrawal and treated as income in the month of receipt.</td>
</tr>
<tr>
<td>Withdrawn from the restricted account because the account balance exceeds $5,000,</td>
<td>Interest accrued in the month of withdrawal is treated as income.</td>
</tr>
<tr>
<td></td>
<td>Interest accrued in months prior to the month of withdrawal is treated as property.</td>
</tr>
<tr>
<td>NOT withdrawn, and the restricted account balance exceeds $5,000</td>
<td>Amount in excess of $5,000 is treated as property.</td>
</tr>
<tr>
<td></td>
<td>EXCEPTION: Interest payments are treated as income in the month of receipt.</td>
</tr>
</tbody>
</table>

26.54 California Partnership-approved LTC Insurance Policy or Certificate

California Partnership-approved LTC policies are not counted as property. [Refer to: "LTC Insurance Exemption," page 11-39]

Note:
Benefit payments issued under the LTC insurance policy equal the amount of assets that must be excluded in property determination.
Payments

These are compensation payments made in accordance with the National Defense Authorization Act of 1997 to persons captured and interned by North Vietnam.

26.55.1 Exempt

These compensation payments are exempt as income in the month of receipt and exempt as property beginning with the month following receipt, as long as these funds are kept separately identifiable.

26.55.2 Nonexempt

Interest earned from the compensation payments is counted as unearned income in the month the interest is posted.

26.55.3 Verification

The compensation payments may be made in the form of a check from “The Lost Army Commando Trust Fund” and the recipient should also have a letter from the Office of the Assistant Secretary of Defense that identifies the payment as having been made in accordance with the National Defense Act of 1997.

26.56 Ricky Ray Hemophilia Relief Fund Act Payments

This act provides for compassionate payments made to individuals with blood-clotting disorders such as: hemophilia and those who contracted the human immunodeficiency virus due to contaminated blood products in the process of medical treatment.
26.56.1 Exempt

The fund payments are exempt as income in the month of receipt and exempt as property beginning with the month following receipt, indefinitely, as long as these funds are kept separately identifiable.

26.56.2 Nonexempt

Interest earned from these payments is counted as unearned income in the month the interest is posted.

26.56.3 Verification

Verification is required prior to exemption.

26.57 Gifts to Children With Life-Threatening Conditions

These gifts may be in cash or in kind given by a tax-exempt organization to a child under 18 who has a life-threatening condition.

26.57.1 Exempt

Exempt any amount up to $2,000 in a calendar year as property beginning with the month following receipt, as long as these funds are kept separately identifiable.

26.57.2 Nonexempt

Interest earned from these gifts is counted as unearned income in the month the interest is posted.
26.57.3 Verification

To verify the life-threatening condition, obtain a written declaration from the adult(s) legally responsible for the child that states that the child has a life-threatening condition and that briefly describes the general nature of the condition. If the verification is questionable, the EW may require a verbal or written statement from a physician.

To verify if the organization making the gift meets the requirements of a tax-exempt organization, the EW must obtain a copy of the organization’s IRS 501(c) exemption certification.

26.58 Other Items

The following list of personal property items shall be considered exempt property:

- Household appliances and furnishings.
- Musical instruments.
- Livestock and poultry primarily for personal use.
- Recreational items (sports equipment, camping gear, etc.)

Note:

Recreational vehicles (boats, campers, trailers) are not exempt.

- Personal clothing and effects.
- Heirlooms. [Refer to “Definitions,” page 1-1 for a definition of heirlooms.]

26.59 Radiation Exposure Compensation Payments

The Radiation Exposure Compensation Act of 1990 provides payments to some individuals who were exposed to radiation during nuclear testing in Nevada during the 1950s and a brief period in 1962.

In addition, the Act covers some individuals employed in uranium mines during the period of January 1, 1947, to December 31, 1971.
26.59.1 Exempt

These payments are treated as exempt lump-sum income in the month of receipt and exempt as property beginning the month following receipt, indefinitely, as long as these funds are kept separately identifiable.

26.59.2 Nonexempt

Interest income earned (as a result of keeping the funds in a bank account) from these payments is counted as unearned income in the month the interest is posted.

Reminder:
Property purchased with these payments may or may not be exempt. [Refer to Conversion of Property, Section 1.1.25 and 45.13.]

26.60 Compensation for Participating in Clinical Trials

Public Law 111-255, signed October 5, 2010 provides for an exclusion under the Supplemental Security Income program and the Medicaid program for compensation provided to individuals who participate in clinical trials for rare diseases or conditions.

The first $2,000 per year of compensation received by the client and/or his/her spouse for participating in this type of clinical trials must not be counted as income and property.

Note:
Any compensation over $2,000 per year should be treated as unearned income. Interest income earned (as a result of keeping the funds in a bank account) from these payments is counted as unearned income in the month the interest is posted.

The trial must meet ALL three criteria in order for the exclusion to apply:

• It must be reviewed and approved by an Institutional Review Board (IRB).
• It must involve research and testing of medical treatments.
• It must target a rare disease or condition.
26.60.1 Verification

The Informed Consent Form

The informed consent form is primary evidence and provides most of the information needed to determine whether the income exclusion applies. The informed consent form must be requested from the clinical trial participant. If the participant does not have the informed consent form, instruct him or her to obtain a copy from the clinical trial administrator.

Note:

Some clinical trial participants may submit an official letter from the administrator of the clinical trial which provides all the relevant information of the informed consent in a summarized format. This letter can be used in lieu of the informed consent form.

Department of Human and Health Services (HHS) regulations dictate that IRBs must approve all informed consents; therefore, an informed consent form can be accepted as a proof that an IRB reviewed and approved the clinical trial.

The Informed Consent Form is NOT available

If the informed consent form is unavailable, request any of the following information from the clinical trial participant:

- Name and location of the clinical trial,
- Name of disease or condition, or
- Name, phone, and address of the clinical trial administrator.

Use the information provided by the participant to locate the clinical trial in the http://clinicaltrials.gov website, a registry of federally and privately supported clinical trials conducted in the United States and around the world. It provides information about a trial's purpose, who may participate, locations, and phone numbers.

If the clinical trial appears in the website, assume it is IRB approved. All clinical trials in the United States, involving human subjects, must meet federal regulations by having an IRB review and approve the research.

Once it is established that clinical trial is approved by IRB, look for the following details in the clinical trial information to determine if the clinical trial meets the other two exclusion requirements:

- Name of the condition, and
• Type of clinical trial, which is usually listed under the primary purpose, the title, or stated in the purpose summary.

Follow the instructions in this table:

<table>
<thead>
<tr>
<th>If</th>
<th>Then</th>
</tr>
</thead>
<tbody>
<tr>
<td>The clinical trial does NOT involve research and testing of treatments</td>
<td>The property exclusion does not apply.</td>
</tr>
<tr>
<td>The clinical trial involves research and testing of treatments</td>
<td>Proceed to verify whether the clinical trial targets a rare disease or condition. Some commonly known rare diseases are Lou Gehrig’s disease, Crohn's disease, cystic fibrosis, cystinosis, Duchenne muscular dystrophy, Huntington's disease and Tourette syndrome. For more comprehensive list visit the Office of Rare Disease Research database at: <a href="http://rarediseases.info.nih.gov">http://rarediseases.info.nih.gov</a></td>
</tr>
<tr>
<td>The clinical trial does NOT targets a rare disease or condition,</td>
<td>The property exclusion does not apply.</td>
</tr>
<tr>
<td>The clinical trial targets a rare disease or condition,</td>
<td>The property exclusion applies.</td>
</tr>
</tbody>
</table>

### 26.61 IHSS Plus Waiver Payments

The IHSS Plus Waiver program was implemented on August 1, 2004. It is a federal waiver that provides in-home services to federally funded full scope Medi-Cal recipients that were previously provided through the IHSS Residual program.

Payments made under the waiver are exempt as property for all Medi-Cal programs. The exempt payments include:

- Caretaker wages paid to a parent for providing in-home services to a minor child under age 21;
- Wages paid to a spouse who provides in-home services to his/her spouse;
- Restaurant meal allowances made to the IHSS Plus Waiver recipient;
26.62 Individual Development Accounts (IDA)

IDA are trust accounts established only for specific purposes which includes, but not limited to:

- Post Secondary Education Expenses. Payments are made from an IDA directly to an eligible educational institution.

- First Home Purchase. Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer and if paid from an IDA directly to the person(s) to whom the amounts are due.

- Business Capitalization. Payments made from an IDA directly to a business capitalization account, which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

Qualified entities such as the following act as trustees:

- Not-for-profit organizations that is exempt from taxation under Section 501(c) or 501(a) of the Internal Revenue Code.

- A State or local government agency acting in cooperation with a not-for-profit organization described above.

26.62.1 Exempt

- Funds retained and interest accrued in IDAs established by and for individuals eligible under CalWORKs are exempt. Deposits to IDAs must be made from earned income only. Income tax refunds may also be deposited into IDAs.

- The trust remains exempt as long as deposits are being made to the IDA or funds are maintained in the IDA, whether or not the individual or any family members remain eligible for CalWORKs.
26.62.2 Nonexempt

- If funds are withdrawn from an IDA and used for another purpose, the amount withdrawn is considered property.
- There is no income exemption for earnings prior to their deposit into an IDA.

26.62.3 Verification

To verify the existence of an IDA, EWs must retain and scan a copy of IDA trust documents and documentation of deposits and withdrawals via IDM. The EW must also verify that the person who created the IDA trust account was eligible for CalWORKs at the time the IDA was established.

26.63 Trusts: Similar Legal Devices (SLD)

SLDs are to be treated as trusts for purposes of establishing initial and ongoing eligibility for Medi-Cal. [Refer to “Treatment of Trusts,” page 47-2 for treatment of trusts and annuities.]

SLD is defined as any legal instrument, device or arrangement that involves the transfer of assets from an individual or entity (transferor) to another individual or entity (transferee) with the intent that the assets be held, managed, or administered by an individual or entity for the benefit of the transferor or certain other individuals. SLDs also include annuities purchased on or after August 11, 1993.

The EW will need to request and review any documentation of the SLD, including verification of investments and distributions, and verification of property addressed by the SLD to determine its status and/or value.

26.64 Endowment Life Insurance Contracts (ELIC)

ELICs are NOT considered as “life insurance” for Medi-Cal eligibility purposes. Instead, these contracts are considered a legal instrument or device similar to a trust and are to be treated as such for Medi-Cal eligibility.
Assets held in ELICs are considered available property and included in the property reserve.

When ELICs are purchased (paid with a set amount of money), the issuing company promises to hold that money for a person they refer to in the contract as “insured” for a designated number of years. The issuing company then promises to return all that money to the “insured” if he/she is alive at the expiration of the designated time period. If the “insured” dies before the time period expires, the issuing company is contractually obligated to pay the designated beneficiary.

The contracts are for a specific number of years and provide that after the expiration of the designated term, the issuing company will return the initial payment along with some additional money to the insured. The contract provides for a pay out to the insured on a specified date in the future and does not just provide for payment to the named beneficiary upon the death of the insured.

26.65 Trusts and Annuities [Article 9J]

26.66 Background

The Omnibus Reconciliation Act of 1993 (OBRA ‘93) was amended to provide new requirements for the treatment of trusts and annuities.

The new procedures for evaluating trusts and annuities are effective for all trusts and annuities established on or after August 11, 1993.

No potential overpayment shall be calculated as a result of a trust established on any date on or after August 11, 1993 through February 29, 1996 due to the delay in implementation of these new procedures. However, when these trusts and annuities are reviewed at application and redetermination, on or after March 1, 1996, and they result in an increase in share of cost or ineligibility due to excess property, the appropriate action must be taken on a prospective basis with an adequate 10 day Notice of Action.
This handbook section is a summary of the treatment of Trusts and Annuities. Refer to the Medi-Cal Eligibility Procedures Manual (MEPM), Article 9J for additional information.

26.67 Overview

All trusts and annuities must be reviewed at application and redetermination in accordance with the new provisions. Trust regulations apply to both long-term care and all other Medi-Cal determinations.

The provisions of OBRA ’93 are effective March 1, 1996 for all trusts and annuities purchased on or after August 11, 1993.

Trusts are classified into 3 distinct categories:

• OBRA ’93 Trusts,
• Medicaid Qualifying Trusts (MQT), and
• Other Trusts.

26.68 Treatment of Trusts

Each trust type is treated and evaluated differently. The following chart provides a step-by-step procedures in the determination and treatment of trusts.

<table>
<thead>
<tr>
<th>STEP</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Evaluate the specific terms of each trust document to determine the trust category and then follow the procedures for evaluating that particular category of trust.</td>
</tr>
</tbody>
</table>
## Property

### 26.69 General Definitions

The following terms are used within the context of trusts and annuity documents. These are not complete legal definitions. They are included in order to assist Eligibility Workers when evaluating trusts and annuities.

<table>
<thead>
<tr>
<th>STEP</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Determine the date of purchase.</td>
</tr>
<tr>
<td></td>
<td>If the trust is purchased... Then the trust is considered...</td>
</tr>
<tr>
<td></td>
<td>PRIOR to 8/11/93, An MQT.</td>
</tr>
<tr>
<td></td>
<td>On or after 8/11/93, An OBRA 93.</td>
</tr>
<tr>
<td></td>
<td>On any date (prior to or on or after 8/11/93,) Other trusts. For examples of Other Trusts, “Treatment of Other Trusts,” page 26-105</td>
</tr>
<tr>
<td></td>
<td>Note: A Special Needs Trust that meets the characteristics of an OBRA 93 Trust or an MQT Trust must be evaluated according to the procedures for that type of trust. “Special Needs Trust (SNT),” page 26-109</td>
</tr>
<tr>
<td></td>
<td>Generally, assets placed in a Living Trust are considered totally available property; however, the EW must still follow the steps described above to determine type of trust, irrevocability and treatment. “Living Trusts,” page 26-110</td>
</tr>
<tr>
<td>3</td>
<td>Review other characteristics of the trust. “Trust Comparison Chart,” page 26-94</td>
</tr>
<tr>
<td>4</td>
<td>Review the terms of the trust, whether it is revocable or irrevocable.</td>
</tr>
<tr>
<td>5</td>
<td>Include in the property and income determination the countable amount of the trust and trust payments based on the rules in the following references:</td>
</tr>
<tr>
<td></td>
<td>• “Revocable OBRA ‘93 Trusts,” page 26-98</td>
</tr>
<tr>
<td></td>
<td>• “Irrevocable OBRA ‘93 Trusts,” page 26-98</td>
</tr>
<tr>
<td></td>
<td>• “Revocable MQT,” page 26-102</td>
</tr>
<tr>
<td></td>
<td>• “Irrevocable MQT,” page 26-102</td>
</tr>
<tr>
<td></td>
<td>• “Revocable Other Trusts,” page 26-105</td>
</tr>
<tr>
<td></td>
<td>• “Irrevocable Other Trusts,” page 26-106</td>
</tr>
<tr>
<td></td>
<td>REMINDER: Determine undue hardship prior to denying or discontinuing an individual due to excess property. “Undue Hardship,” page 26-101 and “Treatment of Other Trusts,” page 26-105</td>
</tr>
<tr>
<td></td>
<td>Note: There is no undue hardship provision for MQTs.</td>
</tr>
<tr>
<td>6</td>
<td>File or scan a copy of verifications of the trust and documents that substantiate investments and distributions.</td>
</tr>
</tbody>
</table>
26.69.1 Annuitant

A person who has the right to receive payments from an annuity.

