

§ 50401. Property Evaluation.

(a) After determining the appropriate Medi-Cal program for the members of the MFBU, the county department shall evaluate the property holdings of the MFBU to determine:

- (1) Property to be included in determining eligibility.
- (2) The value of the included property.
- (3) Whether the total value of the included property exceeds the property reserve limits specified in Section 50420.

(b) After determining the value of all property to be included in the property reserve of the MFBU, the value shall be waived for a pregnant woman and/or infant if those applicants or beneficiaries are found to be eligible under the 200 Percent program as provided in Section 50262(a).

(c) When determining eligibility under the Percent programs, as described under Sections 50262.5 and 50262.6, property shall be disregarded.

§ 50402. Availability of Property.

Property which is not available shall not be considered in determining eligibility.

§ 50403. Treatment of Property: Separate and Community Property.

(a) The separate property and share of community property of any person included in the MFBU shall be considered in determining Medi-Cal eligibility.

(b) A spouse's share of community property is always one-half of the current total community property.

(c) For purposes of establishing eligibility, an interspousal agreement entered into pursuant to Welfare and Institutions Code Section 14006.2 shall:

- (1) be written, dated and signed by both spouses or by a person who has the legal authority to enter into such agreements on behalf of either spouse;
- (2) list each asset being transmuted;
- (3) clearly designate the owner of each asset;
- (4) list the value of each asset; and
- (5) evidence an equal division of the nonexempt community property.

(d) If an interspousal agreement does not comply with (c)(4) of this section, the county shall request additional information from the applicant, or other party mentioned in (c)(1) to supplement the agreement and verify the methodology used to value assets. Such information may be necessary pursuant to verification requirements contained in Article 4 of this Division.

(e) If an interspousal agreement evidences an unequal division of the nonexempt community property, and the applicant received the smaller share of such property under the agreement, the county shall determine whether the transfer was for adequate consideration in accordance with Sections 50408 and 50409.

(1) If the county determines that the transfer was not for adequate consideration and was made in order to establish eligibility or to reduce the share of cost, the county shall give the applicant's spouse the option of reconveying to the applicant in accordance with Section 50411(d)(1) an amount of property sufficient to provide each spouse with equal shares of the total nonexempt community property identified in the interspousal agreement.

(2) If the applicant's spouse does not reconvey property pursuant to (e)(1) above, the county shall assess a period of ineligibility for the applicant in accordance with Section 50411.

§ 50404. Owner of Property.

(a) The owner of property, for Medi-Cal eligibility purposes, shall be the person who holds legal title to the property unless otherwise specified in these regulations.

(b) Ownership of property may be vested in one individual or shared with other individuals.

(c) Notwithstanding (a), a person shall be the owner of separate property designated in a written interspousal agreement.

§ 50405. Contracts of Sale.

(a) Property purchased under a signed contract of sale by the applicant or beneficiary shall be included in the property reserve of the applicant or beneficiary.

(b) Property being sold by the applicant or beneficiary under a signed contract of sale shall not be considered the property of the applicant or beneficiary. The interest payments received under the contract of sale shall be unearned income. The principal payments received under the contract of sale shall be property.

(c) Property being purchased or sold under a verbal or unsigned contract of sale shall be considered the property of the seller until the sale is complete.

§ 50406. Conversion or Transfer of Property.

Conversion or transfer of property may affect eligibility. Sections 50407 through 50411 describe methods of converting or transferring property, and the effect of each method on eligibility.

§ 50407. Conversion of Property -Treatment.

(a) Conversion of property in itself from one form to another has no effect on eligibility; however, the property obtained through a conversion may have an effect on eligibility and therefore shall be evaluated to determine its effect.

(b) Insurance or other third-party payments for the loss or damage of property shall be treated as converted property rather than income.

§ 50408. Transfer of Property Which Does Not Result in Ineligibility.

(a) Transfer of property shall not result in ineligibility for Medi-Cal under any of the following conditions:

(1) The property would have been considered exempt pursuant to Section 50418 of Article 9 of Division 3 of this title at the time of transfer.

(2) The net market value of the property transferred, when included in the property reserve, would not result in ineligibility. The determination of value shall be made as of the time of transfer. If eligibility exists, the value of the property shall no longer be considered.

(3) Adequate consideration is received. Adequate consideration is the fair market value of the property as defined in Section 50412 and includes:

(A) A transfer which was to satisfy a legal debt.

(B) A transfer which was to reimburse someone other than a responsible relative, as specified in Section 50351, for care or benefits provided on the basis of an agreement or understanding that reimbursement would be made. The applicant or beneficiary shall provide evidence that clearly establishes that the value of the care or benefits provided was reasonably equivalent to the value of the property transferred.

(C) A written transmutation of a married couple's nonexempt community property into equal shares of separate property through an interspousal agreement.

(4) Foreclosure or repossession of the property was imminent at the time of transfer, and there is no evidence of collusion.

(5) The transfer was made in return for an enforceable contract for life care which does not include complete medical care. In this case, each full item of need provided under the life care contract shall be considered income in kind in accordance with Section 50509.

(6) The transfer was made without adequate consideration but the applicant or beneficiary provides convincing evidence to the county as specified in Section 50409(b), to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.

(b) There is a presumption that property transferred by the applicant or beneficiary more than two years preceding the date of initial application was not transferred to establish eligibility or reduce the share of cost. Such property shall not be considered in determining eligibility.

(c) While the transfer of property by an applicant or beneficiary from one form to another, as described in (a) above, has no effect on eligibility, any property obtained by an applicant or beneficiary through such a transfer may have an effect on eligibility and therefore shall be evaluated to determine its effect.

§ 50409. Transfer of Property Which Results in Ineligibility.

(a) Transfer of property shall result in ineligibility for Medi-Cal if:

(1) the transfer met none of the conditions specified in Section 50408; or

(2) the transfer was in return for an enforceable life care contract which includes complete medical care.

(b) Transfer of property without adequate consideration shall result in ineligibility for Medi-Cal if the transfer was made to establish eligibility or to reduce the share of cost.

(1) It shall be presumed that property transferred without adequate consideration was for the purpose of establishing eligibility or to reduce the share of cost as limited by (2).

(2) To overcome the presumption, the applicant or beneficiary has the burden of establishing that this presumption is not correct.

(A) The applicant or beneficiary shall provide evidence which may include verification of the onset of traumatic injury or illness, diagnosis of a previously undetected disability condition or unexpected loss of income or resources after transfer and/or that adequate resources were available at the time of the transfer of property for support and medical care considering such things as the applicant's or beneficiary's age, health, life expectancy, and ability to understand extent of resources.

(B) Such evidence may also include other subjective evidence including, but not limited to, evidence that the claimant transferred in order to avoid probate and/or that the claimant had no knowledge of Medi-Cal or its benefits at the time of the transfer.

(C) However, any such evidence presented must be convincing evidence in order to overcome the presumption stated in (b)(1) above.

§ 50410. Transfer of Property with Retention of a Life Estate.

Property transferred by the applicant or beneficiary with retention of a life estate shall be treated as any other transfer to determine whether the transfer results in ineligibility.

§ 50411. Period of Ineligibility Due to Transfer of Property.

(a) Following a determination of ineligibility due to the transfer of property, there shall be a period of ineligibility. This period shall be the time during which the net market value of the property at the time of transfer, less consideration received, would have supported the applicant or beneficiary and the applicant's or beneficiary's family.

(b) The period of ineligibility shall be computed in the following manner:

Determine the net market value of the property at the time of transfer less any consideration received which is the net value of the property transferred.

(2) Determine the portion of the net value of the property transferred which, if included in the property reserve at the time of transfer, would not have caused such reserve to exceed the property limit that was applicable at that time.

(3) The portion of the net value of the property transferred that would not have fallen within the property limit at the time of transfer is the excess net value of the property transferred and shall be used to determine the period of ineligibility.

(4) The number of months in the period of ineligibility shall be determined by dividing the excess net value of the property transferred by the monthly maintenance need for the applicant or beneficiary and the applicant's or beneficiary's family. The maintenance needs used shall be the maintenance needs in effect during each individual month since the date of the transfer. Income received by the family after the transfer shall not affect this computation.

(5) The period of ineligibility may be further reduced by deducting the actual cost to the applicant or beneficiary of the following:

(A) Medical expenses.

