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MQT Policy Principles (Continued)

In addition, the following principles must be considered:

- The client is considered the grantor even if the trust was established pursuant to court order issued upon the petition of the client or his representative. In this situation, the court acts as the client's agent in establishing the trust.
- It is not necessary that there be a trust agreement, as defined by state law, for MQT trust policies to apply. MQT trust policies apply to **"similar legal devices"** or arrangements having all of the characteristics of an MQT, except there is no actual trust instrument. Examples are:
 - Escrow accounts;
 - Savings accounts;
 - Pension funds;
 - Annuities;
 - Investment accounts;
 - Other accounts managed by agent with fiduciary obligations, such as conservatorships or guardianships.
- The MQT provision does not apply to trust agreements established by will. These trusts are treated as standard trusts. However, if a client inherits resources and in turn establishes a trust, the MQT provision could apply.

304.05.02. RESOURCE TREATMENT OF MQT's

Each trust document must be reviewed individually to determine the resource treatment of the trust, but in general use the following criteria to determine resource treatment:

- **Revocable MQT** - The entire corpus of the trust is an available resource to the client. Resources comprising the corpus are subject to individual resource exclusions, if applicable, since the client can access these resources.

An exception is exclusion of the home for institutionalized recipients. Home property loses its excluded status when transferred into an MQT.

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Resource Treatment of MQT'S (Continued)

- **Irrevocable MQT** – The countable amount of the corpus is the maximum amount the trustee can disburse to (or for the benefit of) the client, using his full discretionary power under the terms of the trust. Resources transferred to an irrevocable MQT lose individual resource consideration. For example, home property transferred to such a trust can no longer be excluded as home property but is included in the value of the corpus.
 - If the trustee has unrestricted access to the corpus and has discretionary power to disburse the entire corpus to the client (or to use it for the client's benefit), then the entire corpus is an available resource to the client.
 - If the trust does not specify an amount for distribution from the corpus of the trust or from income produced by the corpus, but the trustee has access to and use of both corpus and income, the entire amount is an available resource to the client.
 - If the trust permits a specified amount of trust income to be distributed to the client (or to be used for his benefit), but these distributions are not made, then client's countable resources increase cumulatively by the undistributed amount.

304.05.03 INCOME TREATMENT OF MQT's

In general use the following criteria to determine treatment of income from an MQT:

- Amounts of trust income distributed to the client are counted as income when distributed.
- Amounts of trust income distributed to third parties for the client's benefit (including payments for medical services) are countable income when distributed.
- **Exculpatory Clauses** which limit the authority of the trustee to distribute funds from a trust if such distribution would jeopardize eligibility for government programs are ignored for MQT purposes if the language explicitly or implicitly links the trustee's discretion to Medicaid requirements.