26.69.2 Annuitized

An annuity providing fixed and equal payments to the annuitant is considered annuitized.

To be “properly annuitized”, payments must be issued no less frequent than monthly and for a period equal to or less than the annuitant’s life expectancy as determined by the tables provided by the Department of Health and Human Services.

Note:
The final annuity payment may be less than previous annuity payments in order to fully exhaust benefits under the annuity.

26.69.3 Annuity

A contract for unconditional, periodic payments of a fixed or variable sum paid to an annuitant. Annuity payments may continue for:

• a fixed period of time (period certain annuity),
• as long as an annuitant lives (lifetime annuity), or
• a combination of the two (lifetime annuity with period certain).

26.69.4 Assets

Income, property and property rights of an individual or spouse. This includes income or property which the individual or spouse is entitled to, but does not receive because of circumstances brought about by:

• The individual or spouse

• Any person or entity, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or spouse

• Any person or entity, including a court or administrative body, acting at the direction or upon the request of the individual or spouse.
Examples of income entitled to but not received include irrevocably waived pension income, waived inheritance or annuity payments assigned to a third party beneficiary.

26.69.5 Beneficiary

The person who is designated to receive the property and/or income (benefits) from a trust.

26.69.6 Cash Refund

A cash payment paid to a designated individual upon the death of the annuitant if the annuitant dies before receiving payments equal to the purchase price of the annuity.

26.69.7 Cost of Living Increase

A periodic increase in the amount of the annuity payments funded by a portion of the purchase price that was set aside by the annuity company for this purpose.

26.69.8 Death Benefit

A predetermined amount or specified number of payments paid to a beneficiary upon the death of the annuitant which is funded by a portion of the purchase price that was set aside by the annuity company for this purpose.

26.69.9 Established

The date trust documents are actually dated and signed.

26.69.10 Irrevocable

An irrevocable trust is one which, by its own terms, cannot in any way be revoked or terminated. This means, if a trust calls itself an “irrevocable trust” in the trust document, then it is irrevocable.

A trust may be irrevocable even though it may be modified under the terms of the trust.
A revocable trust becomes irrevocable whenever the trustor dies or becomes incompetent and the trust documents do not provide that the power to revoke be passed on to the trustee or to another person.

A revocable trust may contain terms that could make the trust irrevocable if a “triggering event” takes place. (i.e. Entry into long term care may be specified as a “triggering event”).

26.69.11 Payment

Any distribution from the trust or annuity, including but not limited to:

- Liquid or non-liquid disbursements
- Payments made to third parties or other entities for the benefit of the individual or spouse
- Disbursements to pay bills, purchase items, or pay for services.

26.69.12 Principal/Corpus

Principal/Corpus of the trust refers to the:

- Original investment of income, property or property rights (assets which originally funded the trust)
- Subsequent addition of income, property or property rights placed in the trust.
- Income generated by the assets in a trust (such as interest and dividends) for which there is no provisions for distribution.

26.69.13 Property Right

The right of an individual to receive income or property. An individual is said to have a property right when the individual:

- Has been designated or named to receive income or property, such as in a will, trust or insurance policy, or
- Has been awarded income or property, such as in a settlement by the court, or
- Contracts for them (purchase of property, etc.).
26.69.14 Revocable

A revocable trust is one which, by its own terms, can be revoked or terminated.

The principal of a revocable trust is considered available property to anyone who can revoke the trust and who can use the principal thereafter. It does not matter whether or not he/she actually revokes the trust or uses the uses the principal.

26.69.15 Similar Legal Device (SLD)

Any legal instrument, device or arrangement which may not be called a trust under state law, but is similar to a trust. It involves the transfer of income, property or property rights from an individual or entity (transferor) to another individual (transferee) who is to hold, manage or administer those assets for the benefits of the transferor or another trust beneficiary.

26.69.16 Trust

A trust is an obligation arising when a person holds legal title to property for the benefit of another.

Any arrangement in which an individual or entity (trustor) transfers income, property or property rights to a trustee(s) with the intent that the income or property be held, managed or administered by the trustee(s) for the benefits of a designated individual(s) (trust beneficiary).

To be a valid trust, the trust must have a designated trust beneficiary, trustor and trustee. These roles may be designated to the same individual, however, at least one other person must be designated as a beneficiary upon the death of the original beneficiary.

26.69.17 Trustee

The individual(s) or entity appointed to manage, hold or administer a trust for the benefit of the trust beneficiary(ies).

The trustee has fiduciary (the duty to act primarily for another’s benefit) responsibilities outlined in the trust to deal with the trust income or property in a way that carries out the wishes of the trustor for the benefit of the trust beneficiary. If the trustee does not fulfill his/her fiduciary responsibilities, he/she could be held liable by the trust beneficiaries.
26.69.18 Trustor

The individual who sets up or creates (funds) the trust with his/her income, property or property rights. This person may also be called the settlor or grantor.

26.69.19 Trust Income

Income generated by the trust, such as interest or dividends and payments of income made directly to and in the name of the trust. Any income paid in the name of the individual and then transferred to the trust is considered income of that individual and not considered trust income.

26.70 Identifying Characteristic of Trusts

Trusts are divided into 3 categories. The EW must first examine the terms of the trust to determine which category the trust falls into and then follow the procedures for evaluating that type of trust.

26.70.1 OBRA ‘93 Trusts

An OBRA ‘93 Trust must have ALL the following characteristics:

- Established ON or AFTER 8/11/93, and
- Established other than by will, and
- Established wholly or in part with income, property or property rights of the individual or spouse. This includes any income, property or property rights an individual receives from an inheritance, trust, insurance policy or court settlement that is later placed in a trust.

26.70.2 Medicaid Qualifying Trusts (MQTs)

An MQT is a trust or similar legal device (SLD) that meets ALL the following characteristics:

- Established PRIOR to 8/11/93, and
- Established other than by will, and
Property

• Established by the individual who is the beneficiary of the MQT or SLD, or by his/her spouse, guardian, conservator or a legal representative acting on the beneficiary’s behalf, and

• Established wholly or in part with the income, property or property rights of the individual or spouse. This includes any income, property or property rights an individual receives from an inheritance, trust, insurance policy or court settlement that is later placed in a trust, and

• The individual or spouse must be the beneficiary of the trust, and

• The trustee must have discretion in distributing trust principal and/or income to or for the benefit of the beneficiary.

26.70.3 Other Trusts

Any trust that does not meet all the characteristics of an OBRA ‘93 Trust or an MQT as listed above is evaluated as an “Other Trust.” The trust may have been established on any date, prior to or on or after 8/11/93.

26.71 Trust Comparison Chart

<table>
<thead>
<tr>
<th>Characteristics of a Trust</th>
<th>OBRA ‘93</th>
<th>MQT</th>
<th>Other Trusts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meets all the following characteristics:</td>
<td>Meets all the following characteristics:</td>
<td></td>
<td>Does not meet all the characteristics of OBRA ‘93 or MQT Trusts.</td>
</tr>
<tr>
<td>Established ON or AFTER 8/11/93.</td>
<td>Established PRIOR to 8/11/93.</td>
<td></td>
<td>Date established is insignificant.</td>
</tr>
<tr>
<td>Established other than by will.</td>
<td>Established other than by will.</td>
<td></td>
<td>May or may not be established by will.</td>
</tr>
<tr>
<td>Established by individual, spouse or someone acting on his/her behalf.</td>
<td>Established by individual, spouse or someone acting on his/her behalf.</td>
<td></td>
<td>Usually, but not always, established by someone else.</td>
</tr>
</tbody>
</table>
### Characteristics of a Trust

<table>
<thead>
<tr>
<th>OBRA ‘93</th>
<th>MQT</th>
<th>Other Trusts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Established in part or in whole with income, property or property rights of the individual or spouse.</td>
<td>Established in part or in whole with income, property or property rights of the individual or spouse.</td>
<td>Usually, but not always, established with assets belonging to someone else.</td>
</tr>
<tr>
<td>May be revocable or irrevocable.</td>
<td>May be revocable or irrevocable.</td>
<td>May be revocable or irrevocable.</td>
</tr>
<tr>
<td>Individual or spouse may or may not be beneficiary of the trust.</td>
<td>Individual or spouse MUST be beneficiary of the trust.</td>
<td>Individual or spouse may or may not be beneficiary of the trust.</td>
</tr>
<tr>
<td>Trustee may or may not have discretion to distribute trust assets. Trust terms may place restrictions on when or if distributions may be made.</td>
<td>The trustee MUST have the discretion to distribute principal and/or income to or for the benefit of the beneficiary.</td>
<td>Trustee may or may not have discretion to distribute trust assets.</td>
</tr>
</tbody>
</table>

### 26.71.1 Example

On 9/30/96, Mr. Smith (trustor) establishes a trust. He names himself as trustee and is given complete discretion to distribute trust assets. He also names himself as trust beneficiary but appoints his daughter, Jane, as beneficiary upon his death.

He places his savings account with a current balance of $100,000 and his house (principal residence) in the trust. The trust is set up as an irrevocable trust.

This trust is an OBRA ‘93 Trust because it is:

- Established after 8/11/93, and
- Not established by will, and
- Established by Mr. Smith, and
- Established with Mr. Smith’s own property.

If this trust was established in 1990 instead of on 9/30/96, it would be treated as an MQT Trust.

If this trust was established by will instead of not by will, it would be treated as an Other Trust.
26.72 Verification

26.72.1 Written Trusts

Obtain the trust documents and any other verification that substantiates investments and distributions.

Note:
A trust document typically has an attachment (Schedule A) that itemizes all the property to be placed in the trust. The property listed on Schedule A is not actually held in the trust until the items are actually transferred into the name of the trust.

26.72.2 Oral Trusts

Oral trusts are rare, however they can be valid providing certain conditions are met. Obtain written affidavits and other documents which substantiate any investments and distributions.

- Affidavits must be dated and signed under penalty of perjury and must specify the terms of the oral agreement. Affidavits may be obtained from the individual or spouse, or any other person who knows the terms of the trust agreement, for example brothers, sisters, stock brokers, ministers, etc.

- Real property cannot be held in an oral trust.

- When an oral trust is held in a financial institution, determine if the property is available.

- Additional documentation may be required to clarify the terms of an oral trust.

26.73 Exempt Income or Property Held in Trust

Exempt assets that are transferred into a trust, such as a principal residence, remain exempt. Placement of an exempt asset in a trust does not change the exempt nature of the asset.
For example, a couple transfers their home into a family trust. One spouse resides in long-term care, the other spouse resides in the home. The home is exempt from Medi-Cal purposes, regardless of the fact that it is included in the trust.

26.74 Transferred Asset

The term “transferred asset” may refer to:

- Transferred property, or
- Transferred income.

Follow the steps below to determine the treatment of the “Transferred Asset”:

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The EW must look at the source of the asset being transferred to determine if it is actually “Transferred Property” or “Transferred Income”.</td>
</tr>
<tr>
<td>2.</td>
<td>If the EW Determines the... Then...</td>
</tr>
<tr>
<td></td>
<td>Transferred asset is property, Treat as a transfer of property for less than adequate consideration. (See Treatment of Property, Transfer of Property)</td>
</tr>
<tr>
<td>3.</td>
<td>Transferred asset is income, • Document the amount, date and brief description of the transfer on the MC 163, and • Evaluate for a potential period of ineligibility.</td>
</tr>
</tbody>
</table>

26.75 Treatment of OBRA ‘93 Trusts

Once a trust has been categorized as an OBRA ‘93 Trust, review the terms of the trust to determine if it is revocable or irrevocable.
26.75.1 Revocable OBRA ‘93 Trusts

- The entire amount of trust principal and trust income retained in the trust is treated as available property.

- Any actual payment from the trust, whether from trust income or principal, paid to or for the benefit of the individual or spouse, is treated as income.

- Any actual payment from the trust, whether from trust income or principal, paid to another person which is not for the benefit of the individual or spouse, is treated as a “transferred asset”.

Example:
On 3/1/96, Mr. Baker established a $100,000 revocable trust. He then enters an LTC facility on 11/15/96 and applies for Medi-Cal at that time. The trustee has full discretion in disbursing trust funds. Each month the trustee gives $100 personal allowance to Mr. Baker and $500 to a property management firm for the upkeep of Mr. Baker’s home. On 10/1/96, the trustee gave $50,000 from the trust principal to Mr. Baker’s brother.

The trust meets all the characteristics of an OBRA ‘93 Trust and is revocable. Therefore, the entire amount of trust income and principal remaining in the trust ($50,000 plus any accrued trust income) is considered available property. The $100 personal allowance and the $500 paid for the upkeep of Mr. Baker’s home are treated as income. The $50,000 given away on 10/1/96 is considered a “transferred asset” (transfer of property).

26.75.2 Irrevocable OBRA ‘93 Trusts

If the OBRA ‘93 Trust is irrevocable, refer to the terms of the trust to determine whether payments can, under any circumstance, be made from the trust to or for the benefit of the individual or spouse. It does not matter when, or if the payment is actually made.

Irrevocable Trust with Disbursements Allowable

For trusts where there is any circumstance, however remote, under which payment can be made, the following rules apply:

- An actual payment from trust income or trust principal is treated as available income.
• Trust income or principal that could be distributed, but is not, is treated as available property.

• Trust principal or income that must be paid in the future, is treated as available property, regardless of when the payment is, or can be, made.

• Any actual payment from the trust, whether from trust income or principal, paid to another person which is not for the benefit of the individual or spouse, is treated as a “transferred asset”.

Example:
Let us now say that on 3/1/96, Mr. Baker established a $100,000 irrevocable trust. He then enters a LTC facility on 11/15/96 and applies for Medi-Cal at that time. The trustee HAS FULL DISCRETION in disbursing trust funds. Each month, from the trust income, the trustee gives $100 to Mr. Baker as a personal allowance and $500 to a property management firm for the upkeep of Mr. Baker’s home. On 6/15/96, the trustee gave $50,000 from trust principal to Mr. Baker’s brother.

The trust meets all the characteristics of an OBRA ‘93 Trust and is irrevocable. Therefore, the remaining $50,000 of trust principal is considered available property because the trustee has full discretion to disburse the entire amount (there is some situation under which payment could be made). The $100 personal allowance and the $500 paid for upkeep of the home are treated as income to Mr. Baker. The $50,000 gift to Mr. Baker’s brother is treated as a “transferred asset” (transfer of property).