(B) Out-of-home care costs in excess of the maintenance needs.

(C) Major home repairs necessary to put the home into a liveable condition.

(c) The period of ineligibility shall begin the first of the month following the date the transfer which resulted in ineligibility occurred, unless a 10 day notice is required and cannot be given. In that case, the period of ineligibility shall begin the first of the next month.

(d) The period of ineligibility shall end when any of the following situations occur:

(1) The property which was transferred and caused ineligibility is reconveyed to the applicant or beneficiary.

(2) The applicant or beneficiary receives adequate consideration for the property.

(3) Deduction of the amounts specified in (b) (4) and (5) has reduced the excess net market value to zero.

§ 50412. Market Value of Property.

(a) The market value of real property shall be (1) or (2), unless the applicant or beneficiary chooses to meet the conditions of (3), and (3) is lower:

(1) The assessed value determined under the most recent property tax assessment, if the property is located in California.

(2) The value established by applying the assessment method used in the area where the property is located, if the property is located outside of California.

(3) The value established as the result of an appraisal by a qualified real estate appraiser, if the appraisal is obtained by the applicant or beneficiary and provided to the county department.

(b) The market value of each item of personal property shall be determined by the specific methods contained in this article.

(c) The market value of notes secured by deeds of trust and mortgages which are considered as other real property in accordance with Section 50441(b) shall be established in accordance with Section 50441(c).

§ 50413. Encumbrances.

(a) Encumbrances of record are obligations for which the property is security. Encumbrances include, but are not limited to:

(1) Loans.

(2) Attachments for debts and taxes.

(3) Chattel mortgages and liens.

§ 50414. Share of Encumbrances Determination.

(a) The share of encumbrances shall be determined as follows:

(1) Determine the total market value of the property.

(2) Determine the market value of the portion of the property that is to be considered.

(3) Divide the amount determined in (2) by the amount determined in (1) to obtain the percentage that the portion of property is of the total property.

(4) Multiply the total encumbrances on the property by the percentage determined in (3) above. This is the share of encumbrances.

§ 50415. Net Market Value of Property.

(a) The net market value of real or personal property is the owner's equity in that property.

(b) The net market value shall be determined by subtracting the encumbrances of record from the market value.

(c) The net market value of real or personal property owned jointly with other persons shall be determined by subtracting the beneficiary's share of encumbrances from the beneficiary's interest in the property.

§ 50416. Utilization Requirements.

(a) Other real property, as specified in Section 50427(b), shall be utilized in order to be exempt unless the net market value, when added to the net market value of other nonexempt property, falls within the limits set forth in Section 50420.

(b) The property is utilized if any of the following requirements are met:

(1) The beneficiary is receiving net yearly income from the property of at least six percent of the net market value of the property.

(A) For property not limited to seasonal use, this requirement is met if the net monthly income from the property is one-twelfth of six percent of the net market value of the property.

(B) For property limited to seasonal use, this requirement is met if the net yearly income is six percent of the net market value of the property. Property limited to seasonal use includes, but is not limited to:

1. Farmland.

2. Summer cabins.

(C) For purpose of determining net yearly income from property limited to seasonal use, the year is considered to begin in the first month of the year in which income normally begins. Income from all months of the year shall be considered in determining net yearly income of the property, regardless of the eligibility status of the beneficiary in those months.

(2) The property has been sold, or the sale is in escrow and there is a bona fide attempt to close the sale.

(c) The applicant or beneficiary shall be allowed six months to meet utilization requirements. The six month period shall be known as the utilization period, and shall begin on the first of the month following issuance of a notice of action informing the applicant or beneficiary that the property is not yielding sufficient income, as required in (b). The utilization period shall be stayed during periods of ineligibility in accordance with (1).

(d) The utilization period may be extended for a maximum of one year for good cause, as specified in Section 50417.

(e) The utilization period shall be extended for as long as the property is listed for sale, provided all of the following conditions are met:

(1) The county department determines that utilization requirements can only be met by sale of the property. This determination shall be made using evidence provided by the applicant or beneficiary, which may be, but is not limited to, either of the following:

(A) A written statement from a qualified real estate appraiser which gives the appraisal value of the property and its income potential.

(B) A certificate of condemnation.

(2) The property is listed for sale with a licensed real estate broker at the market value, as determined in accordance with Section 50412(a).

(3) The beneficiary provides the following evidence every six months, and at any other time it is requested by the county department:

(A) A statement from the real estate agency that no bona fide offer has been rejected.

(B) Copies of any offers that have been submitted and the reasons for rejection.

(C) Evidence of the efforts being made to advertise the property for sale.

(f) If the applicant or beneficiary utilizes the property by sale, the property shall be sold for at least market value, unless the property was sold under either of the following situations, and the applicant or beneficiary submits evidence that there was a bona fide attempt to sell at market value.

(1) The property was listed with a licensed real estate broker for at least three months and the final sale price was similar to comparable sales in the area.

(2) There was an inability to sell the property for the market value and the county department determines that the final sale price was reasonable.

(g) An existing environmental impact report involving a property shall be considered by the county department in determining the utilization potential of the property.

(h) A life estate interest in real property shall be utilized in accordance with this section.

(i) The applicant or beneficiary may arrange for a reassessment of the property during the utilization period. The assessment shall affect utilization as follows:

(1) The reassessment value shall be used in determining utilization requirements.

(2) The reassessment shall not affect the beginning date or the length of the utilization period.

(j) The entire net market value of property not utilized in accordance with this section shall be included in the property reserve on the first of the month following the last month of the utilization period.

(k) A utilization period shall begin whenever:

(1) An applicant, with other real property that is not being utilized, becomes eligible except as specified in (1).

(2) The other real property of a beneficiary, that has been utilized, is no longer utilized.

(3) The net market value of other real property, when added to the net market value of other nonexempt property, no longer falls within the limits set forth in Section 50420.

(l) When a utilization period has begun and the beneficiary becomes ineligible for Medi-Cal prior to its expiration, the remainder of the utilization period shall be applied if eligibility is subsequently reestablished and the property is not utilized at that time. However, if the beneficiary can verify that the property was utilized at any time during the period of ineligibility, a new utilization period shall begin.

§ 50417. Utilization -Good Cause.

(a) Good cause, as required in Section 50416 (d), shall be found only if the applicant or beneficiary has made a bona fide effort to meet utilization requirements and is unable to do so because of circumstances beyond such person's control.

(b) Circumstances beyond a person's control shall include any of the following situations:

(1) Death of a part owner of the property and inability or refusal of the administrator or executor of the estate or other responsible person to complete disposition of the property if such person is other than the applicant or beneficiary.

(2) Misplaced reliance by the applicant or beneficiary upon what appeared to be a bona fide offer. The county department shall require a copy of the written offer for the property as evidence that the offer was bona fide. Misplaced reliance may have resulted if the offer was either of the following:

(A) Bona fide but the purchaser was unable to complete the purchase.

(B) Apparently bona fide but eventually found not to be bona fide.

(3) Prolonged illness causing the seller to be homebound or hospitalized during the utilization period and unable to take the necessary action to meet utilization requirements or to arrange for an agent to do so.

(4) Like reasons which the county department determines meet the general intent of good cause.

§ 50418. Exemption of Property.

(a) Certain real and personal property is exempt and shall not be included in determining eligibility. These property exemptions are specified in Sections 50425 through 50489.

(b) All real and personal property not exempt as specified in (a) is nonexempt property.

§ 50419. Property Reserve.

The property reserve is the net market value of the nonexempt property of those persons whose property is considered in determining the eligibility of the MFBU.

§ 50420. Property Limit.

(a) The property reserve shall not exceed the following limits.

Number of Persons	Property
Property	Property
Whose Property is	Whose Property is
Limit	Limit
Considered	Considered
1985	1985
1986	1986
1987	1987
1988	1988
1989	1989
1 person.....	1,600
	1,700
	1,800
	1,900
	2,000
2 persons.....	2,400
	2,550
	2,700
	2,850
	3,000
3 persons.....	2,550
	2,700
	2,850
	3,000
	3,150
4 persons.....	2,700
	2,850
	3,000
	3,150
	3,300
5 persons.....	2,850
	3,000
	3,150
	3,300
	3,450

6 persons.....
 3,000
 3,150
 3,300
 3,450
 3,600
 7 persons.....
 3,150
 3,300
 3,450
 3,600
 3,750
 8 persons.....
 3,300
 3,450
 3,600
 3,750
 3,900
 9 persons.....
 3,450
 3,600
 3,750
 3,900
 4,050
 10 persons or more.
 3,600
 3,750
 3,900
 4,050
 4,200

(b) The members of the MFBU shall be ineligible for Medi-Cal if the condition specified in (a) above is not met at some time during the month in which application is made.

