



# COMMONWEALTH of VIRGINIA

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## MEMORANDUM

**TO:** EMILY MCCLELLAN  
Regulatory Supervisor  
Virginia Department of Medical Assistance Services

**FROM:** ABRAR AZAMUDDIN   
Assistant Attorney General

**DATE:** July 15, 2016

**SUBJECT:** Exempt Final Regulation – Real Property Appraisals for Resource Eligibility  
12 VAC 30-40-240

I have reviewed the attached exempt final regulation to allow individuals to use real estate appraisers to assess the value of non-commercial property for the purpose of determining Medicaid eligibility. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (“DMAS”) has the legal authority to amend the regulation and if the regulation comports with state and federal law.

Based on my review and pursuant to the HB 30 passed by the 2016 Session of the Virginia General Assembly, the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, in accordance with Virginia Code §§ 32.1-324 and 325, has the authority to amend these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and has not exceeded that authority. It is my view that the amendment of these regulations is exempt from the procedures of Article 2 of the APA pursuant to Va. Code § 2.2-4006(A)(4)(a).

If you have any questions about this matter, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment

Virginia.gov

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Logged in as

Abrar Azamuddin

## Final Text

**Action:** Real Property Appraisals for Resource Eligibility

**Stage:** Final

7/13/16 4:11 PM [latest] ▼

### **12VAC30-40-240. More restrictive methods of treating resources than those of the SSI program: § 1902(f) states only.**

A. The following limitations apply to resources in addition to the resource requirements of the Supplemental Security Income (SSI) program for the aged, blind and disabled.

1. For income-producing property and other nonresidential property, appropriate equity and profit is to be determined by the prorata share owned by an individual in relation to his proportionate share of the equity and profit.

2. Property in the form of an interest in an undivided estate is to be regarded as an asset when the value of the interest plus all other resources exceeds the applicable resource limit unless it is considered unsaleable for reasons other than being an undivided estate. An heir can initiate a court action to partition. If a partition suit is necessary (because at least one other owner or heir to the property will not agree to sell the property) in order for the individual to liquidate the interest, estimated partition costs may be deducted from the property's value. However, if a partition would not result in the applicant/recipient securing title to property having value substantially in excess of the cost of the court action, the property would not be regarded as an asset.

B. Real property.

1. The current market value of real property is determined by ascertaining the tax assessed value of the property and applying to it the local assessment rate. Alternatively, for non-commercial real property only, the current market value may be determined through the use of a certified appraisal in lieu of the tax assessed value. The certified appraisal must be completed by an individual licensed by the Virginia Real Estate Appraiser Board and the cost of the certified appraisal is to be borne by the applicant/recipient or his designee. The equity value is the current market value less the amount due on any recorded liens against the property. "Recorded" means written evidence that can be substantiated, such as deeds of trust, liens, promissory notes, etc.

2. Real property contiguous to an individual's residence which does not meet the home property definitions in subdivision 3 of this subsection, the SSI income-producing requirement or the exceptions listed in subdivision 6 of this subsection and which is saleable according to the provisions in 12VAC30-40-290 C, shall be counted as an available resource. The equity value of the contiguous property shall be added to the value of all other countable resources.

3. Ownership of a dwelling occupied by the applicant as his home does not affect eligibility. A home shall mean the house and lot used as the principal residence and all contiguous property as long as the value of the land, exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the definition of home as provided here is more restrictive than that provided in the

State Plan for Medical Assistance in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value.

The lot occupied by the house shall be a measure of land as designated on a plat or survey or whatever the locality sets as a minimum size for a building lot, whichever is less. In localities where no minimum building lot requirement exists, a lot shall be a measure of land designated on a plat or survey or one acre, whichever is less.

Contiguous property essential to the operation of the home means:

a. Land used for the regular production of any food or goods for the household's consumption only, including:

(1) Vegetable gardens;

(2) Pasture land which supports livestock raised for milk or meat, and land used to raise chickens, pigs, etc. (the amount of land necessary to support such animals is established by the local extension service; however, in no case shall more land be allowed than that actually being used to support the livestock);

(3) Outbuildings used to process and/or store any of the above;

b. Driveways which connect the homesite to public roadways;

c. Land necessary to the home site to meet local zoning requirements (e.g. building sites, mobile home sites, road frontage, distance from road, etc.);

d. Land necessary for compliance with state or local health requirements (e.g., distance between home and septic tank, distance between septic tanks, etc.);

e. Water supply for the household;

f. Existing burial plots;

g. Outbuilding used in connection with the dwelling, such as garages or tool sheds.

All of the above facts must be fully reevaluated and documented in the case record before the home site determination is made.

4. An institutionalized individual's former residence is counted as an available resource if the recipient is institutionalized longer than six months after the date he was admitted. The former residence is disregarded if it is occupied by the recipient's:

a. Spouse;

b. Minor dependent child under age 18;

c. Dependent child under age 19 if still in school or vocational training;

d. Adult child who is disabled according to the Medicaid or civil service disability definition, and who was living in the home with the recipient for at least one year prior to the recipient's institutionalization, and who is dependent upon the recipient for his shelter needs; or

e. Parent who is age 65 or older and who is disabled according to the Medicaid or civil service disability definition and who was living in the home with the recipient for at least one year prior to the recipient's institutionalization and who is dependent upon the recipient for his shelter needs.

5. An applicant or recipient's proportional share of the value of property owned jointly with another person to whom the applicant or recipient is not married as

tenants in common or joint tenants with the right of survivorship at common law is counted as a resource unless it is exempt property or is unsaleable.

6. Ownership of other real property generally precludes eligibility. Exceptions to this provision are: (i) when the equity value of the property, plus all other resources, does not exceed the appropriate resource limitation; (ii) the property is smaller than the county or city zoning ordinances allow for home sites or building purposes, or the property has less than the amount of road frontage required by the county or city for building purposes and adjoining land owners will not buy the property; or (iii) the property has no access, or the only access is through the exempted home site; or (iv) the property is contiguous to the recipient's home site and the survey expenses required for its sale reduce the value of such property, plus all other resources, below applicable resource limitations; or (v) the property cannot be sold after a reasonable effort to sell it has been made, as defined in 12VAC30-40-290.

C. Personal property.

1. Prepaid burial plans are counted as a resource since the money is refundable to the individual upon his request. Cemetery plots are not counted as resources. See 12VAC30-40-290.

2. Assets which can be liquidated such as cash, bank accounts, stocks, bonds, securities and deeds of trusts are considered resources.