Irrevocable Trust with NO Disbursements Allowable

• For trusts where payments from all or some portion of the trust cannot, at any time or under any circumstance, be made to or for the benefit of the individual or spouse, the following rules apply:

• When all, or a portion, of the trust principal cannot be paid out to or for the benefit of the individual or spouse because provisions for distribution never existed or because provisions for distribution have been stopped, that portion of trust principal is treated as a “transferred asset” (transfer of property).

• When all, or a portion, of the trust income cannot be paid out to or for the benefit of the individual or spouse because provisions for distribution never existed, treat the trust income as principal. Review the terms of the trust to determine the provisions for distribution of trust principal. If trust principal can also not be distributed, treat as a “transferred asset” (transfer of property).
• When all, or a portion, of the trust income cannot be paid out because the provisions for distribution have been stopped treat in accordance with the following:

• If, according to the terms of the trust, undistributed income becomes principal, review the terms of the trust regarding the treatment of principal. If trust principal can also not be distributed, treat as a “transferred asset” (transfer of property).

• If, according to the terms of the trust, undistributed income remains income, treat as a “transferred asset” (transfer of income).

Example:
On 3/1/96, Mr. Baker established a $100,000 irrevocable trust. He then enters a LTC facility on 11/15/96 and applies for Medi-Cal at that time. The trustee has full discretion in disbursing trust income but is precluded by the terms of the trust from disbursing any of the trust principal to or for the benefit of Mr. Baker. Each month the trustee gives, from the trust income, a $100 personal allowance to Mr. Baker and $500 to a property management firm for the upkeep of Mr. Baker’s home.

This trust meets all the characteristics of an OBRA ‘93 Trust, is irrevocable and provides for a portion of the trust that cannot, under any condition be distributed. The $100 personal allowance and the $500 paid for upkeep of Mr. Baker’s home are counted as income. Since none of the principal can be disbursed to Mr. Baker, the entire value of principal at the time the trust was created ($100,000) is treated as a “transferred asset” (transfer of property). (See Treatment of Income, Transfer of Property)

Example:
An $100,000 irrevocable trust provides that $40,000 of the trust principal can be made to the trustee only in the event that the trustor needs a heart transplant. The remaining $60,000 cannot be disbursed, under any circumstance.

Since there is a circumstance, however remote, when a payment can be made ($40,000) from the principal, the full $40,000 is considered available property, regardless of when or whether the actual payment is made. The remaining $60,000 cannot, under any circumstances, be paid to, or for the benefit of that individual, and is considered a “transferred asset” (transfer of property).
26.75.3 Undue Hardship

Prior to denying or discontinuing an individual(s) due to excess property from an OBRA ’93 Trust, determine if undue hardship exists.

For undue hardship to exist, ALL the following conditions must be present:

- The trust assets cannot, under any circumstances, be used to provide for health care or medical needs of the individual, and

- Health care cannot be obtained from, and medical needs cannot be met by, any source other than Medi-Cal without depriving the individual of food, clothing, shelter, or other necessities of life, and

- The individual’s parents (if the individual is under 21) or the individual’s spouse, do not have assets to provide for health care and medical needs, or health care coverage for the individual without depriving themselves of food, health care or medical needs, clothing, shelter, or other necessities of life, and

- The courts have denied a good faith petition to release the trust assets to pay for the required medical care. A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language that suggests or requests the courts do anything other than release the trust assets needed to pay for the required medical care. The E.W. must verify the petition by viewing both the petition and the court order.

When Undue Hardship Applies

If undue hardship applies, only the treatment of the trust under the OBRA ‘93 provisions are waived.

The trust must still be evaluated as an “Other Trust”.

When Undue Hardship Doesn’t Apply

If undue hardship doesn’t apply:

- Evaluate for excess property, or

- Evaluate for a Period of Ineligibility if a transfer without adequate consideration exists. (See Treatment of Property, Transfer of Property)
The Notice of Action (NOA) must include a statement indicating that the provisions of undue hardship were considered and found not to exist.

26.76 Treatment of MQT Trusts

Once a trust has been categorized as an MQT, review the terms of the trust to determine if it is revocable or irrevocable.

Do not automatically assume that the term “Medicaid Qualifying Trust” means that an individual is eligible to receive Medi-Cal. An individual with a trust which meets the characteristics of an MQT may be ineligible due to excess property.

26.76.1 Revocable MQT

• The entire amount of trust principal is available property.
• The entire amount of trust income is available income.

Example:
On 9/20/92, Ann and Bob Jones placed all of their property into a living trust. Ann and Bob are both trustors and trustees. The trust is set up as a revocable trust and contains $100,000 in personal property as well as their home, the principal residence. Bob enters a LTC facility on 11/15/96 and Ann applies for Medi-Cal for her husband at that time.

A living trust established prior to 8/11/93 is considered an MQT as long as the trustee has any discretion in distributing funds and as long as the trustor is also the beneficiary of at least some of the payments from the trust. Since this trust is revocable and the applicant has the right to the proceeds, the entire amount of principal in the trust is considered available property. The trust income is considered available income. The principal residence remains exempt property.

26.76.2 Irrevocable MQT

The maximum amount of trust principal and income that the trustee may distribute, if he/she were to exercise full discretion under the terms of the MQT, is considered available. It does not matter whether or not the trustee actually releases the funds, or if the trust places any limitations on the use of the funds, such as in a “Special
Needs Trust." “Special Needs Trust (SNT),” page 26-109 As long as the trustee has discretion in distributing the funds for any purpose, the funds are considered available.

Trust principal

The rules below apply to the treatment of trust principal in an irrevocable MQT:

<table>
<thead>
<tr>
<th>Irrevocable MQT Trust Principal</th>
<th>Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal actually distributed</td>
<td>Available property</td>
</tr>
<tr>
<td>Principal that could be distributed but isn’t</td>
<td>Available property</td>
</tr>
</tbody>
</table>
| Principal that the trustee has no discretion to release | Transfer of Property as of:  
  • The date the trust was established, or  
  • The date that any disbursement is discontinued. |

Trust income

The rules below apply to the treatment of trust income in an irrevocable MQT:

<table>
<thead>
<tr>
<th>Irrevocable MQT Trust Income</th>
<th>Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income actually distributed</td>
<td>Available income</td>
</tr>
<tr>
<td>Income that could be distributed but isn’t</td>
<td>Review the terms of the trust to determine what happens to the trust income which isn’t distributed.</td>
</tr>
</tbody>
</table>

**IF Trust Income... THEN Treat As...**

<table>
<thead>
<tr>
<th>IF Trust Income...</th>
<th>THEN Treat As...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remains trust income,</td>
<td>Available income in the first month distribution is possible, and available property thereafter.</td>
</tr>
<tr>
<td>Becomes trust principal,</td>
<td>A payment made at a later time is considered a conversion of property.</td>
</tr>
<tr>
<td></td>
<td>Available income in the first month distribution is possible, and trust property thereafter.</td>
</tr>
</tbody>
</table>
### Irrevocable MQT Trust Income

<table>
<thead>
<tr>
<th>Treatment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distribution is not discussed in the terms of the trust, trust principal. Trust income immediately becomes principal in this situation.</td>
<td></td>
</tr>
<tr>
<td>Review the terms of the trust to determine what happens to the trust income which cannot be distributed.</td>
<td></td>
</tr>
</tbody>
</table>

#### IF Provisions for Distribution...

<table>
<thead>
<tr>
<th>THEN Treat As...</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Never existed, trust principal. If trust principal cannot be distributed then treat as a Transferred Asset (transfer of property) as of the date the trust was established.</td>
<td></td>
</tr>
<tr>
<td>Stopped, and Trust Income Becomes Trust Principal, “Transferred Asset” (transfer of property) as of the date distribution stopped.</td>
<td></td>
</tr>
<tr>
<td>Stopped, and Trust Income Remains Trust Income, “Transferred Asset” (transfer of income) only if distribution stopped after August 11, 93.</td>
<td></td>
</tr>
</tbody>
</table>

### Example:

On 9/20/92, Ann and Bob Jones placed all of their property into a living trust. Ann and Bob are both trustors and trustees and have full discretion in the distribution of trust funds. The trust is set up as an irrevocable trust and contains $100,000 in personal property as well as the principal residence. Bob enters a LTC facility on 11/15/96 and Ann applies for Medi-Cal for her husband at that time.

A living trust established prior to 8/11/93 is considered an MQT as long as the trustee has any discretion in distributing funds and as long as the trustor is also the beneficiary of at least some of the payments from the trust. Since this trust is irrevocable and the applicant has discretion over the full amount of trust principal and trust income, the entire amount in the trust is considered available property and available income. The principal residence remains exempt property.
26.76.3 Undue Hardship

There is no undue hardship provision for MQTs.

26.77 Treatment of Other Trusts

Examples of Other Trusts include, but are not limited to:

- Trusts or Similar Legal Devices (SLD) established by will.
- Certain Individual and Pooled Trusts established for disabled individuals on or after 8/11/93.
- Blocked accounts established prior to 8/11/93, which cannot be distributed until a minor reaches age 18.
- Trusts established prior to 4/7/86, solely for the benefit of a developmentally disabled person residing in an intermediate care facility for the developmentally disabled.
- Trusts established by a grandparent with the grandparent’s own property for a grandchild’s college education, etc.
- Trusts established by the community for the medical and social service needs of an individual.
- Trust accounts opened under the California Uniform Transfers to Minor Acts (CUTMA or UTMA) for a child with an adult who is named as custodian.
- An OBRA '93 Trust when Undue Hardship has been found to exist.

Once a trust has been categorized as an Other Trust, review the terms of the trust to determine if it is revocable or irrevocable.

26.77.1 Revocable Other Trusts

- When the Medi-Cal applicant/beneficiary has the legal right, power and authority to revoke the trust and the right to use the funds, the entire amount of funds held in a revocable trust is considered totally available.
• Trust principal is available property.

• Trust interest is income. If the trust income is not distributed in the month of receipt, the trust income is considered income in the month received and treated as available property in the month following.

• When the Medi-Cal applicant/beneficiary does not have the legal right, power and authority to revoke the trust AND use the trust proceeds, the trust assets (income and principal) are considered unavailable until actually distributed.

• Funds actually distributed from trust income are considered income.
• Funds actually distributed from trust principal are considered property.

26.77.2 Irrevocable Other Trusts

The funds in an irrevocable trust shall be considered available only if they are actually distributed.

• Funds actually distributed from trust income are considered income.
• Funds actually distributed from trust principal are considered property.

26.77.3 Trusts Established on or after 8/11/93 for Disabled Individuals

Two types of trusts established on or after 8/11/93 specifically for disabled individuals, have been excepted from treatment under the OBRA ‘93 provisions. The two types, “Individual Trusts” and “Pooled Trusts”, are established with the assets or property rights of disabled individuals and are treated as Other Trusts.

Individual and Pooled Trust Characteristic Table

All of the characteristics as indicated below must be met in order for a trust to be exempt from treatment under the OBRA ‘93 provisions and treated as an Other Trust instead.

<table>
<thead>
<tr>
<th>Individual Trust</th>
<th>Pooled Trust</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>X</td>
<td>Established on or after 8/11/93.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Established for the benefit of the disabled individual or disabled spouse by the parent, grandparent, legal guardian or by a court.</td>
</tr>
</tbody>
</table>
To ensure that recovery of costs of medical care occurs, EWs must notify DHS Third Party Liability (TPL) Branch when:

- An Individual or Pooled Trust is discovered, or
- The E.W. finds out that the disabled individual or disabled spouse has died, or
- The trust is being terminated.

Send the beneficiary’s name, Social Security number, Medi-Cal I.D. number, and photocopies of the trust document to DHS - Third Party Liability Branch. “Third-Party Liability,” page 3-15
Note:
It is the responsibility of the trustee to contact DHS to obtain the dollar amount of medical assistance provided by DHS and then submit that amount, or the amount remaining in the trust, whichever is less, to the DHS Recovery Branch.

ANY TRUST WHICH CONTAINS PROVISIONS ALLOWING REIMBURSEMENT OF MEDICAL ASSISTANCE PROVIDED ONLY UPON SUBMISSION OF A "CLAIM" OR A "PROPER CLAIM" SHALL NOT BE CONSIDERED AN "OTHER TRUST" AND SHALL BE TREATED AS AN OBRA '93 TRUST.

26.77.4 California Uniform Gift to Minors Act (CUTMA)/Uniform Gift to Minors Act (UTMA) Trusts

A CUTMA/UTMA Trust is established with an irrevocable monetary gift to a child. The custodian, who manages the account for the child, does not hold legal title to the property and has no ownership interest. Custodial powers may be restricted in which case funds may not be spent before the time of distribution except by court order “upon showing that expenditure is necessary for the support, maintenance, or education of the minor”. If there is no indication that custodial powers are restricted, funds may be used for the child’s benefit without a court order.

The principal used to fund a CUTMA/UTMA Trust is money gifted to a child by another person. A CUTMA/UTMA Trust is not one that is set up with the child’s own property even if it is placed in a custodial account.

Example:
A child is awarded a personal injury settlement. The money is placed in a custodial account. This is NOT a CUTMA/UTMA Account.
**Property**

**Treatment**

Follow the chart below to determine how to treat a CUTMA/UTMA Trust:

<table>
<thead>
<tr>
<th>IF the child:</th>
<th>AND the Account:</th>
<th>THEN The Value of the Account is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is included in the MFBU,</td>
<td>Does not restrict custodial powers</td>
<td>Considered available property.**</td>
</tr>
<tr>
<td></td>
<td>Restricts custodial powers</td>
<td>Considered unavailable property until actual distribution.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Funds distributed from the trust income are considered income.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Funds distributed from the trust principal are considered available property.</td>
</tr>
<tr>
<td>Is NOT included in the MFBU,</td>
<td>Restricts custodial powers</td>
<td>Not included in the property reserve because the child is not included in the MFBU.</td>
</tr>
<tr>
<td></td>
<td>Does not restrict custodial powers</td>
<td></td>
</tr>
</tbody>
</table>

**Apply Sneede regulations whenever the MFBU includes a child with his/her own nonexempt property.**

---

### 26.78 Special Needs Trust (SNT)

A Special Needs Trust (SNT) contains “special needs” or “supplemental needs” exculpatory language. This refers to specific language indicating that funds shall only be used to ensure the individual's health and safety and to supplement public benefits. Federal law does not allow an exemption of trust assets based solely on exculpatory language.

An SNT that meets the characteristics of an OBRA '93 Trust or an MQT Trust will be evaluated according to the procedures for that type of trust.

**Example:**

On 6/21/91, Joseph Jones established an irrevocable Special Needs Trust (SNT) containing $70,500. Joseph is now in a LTC facility. His daughter, Martha Smith, is applying for Medi-Cal for her father. Martha is the trustee and according to the terms of the trust, “the trustee shall pay or apply for the benefit of Joseph Jones for his lifetime, such amount from the principal or income of the trust estate, up to the whole thereof, as the trustee in its sole and absolute discretion may deem necessary or advisable for the satisfaction of Joseph’s special needs”. In addition, the trust states that “no part of the corpus of the trust shall be used to supplant or replace public assistance...”
benefits of any County, State, Federal, or other governmental entity that has a legal responsibility to serve the beneficiary herein."