(c) If the property reserve has been in excess of the property limit from the first day of the month of application through the date of application the MFBU shall be eligible under the following conditions:

(1) The property reserve is brought within the property limit in any manner other than transfer without adequate consideration by the last day of the month of application.

(2) All other conditions of eligibility are met.

(d) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to January 1, 1985.

§ 50420.5. Separation of Community Property: Spouse in Long-Term Care Facility.

(a) The value of property available to an applicant or beneficiary who is in a skilled nursing or intermediate care facility and is in a MFBU separate from his or her spouse shall be determined to meet the property reserve limits if the value as determined in

(1)(E) or (2)(D) of this subsection is equal to or less than the applicable property reserve limit.

(1) If the applicant or beneficiary has entered into an interspousal agreement prior to or on the date of entry into a skilled nursing or intermediate care facility and the agreement meets the requirements set forth in section 50403(c) and (d), the county shall determine:

(A) The value of the applicant or beneficiary's nonexempt separate property resulting from the interspousal agreement.

(B) The value of the applicant or beneficiary's one-half share of any nonexempt community property acquired since or not included in the interspousal agreement.

(C) The value of the applicant or beneficiary's nonexempt separate property from sources other than the interspousal agreement.

(D) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary.

(E) The value of property determined in (a)(1)(A) through (D) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit as defined in (b) of this section and verified losses, if any, in the market value of such property since the date of the interspousal agreement.

(2) If the date the interspousal agreement was executed is later than the date of entry into a skilled nursing or intermediate care facility, or in the absence of an interspousal agreement which meets the requirements of section 50403 (c), (d) and (e), the county shall determine:

(A) The value of the applicant or beneficiary's nonexempt separate and one-half share of nonexempt community property on the date of most recent entry, as limited by (d) of this section, into a skilled nursing or intermediate care facility.

(B) The value of the applicant or beneficiary's share of any nonexempt separate and one-half share of nonexempt community property acquired from the date of most recent entry into a skilled nursing or intermediate care facility to the date eligibility is determined.

(C) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary.

(D) The value of property determined in (a)(2)(A) through (C) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit, as defined in (b) of this section, and verified losses, if any, in the market value of such property since the date of entry into a skilled nursing or intermediate care facility.

(b) Expenditures for the applicant or beneficiary's own benefit shall include but are not limited to:

- (1) Expenditures for the applicant or beneficiary's own medical expenses.
- (2) Expenditures associated with property owned by the applicant or beneficiary and for improvements to such property in proportion to his or her ownership interest in the property, for example.
 - (A) Payments made on the mortgage on a jointly owned principal residence.
 - (B) Payments made on a note on a jointly owned motor vehicle.
 - (C) Expenditures for improvements on a jointly owned principal residence.
- (3) Expenditures for other exempt or nonexempt property for the sole benefit of the applicant or beneficiary including, but not limited to, personal effects, recreational items, and burial trusts.
- (4) Transfer of nonexempt assets for adequate consideration as defined in 50408(a)(3).
 - (c) For purposes of this section, it shall be presumed that all property is community property. This presumption may be rebutted by either spouse.
 - (d) The mere change of residence from one medical facility to another shall not be considered a new entry into LTC for purposes of subsection (a) of this section.
 - (e) Effective 1/1/90, the regulations contained in this section shall not apply to an institutionalized spouse as defined by section 1924 (h)(1) of Title XIX of the Social Security Act.

§ 50421. Limits and Methods of Property Determination for the Qualified Medicare B

(a) To qualify for the QMB or SLMB programs, the net nonexempt property of a QMB or SLMB applicant/beneficiary cannot exceed twice the Supplemental Security Income (SSI) program property limit.

(1) Adult.

(A) A QMB or SLMB applicant/beneficiary who is married or is 18 years of age or older shall be considered an adult for purposes of this section.

(B) Only the property of the QMB or SLMB applicant/beneficiary and his/her spouse, if living in the home, shall be considered in determining net nonexempt property. Such property shall be determined in accordance with Article 9 and shall be compared to twice the SSI property limit for one person (or two persons, if the spouse is living in the home).

(2) Child.

(A) A QMB or SLMB applicant/beneficiary who is unmarried and younger than 18 years of age shall be considered a child for purposes of this section.

(B) Net nonexempt property shall be determined in accordance with article 9. Only the property of the QMB or SLMB child and his/her parent(s) shall be considered in

determining net nonexempt property. For purposes of this subsection, the parent(s) includes stepparent(s).

(C) The parent(s)'s net nonexempt property shall be compared to the SSI property limit for one or two persons (depending upon the number of parents in the home). If the parent(s)'s net nonexempt property does not exceed this property limit, only the QMB or SLMB child's property shall be considered. If the parent(s)'s net nonexempt property exceeds the SSI property limit, the excess amount over the SSI property limit shall be added to the QMB or SLMB child's own net nonexempt property. The QMB or SLMB child's total net nonexempt property shall be compared to twice the Medi-Cal property limit for one person.

(D) If there are two or more QMB or SLMB children in the home, the excess amount of the parent(s)'s net nonexempt property over the SSI property limit shall be divided by the number of QMB or SLMB children and that quotient added to each child's net nonexempt property. The net nonexempt property of the QMB or SLMB child shall no longer be increased by his/her share of the parental allocation when:

1. The parental allocation of net nonexempt property when added to the QMB or SLMB child's own net nonexempt property exceeds twice the SSI property limit for one person, or
2. The QMB or SLMB child is found ineligible as a QMB or SLMB for any other reason. When a QMB or SLMB child no longer qualifies to receive a share of the parent(s)'s nonexempt property, the parent(s)'s net nonexempt property shall then be redivided by the number of remaining QMB or SLMB children in the home and that quotient added to the net nonexempt property of each of those children.

§ 50421.5. Limits and Methods of Property Determination for the Qualified Disabled and

(a) To qualify for the QDWI program, the net nonexempt property of a QDWI applicant/beneficiary cannot exceed twice the Supplemental Security Income (SSI) resource limit in accordance with Section 1613, Title XVI of the Social Security Act.

(b) Only the property of the QDWI applicant/beneficiary and, if married, his/her spouse, if living in the home, shall be considered in determining net nonexempt property. Such property shall be determined in accordance with Section 50420.

§ 50422. Liens.

§ 50423. Items of Property to Be Considered.

(a) The items of property to be considered in determining eligibility are described in Sections 50425 through 50489. Each of these sections indicates:

- (1) Whether all or a portion of the item of property is exempt.
- (2) The method for determining the net market value of the specific item of property.
- (3) Any other information necessary to evaluate the property.

§ 50425. Property Used As a Principal Residence.

(a) A principal residence may consist of real or personal property, fixed or mobile, located on land or water. The principal residence includes land or buildings surrounding, contiguous to, or appertaining to the residence.

(b) The following items of real property may serve as a principal residence:

(1) A house.

(2) The entire multiple unit dwelling if any portion of the multiple unit dwelling serves as the principal residence of the applicant or beneficiary.

(3) The items listed in (d). These items shall be considered as real property when they are assessed as real property by the county assessor of the county in which the property is located.

(c) Property which the applicant or beneficiary uses or formerly used as a home shall be exempt as the principal residence if any of the following situations exist:

(1) The applicant or beneficiary lives on the property.

(2) The family of the applicant or beneficiary lives on the property and Medi-Cal eligibility is determined in either of the following ways:

(A) With the applicant or beneficiary and the family in a single MFBU.

(B) With the income of the family considered in determining the applicant's or beneficiary's eligibility.

(3) The applicant or beneficiary is absent from the property for any reason, including admittance to LTC, and declares in writing that he/she intends to return to the property to live.

(4) The applicant or beneficiary is absent from the property and has a spouse, child under age 21 or a dependent relative, who lives on the property. A disabled child age 21 or older is considered a dependent relative for purposes of this regulation only.

