

RESOURCES

MORTGAGES AND CONTRACTS OF SALE

Description: A mortgage is a pledge of real property for the payment of a debt or the performance of some other obligation, within a prescribed time period.

A contract of sale is when the A/R sells property but does not receive payment in full for the property. The purchaser pays for the property in installments. The A/R may retain certain rights to the property until the contract is paid in full.

Policy: Mortgage agreements/contracts of sale are assumed to be negotiable unless the A/R presents convincing evidence of a legal impediment to transferring ownership.

For SSI-related A/Rs if there is no legal impediment to transferring the mortgage/contract of sale, the value of the mortgage/contract of sale is an available resource. The debtor's payments against the principal are considered the conversion of part of this resource, and thus are not counted as income in determining eligibility. The debtor's payments of interest are counted as unearned income. The value of the mortgage is the outstanding principal balance, unless the SSI-related A/R documents that the current market value of the mortgage is less by submitting an evaluation from someone regularly engaged in the business of making such evaluations, such as a bank or other financial institution, licensed private investor or real estate broker.

For Medicaid A/Rs who are not subject to a resource test, the debtor's payments of principal and interest are counted as unearned income.

If there is a legal impediment to transferring the mortgage/contract of sale, the value of the mortgage is not counted as an available resource for the SSI-related A/R. However, the debtor's payments of both principal and interest are counted as unearned income for A/Rs of all categories.

If the SSI-related A/R sells a mortgage for less than fair market value, the sale is reviewed as a potential prohibited transfer.

If the mortgage/contract of sale is satisfied (paid off) with a lump sum payment, or sold for a lump sum, that lump sum is considered a countable resource of an SSI-related A/R.

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References:	SSL Sect.	366 366-ee
	Dept. Reg.	352.23
	ADMs	10 OHIP/ADM-01 06 OMM/ADM-5 96 ADM-8
	GISs	09MA/-027 06 MA/016

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Interpretation: The local district evaluates whether or not there is a legal impediment to transferring/selling the mortgage/contract of sale. If there is a legal impediment to transferring/selling, the mortgage/contract of sale, then it is considered an unavailable resource in determining eligibility for the SSI-related A/R.

NOTE: For applications filed on or after August 1, 2006, for nursing facility services, including requests for an increase in coverage of nursing facility services, if an A/R or the A/R's spouse purchases a loan, promissory note or mortgage, the funds used are to be treated as a transfer for less than fair market value unless certain criteria are met. (See **RESOURCES** TRANSFER OF ASSETS for more information.)

When to Verify:

- (a) When the A/R indicates that s/he owns a mortgage, contract of sale or life estate;
- (b) When the A/R indicates ownership of property other than a homestead;
- (c) When the A/R indicates that s/he has transferred property;
- (d) When the A/R indicates that s/he receives income from property;
- (e) When the A/R indicates that s/he does not have a shelter expense.

Verification: The existence and terms of mortgages and contracts of sale are verified by seeing the actual mortgage certificate or contract document. If this is not possible, the attorney who handled the mortgage contract, when one was involved may provide verification.

Documentation: Sufficient to establish an audit trail:

- (a) Type of document, name of owner, date of contract/mortgage, date of maturity, current value, value at maturity;
- (b) Name, address and title of person providing information.