**IMPORTANT:** When reviewing an SNT, disregard the exculpatory language. This trust meets all the conditions of an MQT (See Section 42.4.2) and is irrevocable. Since the trustee has full discretion in disbursing trust funds, the $70,500 is considered available property and is included in the property reserve.

### 26.79 Living Trusts

Living trusts are usually established to avoid probate and to minimize estate taxes. When establishing a living trust, the owner of assets places the titles of real estate and/or other assets in a trust while the owner is still alive. The trust document specifies how the assets are to be managed and distributed after the individual’s death. Usually people who create a living trust name themselves as trustee; therefore, they retain control over the assets during their lifetime.

Generally, assets placed in a living trust will be considered totally “available property” but you must still follow the steps described above to determine type of trust, revocability and treatment.

### 26.80 Identifying Characteristics of Annuities

Annuities are divided into two categories:

- OBRA ’93 Annuities, and
- Other Annuities.

Each annuity type is treated and evaluated differently. The following chart provides step-by-step procedures in the determination and treatment of annuities:

<table>
<thead>
<tr>
<th>STEP</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Evaluate the specific terms of each annuity document to determine the annuity category and then follow the procedures for evaluating that particular category of annuity.</td>
</tr>
</tbody>
</table>
The EW must first examine the annuity document to determine which category the annuity falls into and then follow the procedures for evaluating that type of annuity.

### 26.80.1 OBRA '93 Annuities

An OBRA '93 Annuity must have all the following characteristics:

- Established on or after 8/11/93, and
- Established with income, property and/or property rights of the individual or spouse, and
- Not established by will, and
- Provides periodic payments (fixed or variable) which are unconditionally payable to the annuitant, and
• Established to provide payments (principal and interest) which exceed the fair market value of the property used to purchase the annuity, and

• The annuity may be:
  • Period Certain, or
  • Lifetime, or
  • Lifetime with a Period Certain.

26.80.2 Other Annuities

Any annuity that does not meet all the characteristics of an OBRA ‘93 Annuity as listed above is evaluated as an Other Annuity, including all annuities:

• Established prior to 8/11/93, or
• Established by will, or
• Established with the income, property and/or property rights belonging to someone other than the applicant/beneficiary or spouse.
26.81 Annuity Comparison Chart

<table>
<thead>
<tr>
<th>Characteristics of an Annuity</th>
<th>OBRA '93 Annuity</th>
<th>Other Annuity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meets all the following characteristics.</td>
<td>All annuities that do not meet ALL the characteristics of an OBRA '93 Annuity, regardless of date established.</td>
<td></td>
</tr>
<tr>
<td>Established on or after 8/11/93.</td>
<td>All annuities established prior to 8/11/93.</td>
<td></td>
</tr>
<tr>
<td>Not established by will.</td>
<td>May or may not be established by will.</td>
<td></td>
</tr>
<tr>
<td>Established with income, property and/or property rights of the individual or spouse.</td>
<td>May or may not be established with the income, property and/or property rights belonging to someone other than the applicant/beneficiary or spouse.</td>
<td></td>
</tr>
<tr>
<td>Established to provide periodic payments (fixed or variable) which are unconditionally payable to the annuitant. Payments may be for a fixed time period or for the lifetime of the annuitant.</td>
<td>May provide a periodic payment plan different than that required for an OBRA '93 Annuity.</td>
<td></td>
</tr>
<tr>
<td>Established to provide payments (principal and income) which exceed the fair market value of the property used to purchase the annuity.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

26.82 Verification

Obtain the annuity contract and any other verification that substantiates investments and distributions.
26.83.1 Properly Annuitized

An OBRA ‘93 annuity which is not “properly annuitized” can result in:

• A Period of Ineligibility (POI), or
• Ineligibility due to excess property.

An OBRA ‘93 Annuity is “properly annuitized” when ALL the following apply:

• The annuity provides fixed, equal, monthly payments to the individual or spouse, and
• The final annuity payment may be for an amount less than the previously fixed payments in order to fully exhaust benefits under the annuity.
• The annuity payments are to be paid over a number of years equal to or less than the annuitant’s life expectancy as indicated on the life expectancy tables.
• The annuity payments will exhaust any balance remaining in the annuity, at or before the end of the annuitant’s life expectancy.
• The annuity may provide a reasonable increase for an annual cost of living adjustment (COLA) (i.e., Up to 5% annually).

26.83.2 Determining Life Expectancy

The life expectancy of an annuitant is determined by using the life expectancy tables at the end of this chapter which were compiled by the Actuary of the Social Security Administration. To determine the life expectancy of an annuitant use the age of the annuitant as of:

• The date the annuity was purchased, OR
• The date the payment plan was established, whichever is most recent.

The table will provide the years of life expectancy of the annuitant.
26.83.3 Treatment of a Properly Annuitized Annuity

**Income**

Actual disbursements from the annuity are treated as gross unearned income.

**Property**

The balance of an annuity purchased on or after 8/11/93 shall be considered unavailable property only when:

- The annuity is “properly annuitized,” or
- The individual/spouse takes steps to “properly annuitize” an annuity.

**Example:**

Mrs. Jones purchased a lifetime annuity with a period certain when she was 75 years old. The company that issued the annuity based the annuity on a lifetime expectancy of 12 years and 1 month. The period certain (or guarantee period) was also established at 12 years and 1 month.

Based on the life expectancy table compiled by the Actuary of the Social Security Administration, Mrs. Jones’ life expectancy is determined to be 12.05 years (12 years and 0.6 months). Even though the life expectancy and guarantee period of the annuity exceeds the life expectancy determined by the Actuary’s table, both of the life expectancies take the annuitant into the 12th year, first month. Therefore, this annuity is considered to be “properly annuitized”.

26.83.4 Treatment of an Annuity Not Properly Annuitized

When an annuity purchased on or after 8/11/93 is not properly annuitized, refer the applicant/beneficiary back to the company the annuity was purchased from, to have the annuity restructured. Provide the annuitant with the correct life expectancy figure based on the annuitant’s current age. The annuity must be restructured to that time period or less so that the balance can be treated as unavailable property.

**Note:**

The balance of the annuity is considered unavailable while the annuitant is cooperating and taking steps to restructure the annuity.
Deferred Annuity

Payments are considered deferred if:

- The annuity has not been “properly annuitized”, or
- The payments being received are of interest only, or
- The payments are stopped at any time.

If payments are deferred, excess property may exist or there may be a transfer of property for less than adequate consideration. Follow the chart below to determine the necessary action.

<table>
<thead>
<tr>
<th>If the individual or spouse is...</th>
<th>And the payments...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOT in Long Term Care (LTC)</td>
<td>Extend beyond the individual's life expectancy,</td>
<td>Count the cash surrender value (CSV) of the annuity in the property reserve.</td>
</tr>
<tr>
<td></td>
<td>Do Not extend beyond the individual's life expectancy,</td>
<td></td>
</tr>
</tbody>
</table>
| In Long Term Care (LTC)          | Extend beyond the individual's life expectancy, | • Evaluate for a period of ineligibility (POI), AND
  |                                  |                                                 | • Do not count the CSV in the property reserve.** |
|                                  | Do Not extend beyond the individual's life expectancy, | Count the CSV in the property reserve until steps are taken to “properly annuitize” the annuity. |

**If a Period of Ineligibility (POI) is not actually being applied in a LTC case (i.e. 30 months of POI have already been applied), count the CSV in the property reserve.

When an annuity cannot be restructured

If the annuity cannot be restructured, only the payments made beyond the life expectancy of the annuitant and/or any specified cash refund/death benefit are considered a transfer of property (from the purchase date of the annuity) for less than adequate consideration. The percentage of the purchase price used to fund the payments to be made beyond the life expectancy of the annuitant is the amount considered transferred for less than fair market value.
Follow the steps below to determine the amount that was transferred for less than adequate considerations:

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Determine the Life Expectancy of the annuitant based on the life expectancy tables at the end of this chapter.</td>
</tr>
<tr>
<td>2.</td>
<td>Determine the original purchase price of the annuity. (Review the original annuity document for the purchase price.)</td>
</tr>
<tr>
<td>3.</td>
<td>Determine the sum of all the annuity payments that will be paid. (Add all annuity payments together.)</td>
</tr>
<tr>
<td>4.</td>
<td>Determine the sum of all the annuity payments that will be paid beyond the life expectancy. (Add all annuity payments scheduled to be paid beyond the number of life expectancy years together.)</td>
</tr>
<tr>
<td>5.</td>
<td>Determine the percentage of payments that will be paid beyond the life expectancy. (Step 4 divided by Step 3.)</td>
</tr>
<tr>
<td>6.</td>
<td>Determine the amount of the original annuity purchase price that will be considered a transfer for less than adequate consideration. (Step 2 times the percent determined in Step 5.)</td>
</tr>
<tr>
<td>7.</td>
<td>Use the amount determined in Step 6 to establish a period of ineligibility (POI), if the individual/spouse is in LTC.</td>
</tr>
</tbody>
</table>

**Example:**

Mrs. Jones purchased a lifetime annuity with a period certain on 4/1/96 when she was 75 years old. The annuity company based the annuity on a lifetime expectancy of 13 years and 1 month. The period certain (or guarantee period) was also established at 13 years and 1 month. She is unable to have the annuity restructured.

Based on the life expectancy table compiled by the Actuary of the Social Security Administration, Mrs. Jones' life expectancy is determined to be 12.05 years (12 years and 0.6 months). Since the life expectancy determined by the Actuary’s table takes the annuitant into the 13th year, first month, the last year of payments are considered to be a transfer of property.

The steps in the chart above must be followed to determine how much of the original annuity investment is to be considered an inadequate transfer of property.
26.83.5 Undue Hardship

Undue hardship automatically exists when an OBRA ‘93 annuity:

- Is purchased between 8/11/93 and 2/29/96, AND
- Cannot be restructured, AND
- There is written verification from the agent or the company that issued the annuity that the annuity cannot be restructured.

Note:
Prior to establishing a period of ineligibility for LTC services due to a transfer of property, undue hardship MUST be considered if the annuity was purchased between 8/11/93 and 2/29/96.

<table>
<thead>
<tr>
<th>If Undue Hardship...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is found to apply,</td>
<td>• NO period of ineligibility (POI) for nursing facility level of care shall result, and&lt;br&gt;• The annuity is evaluated as an “Other Annuity”.</td>
</tr>
<tr>
<td>Is found NOT to apply,</td>
<td>• Evaluate as an OBRA ‘93 Annuity,&lt;br&gt;• Establish a POI, if necessary,&lt;br&gt;• The notice of action must state that undue hardship provisions were considered and found not to apply.</td>
</tr>
</tbody>
</table>

"Undue hardship" status may NOT be granted to any annuity purchased on or after 3/1/96.

26.84 Other Annuities

Follow the treatment for “Other Annuities” for all annuities:

- Purchased prior to 8/11/93
- Containing periodic payment plans different from those described above
- Purchased with property belonging to someone other than the Medi-Cal applicant, beneficiary, or his/her spouse
- Established by will.
26.84.1 Treatment of Other Annuities

• The cash surrender value or balance of an annuity is considered unavailable only when the applicant/beneficiary is:
  • Receiving periodic payments of interest and principal, or
  • Taking steps to receive periodic payments of interest and principal. A good faith intent and bona fide effort to receive payments must be demonstrated by taking all the necessary steps in a timely manner and providing verification as requested by the county.

• Periodic payments are treated as available income.

• A cash lump sum payment is considered property.

• When payments are deferred at any time while the individual is a Medi-Cal applicant or beneficiary, the cash surrender value (CSV) of the annuity shall be considered available and shall be included in the property reserve.

26.84.2 Undue Hardship

There are no undue hardship provisions for “Other Annuities.”

26.85 Annuity Distribution/Treatment Chart

Use the following chart to determine the treatment of distributions made from annuities.

<table>
<thead>
<tr>
<th>Type of Distribution</th>
<th>OBRA '93 Treatment **</th>
<th>Other Annuity Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any payment from the annuity made to:</td>
<td>Treat as income.</td>
<td>Treat as income.</td>
</tr>
</tbody>
</table>
  • The individual
  • The spouse
  • Another person for the benefit of the individual or spouse. |
### Annuity Examples

#### Example 1: LIFE EXPECTANCY EXCEEDS PERIOD CERTAIN

On January 30, 1996, at age 65, Mr. Baker purchases a $20,000 period certain annuity to be paid over the course of 10 years. Fixed, equal, monthly payments begin March 1, 1996.

<table>
<thead>
<tr>
<th>Type of Distribution</th>
<th>OBRA ‘93 Treatment **</th>
<th>Other Annuity Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A predetermined specified amount or number of payments set aside for any other person (other than for the sole benefit of the individual or spouse)</td>
<td>Treat as a transfer of property for less than adequate consideration. Evaluate for a POI.</td>
<td>While the applicant/beneficiary is receiving payments, the balance of the annuity is exempt. While someone else is receiving payments, the cash surrender value of the annuity is included in the property reserve.</td>
</tr>
<tr>
<td>After payments to the annuitant have started, any payment later designated to any other person (other than for the sole benefit of the individual or spouse)</td>
<td>Treat as a transfer of income.</td>
<td>Once payment to another individual starts, the annuity is no longer exempt. Count the cash surrender value in the property reserve.</td>
</tr>
<tr>
<td>Any deferred payment</td>
<td>Treat the cash surrender value as available property and add to the property reserve.</td>
<td>Treat the cash surrender value as available property and add to the property reserve.</td>
</tr>
<tr>
<td>Unspecified cash refund</td>
<td>If the annuity is properly annuitized, disregard.</td>
<td>As long as the applicant/beneficiary is receiving payments, the balance of the annuity is exempt. An unspecified cash refund paid upon the death of a Medi-Cal beneficiary does not affect Medi-Cal eligibility.</td>
</tr>
</tbody>
</table>

** If the OBRA ‘93 Annuity was purchased between 8/11/93 and 2/29/96, evaluate for Undue Hardship prior to taking any adverse action.
At age 65, Mr. Baker’s life expectancy is 14.96 years according to the life expectancy table for males compiled by the Actuary of the Social Security Administration. Since Mr. Baker’s life expectancy figure (14.96 years) exceeds the payout period (10 years) and Mr. Baker is receiving payments, the balance of the annuity is considered unavailable. The payments are treated as income.

Example 2: PERIOD CERTAIN EXCEEDS LIFE EXPECTANCY - UNDUE HARDSHIP

On March 10, 1996, at age 65, Mr. Baker purchases a $100,000 period certain annuity to be paid over the course of 20 years. Fixed, equal, monthly payments are to begin April 15, 1996.

At age 65, Mr. Baker’s life expectancy is 14.96 years according to the life expectancy table for males compiled by the Actuary of the Social Security Administration. The payout period (20 years) exceeds Mr. Baker’s life expectancy (14.96 years). Mr. Baker is unable to restructure the annuity’s payment schedule. Since the annuity was purchased after 2/18/96, the undue hardship provisions do not apply. The payments scheduled to occur beyond Mr. Baker’s life expectancy would be considered transferred property that may be a disqualifying transfer.