(5) A sibling or child age 21 or over of the applicant or beneficiary has continuously resided on the property for at least one year immediately prior to the date the applicant or beneficiary entered a SNF or ICF and continues to reside there.

(6) The property cannot be sold because there are legal obstacles preventing the sale and the applicant or beneficiary or person acting on his/her behalf provides evidence of attempts to overcome such obstacles.

(7) The applicant or beneficiary no longer lives on the property, does not intend to return to the property, the property is not otherwise exempt and the property cannot be readily converted to cash but a bona fide effort is being made to sell the property. A bona fide effort to sell means that the property is listed for sale with a licensed real estate broker

for its fair market value established by a qualified real estate appraiser, a good faith effort is being made to sell the property, offers at fair market value are accepted, and the applicant or beneficiary has supplied proof of compliance with these conditions to the county.

(d) The following items of personal property may serve as a principal residence:

(1) A mobile home.

(2) A houseboat.

(3) A motor vehicle used as a residence.

(4) Any other shelter not attached to the land and used as a residence.

(e) Only one property may be exempt as the principal residence.

(f) Real property formerly used as a principal residence shall be considered other real property, effective the first of the month following the date the property is no longer used as a principal residence as specified in (a). Such property shall be subject to all conditions placed upon other real property in these regulations.

(g) Personal property formerly used as a principal residence shall be evaluated as an item of personal property beginning the first of the month following the date the property is no longer used as a principal residence as specified in (c).

§ 50426. Property Used to Purchase a Principal Residence.

(a) The proceeds from the sale of real property retained by an applicant or beneficiary who does not own a suitable principal residence or who wishes to sell the current principal residence and purchase a new principal residence shall be exempt for a period of six months from the date of receipt of the proceeds so long as the proceeds from the sale of the real property are intended to be used to purchase a principal residence. Such proceeds may also be applied to the costs of moving, necessary furnishings, and repair or alteration to the principal residence.

(b) If a portion of the proceeds specified in (a) is diverted to some other purpose, the status of the remainder is not affected provided such remainder is being retained to apply toward the purchase of a principal residence.

§ 50427. Other Real Property.

(a) Real property not exempt as a principal residence, including deeds of trust as specified in Section 50441(b), is other real property.

(b) Other real property not exempt under any other section of these regulations shall be exempt if both of the following conditions are met:

(1) The combined net market value of all other real property is \$6,000 or less.

(2) The owner meets the utilization requirements set forth in Section 50416.

(c) Other real property with a net market value of more than \$6,000 shall be considered as follows:

(1) The first \$6,000 of net market value shall be exempt if the owner meets the utilization requirements set forth in Section 50416.

(2) The net market value in excess of \$6,000 shall be included in the property reserve.

§ 50428. Liens.

(a) The Department shall record a lien against the ownership interest in the principal residence of an institutionalized beneficiary if the property meets the provisions of Section 50425 (a)(7) unless:

(1) The individual did not receive a Notice of Action according to the provisions of Section 50179 or has not had the opportunity for a state hearing according to the provisions of Article 18 (commencing with Section 50951) of this Chapter. Such Notice shall include the following:

(A) The beneficiary has stated he/she does not intend to return to the principal residence from long term care;

(B) A lien will be recorded against the property for the cost of all Medi-Cal claims paid or to be paid on the beneficiary's behalf.

(C) The recording of the lien does not mean ownership of the property is lost or transferred.

(D) The requirements to list the property for sale that the applicant or beneficiary must meet to remain eligible for Medi-Cal in accordance with Section 50425.

(E) The beneficiary has the right to a county level review and a state hearing prior to recording of the lien or imposing any requirements to list the property for sale.

(F) The procedures for requesting a county level review and the time limits within which such requests must be made.

(b) Any recorded lien for an amount equal to the cost of medical care provided may be foreclosed only after one of the following:

(1) The beneficiary sells the property.

(2) The beneficiary dies and the following conditions are met:

(A) There is no surviving spouse.

(B) The beneficiary has no surviving child who is under the age of 21 or who is blind or disabled.

(c) Any lien shall dissolve when the beneficiary is discharged from LTC and returns to the principal residence to live.

(d) The county department shall notify the Department upon a determination that:

(1) All the criteria set forth in Section 50428(a) are met; or

(2) A person in long term care has been discharged and has returned to the principal residence to live.

§ 50429. Value and Division of Real Property Where Part Is Used As a Home.

§ 50431. Land Contiguous to the Home -Value and Division.

§ 50433. Single Family Dwelling Used in Part As a Business -Value and Division.

§ 50435. Multiple Dwelling Unit -Value and Division.

§ 50437. Land with More Than One Building -Value and Division.

§ 50441. Mortgages, Deeds of Trust and Other Promissory Notes.

(a) Mortgages, notes secured by deeds of trust and other promissory notes which can be sold or discounted shall be included in the property reserve, except as specified in (b).

(b) A mortgage, or a note secured by a deed of trust, from the sale of real property owned by the applicant or beneficiary shall be considered other real property and subject to all the conditions placed upon other real property in these regulations.

(c) The market value of all mortgages and notes shall be the value as established in (1), unless the applicant or beneficiary chooses to meet the conditions of (2), and (2) is lower:

(1) The principal amount remaining on the note.

(2) The appraised value obtained by the applicant or beneficiary from a party qualified to appraise such items. Parties qualified to appraise such items include, but are not limited to, any of the following:

(A) Banks.

(B) Savings and Loan Associations.

(C) Credit Unions.

(D) Licensed loan or mortgage brokers.

(d) Proceeds from mortgages and notes shall be considered as follows:

(1) The principal portion of the payment shall be treated as property.

(2) The interest portion of the payment shall be unearned income and shall be included in determining the share of cost.

§ 50442. Life Estate.

(a) A life estate interest in real property shall be considered real property.

(b) A life estate interest in personal property shall be considered personal property.

(c) The value of a life estate shall be:

(1) The entire market value of the property on which the life estate is held if the applicant or beneficiary was the owner of the property prior to selling the property and he/she is retaining a life estate interest in the property, and the Life estate is revocable, or

(2) In all other instances, the value determined in accordance with the California State Gift Inheritance Tax Formula or, at the applicant's or beneficiary's option, a lesser value established by a person qualified to appraise such items as described in Section 50441

(c) (2).

§ 50443. American Indian's Interest in Land Held in Trust by United States Government.

The entire market value of an American Indian's interest in land held in trust by the United States Government shall be exempt.

§ 50445. Federal Payments to Indians and Alaskan Natives -Property.

(a) Payments received from the Federal Government under Public Law 90-507 shall be excluded from consideration as personal property when the total of nonexempt personal property, including such payments does not exceed \$2,000 for each individual. Payments converted into other property shall be treated the same as the payments. However, if the property received through such a conversion is again converted, the property acquired is included in the property reserve unless otherwise exempt.

(b) Payments received from the Federal Government under Public Law 92-254 or Section 6 of Public Law 87-775 shall be exempt.

(c) Per capita payments distributed pursuant to any judgment of the Indian Claims Commission or the Court of Claims in favor of any Indian Tribe are exempt.

(d) Shares of stock and money payments made to Alaskan Natives under the Alaskan Native Claims Settlement Act are exempt as long as the payments or stock remain separately identifiable and not commingled with nonexempt resources. Any property obtained from stock investments under the Act is not exempt.

(e) Receipts derived from lands, as specified in Section 50537(e), shall be exempt providing all of the following conditions are met. The monies:

(1) Are retained by the original recipient.

(2) Are not commingled.

(3) Can be separately identified as a proportionate share of the applicant's or beneficiary's property.

§ 50446. Payments to Victims of the National Socialist Persecution.

(a) Payments received from the Federal Republic of Germany (German Reparations Payments) pursuant to the federal law on the Compensation of Victims of the National Socialist Persecution (Federal Compensation Law) shall be exempt from consideration as personal property provided these funds are not spent and are kept identifiable.

(b) If the funds referred to in subsection (a) have been spent, the property acquired with the funds shall be included in the property reserve unless otherwise exempt.

(c) If the exempt funds referred to in subsection (a) have been commingled with nonexempt funds, it is the applicant's or beneficiary's responsibility to be able to distinguish which are the exempt commingled funds. It is presumed that withdrawals from an account in which exempt and nonexempt funds have been commingled were made from the nonexempt fund first.

