

**9050.0600 PROPERTY LIMITATIONS.**

Subpart 1. **General provisions of property ownership.** The equity value of all nonexcluded real and personal property owned by an applicant or resident must not exceed \$3,000. The facility financial staff must use the equity value of legally available real and personal property, except property excluded in subpart 2 or 3, to determine the resources available to or on behalf of an applicant or resident.

A. If real or personal property is jointly owned by two or more persons, the facility financial staff shall assume that each person owns an equal share. When the owners document greater or smaller ownership, the facility financial staff shall use that greater or smaller share to determine the equity value held by or on behalf of an applicant or resident. Other types of ownership, such as a life estate, must be evaluated according to law.

B. Real or personal property owned by or on behalf of an applicant or resident is presumed legally available unless the applicant or resident documents that the property is not legally available to the applicant or resident. If real or personal property is not legally available, its equity must not be applied against the limits of subparts 2 and 3. Examples of property not available to a person are an estate that has not been probated, property owned together with one or more other people that the facility financial staff determines cannot be liquidated or reduced to cash through exercise of the applicant's or resident's legal rights, and property of an applicant or resident who is determined incompetent by a court and whose guardianship is pending. The facility financial staff shall consider as available property that property which a person has failed to make available for purposes of gaining admission to a facility operated by the commissioner of veterans affairs or avoiding payment of the maintenance charge. An example of a person's failure to make property available occurs when the person refuses to accept a share of an inheritance.

C. Real or personal property transferred by an applicant or resident in violation of part 9050.0650 is presumed legally available.

D. The facility financial staff shall consider as available an individual retirement account, Keogh account, or other pension or deferred compensation plan account. The facility financial staff shall evaluate the accounts on the basis of the funds deposited in the account and the interest accrued on the funds less the penalty for early withdrawal.

E. The facility financial staff shall consider as available the proceeds that a person receives in a tort settlement, whether the settlement is entered into by the person or the person's guardian. If the settlement is received as a one-time payment, the facility financial staff shall treat it as a lump sum. If the settlement is structured to be paid over a period of time, the facility financial staff shall evaluate the property as those funds become available to the resident. This item applies only to settlements entered into after April 9, 1990.

Subp. 2. **Real property limitations.** Real property owned by an applicant or resident must be excluded from consideration as an available resource, subject to the limitations in items A and B.

A. The facility financial staff shall exclude the homestead of an applicant or resident from consideration as a resource according to the provisions in subitems (1) to (4).

(1) The spouse of an applicant or resident or the dependent child or children of the applicant or resident, if any, must occupy the homestead.

(2) An applicant or resident or spouse of an applicant or resident who is purchasing real property through a contract for deed and using that property as a home is considered the owner of real property.

(3) The total amount of land that can be excluded under this subpart is limited as specified in Minnesota Statutes, section 510.02. Additional contiguous platted lots must be assessed as to their legal and actual availability according to subpart 1.

(4) When real property that has been used as a home by an applicant or resident, the spouse of an applicant or resident, or the dependent child or children of an applicant or resident is sold, the facility financial staff shall treat the proceeds from that sale as excluded property for a period of two years if the person intends to reinvest them in another home and maintains those proceeds, unused for other purposes, in a separate account. If the property is held jointly, any earnings that accrue on the sales proceeds before reinvestment or any excess proceeds not used for reinvestment must be treated as joint income or property and divided according to subpart 1, item A.

B. Real property being sold on a contract for deed must be excluded if the net present value of the contract in combination with other property does not exceed the limitations in parts 9050.0560 and 9050.0600. If the present value exceeds limitations, the contract payments must be considered as income to the applicant or resident. If the contract is sold, proceeds from the sale must be treated as lump sum payments.

C. Real property that is rental property leased at a market rent and producing a net income must be excluded. If the property is sold, the proceeds must be treated as lump sum payments.