To calculate the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund those payments that exceed the life expectancy on the tables. (See Section 47.17.4 for specific procedures.)

Example 3: OTHER BENEFICIARY NAMED PRIOR TO START OF PAYMENTS

On 12/4/96, Mrs. Baker purchases a $50,000 period certain annuity and names her daughter the annuitant.

Since the annuity was established after 8/11/93, it is treated as an OBRA ‘93 annuity. The full amount of the annuity ($50,000) is considered a transfer of property for less than adequate consideration.

Example 4: SPECIFIED DEATH BENEFIT

On 6/10/96, Mrs. Baker purchases a $50,000 lifetime annuity with 5 years worth of payments designated to go to her daughter upon the death of Mrs. Baker. Mrs. Baker is 79 years old and her life expectancy is determined to be 9.67 years.
Since the annuity was purchased after 8/11/93, it is treated as an OBRA '93 annuity. The 5 years worth of payments specified as death benefits and designated for the daughter shall be considered transferred property for less than adequate consideration. Mrs. Baker’s monthly payments are considered income and the balance of the annuity less the death benefits are considered unavailable.

Example 5: UNSPECIFIED CASH REFUND

On 4/15/96, Mrs. Baker purchases a $50,000 lifetime annuity and designates her daughter to receive a cash refund (unspecified amount) upon her death. Mrs. Baker is 79 years old and her life expectancy is determined to be 9.67 years. The life expectancy tables used by the annuity company to establish this annuity determined Mrs. Baker’s life expectancy at 8 years.

Since this annuity was purchased after 8/11/93, it is treated as an OBRA '93 annuity. The cash refund is an unspecified amount and the annuity was annuitized to a life expectancy less than that determined by the life expectancy tables compiled by the Actuary of the Social Security Administration. Therefore, the monthly payments are considered income, the balance of the annuity is considered unavailable and the unspecified cash refund that is to go to Mrs. Baker’s daughter is NOT considered a transfer of property.

Example 6: OTHER BENEFICIARY NAMED AFTER PAYMENTS HAVE STARTED

Mrs. Baker begins receiving payments from her properly annuitized annuity. She later designates her daughter as the annuitant after receiving payments for 1 year. The daughter will receive the remaining four years of payments from the annuity.

The 4 years of payments will be considered transferred income which may result in a disqualifying transfer in the future.

Example 7: PAYMENTS MADE TO ANOTHER PERSON - SOLE SUPPORT

Mrs. Baker begins receiving payments from her properly annuitized annuity. She later designates her daughter to receive the remaining 4 years of payments to be used solely for the support of Mrs. Baker.

Since the payments designated to Mrs. Baker’s daughter are for the sole support of Mrs. Baker, this is NOT considered transferred income. The payments will be considered income to Mrs. Baker.
Example 8: LIFE EXPECTANCY EXCEEDS PERIOD CERTAIN

On 3/1/96, Mrs. Baker, age 64, purchases a $50,000 lifetime annuity with a period certain of 15 years. Her life expectancy is determined to be 19.72 years. The life expectancy table used by the annuity company to establish her annuity give Mrs. Baker a life expectancy of 18 years. She is receiving fixed, equal, monthly payments.

Since this annuity was purchased after 8/11/93, it is treated as an OBRA '93 annuity. The number of years of both the company’s life expectancy table and the period certain are less than Mrs. Baker’s life expectancy according to the tables compiled by the Actuary of the Social Security Administration. Therefore, the monthly payments are considered income, and the balance of the annuity is considered unavailable property.

26.87 Analysis of Sample Annuities

26.87.1 Properly Annuitized Payment Schedule

On 5/1/96, Mr. Smith, age 60, purchased a $100,000 annuity with a 15 year period certain. The payment schedule is represented below. According to the life expectancy table, the 15 year guarantee period does not exceed Mr. Smith’s 18.42 year life expectancy. Monthly payments are fixed, equal and monthly but may reflect reasonable, annual cost-of living increases (i.e. less than or equal to 5%).

<table>
<thead>
<tr>
<th>Amount Invested = $100,000</th>
<th>Rate of Return = 5.00%</th>
<th>Guarantee Period = 15 Years</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Level Payments</th>
<th>3% Annual Increase</th>
<th>5% Annual Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>Annual Payment</td>
<td>Annual Payment</td>
</tr>
<tr>
<td>1</td>
<td>$9,634.23</td>
<td>$7,981.13</td>
</tr>
<tr>
<td>2</td>
<td>$9,634.23</td>
<td>$8,220.57</td>
</tr>
<tr>
<td>3</td>
<td>$9,634.23</td>
<td>$8,467.18</td>
</tr>
<tr>
<td>4</td>
<td>$9,634.23</td>
<td>$8,721.20</td>
</tr>
<tr>
<td>5</td>
<td>$9,634.23</td>
<td>$8,982.83</td>
</tr>
</tbody>
</table>
26.87.2 Improperly Structured Payment Schedule

On 5/1/96, Mr. Smith, age 60, purchased a $100,000 annuity. The payment schedule for the 20 year period certain annuity is represented below. According to the life expectancy tables compiled by the Actuary of the Social Security Administration, the 20 year guarantee period exceeds the 18.42 year (18 years and 5.04 months) life expectancy of the annuitant. In this situation there may be a disqualifying transfer as of the date the annuity was purchased (or the date the payment plan was established, whichever is most recent). Follow regular procedures in determining if a period of ineligibility must be determined.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that exceed the life expectancy on the Secretary's tables as of the date of purchase or the date the payment plan was established, whichever was the most recent.

Amount Invested = $100,000  Rate of Return = 5.00%  Guarantee Period = 20 Years

<table>
<thead>
<tr>
<th>Level Payments</th>
<th>3% Annual Increase</th>
<th>5% Annual Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>Annual Payment</td>
<td>Annual Payment</td>
</tr>
<tr>
<td>6</td>
<td>$9,634.23</td>
<td>$9,252.32</td>
</tr>
<tr>
<td>7</td>
<td>$9,634.23</td>
<td>$9,529.89</td>
</tr>
<tr>
<td>8</td>
<td>$9,634.23</td>
<td>$9,815.79</td>
</tr>
<tr>
<td>9</td>
<td>$9,634.23</td>
<td>$10,110.26</td>
</tr>
<tr>
<td>10</td>
<td>$9,634.23</td>
<td>$10,413.57</td>
</tr>
<tr>
<td>11</td>
<td>$9,634.23</td>
<td>$10,725.97</td>
</tr>
<tr>
<td>12</td>
<td>$9,634.23</td>
<td>$11,047.75</td>
</tr>
<tr>
<td>13</td>
<td>$9,634.23</td>
<td>$11,379.19</td>
</tr>
<tr>
<td>14</td>
<td>$9,634.23</td>
<td>$11,720.56</td>
</tr>
<tr>
<td>15</td>
<td>$9,634.23</td>
<td>$12,072.18</td>
</tr>
<tr>
<td>Total Pmts</td>
<td>$144,513.43</td>
<td>$148,440.38</td>
</tr>
<tr>
<td>Year</td>
<td>Annual Payment</td>
<td>3% Annual Increase</td>
</tr>
<tr>
<td>------</td>
<td>----------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>1</td>
<td>$8,024.26</td>
<td>$6,263.79</td>
</tr>
<tr>
<td>2</td>
<td>$8,024.26</td>
<td>$6,451.70</td>
</tr>
<tr>
<td>3</td>
<td>$8,024.26</td>
<td>$6,645.25</td>
</tr>
<tr>
<td>4</td>
<td>$8,024.26</td>
<td>$6,844.61</td>
</tr>
<tr>
<td>5</td>
<td>$8,024.26</td>
<td>$7,049.95</td>
</tr>
<tr>
<td>6</td>
<td>$8,024.26</td>
<td>$7,261.45</td>
</tr>
<tr>
<td>7</td>
<td>$8,024.26</td>
<td>$7,479.29</td>
</tr>
<tr>
<td>8</td>
<td>$8,024.26</td>
<td>$7,703.67</td>
</tr>
<tr>
<td>9</td>
<td>$8,024.26</td>
<td>$7,934.78</td>
</tr>
<tr>
<td>10</td>
<td>$8,024.26</td>
<td>$8,172.82</td>
</tr>
<tr>
<td>11</td>
<td>$8,024.26</td>
<td>$8,418.01</td>
</tr>
<tr>
<td>12</td>
<td>$8,024.26</td>
<td>$8,670.55</td>
</tr>
<tr>
<td>13</td>
<td>$8,024.26</td>
<td>$8,930.66</td>
</tr>
<tr>
<td>14</td>
<td>$8,024.26</td>
<td>$9,198.58</td>
</tr>
<tr>
<td>15</td>
<td>$8,024.26</td>
<td>$9,474.54</td>
</tr>
<tr>
<td>16</td>
<td>$8,024.26</td>
<td>$9,758.78</td>
</tr>
<tr>
<td>17</td>
<td>$8,024.26</td>
<td>$10,051.54</td>
</tr>
<tr>
<td>18</td>
<td>$8,024.26</td>
<td>$10,353.09</td>
</tr>
<tr>
<td>19</td>
<td>$8,024.26</td>
<td>$10,663.68</td>
</tr>
<tr>
<td>20</td>
<td>$8,024.26</td>
<td>$10,983.59</td>
</tr>
<tr>
<td>Total Pmts</td>
<td>$160,485.20</td>
<td>$168,310.33</td>
</tr>
</tbody>
</table>
## Level Payment Sample

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Determine the Life Expectancy of the annuitant based on the life</td>
<td>18 years, 6 months</td>
</tr>
<tr>
<td></td>
<td>expectancy tables at the end of this chapter.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Determine the original purchase price of the annuity. (Review the</td>
<td>$100,000</td>
</tr>
<tr>
<td></td>
<td>original annuity document for the purchase price.)</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Determine the sum of all the annuity payments that will be paid.</td>
<td>$160,485.20</td>
</tr>
<tr>
<td></td>
<td>(Add all annuity payments together.)</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Determine the sum of all the annuity payments that will be paid</td>
<td>20th year = $8,024.26</td>
</tr>
<tr>
<td></td>
<td>beyond the life expectancy. (Add all annuity payments scheduled to</td>
<td>6 months of 19th year = $4,012.13</td>
</tr>
<tr>
<td></td>
<td>be paid beyond the number of life expectancy years together.)</td>
<td>Total $12,036.39</td>
</tr>
<tr>
<td></td>
<td>Annuity is scheduled to pay 1 year, 6 months beyond Life Expectancy.</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Determine the percentage of payments that will be paid beyond the</td>
<td>12,036.39 divided by 160,485.20 = .075 (7.5%)</td>
</tr>
<tr>
<td></td>
<td>life expectancy. (Step 4 divided by Step 3.)</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Determine the percentage of the original annuity purchase price that</td>
<td>$100,000 x 7.5% = $7,500</td>
</tr>
<tr>
<td></td>
<td>will be considered a transfer for less than adequate consideration.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Step 2 times % in Step 5.)</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Use the amount determined in Step 6 to establish a period of ineligibility (POI), if the individual/spouse is in LTC.</td>
<td>$7,500.</td>
</tr>
</tbody>
</table>

## 3% Annual Increase Sample

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Determine the Life Expectancy of the annuitant based on the life</td>
<td>18 years, 6 months</td>
</tr>
<tr>
<td></td>
<td>expectancy tables at the end of this chapter.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Determine the original purchase price of the annuity. (Review the</td>
<td>$100,000</td>
</tr>
<tr>
<td></td>
<td>original annuity document for the purchase price.)</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Determine the sum of all the annuity payments that will be paid.</td>
<td>$168,310.33</td>
</tr>
<tr>
<td></td>
<td>(Add all annuity payments together.)</td>
<td></td>
</tr>
</tbody>
</table>

(Chart page 1 of 2)
<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>Determine the sum of all the annuity payments that will be paid</td>
<td>20th year = $10,983.59</td>
</tr>
<tr>
<td></td>
<td>beyond the life expectancy. (Add all annuity payments scheduled to be</td>
<td>6 months of</td>
</tr>
<tr>
<td></td>
<td>paid beyond the number of life expectancy years together.)</td>
<td>19th year = $5,331.84</td>
</tr>
<tr>
<td></td>
<td>Annuity is scheduled to pay 1 year, 6 months beyond Life</td>
<td>Total = $16,315.43</td>
</tr>
<tr>
<td></td>
<td>Expectancy.</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Determine the percentage of payments that will be paid beyond the</td>
<td>16,315.43 divided by 168,310.33 = .097 (9.7%)</td>
</tr>
<tr>
<td></td>
<td>life expectancy. (Step 4 divided by Step 3.)</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Determine the percentage of the original annuity purchase price</td>
<td>$100,000 x 9.7% = $9,700</td>
</tr>
<tr>
<td></td>
<td>that will be considered a transfer for less than adequate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>consideration. (Step 2 times % in Step 5.)</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Use the amount determined in Step 6 to establish a period of</td>
<td>$9,700.</td>
</tr>
<tr>
<td></td>
<td>ineligibility (POI), if the individual/spouse is in LTC.</td>
<td></td>
</tr>
</tbody>
</table>

(Chart page 2 of 2)

5% Annual Increase

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Determine the Life Expectancy of the annuitant based on the life</td>
<td>18 years, 6 months</td>
</tr>
<tr>
<td></td>
<td>expectancy tables at the end of this chapter.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Determine the original purchase price of the annuity. (Review the</td>
<td>$100,000</td>
</tr>
<tr>
<td></td>
<td>original annuity document for the purchase price.)</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Determine the sum of all the annuity payments that will be paid.</td>
<td>$173,596.27</td>
</tr>
<tr>
<td></td>
<td>(Add all annuity payments together.)</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Determine the sum of all the annuity payments that will be paid</td>
<td>20th year = $13,266.49</td>
</tr>
<tr>
<td></td>
<td>beyond the life expectancy. (Add all annuity payments scheduled to be</td>
<td>6 months of</td>
</tr>
<tr>
<td></td>
<td>paid beyond the number of life expectancy years together.)</td>
<td>19th year = $6,317.17</td>
</tr>
<tr>
<td></td>
<td>Annuity is scheduled to pay 1 year, 6 months beyond Life</td>
<td>Total = $19,583.86</td>
</tr>
<tr>
<td></td>
<td>Expectancy.</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Determine the percentage of payments that will be paid beyond the</td>
<td>19,583.86 divided by 173,596.27 = .113 (11.3%)</td>
</tr>
<tr>
<td></td>
<td>life expectancy. (Step 4 divided by Step 3.)</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Determine the percentage of the original annuity purchase price</td>
<td>$100,000 x 11.3% = $11,300.</td>
</tr>
<tr>
<td></td>
<td>that will be considered a transfer for less than adequate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>consideration. (Step 2 times % in Step 5.)</td>
<td></td>
</tr>
</tbody>
</table>