§ 50448. Payments to Victims of Crimes -Treatment as Property.

Payments made under the California Victims of Crimes program, which are exempt as income in the month of receipt in accordance with Section 50534, shall be exempt as property for the 9-month period beginning after the month in which the payment was received.

§ 50448.5. Relocation Assistance Benefits.

(a) Relocation assistance benefits are payments made by a public agency to a person who has been relocated as a result of a program of area redevelopment, urban renewal, freeway construction, or any other public development involving demolition or condemnation of existing housing.

(b) Relocation Assistance Benefits paid by a public agency shall be exempt provided these these funds are not spent and are kept identifiable.

(c) If the exempt funds referred to in subsection (b) have been commingled with nonexempt funds, it is the applicant's or beneficiary's responsibility to be able to distinguish which are the exempt commingled funds. It is presumed that withdrawals from an account in which exempt and nonexempt funds have been commingled were made from the nonexempt funds first.

§ 50449. Earned Income Tax Credit.

The actual Earned Income Tax Credit (EITC) payment or an advance payment of the Earned Income Tax Credit made by an employer shall be exempt in the month following the month of receipt.

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The actual Earned Income Tax Credit (EITC) payment or an advance payment of the Earned Income Tax Credit made by an employer shall be exempt in the month following the month of receipt.

§ 50453. Checking and Savings Accounts.

(a) The entire amount in checking and savings accounts to which the applicant or beneficiary has unrestricted access shall be included in the property reserve, subject to the limitations in Section 50453.5 and the following conditions:

(1) Income received during a month and deposited in a checking or savings account shall not be considered as property during that month.

(2) Accounts held with persons who are not family members shall be considered available in their entirety if the applicant or beneficiary has unrestricted access to the funds, unless the conditions of (3) are met.

(3) If the applicant or beneficiary presents evidence which clearly establishes that all or a portion of the funds specified in (2) are the property of a person who is not a family member, those funds shall not be considered the property of the applicant or beneficiary.

(b) If an applicant or beneficiary has restricted access to a checking or savings account such as accounts which require two signatures or savings accounts held in trust by other than the applicant or beneficiary, only those funds actually available shall be included in the property reserve.

§ 50453.5. Savings of a Child.

Reasonable amounts saved from a child's exempt earnings for future education or for other future identifiable needs are exempt as property.

§ 50453.7. Long-Term Care Insurance Exemption.

(a) Property shall be exempt up to the amount of benefits that have been paid for Long-Term Care services countable towards the Medi-Cal property exemption as defined in Section 58023 in behalf of the Medi-Cal applicant or Medi-Cal beneficiary under a certified long-term care insurance policy or certificate certified by the State to provide this exemption.

(b) Property exempted under subsection (a) shall also be exempt from any recovery by the State of payments made for medical services.

(c) Income received from property exempt under subsection (a) shall be nonexempt and shall be treated in accordance with regulations contained in Article 10 of Chapter 8.

(d) The Medi-Cal applicant or Medi-Cal beneficiary shall provide verification from the insurance company of the amount of qualified benefits paid which entitle that applicant or beneficiary to an exemption under subsection (a). After notifying the Department in accordance with Probate Code, Sections 215 and 9202, the person handling the estate of a deceased Medi-Cal beneficiary shall also provide verification to the Department

from the insurance company of the amount of qualified benefits paid which entitle that deceased beneficiary to an exemption under subsection (b).

(1) If the verification provided by the insurance company is found to be in error resulting in the ineligibility of the Medi-Cal applicant or Medi-Cal beneficiary, the County shall notify the Department to take appropriate actions against the insurance company under Section 58082(e).

(2) If the verification provided by the insurance company is found to be in such a condition that the County cannot determine whether the Medi-Cal applicant or Medi-Cal beneficiary is entitled to an exemption under subsection (a), the County shall determine that the Medi-Cal applicant or Medi-Cal beneficiary is not entitled to such an exemption and shall notify the Department to take appropriate actions against the insurance company under Section 58082(f) of the Partnership Regulations for Insurers.

(3) If the verification provided to the Department by the person handling the estate of a deceased beneficiary is found to be either in error, or in such a condition that the Department cannot determine whether the deceased beneficiary is entitled to an exemption under subsection (b), the Department shall take appropriate actions against the insurance company under Section 58082(e) and (f).

§ 50454. Income Tax Refunds.

Income tax refunds shall be included in the property reserve.

§ 50454.5. California Franchise Tax Board Payments.

(a) The following payments or funds received from the California Franchise Tax Board shall be exempt:

(1) Renters Credits.

(2) Senior Citizens Homeowners and Renters Property Assistance.

(3) Senior Citizens Tax Postponement.

§ 50455. Lump Sum Payments.

(a) Nonrecurring lump sum social insurance payments, such as nonrecurring lump sum payments of any of the items specified in section 50507(a)(1) through (9), shall be included in the property reserve, except as provided in (b).

(b) Retroactive SSI and Title II benefit payments shall not be included in the property reserve for a period of six months after the month in which they are received.

(c) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1984.

§ 50456. Stocks, Bonds, Mutual Funds.

Stocks, bonds and mutual funds shall be included in the property reserve. The value of these items shall be the closing price on the date the property is evaluated.

§ 50457. United States Savings Bonds.

United States Savings Bonds shall be included in the property reserve. The value of these bonds shall be the amount for which they can be sold.

§ 50459. Promissory Notes.

§ 50461. Motor Vehicles.

(a) One motor or other vehicle that is used for transportation shall be exempt, subject to the following conditions:

(1) The applicant or beneficiary shall be allowed to choose which vehicle used for transportation shall be exempt except that recreational and commercial vehicles shall be considered to be used for transportation only if other motor vehicles are not available to provide transportation for the applicant or beneficiary.

(2) A vehicle owned by an applicant or beneficiary who no longer drives shall be exempt when other individuals use the vehicle to meet the transportation needs of the applicant or beneficiary.

(b) The net market value of all nonexempt motor vehicles shall be included in the property reserve.

(c) The net market value of a motor vehicle shall be determined by the following process:

(1) Determine the class of the motor vehicle.

(2) Determine the vehicle license fee which does not include registration or weight fees, using the class and the State Department of Motor Vehicles license fee chart.

(3) Multiply the vehicle license fee by 50. This is the market value of the motor vehicle.

(4) Subtract any encumbrances of record from the market value. This is the net market value.

(d) In those cases where the class of the motor vehicle is unknown or unavailable, the county department or the applicant or beneficiary shall contact the State Department of Motor Vehicles to determine the class or license fee of the motor vehicle.

(e) In those cases where the applicant or beneficiary does not agree with the net market value:

(1) Three appraisals by auto dealers, insurance adjustors or personal property appraisers shall be submitted to the county department.

(2) The average of these appraisals shall be the market value.

(3) The net market value shall be the market value minus any encumbrances of record.

§ 50463. Boats, Campers, Trailers.

(a) The net market value of boats, campers, and trailers and mobile homes, which are not assessed as real property by the county assessor, shall be included in the property reserve unless exempt as either of the following:

(1) A principal residence.

(2) A vehicle used for transportation.

(b) Items in (a) which are assessed as real property by the county assessor of the county in which the property is located and which are not exempt as a home shall be considered as other real property and treated in accordance with Section 50427.

(c) The net market value of these items shall be determined as follows:

(1) The market value shall be any of the following:

(A) The average of three appraisals by dealers, insurance adjustors or personal property appraisers submitted to the county department by the applicant or beneficiary.

(B) The market value placed on the item by the county assessor.

(C) The market value of the item determined by use of the State Department of Motor Vehicle's license fee chart.

(D) The original purchase price of the item if the applicant or beneficiary does not wish or is unable to provide three appraisals or the market value cannot be determined in accordance with (B) or (C).

(2) The net market value shall be the market value less any encumbrances of record.

(d) Eligibility or share-of-cost determinations effective on or after January 1, 1980, shall be based on the provisions of this section.

§ 50465. Household Items.

All items used to furnish and equip a home shall be exempt.

§ 50467. Personal Effects.

(a) All items of clothing shall be exempt.

(b) The following jewelry shall be exempt:

(1) Wedding and engagement rings.

(2) Heirlooms.

(3) Any other item of jewelry with a net market value of \$100 or less.

(c) The net market value of jewelry not exempted above shall be included in the property reserve.