D. Real property on or in which the person operates a business that is anticipated to produce a net income must be excluded. If the property is sold, the proceeds must be treated as lump sum payments.

E. Real property that is not salable must be excluded. If the property is an asset that must be liquidated for the resident or applicant to meet the financial needs established by the maintenance charge calculations, the property must be sold within six months of the determination of financial need or within six months of the date of initial admission,

whichever is later, unless the property is not salable. For purposes of this item, "not salable" means:

(1) two neutral licensed professionals agree that the property is not salable due to a specified condition; if the nonsalable condition is due to an action taken by the applicant or resident within the 12 months prior to the initial admission, there is a presumption that the action was an improper transfer pursuant to part 9050.0650, subpart 3, and is subject to the considerations listed in that subpart; or

(2) an actual good faith sale attempt was made at a price not more than an estimate of the highest current market value obtained within six months of application for admission or since the last determination of the maintenance charge, but no offer to purchase was received. The market value price estimate must be based upon the written estimates from two licensed real estate professionals. If a purchase offer at the lowest professional market value price estimate was received but was rejected by the seller, it is presumed that the failure to sell the property was due to an improper action on the part of the seller. The lowest market price estimate must be the figure taken into account in determining the resident's maintenance charge or the spousal allowance.

For purposes of subitems (1) and (2), the source of information must be from the same geographic area as the property and knowledgeable about the value of the type of property offered for sale. For purposes of subitem (2), "an actual sale attempt" means the individual has listed the property with a licensed real estate broker or salesperson or, if the property is offered for sale by the owner, the owner has affixed to the property a prominently posted, conspicuous sign that is readable from the road or driveway entrance. The sign must include in large, legible type a notice of the sale and the address or phone number of the owner. The owner must prominently advertise the property for sale in the official newspaper of the county, the newspaper of largest circulation in the county, or the local shopper. The minimum period of an actual sale attempt is 90 consecutive days. If a property has been determined to be nonsalable, the owner of the property must offer it for sale again or establish it is still nonsalable within two years after the date of the last determination of nonsalability.

F. Other real property must be excluded if required by federal law, federal regulations, or state law.

Subp. 3. **Other property limitations.** The facility financial staff shall exclude the value of the following personal property:

A. one motor vehicle, for personal use. The motor vehicle must be kept for the primary use of the resident, spouse, or dependent child. The person for whom the vehicle is intended must have a valid driver's license. The administrator has discretionary authority to permit a waiver on the driver's license requirement;

B. the value of a prepaid burial account, burial plan, burial contract, or burial trust up to an amount set by the commissioner of veterans affairs or the entire amount of an investment made prior to the date of initial admission, whichever is greater. The commissioner of veterans affairs shall establish and annually review the items categorized under "burial account," "burial plan," "burial contract," and "burial trust" and establish maximum value allowance limits on those items. The allowance set by the commissioner of veterans affairs for total burial and funeral costs must not be below \$5,000;

C. 50 percent of property owned jointly with a spouse;

D. household goods and furniture and personal effects, wearing apparel, and jewelry regularly used by the applicant or resident in day-to-day living;

E. the value of personal property needed to produce income for a business or farm, including tools, implements, farm animals and inventory, or capital and operating assets of a trade or business necessary to income production, and if the property is sold, the proceeds must be treated as lump sum payments; and

F. other personal property specifically excluded by federal law, federal regulation, or state law.

Subp. 4. **Separate account for excluded funds.** Funds excluded from consideration as an available resource by subpart 2 or 3 must be placed in an account separate from other funds to retain the exclusion. Upon application for admission and redetermination of a maintenance charge, the facility financial staff shall inform the person in writing of the requirement to place excluded funds in a separate account.

**Statutory Authority:** *MS s 198.003*

**History:** *14 SR 2355; 18 SR 2254; 20 SR 2095; 28 SR 1251; L 2008 c 297 art 2 s 29*

**Published Electronically:** *October 15, 2008*