(Chart page 1 of 2)
<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Use the amount determined in Step 6 to establish a period of ineligibility (POI), if the individual/spouse is in LTC.</td>
<td>$11,300.</td>
</tr>
</tbody>
</table>

(Chart page 2 of 2)
### 26.88 Life Expectancy (L.E.) Table - Males

<table>
<thead>
<tr>
<th>Age</th>
<th>L.E. *</th>
<th>L.E. in yrs/mos</th>
<th>Age</th>
<th>L.E. *</th>
<th>L.E. in yrs/mos</th>
<th>Age</th>
<th>L.E. *</th>
<th>L.E. in yrs/mos</th>
<th>Age</th>
<th>L.E. *</th>
<th>L.E. in yrs/mos</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>71.80</td>
<td>71 yrs/10 mos</td>
<td>30</td>
<td>44.06</td>
<td>44 yrs/1 mo</td>
<td>60</td>
<td>18.42</td>
<td>18 yrs/ 6 mos</td>
<td>90</td>
<td>3.86</td>
<td>3 yrs/11 mos</td>
</tr>
<tr>
<td>1</td>
<td>71.53</td>
<td>71 yrs/ 7 mos</td>
<td>31</td>
<td>43.15</td>
<td>43 yrs/ 2 mos</td>
<td>61</td>
<td>17.70</td>
<td>17 yrs/ 9 mos</td>
<td>91</td>
<td>3.64</td>
<td>3 yrs/ 8 mos</td>
</tr>
<tr>
<td>2</td>
<td>70.58</td>
<td>70 yrs/ 7 mos</td>
<td>32</td>
<td>42.24</td>
<td>42 yrs/ 3 mos</td>
<td>62</td>
<td>16.99</td>
<td>17 yrs</td>
<td>92</td>
<td>3.43</td>
<td>3 yrs/ 6 mos</td>
</tr>
<tr>
<td>3</td>
<td>69.62</td>
<td>69 yrs/ 8 mos</td>
<td>33</td>
<td>41.33</td>
<td>41 yrs/ 4 mos</td>
<td>63</td>
<td>16.30</td>
<td>16 yrs/ 4 mos</td>
<td>93</td>
<td>3.24</td>
<td>3 yrs/ 3 mos</td>
</tr>
<tr>
<td>4</td>
<td>68.65</td>
<td>68 yrs/ 8 mos</td>
<td>34</td>
<td>40.23</td>
<td>40 yrs/ 3 mos</td>
<td>64</td>
<td>15.62</td>
<td>15 yrs/ 8 mos</td>
<td>94</td>
<td>3.06</td>
<td>3 yrs/ 1 mos</td>
</tr>
<tr>
<td>5</td>
<td>67.67</td>
<td>67 yrs/ 9 mos</td>
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26.90 Sneede Considerations

If the MFBU is ineligible due to excess property in a trust or annuity owned by a child, unmarried parent, stepparent, or a non-parent caretaker relative, the EW must complete a Sneede property determination to establish if there is eligibility for other family members.

26.91 DHCS Principal Residence

26.92 Definitions [50425]

The following terms are used in this section:

26.92.1 Principal Residence

A principal residence may consist of real or personal property, fixed or mobile, located on land or water. The principal residence includes land or buildings surroundings, contiguous to, or appertaining to the residence.
26.92.2 Appertains

Refers to any land or structures that, at the time of purchase, the applicant/beneficiary intended to make personal use of as their residence.

The land may be in one parcel or several, purchased at the same or different times. If there are separate parcels, they must be contiguous.

26.92.3 Contiguous

Refers to land or structures being next to each other with the only allowable separations being easements, water courses, streets or highways.

Example #1: The client owns property which is 28 acres in size, that she divided into three parcels. She did this in order to sell 2 parcels and keep the parcel where her principal residence is located. She gets three tax liens.

Her intent at the time of purchase was to keep the land intact as her principal residence, but she later became disabled and required additional funds to be obtained from the sale of the property.

The entire 28 acres is considered her principal residence.

Example #2: The client owns an 80 unit apartment building and lives in one of the apartments. The entire building is the client's principal residence. However, income produced from the remaining units must be included in the determination of the Share of Cost (SOC).

26.93 General Rules

• The following personal property may serve as a principal residence:
  • A mobile home
  • A houseboat
  • A motor vehicle used as a residence
  • Any other shelter not attached to the land and used as a residence

• The following items of real property can be considered as a principal residence:
  • A house
• The entire multiple unit dwelling if any portion serves as the principal residence of the applicant or beneficiary

• Property (real or personal) which the applicant or beneficiary uses as a home is exempt as the principal residence

• A former home is exempt even if the applicant or beneficiary is absent from the property for any reason, including admittance to LTC facility, as long as he/she declares in writing his/her intent to return to the former home to live.

Note: If the individual or his/her authorized representative (AR) previously states that there is no intent but later makes a correction, the EW must accept the correction for the exemption of the principal residence. In many cases, the individual or his/her AR does not understand that the nature of the intent to return is subjective and is not dependent on the individual’s physical ability to ever return.

• Only one property may be exempt at one time.

• If a portion of a multiple unit dwelling is the applicant/beneficiary’s home, the entire property is exempt.

• If the home is on land which contains other buildings, all the land surrounding and contiguous to the residence, and all other buildings on the land are exempt as the principal residence.

• No utilization is required of the principal residence. However, if the property cannot be exempt as the principal residence, it becomes “Other Real Property” and utilization may apply. [Refer to “Other Real Property (ORP),” page 49-1.]

• No durational residence is required in the chosen exempt property.

• The applicant/beneficiary must use a broker if possible when required to list the principal residence. Evidence of the listing in the newspaper or sales notices are acceptable.

• Fair Market Value (FMV), as it pertains to listing the property for sale is defined as “the amount for which comparable properties are being sold in that particular market area,” as determined by a qualified real estate appraiser.

• The exempt principal residence may be sold or transferred by the beneficiary at any time, at any price, with no subsequent period of ineligibility. However, property reserve limits must be explored, except when the beneficiary intends to buy a new principal residence within six months.
• If an MFBU member is living in the principal residence, it is exempt. All land or building appertaining and contiguous to an applicant/beneficiary’s principal residence is also exempt.

• When no member of the MFBU is living in the home, the EW must determine if the home can still be exempt as a principal residence.

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### 26.94 Exemption of Principal Residence

An applicant/beneficiary’s home, interest in a home or life estate, will continue to be the exempt principal residence (PR) if any of the following circumstances exists:

#### 26.94.1 Intent to Return

During any absence, a principal residence is exempt based on a person’s SUBJECTIVE intent to return. The intent to return is indicated by the individual or their representative marking the appropriate box on the “Application for Medi-Cal” (MC 210). Verification of the individual’s ability to return to the principal residence must not be required unless the individual or his/her authorized representative requests the income deduction for upkeep and repair of the home. [Refer to “Upkeep of Home,” page 11-83 ]

**Note:**
A person’s physical ability to return to the principal residence is not considered when determining principal residence.

**Example:**
An 84-year-old client has been living with her son in San Jose for more than a year now. She has a home in Oakland which is being rented to non-relatives for more than a year since she started living with her son. She claims her home in Oakland as her principal residence (though she currently doesn’t live there) and intends to return to her home in the future (any day in the future, no time limitation). As long as the client intends to return to her home in Oakland, it can be an exempt principal residence.
Out of State

If the applicant declares a principal residence outside of California, then California residency must be questioned. The EW must review the circumstances to see if the principal residence is exempt and if other facts support the applicant's claim of California residency. The following areas should be considered:

- Any evidence that contradicts the client's declared California residency
- Whether the property should be treated as other real property
- Circumstances surrounding the client's decision to come to California
- Physical presence with no intent of leaving
- At the time of application, whether the client already had plans to leave California.

Review the following examples of out-of-state property with intent to return:

**Example 1: Exempt out-of-state principal residence and CA residency**

The applicant and his spouse own a home in Arizona which was their former residence. They state that they intend to return to their home. Their adult son now resides in the home, however they have no present intent to leave California. They are renting an apartment in Santa Clara County. The EW establishes that the former home is an exempt principal residence and that the couple are residents of California.

**Example 2: Not a principal residence**

The facts are the same as in Example 1, but the couple has never lived in the house in Arizona. They intend to retire there someday. Since it is not their former home, it cannot be defined as a "principal residence". It must be treated as "Other Real Property". [Refer to "Other Real Property (ORP)", page 49-1.]

**Example 3: Two homes**

The facts are the same as in Example 1, except the couple lives in and owns their home in Santa Clara County (instead of renting an apartment). Only one property may be exempt as a principal residence. The couple must decide which to exempt. The other home is treated as "Other Real Property". They may still have California residence, as long as the facts indicate that they are living here.
Out-of-County Property

If the property is located out-of-county, Medi-Cal eligibility may exist. However, this county may not be the county of responsibility. [Refer to “Intercounty Transfer (ICT),” page 19-1 to determine the county of responsibility.]

Intent to Return is Questionable

A client may have declared intent to return, yet later the EW determines that the property was transferred. Intent to return becomes questionable at the time of transfer.

• The client (or the representative) has 10 days to report a change in his/her intent.

• A possible overpayment may result.

• If the property is transferred to someone who is willing to let the client return to the home should he/she be able to do so, the home remains exempt. Obtain an affidavit from the new owner.

26.94.2 Child, Spouse or Dependent Relative in Home

If during any absence, the applicant/beneficiary’s spouse, children under 21 years of age, a dependent relative, or a blind/disabled child age 21 or older lives in the principal residence, it is exempt. A medical determination of disability or blindness must be provided. If such determination is not readily available, the individual’s statement of dependency is an acceptable alternative to exempt the principal residence.

Blind Child Age 21 or Older

A person is considered blind if there has been a medical determination that he/she has either of the following conditions:

• Central visual acuity of no more than 20/200 with correction
• Tunnel vision, which is a limited visual field of 20 degrees or less.

Disabled Child Age 21 or Older

The child must meet the federal definition of disability per Title II or XVI (Social Security Act). Acceptable verification includes, but is not limited to:
Dependency Requirements

If there is a dependent relative, obtain a written statement from the applicant/beneficiary and/or the dependent relative describing the nature and degree of dependency. No further follow-up is required until the next annual RD unless it is questionable.

• Dependent relative status may be medical, financial or emotional.

• The EW is responsible for making the determination of the degree of dependency.

• Documentation of reason for the decision must be clear.

26.94.3 Legal Obstacles to Sell

If during any absence, the applicant/beneficiary does not intend to return, and no specific relative resides in the residence, but the home cannot be sold because there are “legal obstacles preventing the sale,” it is exempt. Legal obstacles can include any reason that prevents the client from liquidating the property or his/her share or interest in the property such as, but not limited to:

• Another lien (non-county imposed lien,) or

• Clouded title

• Other persons on the property who refuse to sell, including a spouse from whom the applicant/beneficiary is separated, or

• A comatose or incompetent applicant/beneficiary who is unable to act for him/herself and has no legal guardian or conservator.

As long as the legal obstacles to the sale exist, the property does not have to be listed for sale. When possible, the applicant/beneficiary must submit statements from other parties who refuse to cooperate. If the other parties refuse to provide statements, acceptable verifications include but are not limited to:

• Statement of a realtor that legal obstacles prevent the sale of the property.

• Copies of registered/certified letters sent from the beneficiary to other party(ies) requesting their cooperation in listing the property for sale.
• As a last resort, the sworn statement of the applicant/beneficiary. In the case of an incompetent applicant/beneficiary, a statement from an individual or organization having knowledge of the applicant/beneficiary’s status. In this case, the EW would make a referral to the Public Guardian/conservator.

**Note:**
These obstacles must be reviewed quarterly. New statements/evidence must be submitted to substantiate the continuation of legal obstacles. Document on the [Maintain Case Comments] window.

### 26.94.4 Client Not in LTC, Property Listed for Sale

If during any non-LTC absence, the applicant/beneficiary does not intend to return, and no specified relative resides in the residence, but a verified effort is being made to sell the property, it is exempt. If property value is under $6,000 plus the property reserve, the client must be offered the choice of listing the property for sale or meeting utilization requirements.

**Note:**
There is no time limit for the length of absence.

The following verification of the listing is required:

• An appraisal of the property from a qualified real estate appraiser, AND
• A copy of the tax assessment, AND
• A copy of the real estate listing.

The property must be listed at its Fair Market Value (FMV). FMV is the value established by a qualified real estate appraiser.

**Example:**
If the assessed value is $18,000, then the Market Value is $18,000. This is not the Fair Market Value. If the appraisal is for $100,000, the Fair Market Value (FMV) is $100,000. The listing must show a price of at least $100,000.
26.95 Net Nonexempt Income From Principal Residence

Although an exempt principal residence is not subject to utilization requirements, the net nonexempt income received from the rental of the principal residence is a countable income.

26.96 Documentation

EWs must ensure that all information regarding the current status of the principal residence is clear and documented in the case record. Principal residence questions are included on the Medi-Cal Statement of Facts form.

EWs must determine if the circumstances pertaining to the principal residence:

- Meet any of the exemption criteria
- Obtain the appropriate verifications
- Document the details in the [Maintain Case Comments] window.

If the questionnaire or requested information/verification is not provided, attempt to contact the responsible party to determine the reason for the delay. If no valid reason can be established, deny or discontinue the case for failure to provide essential information.

26.96.1 “Property Supplement” (MC 210 PS)

The MC 210 PS must be issued when it is discovered that a beneficiary has ownership interest in real or personal property which was previously used as a principal residence, in which they do not currently reside.
26.97 County Level Review (*Bagley v Rank*)

The client has the right to a County Level Review (CLR) and a state hearing prior to recording of the lien or imposing any requirement to list the property.

An LTC/SNF beneficiary or their representative may request a CLR of the circumstances surrounding their case within 30 days of the date the MC 239 W was sent to the client.

If an applicant requests such review, eligibility may not be approved until after the review and, then, only if the applicant complies with the review decision and is otherwise eligible.

Issues which may be explored are:

- Whether or not the beneficiary is absent from the property but intends to return to the principal residence to live.

- Whether there are any regulations which would allow the claimant to remain or become eligible for benefits without listing the principal residence for sale, e.g., a dependent relative resides on the property.

- Whether there is any reason why the beneficiary is unable to comply with the requirements to list the principal residence for sale, such as, the beneficiary is incompetent and there is no legal conservator or guardian.

26.97.1 EW Actions

The EW of record must conduct and document the content and results of the CLR on the [Maintain Case Comments] window.

The EW must review documents submitted by the beneficiary or the representative, which may consist of any type of written verification documenting that legal obstacles to sale exist.

The beneficiary must be informed that the property in question must not be transferred or sold during the County Level Review/State Hearing process, or eligibility for Medi-Cal may be jeopardized. This information is contained on the MC 239 W.
Exception:
Property held in joint tenancy that is transferred to the joint tenant upon the death of the beneficiary; or, if the transfer or sale is court-ordered.