(d) The net market value of jewelry shall be determined as follows:

(1) The applicant or beneficiary shall submit at least one written appraisal of current market value by a jeweler, insurance adjustor or personal property appraiser, or proof of the purchase price in the form of a sales slip which shall establish the market value.

(2) Subtract any encumbrances of record from the market value. This is the net market value.

§ 50469. Recreational Items.

(a) All recreational items shall be exempt, except for:

(1) Recreational motor vehicles, such as motor homes and snowmobiles, which shall be considered in accordance with Section 50461.

(2) Boats, campers and trailers, which shall be considered in accordance with Section 50463.

§ 50471. Musical Instruments.

All musical instruments shall be exempt.

§ 50473. Livestock and Poultry.

(a) Livestock and poultry retained primarily for personal use shall be exempt.

(b) The net market value of livestock and poultry retained primarily for profit shall be included in the property reserve except to the extent exempt as business property in accordance with Section 50485.

(c) The net market value of livestock and poultry shall be the net market value listed by the applicant or beneficiary on the Statement of Facts, unless the county department determines further verification is required. If verification is required:

(1) The applicant or beneficiary shall submit three appraisals from persons or businesses dealing in livestock and poultry. The average of these appraisals shall be the market value.

(2) Subtract any encumbrances of record from the market value. This is the net market value.

§ 50475. Life Insurance.

Life insurance policies, except term insurance, owned by a member of the MFBU on the life of any individual in the family shall be exempt if the combined face value of all of the

policies on the insured individual is \$1,500 or less. If the combined face value of all of the policies exceeds \$1,500, the net cash surrender value of life insurance policies shall be included in the property reserve.

§ 50476. Burial Insurance.

Burial insurance with no cash surrender value shall be exempt. Burial insurance with a cash surrender value shall be considered a revocable burial fund and shall be treated as provided for in section 50479.

§ 50477. Burial Plots, Vaults and Crypts.

(a) Any burial plot, vault or crypt retained by the applicant or beneficiary for use by any member of the family shall be exempt. For the purposes of this section only, the family shall include the applicant or beneficiary, his/her spouse, adult or minor children (including adopted and stepchildren), siblings, parents, adoptive parents, and the spouses of those individuals.

(b) The net market value of any burial plot not exempted above is other real property and shall be subject to all conditions placed on other real property in these regulations.

(c) The net market value of any burial vault or crypt not exempted above is personal property and shall be included in the property reserve.

(d) The net market value of a burial plot, vault or crypt shall be the net market value listed by the applicant or beneficiary on the Statement of Facts, unless the county department determines further verification is required. If verification is required:

(1) The applicant or beneficiary shall submit a statement of value from the organization from which the plot, vault or crypt was purchased. This statement of value shall be the market value.

(2) Subtract encumbrances of record from the market value. This is the net market value.

§ 50479. Burial Funds.

(a) All of the following burial funds for an individual shall be exempt.

(1) Money or securities placed in an irrevocable trust for funeral, cremation, or interment expenses with the following trustees: any banking institution or trust company empowered by the State of California to act as trustee in the handling of trust funds, cemetery authority which has established an endowment care fund, or not less than three persons one of whom may be in the employ of a funeral director.

(2) Money or securities placed in an irrevocable trust created by the deposit in an insured savings institution made by one person of his or her own money in his or her own name as trustee for a funeral director to provide payment for funeral services rendered by the funeral director upon the depositor's death.

(3) Life or burial insurance purchased specifically for funeral, cremation, or interment expense, which is placed in an irrevocable trust or which has no loan or surrender value available to the recipient.

(4) Securities issued by a licensed cemetery authority which by their terms are convertible only into payment for funeral, cremation, or interment expenses.

(b) The first \$1,500 paid for designated burial funds for funeral, cremation or interment expenses for an individual shall be exempt when the fund is revocable.

(c) Designated burial funds include burial trusts, prepaid burial contracts, burial insurance, annuities or any separately identifiable assets which are clearly designated as set aside for the expenses connected with the individual's burial, cremation, or other funeral arrangements.

(d) Interest earned on or appreciation in value of either an exempt burial fund described in subsection (a), above or revocable designated burial fund described in subsections (b) and (c), above shall be exempt if it is left to accumulate and become part of the separately identifiable burial fund.

(e) The amount of designated burial funds which are not exempt shall be included in the property reserve.

§ 50481. Disaster and Emergency Assistance Payments.

Disaster and emergency assistance payments, regardless of the date of receipt, and any interest earned from such payments, shall be permanently exempt and shall not be included in the property reserve. This exemption applies only to such payments received from federal, state, or local government agencies, or disaster assistance organizations.

§ 50481. Disaster and Emergency Assistance Payments.

Disaster and emergency assistance payments, regardless of the date of receipt, and any interest earned from such payments, shall be permanently exempt and shall not be included in the property reserve. This exemption applies only to such payments received from federal, state, or local government agencies, or disaster assistance organizations.

§ 50485. Business Property.

(a) Equipment, inventory, licenses and materials owned by the applicant or beneficiary which are necessary for employment, for self-support or for an approved plan of rehabilitation or self-care necessary for employment shall be exempt.

(1) Equipment, inventory, licenses and materials shall be considered necessary for employment if either of the following conditions is met:

(A) The applicant's or beneficiary's employer requires that the applicant or beneficiary provide this property as a condition of employment.

(B) The applicant or beneficiary is currently unemployed but has been required to use this property for employment in the past and can provide reasonable evidence that the

applicant or beneficiary is actively seeking employment which will require the use of the same property. This property shall be exempt for a maximum of one year from the date the beneficiary became unemployed if this condition is met.

(2) Equipment, inventory, licenses and materials shall be considered necessary for self-support if the applicant or beneficiary obtains a reasonable rate of return from the use of this property.

(A) A business or means of self-support that has been in existence for more than one year shall be considered to be realizing a reasonable rate of return if it is earning an annual net income equal to six percent of the net market value of the property. Net income shall be determined in accordance with Sections 50505 and 50517(a)(5).

(B) A business or means of self-support that has been in existence for more than one year and is not earning net income equal to six percent of the net market value of the property shall be considered to be providing a reasonable rate of return for a maximum of six months if the applicant or beneficiary can show by objective evidence that the property will begin earning six percent within six months.

(C) A business or means of self-support shall not be required to realize any actual income during the first year of operation in order to meet the requirement for realizing a reasonable rate of return.

(D) A business or means of self-support that has been in existence for more than one year and is resumed after an illness, or a period of convalescence from an illness or injury, shall not be required to realize any actual income during the first six months of resumed operation in order to meet the requirement for realizing a reasonable rate of return.

(E) A business or means of self-support that has provided the applicant or beneficiary with income in the past shall be considered to be providing a reasonable rate of return for a maximum of one year during a period when it is not in operation if the applicant or beneficiary can provide evidence that both of the following conditions are met:

1. The business or means of self-support is not in operation due to reasons beyond the applicant's or beneficiary's control.

2. Operation will be resumed within one year of the date operation ceased.

(3) Equipment, inventory, licenses and materials shall be considered necessary for an approved plan of rehabilitation or self-care necessary for employment if the county department determines that the property is necessary for any of the following:

(A) Training which will lead to employment or self-support.

(B) Future employment or a means of self-support that will result from a plan of rehabilitation established by the county or the Department of Rehabilitation.

(C) Employment or a means of self-support that will continue after a period of illness or a period of convalescence or both.

(b) Motor vehicles shall be considered equipment only if used for employment or for a means of self-support other than for commuting to and from work.

(c) Cash on hand and money in checking accounts necessary for the functioning of a business or a means of self-support shall be exempt up to a maximum of three times the average monthly cash expenditures of the business.

(d) Real property used in whole or in part as a business or as a means of self-support shall be considered other real property in accordance with Section 50427.

(e) Stocks, bonds and other similar items of personal property shall not be considered property necessary for employment or self-support even in those instances where the beneficiary holds stock in the corporation in which the beneficiary is employed.

(f) A person who owns equipment, inventory, licenses and materials for self-support shall not be required to be personally involved in the business or means of self-support in order for the property to be exempt under (a).

(g) The net market value of business equipment, inventory, licenses and materials shall be the amount listed by the applicant or beneficiary on the Statement of Facts, unless the county department determines that Sections 50442 through 50489 provide a method of valuing the specific item of property or that further verification is required.

