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**D. REAL
PROPERTY
EXCLUSIONS**

The types of exclusions described below can apply to home/non-home property as appropriate. Each exclusion can apply to any type of ownership interest.

**1. Jointly Owned
Real Property
Whose Sale
Would
Cause
Undue
Hardship**

Effective April 1, 1988, the value of an individual's owner-interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship, due to loss of housing, to a co-owner.

Undue hardship would result if such co-owner:

- uses the property as his/her principal place of residence;
- would have to move if the property were sold; and
- has no other readily available housing.

Verify joint ownership and obtain a signed statement from the client and joint owner which documents undue hardship.

The exclusion ends when any one of the above conditions no longer applies.

**2. Exclusion of
Real Property
Due to
Reasonable
Efforts to
Sell**

Effective April 1, 1988, real property can be excluded from resources provided the owner makes reasonable efforts to sell it and those efforts have been unsuccessful. The specific requirements listed below must be met in order this exclusion to apply.

a. Reasonable Efforts to Sell

Reasonable efforts to sell real property consist of taking all necessary steps to sell it through media serving the geographic area in which the property is located. For purposes of this provision, reasonable efforts specifically mean that:

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- (1) Within 30 days of signing Form DOM-320A, Agreement to Sell Property, the owner(s) must:
 - a. List the property with an agent; or
 - b. Begin to advertise in at least one of the appropriate local media, place a "For Sale" sign on the property (if permitted), begin to conduct open houses or otherwise show the property to interested parties on a continuing basis, and attempt any other appropriate methods of sale; and
 - (2) Except for gaps of no more than 1 week, the owner must maintain efforts of the type listed in 1. above; and
 - (3) The owner does not reject any reasonable offer to buy the property and accepts the burden of demonstrating to Medicaid's satisfaction that an offer was rejected because it was not reasonable.
- b. Reasonable Offer to Buy

Assume that an offer to buy property at a particular price is reasonable if it is at least two-thirds of the estimated current market value (CMV) unless the owner proves otherwise (e.g., provides convincing evidence of a different CMV).

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c. Good Cause

Good cause exists when circumstances beyond an individual's control prevent his or her taking the required action to accomplish reasonable efforts to sell. If good cause exists for the failure to meet any of the criteria specified in "Reasonable Efforts to Sell", the exclusion can continue, provided action is taken to resume efforts to sell.

d. Failure to Make Reasonable Efforts

Unless there is good cause, failure to meet any of the criteria specified in "Reasonable Efforts to Sell" means that:

1. An individual is not making reasonable efforts to sell the property;
2. The individual's countable resources include the value of the property beginning with the month following the month in which reasonable efforts to sell stop; and
3. The individual will be charged with an improper payment, if applicable.

e. Initial Verification of Efforts to Sell

The effort to sell must be documented in the case record within the 30 day time period for applying the exclusion by requiring all appropriate proof such as:

1. Copy of the listing agreement with the real estate agency in current use;
2. Dated advertisement(s) indicating the property is for sale;

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3. Contracts with local media to advertise the property;
4. A photograph of the "For Sale" sign on the property;
5. Any other relevant items.

f. Effective Date of Exclusion

If the appropriate proof is submitted, the exclusion is applied back to the first of the month in which the effort to sell was initiated.

If the effort to sell was in existence prior to the date of application, the exclusion can be applied retroactively provided the effort is documented and DOM-320A is signed.

If the effort to sell is just beginning, the exclusion applies effective with the first of the month DOM-320A is signed (provided it is signed within 30 days).

If not signed within 30 days, the exclusion applies as of the first of the month the effort to sell is initiated.

g. Follow-Up Contacts

Contacts must be scheduled at 90-day intervals until the property is sold or the exclusion ends. Follow-up contacts may be by telephone to determine the efforts being made to accomplish the sale and to document whether there has been any offer to buy since the prior contact. If an offer to buy has been refused, a statement must be submitted explaining the refusal. Note: the refusal of an offer to buy must be evaluated under the "Reasonable Offer to Buy" guidelines. If the refusal is unacceptable, the exclusion ends beginning with or retroactive to the month after the month of the refusal to sell.

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If the reasonable efforts to sell are not continuing at each follow-up contact, determine if good cause exists. If good cause does not exist, the exclusion ends beginning with or retroactive to the month after the month the reasonable efforts stopped.

3. Interests of Individual Indians in Trust or Restricted Lands

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, any interests of the individual (or spouse) in trust or restricted lands are excluded from resources.

If an individual Indian alleges an interest in trust or restricted land:

- obtain for the file a copy of any document or documents that might identify it as such; and/or
- verify the allegation with the appropriate Indian agency.

If verification is by phone, document the file.