The Eligibility Worker must reach a decision about the CLR prior to the date of the State Hearing, if any, but no later than 30 days from the date of request for the county review.

If a State Hearing is pending, and the County Level Review is favorable to the beneficiary, immediately contact the Appeals Unit for the purpose of obtaining a withdrawal of the request for the hearing.

Reminder:
The EW must send a “Notice of Action - Result of County Review” (MC 239 Z) and a copy of the result of the CLR to the beneficiary.

26.98 List or Lien Requirements (Non-LTC)

The following rules apply:

Lien Requirements
There are no lien requirements for non-LTC clients.

List Requirements
List requirements apply, if during any non-LTC absence, the applicant/beneficiary does not intend to return to his/her principal residence and no specified relative resides in the residence. A verified effort must be made to sell the property.

- Applicants/beneficiaries with a principal residence having a net market value of less than $6,000 must be offered the choice of listing the property for sale at Fair Market Value or meeting utilization requirements. [Refer to “Other Real Property (ORP),” page 49-1.]

- Applicants/beneficiaries with a principal residence whose market value is more than $6,000 must list the property for sale at Fair Market Value.
Note:
Fair Market Value (FMV) means the full market price that the property would sell for in the open market in the particular geographic areas where it is located. The Market Value is the same as the assessed value, and is not the same as the Fair Market Value.

26.98.1 “List Property for Sale - Persons Not in Long-Term Care” (MC 239 X)

When a non-LTC applicant/beneficiary has an interest in a principal residence which must be listed for sale, or, which the client chooses to list for sale, the EW must send an MC 239 X. This NOA tells the applicant/beneficiary that:

• In order for Medi-Cal to be established or continued the property must be listed for sale at its fair market value with a licensed real estate broker, and

• A copy of the listing contract from the real estate agent and a copy of a written appraisal from a qualified real estate appraiser must be provided by the applicant/beneficiary, and

• Verification of this listing and appraisal must be received within 30 days of the date of the NOA.

26.98.2 Applicant's/Beneficiary's Response, Listed at FMV

Once the NOA has been mailed, the EW must take the following actions, according to the client's response:

• Establish/continue Medi-Cal if the listing and appraisal is received within 30 days of the date of the NOA.

• Obtain a new listing verification on a quarterly basis.

• Once verification is received that the principal residence is listed for its FMV, the property is considered exempt. Per the Beltran v. Myers court decision, exempt property may be disposed of without adequate consideration. If the owner should transfer the property, the EW must only consider whether timely notice of the transfer was given by the owner to the EW.
Reminder:
[Refer to “Personal Property,” page 46-1 for instructions in exempting resources obtained from the sale of a principal residence, when the applicant/beneficiary intends to buy a new Principal Residence within six months.]

26.98.3 Listing not Provided

If an applicant/beneficiary fails to provide the listing as required, determine the net market value (assessed value minus encumbrances) of the property in question.

• If the net market value of the property is over $6,000 and the portion of the market value in excess of $6,000, together with all other non-exempt property, exceeds the property limit, deny/discontinue the client for excess property.

• If the market value of the property is under $6,000, the property becomes “Other Real Property.” The applicant/beneficiary remains eligible provided they meet the utilization requirements set forth. [Refer to “Other Real Property (ORP),” page 49-1.]

• If the value of the property is unknown, deny or discontinue the case for “failure to provide essential information”.

26.98.4 Lien Procedures

When the listing, the appraisal, and the copy of the deed are received, establish/continue Medi-Cal eligibility. The property is now considered exempt. In addition, a lien must be placed on the property. The EW must:

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Complete an original and one copy of the form, “Property Lien Referral” (DHCS 7014). File or scan a copy via IDM on fastener two, top.</td>
</tr>
<tr>
<td>2</td>
<td>Send the original of the DHCS 7014 and a copy of the deed to the State Department of Health Services, Recovery Branch. “Probate/Estate Recovery,” page 3-12</td>
</tr>
</tbody>
</table>
26.98.5 Effective Date of Lien

The recorded lien will take effect only after the Medi-Cal beneficiary:

- Sells the property, or
- Dies, and there is no surviving spouse; or, the beneficiary has no surviving children who are under age 21, blind or disabled.

The charges against the lien begin either on the date of application, or the date the MC 239 Y was sent to the client.

Liens are only effective until, and if, the applicant/beneficiary is discharged to return to his/her principal residence. Once the individual returns to the principal residence (and the DHA 7013 is completed and sent to DHCS,) the lien is dissolved.

Note:
A move from an LTC facility to Acute Care or a temporary visit outside the home does not dissolve the lien.

26.98.6 Non-Cooperation

If an LTC applicant/beneficiary (or their representative) fails to provide the listing, the appraisal, or the copy of the deed or contract as required, the EW must determine the market value of the property, subtracting encumbrances to arrive at the net market value of the property.

- If the net market value of the property is over $6,000, and the portion of the market value in excess of $6,000 together with all other non-exempt property, exceeds the property limit, deny/discontinue the client for excess property.
• If the net market value of the property is under $6,000, the property becomes “Other Real Property”. The applicant/beneficiary remains eligible provided they meet the utilization requirements set forth. [Refer to “Other Real Property (ORP),” page 49-1.]

• If the value of the property is unknown, deny or discontinue the case for failure to provide essential information.

26.99 Reporting Responsibilities

The exempt status of the Principal Residence is often based on the intent of the applicant/beneficiary. Therefore it is important for the EW to stress to the applicant/beneficiary or their representative that changes in intent must also be reported in a timely manner. Changes that must be reported include, but are not limited to:

• The applicant/beneficiary no longer has intent to return to the principal residence.

• The applicant/beneficiary’s spouse or other specified relative no longer lives in the home.

• Legal obstacles preventing the sale of the home no longer exist.

• Changes which are not reported within ten days must be treated as a potential overpayment. [Refer to “Overpayments,” page 65-1 for guidelines in the determination and calculation of an overpayment.]

26.100 Mandatory Informing Notices

The following forms must be provided at the time of application:

• “Notice Regarding Standards for Medi-Cal Eligibility” (DHCS 7077)

The DHCS 7077 must be provided to all LTC clients.
“Notice Regarding Transfer of a Home for Both Married and Unmarried Applicant/Beneficiary” (DHCS 7077 A)

The DHCS 7077 A must be provided to all Medi-Cal applicants, the applicant’s spouse, legal or authorized representative. It includes a signature line for clients to document that the form was received. It also indicates that failure to sign the form will NOT result in ineligibility. The EW must document in the [Maintain Case Comments] window the client’s refusal to sign the form.

### 26.101 Exemption of Principal Residence Eligibility Flow Chart

The following flow chart provides guidelines in the determination and treatment of principal residence:

- **Does the A/B own interest in a P/R?**
  - **No** → **P/R = Principle Residence**
  - **Yes** → **A/B must complete the MC 210 PS.**

- **MC 210 PS returned?**
  - **No** → **Deny/Discontinue.**
  - **Yes** → **Is P/R exempt?**
    - **Yes** → **Establish/continue Medi-Cal benefits.**
    - **No** → **Determine the value of the P/R.**
      - **Is the value under $6,000 plus the property reserve?**
        - **Yes** → **P/R must be**
        - **No** → **A/B must list the P/R. LTC must also provide copy of deed.**

**Update # 13-07**  
**Revised: 06/04/13**
### Property

<table>
<thead>
<tr>
<th>copy of the deed (if required) returned?</th>
<th>No</th>
<th>of the P/R. Is the value under $6,000 plus the property reserve?</th>
<th>Yes</th>
<th>utilized or listed to be exempt?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td>Deny/Discontinue</td>
<td></td>
<td>Is the P/R utilized or listed?</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>Is the A/B in LTC/SNF?</td>
<td>No</td>
<td>Deny/Discontinue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Is the A/B in LTC/SNF?</td>
<td>Yes</td>
<td>Establish/Continue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The P/R must be liened.</td>
<td>P/R is exempt.</td>
<td>P/R is exempt.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>EW completes DHCS 7014</td>
<td>Establish/Continue</td>
<td>Establish/Continue</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Medi-Cal benefits.</td>
<td>Medi-Cal benefits.</td>
</tr>
</tbody>
</table>

**Note:**
A non-exempt principal residence can be transferred to certain family members.

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### 26.102 Other Real Property (ORP)

### 26.103 Exemption/Unavailability of ORP [50402]

1. The following chart summarizes if and when Other Real Property is exempt:

<table>
<thead>
<tr>
<th>If the combined net market value of all Other Real Property (ORP) is...</th>
<th>And...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>At or Below $6,000,</td>
<td>Is being utilized,</td>
<td>It is exempt.</td>
</tr>
</tbody>
</table>
Property

<table>
<thead>
<tr>
<th>If the combined net market value of all Other Real Property (ORP) is...</th>
<th>And...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>At or Below $6,000,</td>
<td>The value of ORP, when added to other nonexempt property, is under the property limit for the Medi-Cal Family Budget Unit (MFBU),</td>
<td>It is counted in the property determination AND no utilization requirement is needed.</td>
</tr>
<tr>
<td>Above $6,000,</td>
<td>Is being utilized,</td>
<td>The first $6,000 of its net market value is exempt.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The net market value in excess of $6,000 must be counted in the property reserve.</td>
</tr>
<tr>
<td>Above $6,000,</td>
<td>Is not being utilized,</td>
<td>The full net market value is counted in the property reserve.</td>
</tr>
</tbody>
</table>

2. Other Real Property, regardless of its value, is considered unavailable beginning the first day of the month in which a good faith intent and bona fide effort to sell is started, and remains unavailable until the last day of the month in which the property has been sold.

Necessary steps demonstrating a bona fide effort to sell include but are not limited to:

a. Listing the property for sale with a licensed real estate broker for Fair Market Value (FMV) established by a real estate appraiser.

b. Advertising the property for sale in at least one local newspaper.

Note:
If there is no local newspaper, then the property must be advertised in a newspaper with local distribution.

c. Accepting bona fide offers within 2/3 of the FMV AND supplying copies of all offers.

3. The client must submit verification to the EW that all requirements in b. above are being met every six months.
4. Good cause for ceasing to make a bona fide effort to sell exists when the applicant/beneficiary has accepted what appears to be a bona fide offer, and:

a. Either the buyer is unable to complete the purchase, OR

b. The offer is eventually found not to be bona fide.

Note:
A copy of the written offer for the property must be provided to the EW as evidence that the offer was bona fide.

26.104 Definitions [50413, 50415, 50427]

26.104.1 Fair Market Value (FMV)

Fair market value of other real property is the actual market price as determined by a qualified real estate appraiser.

26.104.2 Investment Property

Any property that is owned and used for the sole purpose of keeping or gaining a future increase in its value, and/or is considered an investment property. This includes:

- Homes (other than those used as principal residence)
- Residential or commercial lots/units.

These properties could be acquired through direct purchase, inheritance, case settlement (e.g., divorce), lottery winnings, or as gifts. When property is held without an immediate intent to sell it, it is considered as being held as an investment.
Example:
Mrs. B owns a vacant lot. It has a current net market value of $20,000. She will only sell it when the net market value would increase by no less than 25% from the original purchase price. The net market value of the lot must be counted in the property determination.

An investment property is a countable property. It is considered other real property and is subject to the utilization requirements. A property is considered being utilized if the property is earning an annual income of 6% of its net market value.

26.104.3 Market Value

California property

The market value is the assessed value shown on the most recent property tax assessment.

Property located outside California

- Use the assessment method where property is located. The EW may call the local tax assessor's office.
- Use the value of an appraisal by a member of a recognized professional appraisal society.

Note:
It is the client's responsibility to obtain the appraisal.

26.104.4 Encumbrances

An encumbrance is an obligation for which property is security. These may be:

1. Loans.
2. Attachments for debts and taxes.
3. Chattel mortgages and liens.

Note:
Each encumbrance must be verified by viewing a legal document which states that the property is being used as security.
Net Market Value (NMV)

The net market value is the owner’s equity in the property. It is obtained by subtracting the encumbrances from the market value.

Example:

<table>
<thead>
<tr>
<th>Market Value</th>
<th>$125,000 (assessed value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minus Encumbrances</td>
<td>- 60,000</td>
</tr>
<tr>
<td>Net Market Value</td>
<td>$65,000</td>
</tr>
</tbody>
</table>

26.105 Determine Ownership Share and Amount to Be Utilized

1. The owner is the person who holds legal title. Title may be sole and separate, joint or in common.
   a. If the title states: “John Doe, Et Al”, this is a clue that others beside John Doe hold legal title. The “Et Al” means “and all others”.
   b. If the client is the sole owner of the item of property, the entire item is subject to utilization.

2. If the client shares ownership with other persons, only the client’s portion of the property is subject to utilization.

Example:
Client has 1/3 interest in an apartment building that he does not live in. Therefore 1/3 of the Net Market Value of the apartment building is subject to utilization.
26.106 Utilization [50416]

All other real property shall be utilized in order to be exempt unless the net market value, when added to the net market value of other nonexempt property, does not exceed the property reserve limit for the MFBU.

1. Property is utilized if receiving net yearly income from the property of at least 6% of its net market value.

The EW shall complete the MC 176 P, Property Worksheet, Section I, to determine utilization. [Refer to “Examples of Other Real Property (ORP) Utilization,” page 26-155.]

a. Property not limited to seasonal use.

The net monthly income must be \( \frac{1}{12} \) of 6% of the NMV. This amount is shown on Column I, Line D3 of the MC 176P.

b. Property limited to seasonal use, e.g., farmland, summer cabins.

(1) The utilization requirement is met if net yearly income is equal to 6% of its NMV.

(2) The year is considered to begin in the first month of the year in which income normally begins, and income from all months of the year shall be considered in determining net yearly income from the property, regardless of the Medi-Cal eligibility status of the owner in those months.

c. An existing environmental impact report may be considered when determining the utilization potential of property.

Note:
If a person owns more than one piece of property which are subject to utilization requirements, the combined net market value of ALL the property may be used in determining if the utilization requirements are met. Each piece need not be producing income of 6%. 

Example:
Client owns 2 pieces of property. One is not producing income. The second piece of property is producing income which equals 6% NMV of both pieces of property. The utilization requirements are met.

2. Other real property is being utilized if:
   a. It has been sold for fair market value, OR
   b. The sale is in escrow and there is a bona fide attempt to close the sale.

3. Other real property listed for sale is exempt from utilization requirements as long as all of the requirements for it to be considered otherwise unavailable are being met. [Refer to “Exemption/Unavailability of ORP [50402],” page 26-148.]

4. Utilization requirement begins whenever:
   a. An application who is a member of an MFBU, with other real property included in the property reserve of the MFBU that is not being utilized, becomes eligible.
   b. The other real property that has been utilized is no longer utilized.
   c. The net market value of ORP, when added to the NMV of other nonexempt property no longer falls within the property limits for the MFBU.

5. The entire NMV of property not utilized is included in the property reserve on the first of the month following the last month of the utilization period.