(1) If any of the sections between Sections 50442 and 50489 can be applied as a method of valuing the specific item of property that method shall be used.

(2) If the county determines that further verification is required and Sections 50442 through 50489 do not apply:

(A) The applicant or beneficiary shall submit an appraisal from an appropriate dealer, insurance adjuster or personal property appraiser. The value listed on the appraisal shall be the market value.

(B) The county shall subtract encumbrances of record from the market value. This is the net market value.

§ 50487. Stocks Held by Natives of Alaska.

Shares of stock in a regional or village corporation held by natives of Alaska for a 20 year period during which such stock cannot be conveyed, transferred or surrendered, shall be exempt.

§ 50489. Trusts -General.

(a) Property and income held in trust for the benefit of an individual or individual's spouse shall be treated in accordance with Sections 50489 through Section 50489.9. These sections shall supersede any other section(s) of this article.

(b) For purposes of sections 50489 through 50489.9, the following definitions apply:

(1) "Annuitant" means a person who has the right to receive payments from an annuity. The annuity shall be annuitized based upon the life expectancy of the annuitant.

(2) "Annuitized" means that an annuity is paying a fixed, equal amount to the annuitant on a periodic basis. Payments shall be no less frequent than monthly over a number of years equal to or less than the annuitant's life expectancy as indicated in life expectancy tables provided by the Secretary for the Department of Health and Human Services, contained in Section 3258.9 (Revision 64), Part 3 of the Health Care Financing Administration's State Medicaid Manual and titled "Life Expectancy Table -Males and Life Expectancy Table -Females". The final annuity payment may be for an amount less than the previously fixed annuity payments in order to fully exhaust benefits under the annuity. An annuity shall be considered annuitized even though it may provide an annual cost of living adjustment equal to or less than 5%.

(3) "Annuity" means a contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally. Annuity payments may continue for a fixed period of time or for as long as an annuitant lives. An annuitant purchases an annuity with his or her property or property rights. Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity. Annuities purchased prior to August 11, 1993, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Title 22, Section 50402 and Article 10 of this chapter.

(4) "Assets" shall mean all income and property of the individual or the individual's spouse, including income or property which the individual or spouse is entitled to, but does not receive because of circumstances brought about by:

(A) the individual or the individual's spouse, or

(B) any other individual or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse, or

(C) any other individual or entity, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(5) "Beneficiary" means any individual or individuals designated in the trust instrument as benefiting in some way from the trust.

(6) "Date of establishment" means the date the trust document (in the case of a trust), annuity purchase agreement (in the case of an annuity), or other creating document (in the case of a similar legal device) is signed and dated. A trust is not considered to be established on the date it has been amended.

(7) "Irrevocable trust" means a trust which cannot be revoked by its own terms or a trust deemed to be irrevocable under State law.

(8) "Revocable trust" means a trust which can be revoked by its own terms or a trust deemed to be revocable under State law.

(9) "Similar legal device" (SLD) means any legal instrument, device or arrangement that involves the transfer of assets from an individual or entity (transferor) to another individual or entity (transferee) with the intent that the assets be held, managed, or administered by an individual or entity for the benefit of the transferor or certain other individuals. SLDs also include annuities purchased on or after August 11, 1993.

(10) "Trust" means any arrangement in which an individual or entity (trustor) transfers assets to a trustee with the intent that the assets be held, managed, or administered by the trustee(s) for the benefit of the trustor or certain designated individuals (beneficiaries). The trust must be valid under State law. The term "trust" also includes any legal instrument or device similar to a trust as described in subsection (b)(9) of this section.

(11) "Trustee" means any individual(s), entity, trust advisory committee, or individual(s) with power of appointment, who manages, holds, or administers a trust for the trust beneficiary or beneficiaries.

(12) "Trustor" means an individual who creates a trust. A trustor is also known as the "settlor" or "grantor".

(c) For purposes of this article, trusts shall be classified in three ways:

(1) Medicaid Qualifying Trusts (MQT): A trust established prior to August 11, 1993, as described in Section 50489.1.

(2) OBRA 93 Trusts: A trust established on or after August 11, 1993 as described in Section 50489.5.

(3) Other Trusts: A trust other than those described in subsections (c)(1) or (c)(2) of this section.

(d) Placement of assets in, or distributions from, a trust other than a burial trust which is exempt pursuant to Section 50479 shall be considered a transfer of assets.

(e) Verification of trusts shall be performed by the county in accordance with subsections (e)(1) and (e)(2) of this section.

(1) A written trust shall be verified by examining the trust documents and any other related documents.

(2) An oral trust shall be verified by written affidavit and by any other related documents. Affidavits shall be dated and signed under penalty of perjury, and shall specify the terms of the oral agreement. Real property cannot be held in an oral trust. Oral trusts which are held in financial institutions are subject to Section 50402.

§ 50489.1. Medicaid Qualifying Trusts.

(a) Pursuant to Title 42, U.S.C., Section 1396a(k) as it existed prior to repeal, a Medicaid Qualifying Trust (MQT):

(1) Is one which was established prior to August 11, 1993, other than by will, by an individual or the individual's spouse, or by the individual's guardian, conservator, or legal representative who is acting on the individual's behalf; and which

(2) Provides that the individual or the spouse may receive all or part of the income or principal of the trust that is dispersed directly or to another person or entity on behalf of that individual; and which

(3) Gives the trustee(s) discretion in distributing funds to the individual, to the spouse, or to another person or entity on behalf of that individual; and

(4) Is not described in Section 50489.9, and

(5) May be revocable or irrevocable, and

(6) May be established to enable the individual or the spouse to qualify for Medi-Cal.

(b) For purposes of this section, "individual" means a person or spouse who establishes an MQT and who is a beneficiary of the MQT.

(c) Property in an MQT is available as specified below:

(1) If the MQT is revocable, it shall be available.

(2) If the MQT is irrevocable then:

(A) Any amount distributed from the principal of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be available property.

(B) Any amount distributed from the income of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered income and shall be subject to Article 10 of this chapter.

(C) The maximum amount that the trustee(s) could distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust principal shall be considered available property. The maximum amount is the amount the trustee(s) may distribute if the trustee(s) were to exercise full discretion under the terms of the MQT.

(D) The maximum amount that the trustee(s) may distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust income if the trustee(s) were to exercise full discretion under the terms of the MQT is available income and is subject to Article 10 of this chapter.

(E) Any amount of trust principal for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred property. The date of the transfer shall be the date the trust was established, the date the trust receives the property, or the date disbursement is foreclosed, whichever is the most recent.

(F) Any amount of trust income for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred assets. The date of the transfer shall be the date trust disbursement is foreclosed, or the date the trust receives income, whichever is the most recent. Transfers of income occurring prior to August 11, 1993, shall not be considered.

§ 50489.5. OBRA 93 Trusts Established On or After August 11, 1993.

(a) An OBRA 93 trust:

(1) Is established, in part or in whole, with assets of an individual or individual's spouse, on or after August 11, 1993, other than by will; and

(2) Is not described in Section 50489.9, and

(3) Shall be treated in accordance with the remainder of this section.

(b) The provisions of this section shall apply to OBRA 93 trusts without regard to:

(1) the purposes for which the trust is established,

(2) whether the trustee(s) has, or exercises, any discretion under the terms of the trust,

(3) restrictions on when, or whether, distributions may be made from the trust, or

(4) restrictions on the use of trust assets or distributions.

(c) The provisions of this section shall apply to any OBRA 93 trust if it was established by any of the following:

(1) the individual, or

(2) the individual's spouse, or

(3) any other person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse, regardless of whether that person or entity claims to be acting in such a capacity at the time of the action, or

(4) any other person or entity, including any court or administrative body, acting at the direction, or upon the request of, the individual or the individual's spouse.

(d) In the case of an OBRA 93 trust which includes the assets of someone other than the individual or the individual's spouse, the provisions of this section shall apply only to that portion of the trust containing the assets of the individual or the individual's spouse.

(e) In the case of a revocable OBRA 93 trust:

(1) trust income and principal shall be considered property available to the individual who has the right, power, and authority to revoke the trust and to use the proceeds, and

(2) payments from the trust to, or for the benefit of, the individual or spouse shall be considered income of that individual or spouse in accordance with Article 10 of this chapter, and

(3) if payments are made to any person or entity, other than the individual or spouse, for any purpose other than for the benefit of the individual or spouse, those payments shall be considered transferred assets as of the date of payment.

