302.02 LOANS, PROMISSORY NOTES & PROPERTY AGREEMENTS

This section provides resource policies that primarily apply when the client or spouse is the creditor (lender or seller) and is, therefore, the owner of a loan agreement, promissory note or a property agreement. The principal amounts of these items are evaluated under appropriate SSI or liberalized resource policy.

302.02.01 GENERAL

TERM	DEFINITION
Bona Fide Agreement	An agreement which is legally valid and made in good faith.
Negotiable Agreement	A type of agreement where legal title or the amount of the agreement can be transferred (sold) to another party. Generally, promissory notes, loan agreements and personal and real property agreements can be sold to a third party. An agreement may be assumed to be non-negotiable if there is a legal bar to its sale.
Loan	A transaction in which one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest. The loan agreement must be enforceable under state law and be in writing. A written loan agreement is a form of promissory note.
Informal Loan	With formal loans (e.g., commercial), there is rarely a question about whether the loan agreement is bona fide. An informal loan is a loan between individuals who are not in the business of lending money or providing credit. An informal loan must be written and is bona fide if: • It is legally binding under state law • It was in effect at the time of the transaction (money given with no obligation to repay cannot become a loan at a later date) • There is an acknowledgement of an obligation to repay, with or without interest, by the lender and the borrower • There is a plan or schedule for repayment and the borrower's express intent to repay by pledging real or anticipated future income. • The repayment plan is feasible.

General (Continued)

TERM	DEFINITION
Promissory Note	Written, unconditional agreement where one person promises to pay another party a specific amount at a specific time (or on demand). It can be repayment for goods, money loaned or services rendered.
Property Agreement	A piece of property is used to secure payment of a debt or performance of services within a specified period of time. Other names for property agreements include: • Mortgages • Real estate or land contracts • Contracts for deed • Deeds of trust • Personal property agreements, e.g., pledges of crops, fixtures, inventory, etc., are known as chattel mortgages

Property Agreements Prior to Settlement

A person holding a contract for sale of real estate (seller or creditor) owns **two** items until the settlement of the sale is completed:

1. The real estate, which is not a resource since it cannot be sold while encumbered by the contract, and.

2. The value of the contractual agreement.

Determining the Value of a Contract

The status and value of a contract, i.e., loan agreement, promissory note or property agreement, must be evaluated to determine if it is a resource under appropriate SSI or liberalized resource policy.

302.02.02 TREATMENT OF LOANS, PROMISSORY NOTES & PROPERTY AGREEMENTS

Procedure

SSI RESOURCE POLICY

Follow these procedures when the individual is the seller or creditor:

- Obtain a copy of the agreement for the file. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.
  - A bona fide, negotiable agreement is a resource. The goods or money represented in the agreement are not a resource because they are not accessible.
  - The debtor's payments against the principal are a conversion of a resource, not income. The interest portion received by the lender is unearned income. If retained, principal and interest are counted as the lender's resource the month following the month of receipt.

  Example: Debtor pays $500 per month - $350 toward principal and $150 in interest. The $350 is a converted resource. The $150 is unearned income.
- If including the original principal balance (the amount owed to the creditor when the agreement was established) causes ineligibility on resources, obtain verification of the outstanding principal balance, i.e., the balance in the month for which a determination is being made.
- If including the outstanding principal balance causes ineligibility on resources, inform the individual that we will use the outstanding principal balance in determining resources unless he submits:
  - Evidence of a legal bar to the sale of the agreement ; or
  - An estimate from a knowledgeable source (in the business of making estimates, such as banks, other financial institutions, private investors, real estate brokers, etc.) showing that the CMV of the agreement is less than its outstanding principal balance. The estimate must show name, title, and address of the source.

For agreements determined to be Non-Bona Fide or Non-Negotiable

- A non-bona fide or non-negotiable agreement is not a resource under SSI policy
- The principal and interest paid to the lender are income, not a resource
- The goods or money represented in the agreement may be a resource to the seller if the seller/creditor has access for his own use

Treatment Of Loans, Promissory Notes & Property Agreements (Continued)

Procedure

LIBERALIZED RESOURCE POLICY

Follow these procedures when the individual is the seller or creditor:

- Obtain a copy of the agreement for the file. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.
- Determine if the bona fide, negotiable note or agreement produces at least 6% net annual return of the principal balance.
  - Loans, promissory notes and property agreements can be excluded as a resource if the note, loan or agreement produces at least a 6% net annual return of the principal balance.
  - The income must be received by the client/spouse and counted as income in order for the exclusion to apply.
  - If the above criteria are not met, the note or agreement cannot be excluded as a resource.
- Even though the 6% rule is in effect and establishes a minimum acceptable payment when compared to the principal balance, the following conditions must also be met for a resource exclusion:
  - For all institutionalized individuals in SSI or liberalized programs, the repayment terms of the agreement must be actuarially sound.
  - The payments must be of uniform rate, principal and interest, during the term of the agreement, with no deferred or balloon payments; and
  - The agreement must prohibit cancellation of the debt upon the death of the lender.

The institutional client or spouse must reasonably expect to receive full payoff of the note or loan during his/her lifetime. As with annuities, the average number of years of life expectancy remaining based on the Annuity Life Expectancy Charts must coincide with the payout of the promissory note or loan.

Treatment of Loans, Promissory Notes & Property Agreements **(Continued)**

Procedure

LIBERALIZED RESOURCE POLICY

Handling Agreements that Do Not Meet Requirements

- For **non-institutional** cases assessed under liberalized resource policy, a non-bona fide or non-negotiable agreement is not a resource.
    - Principal and interest payments are income to the seller/creditor.
    - The goods or money represented in the agreement may be a resource if the seller/creditor has access for his own use.
- For **institutional** cases, funds used to purchase promissory notes, loans or mortgages that do not meet the 6% rule, are not actuarially sound or are not bona fide or negotiable will be considered a transfer of assets valued as the entire outstanding balance due as of the date of the application for long term care for contracts dated on or after February 8, 2006.

Documenting Loans

- A loan to a relative that is immediately declared "uncollectable" is not a loan at all. It is a transfer or assets for less than fair market value.
    - A financial institution that has no direct interest in the original transaction cannot verify that the "loan" is uncollectable. An uncollectible loan must be documented in the form of a legally binding and enforceable contract with the rate of interest specified and a repayment schedule.
- Documentation is required on a regular basis to verify that the loan is being repaid as required by the contract. If the loan is not being repaid, the lender is required to take legal action against the borrower to enforce the contract requirements. If no action is taken by the lender, he may be subject to a transfer penalty.

Treatment of Loans, Promissory Notes & Property Agreements (Continued)

Treatment for the Borrower

For the borrower under SSI and liberalized resource policy:

- If the agreement is bona fide and negotiable, cash paid by the lender to the borrower is not income; however, cash retained (or property received) may be a resource to the borrower the month following the month of receipt.
- If the agreement is non-bona fide or non-negotiable, cash paid by the lender to the borrower is income in the month received by the borrower and retained cash (or property received) may be a resource to the borrower the following month.