**26.107 Time Limits for Utilization**

1. The applicant/beneficiary shall be allowed six months to meet utilization requirements.
   a. The six month period begins on the first of the month following issuance of a notice of action regarding utilization requirements.
   b. Once a utilization period has begun, if the beneficiary becomes ineligible for Medi-Cal before it expires, the utilization period stops.
(1) The remainder of the utilization period shall be applied if the client reapplies and the property is still not being utilized, UNLESS

(2) The beneficiary verifies that the property was utilized at any time during the month(s) he/she was not on Medi-Cal, a new utilization period shall be allowed.

2. The utilization period can be extended for a maximum of one year for good cause.

Good cause can be established only when the applicant/beneficiary has made a bona fide effort to meet utilization requirements and is unable to do so because of circumstances beyond his/her control, including, but not limited to:

a. Death of a part owner of the property and inability or refusal by the administrator, executor of the estate, or other responsible person to meet the utilization requirements.

b. Prolonged illness which causes the applicant/beneficiary to be hospitalized or home bound during the utilization period, which renders him/her unable to take the necessary actions or to arrange for an agent to do so.

3. If the utilization requirements can only be met by sale of the property, the utilization period can be extended for as long as the property is listed for sale and all requirements are being met for it to be considered unavailable.

4. The client may have his/her property reassessed during the utilization period.

a. Use the reassessed value to determine utilization.

b. A reassessment shall not affect the length of the utilization period.

26.108 Examples of Other Real Property (ORP) Utilization

26.108.1 Value of ORP is Within Property Limits

A couple owns undeveloped land with an assessed value of $650,000. However, they owe $648,000 on the property; therefore, the net market value is $2,000. They also have $700 in a joint checking account.
26.108.2 Value of ORP is Over Property Limits, ORP Must Be Utilized

A couple lives in their own home and have another home which is not being rented. The assessed value of the second house is $750,000 and $720,000 is still owing. The net market value of the ORP is $3,000. The couple also has $2,000 in a savings account. Since the value of the ORP and their savings account is more than their property limit ($3,000), the house is subject to utilization requirements.

26.108.3 Deed of Trust, Utilization Met

A couple has a deed of trust from the sale of their previous home. Its net market value is $5,000. Since the value of deed is more than their property limit ($3,000), the deed is subject to utilization requirements. The value of the deed is not included in the property reserve if utilization requirements are met.

26.108.4 Value of ORP over $6,000, Utilization Requirements Met

When the NMV of other real property is over $6,000, only the first $6,000 may be exempt if utilization requirements are being met. Any amount of the NMV in excess of $6,000 is included in the property reserve.

A couple owns a house that is being rented. The net market value of the house is $7,000. They have $1,500 in the bank. The property limit for 2 is $3,000.

If they meet the utilization requirements, the first $6,000 on the property is exempt. The balance of its net market value ($1,000) is included in their property reserve, together with the $1,500 in their bank account.

26.108.5 Excess ORP Over $6,000, Not Eligible

A couple owns land with an assessed value of $160,000. They owe $140,000; therefore, the net market value is $20,000. Only $6,000 is exempt. The remaining $14,000 is included in their property reserve. They are ineligible unless they make a bona fide effort to sell the property for its fair market value (appraised value not the assessed value). They are eligible and the property will be considered unavailable if they meet all requirements.
26.108.6 ORP Value Under $6,000, Utilization Not Met

A couple has a second home with a net market value of $3,500. A relative residing in the home, is paying $200 per month rent.

Actual expenses include:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td>$1,000 annually</td>
</tr>
<tr>
<td>Interest</td>
<td>1,200 annually</td>
</tr>
<tr>
<td>Insurance</td>
<td>300 annually</td>
</tr>
<tr>
<td>Water and Garbage</td>
<td>500 annually (paid by owner)</td>
</tr>
<tr>
<td>Gardening service</td>
<td>30 monthly (paid by owner)</td>
</tr>
</tbody>
</table>

No other expenses are being paid by the owner.

26.109 Life Estate [MEPM 9A]

A life estate is a legal arrangement that allows an individual (the life-tenant) to use real or personal property for their lifetime. Although they do not own the property, the life estate provision itself has a property value.

A life estate is considered “property” for Medi-Cal purposes and has a value as long as an individual owns a life estate interest, whether they currently use the property or not. The value must be considered when determining the property reserve for a Medi-Cal applicant/recipient.

A life estate generally entitles the life tenant to make full use of the property for as long as he/she lives and the right to any income earned from the property. Life estates may, however, be restricted. Any restrictions must be identified in the life estate document. Examples of restrictions include:

- A requirement to actually reside on the property and to not rent the property.
- The remainderman, rather than the life tenant, may be entitled to any and all income generated from the property.
- A requirement for the remainderman to pay part or all of the maintenance, taxes or other expenses related to the property rather than the life tenant.
26.110 Definitions

Life Estate

An interest in real or personal property whose duration is limited to the lifetime of a person holding it, or to the lifetime or one or more other designated persons.

The wording “life estate” is not essential to make it a Life Estate document. Other commonly used phrases in life estate document include:

- To person A for the term of his/her life.
- Person A reserves the possession or use of the property for the term of person A’s lifetime.
- To person A for the life of person X.
- To person A but on person A’s death to go to person B and his/her heirs.

Life Tenant/Beneficiary

The person holding a life estate interest. The life tenant/beneficiary need not be the same person as the grantor.

Grantor/Trustor

The person who owns property and gives a life estate to a life tenant with a future interest to one or more remainderman. The grantor may reserve a life estate interest for someone other than him/herself.

Remainderman

The person(s) who owns the property subject to the life estate and who is entitled to the use of the property once the life estate ends (usually upon the death of the life tenant). Remainderman have a remainder interest or future interest (i.e., right to use or right to income) in the property.
Revocable

A life estate which can revoked or terminated by its own terms.

Irrevocable

A life estate which cannot, in any way, be revoked or terminated by its own terms.

26.111 Life Estate Interest in Real Property

Life estate interest in real property is treated the same as real property.

Life estate interest in personal property is considered personal property.

Principal Residence

Life estate interest in an individual's principal residence is exempt.

Other Real Property (ORP)

The life estate value of Other Real Property (ORP) over $6,000 must be included in the property reserve.

The $6,000 value of the life estate property must be utilized. [Refer to "Life Estate Interest (Personal Property) [50442]," page 46-24.]

Verification

A copy of the legal document which created the nonexempt life estate is required. This is usually the grant deed.

26.112 When to Evaluate

The life estate value must be calculated as part of an eligibility determination when:
• The life estate is currently held nonexempt resource, or

• The nonexempt life estate was transferred and adequate consideration must be determined, or

• Nonexempt property was transferred with retention of the life estate and the life estate value is needed in order to determine the amount of consideration received for the property transfer.

26.113 Method of Evaluation

When determining the value of a life estate, first determine whether the life estate:

• Is revocable
• Is irrevocable
• Contains property that was owned by the applicant/beneficiary when the title of the property was transferred and the life estate was established.

26.113.1 Revocable Life Estate

A revocable life estate is one in which ALL the following conditions exist:

• The life estate is revocable by someone in the MFBU or the community spouse, and

• The MFBU member or community spouse was the owner of the property when the life estate was established, and

• The MFBU member or community spouse is retaining a life estate interest in the property.

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Determine the current market value or the property assessed value or appraised value.</td>
</tr>
<tr>
<td>2</td>
<td>Deduct all encumbrances of record from the market value.</td>
</tr>
<tr>
<td>3</td>
<td>Count the remainder in full as the net market value in determining the property reserve. Important: Do not use the Life Estate Value Table to determine the value of this type of Life Estate.</td>
</tr>
</tbody>
</table>
26.113.2 Irrevocable/Other Life Estates

Use the “Life Estate Value Table” when evaluating life estates that do not meet ALL the Revocable Life Estate requirements listed above. Some examples of when to use this method include a life estate that:

- Is irrevocable (a life estate is always considered irrevocable unless the life estate document specifically states it is revocable).

- Was established with property that was not owned by the MFBU member or community spouse.

- Is irrevocable, but not by anyone in the MFBU or the community spouse.

Follow the steps below to determine the net market value of irrevocable/other life estate.

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Determine the current market value of the property (assessed value or appraised value).</td>
</tr>
<tr>
<td>2</td>
<td>Deduct all encumbrances of record from the market value to determine the net market value of the property.</td>
</tr>
<tr>
<td>3</td>
<td>Use the “Life Estate Value Table” to determine the life estate value factor based upon the life tenant’s current age.</td>
</tr>
<tr>
<td>4</td>
<td>Multiply the life estate value factor by the net market value found in Step 2.</td>
</tr>
<tr>
<td>5</td>
<td>The result is the amount to be included in determining the property reserve.</td>
</tr>
</tbody>
</table>

**Note:**
The appraised value from a qualified real estate appraiser may be used, if lower (real estate appraiser, bank, savings and loan association, credit union, licensed loan or mortgage broker).

**Example:**
Mrs. Smith was granted a life estate interest in the home of her deceased sister. It had been exempt as a principal residence.

She is now 85 years old and is entering a long term care (LTC) facility. She declares no intention to return to her home. It is now considered Other Real Property (ORP). Evaluate for utilization.

The house is currently assessed at $20,000 and has no encumbrances. Per
the “Life Estate Value Table”, Mrs. Smith’s life estate value factor is .35359. 
(20,000 x .35359 = 7071.80) The value of her life estate is determined to be 
$7071.80.

Since this is below the property limit of $2000 plus the Other Real Property 
(ORP) limit of $6000, she must be given 6 months to utilize the property. If 
utilized, the market value of the life estate in excess of $6000 will be included 
in the property reserve.

26.113.3 Determination of Past Value

Property transferred during the 30-month look-back period for LTC must be 
evaluated for a potential Period of Ineligibility (POI).

Follow the steps below to determine the past value of a life estate.

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Determine the market value (assessed value or appraised value) at the time of the transfer.</td>
</tr>
<tr>
<td>2</td>
<td>Deduct all encumbrances of record at the time of the transfer to determine the net market value of the property.</td>
</tr>
<tr>
<td>3</td>
<td>Use the “Life Estate Value Table” to determine the life estate value factor based on the life tenant’s age at the time of the transfer.</td>
</tr>
<tr>
<td>4</td>
<td>Multiply the life estate factor by the net market value (Step 2) to determine the value of the life estate.</td>
</tr>
<tr>
<td>5</td>
<td>Subtract the value of the life estate from the net market value found in Step 2.</td>
</tr>
<tr>
<td>6</td>
<td>Use the resulting amount to determine POI, if necessary.</td>
</tr>
</tbody>
</table>

Example:
Mr. Johnson, age 83, transferred his irrevocable nonexempt, second home 
(ORP) to his son one year ago, but retained a life estate interest. He is now 
applying for Medi-Cal. To compute the value of the property transferred and 
determine the POI, the value of the life estate interest at the time the property 
was transferred must be determined. The period of ineligibility can then be 
determined.

The assessed value of the ORP at the time of the transfer was $19,000. 
Encumbrances of record at the time of the transfer totaled $4000. Therefore, 
the net market value was $15,000.
The life estate value factor for an 82-year-old is .40295. The value of Mr. Johnson’s life estate interest at the time of the transfer was $6,044.25 ($15,000 x .40295). The value of the life estate is subtracted from the net market value of the ORP transferred without receipt of adequate consideration ($15,000 - $6,044.25 = $8,955.75). The remaining amount, $8,955.75, is used to determine the period of ineligibility.

### 26.114 Life Estate Value Table

The Life Estate Value table is based on the California State Inheritance Tax Formula and the Internal Revenue Service Actuarial table.

#### Life Estate Value Table (effective 6/1/96)

<table>
<thead>
<tr>
<th>Age</th>
<th>Life Estate Value Factor</th>
<th>Age</th>
<th>Life Estate Value Factor</th>
<th>Age</th>
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<td>70</td>
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</tr>
</tbody>
</table>
1. The Medicare Catastrophic Coverage Act (MCCA) allows that a couple (or their representative) may request to have a “property assessment” to determine how their resources would be counted and valued when one spouse is in LTC and the other spouse is in the home, even though they are not presently applying for Medi-Cal. Property assessments are limited to couples when:

   a. Application is made on or after January 1, 1990, and

   b. One spouse has been institutionalized on or after September 30, 1989.

2. A couple meeting the criteria above, may also request a property assessment be completed at the time of their application for Medi-Cal.
a. If an assessment is requested as part of the Medi-Cal application, the EW shall complete the MC 176PA, Property Worksheet/Assessment.

b. Issue a copy to each spouse and/or their representative(s), and retain the original in the case folder.

26.115.1 Property Assessment Application and Statement of Facts

1. Property assessments will be completed by intake in offices which are responsible for LTC cases.

   a. The SAWS 1 and MC 210 will be provided by the receptionist to all persons requesting Medi-Cal.

   b. If the EW determines at the initial interview that the client is only requesting a property assessment and does not want to apply for Medi-Cal at this time:

      (1) Have the client sign the SC 166, application refusal for Medi-Cal.

      (2) Either the community spouse, the institutionalized person, or their representative shall sign the Medi-Cal Property Assessment Application, MC 176PA-A.

Note:

This form must also be signed by the EW. A copy must be given to each of the spouses and/or their representative(s). Scan a copy into IDM.

2. The MC 210 may be used to determine the couple's property. If the MC 210 is used:

   a. Only the questions concerning property must be completed.

   b. Neither the EW nor the client are required to sign the MC 210.

3. If the MC 210 has not been completed, the client may complete the Property Assessment Statement of Facts MC 210PA. (Again, no signatures are required on this form.)

4. Persons requesting a property assessment are required to provide verification of their resources.

   a. Allow the client a reasonable opportunity to provide property verifications.
Note:
Reasonable opportunity generally means that the client is cooperating and maintaining contact with the EW. Clients must be allowed additional time to provide verification when there is good cause for delay.

b. If verification(s) are not provided, carefully document the case record on the MC 176 PA that the assessment is being completed without “(specify) verification.”

c. Income information/verification is not required.

26.115.2 Completing the Property Assessment

1. The Property Worksheet/Assessment for Institutionalized Spouses, MC 176PA, page 1-2 is used to complete the property assessment.

   a. If verifications have not been provided after a reasonable time, the EW shall use the values stated on the statement of facts form to complete the assessment.

   b. Document on the worksheet (MC 176 PA) that verification was not provided.

2. The EW shall complete and explain the MC 176 PA to the client.

   a. A copy shall be provided to each spouse and/or their representative. Scan a copy into IDM.

   b. The EW shall explain, as with any Medi-Cal application, the treatment of property for Medi-Cal including, but not limited to:

      (1) Property limits.
      (2) How property is divided, exempted, counted, and valued.
      (3) Spenddown and reducing excess property, e.g., purchasing exempt items.
      (4) The cash surrender value of life insurance policies, and how they may borrow against the value to reduce countable property.

3. Notices of Action are not required, as an assessment is not an application for Medi-Cal.
a. The value of property held at the time of the actual application for Medi-Cal will be used.

Fair Hearings will not be granted to persons who are only requesting an assessment.