(f) In the case of an irrevocable OBRA 93 trust:

(1) if payment(s) can be made from the trust to, or for the benefit of, the individual or spouse at any time or under any circumstances, the portion of the trust income or principal from which payment(s) to the individual or spouse could be made shall be considered property available to that individual or spouse,

(2) if payment(s) from the trust income or principal is made to, or for the benefit of, the individual or spouse, the payment(s) shall be considered income of that individual or spouse, in accordance with Article 10 of this chapter,

(3) if payment(s) is made from the trust income or principal for any other purpose, the payment(s) shall be considered a transfer of assets by the individual or spouse as of the date of payment, and

(4) if any portion of the trust income or principal from which payment cannot be made to, or for the benefit of, the individual or spouse, then that portion shall be considered a transferred asset. The value of the assets transferred shall include the amount of assets used to establish the trust and any assets added to that portion. Payments which have been made from that portion of the trust shall not be deducted from the value of the assets transferred. The date of transfer shall be the date the trust was established, the date the trust receives the asset or the date disbursement is foreclosed, whichever is most recent.

(g) In the case of an annuity:

(1) Payments shall be considered income in accordance with Article 10 of this chapter, and

(2) Section 50402 shall apply only to the extent that it is not inconsistent with subsections (g)(2)(A)-(g)(2)(D) of this section.

(A) The undistributed balance of the annuity shall be considered unavailable if the annuity contract is annuitized upon the life expectancy of the individual or spouse or for a shorter period of time.

(B) The life expectancy of the annuitant shall be determined in accordance with life expectancy tables specified by the Secretary of the Department of Health and Human Services, contained in Section 3258.9 (Revision 64), Part 3 of the Health Care Financing Administration's State Medicaid Manual and titled "Life Expectancy Table -Males and Life Expectancy Table -Females".

(C) Any payment scheduled to occur beyond the life expectancy of the individual or spouse as determined in accordance with subsection (g)(2)(B) of this section shall be considered a transfer of assets.

(D) Any payment made to, or set aside for, another individual (other than for the sole benefit of the spouse), shall be considered a transfer of assets.

(h) The county must consider whether undue hardship exists before eligibility may be denied under this section. Eligibility shall not be denied based upon the provisions of this section if undue hardship is found to exist. The provisions of this section shall be waived if the application of these provisions would work an undue hardship. If undue hardship, in accordance with the provisions of this subsection, is considered and found not to apply, the county shall state that on the notice of action. For purposes of this section, undue hardship exists when all of the conditions in subsections (h)(1) through (h)(4) of this section exist or when the conditions in subsections (h)(5) or (h)(6) of this section exist. The county shall notify the individual that undue hardship is being considered prior to denying eligibility to any individual under this section.

(1) The trust assets cannot, under any circumstances, be used to provide for the health care or medical needs of the Medi-Cal applicant or Medi-Cal beneficiary, and

(2) Health care cannot be obtained from, and medical needs cannot be met by, any source other than Medi-Cal without depriving the individual of food, clothing or shelter or other necessities of life, and

(3) The individual's parents (if the individual is under 21) or the individual's spouse, cannot provide for the health care and medical needs or health care coverage of the individual without depriving themselves of food, clothing or shelter or other necessities of life, and

(4) The courts have denied a good faith petition to release the trust assets to pay for the required medical care.

(A) A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language which suggests or requests that the courts do anything other than release the trust assets needed to pay for the required medical care.

(B) The counties shall verify that the criteria contained in subsections (h)(4) and (h)(4)(A) of this section, concerning a valid good faith petition and court order exist by examining the petition and the court order.

(C) Subsection (h)(4) of this section does not apply to an annuity.

(5) No person shall be made ineligible to the extent the trust contains otherwise exempt income or property.

(6) No person shall be made ineligible due to the application of subsection (g) of this section, concerning an annuity purchased prior to March 1, 1996 when the annuity cannot be annuitized to comply with the provisions of subsection (g) of this section. Any annuity purchased prior to March 1, 1996 which cannot be annuitized to comply with the

provisions of subsection (g) of this section, shall continue to be considered in accordance with Section 50402.

§ 50489.9. Trusts Other than Those Described in 50489.1 or 50489.5.

(a) Trusts described in subsections (a)(1) through (a)(4) of this section, shall be considered available in accordance with subsection (b) of this section:

(1) Trusts that are not described in Section 50489.1 or Section 50489.5.

(2) Any trust established prior to April 7, 1986, which benefits no one other than a mentally retarded person who resides in an intermediate care facility for the mentally retarded.

(3) A trust established on or after August 11, 1993, which meets all of the following conditions:

(A) A trust, or portion of a trust, that contains the assets of an individual or spouse who was both disabled as verified in accordance with Section 50167(a)(1) and under the age of 65 when the trust was established and who is currently disabled whether or not he/she is age 65 or over, and

(B) A trust that is established for the benefit of the disabled individual or disabled spouse in subsection (a)(1)(A) of this section by a parent, grandparent, legal guardian of the individual, or a court, and where

(C) The State receives all remaining funds in the trust, or respective portion of the trust, upon the death of the individual or spouse or upon termination of the trust up to an amount equal to the total medical assistance paid on behalf of that individual by the Medi-Cal program. A trust, or respective portion of the trust, will still be considered for the benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to this subsection.

(4) A trust established on or after August 11, 1993, which meets all the conditions listed in subsections (a)(4)(A) through (a)(4)(F) of this section:

(A) the trust contains the assets of the individual or spouse who is disabled as verified in accordance with Section 50167(a)(1), and

(B) the trust is established and managed by a nonprofit association, and

(C) a separate account is maintained for each trust beneficiary, but for purposes of investment and management of funds, the trust pools these accounts, and

(D) the accounts in the trust are established, except for purposes of subsection (a)(4)(E) of this section, solely for the benefit of the disabled individual or disabled spouse, as defined in subsection (a)(4)(F) of this section, by the disabled individual or disabled spouse, his or her parents, his or her grandparents, or the legal guardian of that individual, or by a court, and

(E) the State receives, upon the death of the disabled individual or disabled spouse, all funds remaining in the individual's account, up to an amount equal to the total amount of medical assistance paid on behalf of that individual by the Medi-Cal program. The State shall receive this amount only to the extent that funds remain in that individual's account and are not retained by the trust to cover management and investment fees associated with that account.

(F) In determining whether an account may be considered solely for the benefit of the disabled individual or disabled spouse, both subsections (a)(4)(F)(1) and (a)(4)(F)(2) of this section shall apply.

(1) Except in accordance with subsection (a)(4)(E) of this section, the account funds must benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section.

(2) If the trust permits funds to be used for any purpose other than for the sole benefit of the disabled individual or disabled spouse for whose benefit the trust or account was established, before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section, the account will not be considered solely for the benefit of that individual or spouse. Such accounts shall be treated pursuant to Section 50489.5. An account will still be considered for the sole benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to subsection (a)(4)(E) of this section.

(b) Trusts described in subsections (a)(1) of this section through (a)(4) of this section, shall be considered available as specified in subsections (b)(1) and (b)(2) of this section.

(1) If the trust is revocable, trust income and principal shall be considered available to the person who has the right, power, and authority to revoke the trust and to use the proceeds.

(A) Trust income is income, and is subject to Article 10 of this chapter. If trust income is not distributed in the month of receipt, it is available property.

(B) Trust principal is available property.

(2) If the trust is irrevocable, the trust assets are not available until distributed.

(c) Any augmentations or additions made to a trust described in subsection (a)(3) of this section or subsection (a)(4) of this section after the disabled individual or disabled spouse for whose benefit the trust was established reaches the age of 65 shall be considered a transfer of assets for less than adequate consideration; earlier augmentations or additions shall not be considered transferred for less than adequate consideration.

(d) In the case of a trust described in subsection (a)(3) of this section or (a)(4) of this section, to ensure that the Department recovers the costs of medical care it provided, the Department's Third Party Liability Branch shall be notified

(1) by the county, whenever the county becomes aware of a Medi-Cal applicant or Medi-Cal beneficiary who is a trust beneficiary, and

(2) by the trustee, upon death of the trust beneficiary, termination of the trust, or change of trustee.