

Virginia Department of Social Services
Medicaid Fact Sheet #40
**REASONABLE BUT UNSUCCESSFUL
EFFORTS TO SELL REAL PROPERTY**

The following information is given as a guideline only. For Medicaid eligibility to be determined, an application must be filed with the local department of social services that serves the city or county in which you live.

If you own real property that makes you ineligible for Medicaid, it can be excluded from the Medicaid eligibility determination if you have made a reasonable effort to sell it. If you become eligible for Medicaid, you must continue to try to sell the property until it is sold or you no longer want Medicaid coverage. This exclusion is effective the first day of the month in which the most recent Medicaid application was filed or up to three months prior to the month of application, if retroactive coverage is needed.

Making the Initial Reasonable Effort to Sell

For the real property to be excluded, an initial effort to sell the property must be made. The initial effort to sell requirement is met when one of the following situations applies:

- The property is listed with a realtor at current market value (CMV), AND the listing realtor verifies that it is unlikely to sell within 90 days of listing because of particular circumstances, such as: the owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on the title; right of way or easement restrictions; or local market conditions. For Medicaid purposes, the CMV of real property is 100% of its tax assessed value. Appraisals by real estate agents cannot be used.
- At least two realtors refuse to list the property. The reason for refusal must be that the property cannot be sold at CMV (other reasons are not sufficient). You must provide documentation of the refusals.
- When the applicant has personally advertised his property at or below CMV for 90 days by use of a "For Sale by Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, reasonable inquiries with all adjoining land-owners, or other potential interested purchasers.
- For property owned by an individual who is incompetent and for whom no general power of attorney exists, an initial reasonable effort to sell is made when court action is initiated for appointment of a guardian or conservator to secure the court's approval to dispose of the property. The initial reasonable effort to sell is effective beginning with the date the hearing for appointment of a guardian is placed on the court docket and is valid until the court authorizes sale of the property or six months, whichever is less.
- For property which is an interest in an undivided estate or for jointly owned property when a co-owner refuses to sell, an initial reasonable effort to sell is made when all other co-owners have refused to purchase the applicant's or recipient's share, and at least one of the other co-owners has refused to agree to sell the property. You must provide documentation of the refusals.

Making Continuing Efforts to Sell

If you become eligible for Medicaid, you must continue to make reasonable efforts to sell the real property in one of the following ways for the exclusion to continue:

- Continually renewing a listing agreement at no more than 100% of the taxed assessed value, until the property is sold.
- In the case where at least two realtors have refused to list the property, you must personally try to sell the property at no more than the CMV for 12 months. The newspaper advertisements, "for sale" sign, etc., must be done for at least 90 days within a 12 month period. If you have personally advertised the property for a year without success, you must then (1) list the property with a realtor priced at or below CMV or (2) at least two realtors must refuse to list it because it cannot be sold at CMV (other reasons are not sufficient).
- If you have made a continuing effort to sell the property for 12 months, then you may sell the property between 75% and 100% of its tax assessed value without affecting Medicaid payment for long-term care services under the asset transfer rule. If you request to sell the property at less than 75% of assessed value, you must submit documentation from the listing realtor (or knowledgeable source if the property is not listed with a realtor) that the requested sale price is the best price you can expect to receive for the property at this time. Under these conditions, the sale will not be considered an uncompensated transfer for Medicaid purposes. See Fact Sheet #3, Asset Transfer, for more information about the asset transfer rule.
- For jointly owned property or interest in an undivided estate, a partition suit to liquidate the property must be filed within 60 days of proving the property cannot otherwise be sold. The property remains excluded until the property is sold or for 9 months, whichever is less. The property cannot be excluded beyond 9 months when a partition suit was filed.

Retroactive Medicaid Eligibility

Medicaid coverage can begin up to three months before the month of application if all Medicaid eligibility requirements are met. This period is called the application's "retroactive period. If the real property was already listed for more than the CMV when you applied for Medicaid, a reasonable effort to sell was made for the retroactive period if (1) the property was listed at no more than 100% CMV or (2) the property was listed at or below 150% of CMV and the initial effort to sell requirement described above is met except for the listing price. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced to no more than the CMV to meet the continuing efforts to sell requirement.

If property was listed higher than 150% of CMV, a reasonable effort to sell cannot be established in the retroactive period.