16. Real Property

16.1 General [EAS 42-203, 42-211.1]

16.1.1 Definitions

Real property is generally considered to be land and improvements. It includes such items as:

- The house and the land on which it is built.
- Immovable property attached to the land such as trees, fences, buildings, etc.
- Mines.
- Patented or unpatented oil.
- Mineral or timber rights.

In addition to the items listed above, the following are evaluated as real property:

- Cemetery property held for profit.
- Stocks in a water company not appurtenant to the land in furnishing water for agricultural purposes. It is excluded as personal property.
- Any other items of real property owned unless specifically exempt.

Real Property owned by the applicant or recipient includes real property which:

- Secures any of the individual's debts.
- Is being purchased by the individual under a sale of contract mortgage, and/or deed of trust.
- Is being sold by the individual under a contract of sale, but no contract has actually been signed.
- Is being held by the individual with the retention of life estate.
- Is held in trust for the individual and is available for disposition or use.
- Is held for the individual in an undistributed estate and is available for use prior to distribution.
- Is being sold by the individual and is held in escrow.

16.1.2 Market Value

The market value of real property is based on the most recent appraisal of market value from the county assessor, recorder or tax collector.

16.1.3 Allowable Encumbrances

The following are allowable encumbrances:

- Mortgages
- Notes
- Deeds of trust
- Delinquent tax liens
- Judgment items
- Mechanics liens
- Assessments
- Unpaid balance on property
- Property liens established to repay the CalWORKs grants.

16.1.4 Verification of Encumbrances

Verification of the above encumbrances is the document themselves, payment books, tax bills, assessments, etc. Evidence of unwritten encumbrances is the sworn statement of all parties under penalty of perjury regarding the:

- Initial and maturity dates,
- Amount of the encumbrances, and
- Value received.

16.1.5 Evaluation Formula

To determine the value of real property, use the following computation:

The market value, less encumbrances, equals equity or the value of property.

	A	B	C
Real property market value	$28,000	$47,000	$58,000
Encumbrances	– 26,000	– 46,250	– 64,000
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Amount considered as property	$2,000	$750	$00

16.1.6 Shared Ownership

If the applicant or the applicant and his/her spouse are not the sole owners of the property, only their proportionate share is included in their appropriate property limit.

16.1.7 Multiple Dwelling Unit

To determine the value of real property when the unit is a multiple dwelling with more than one unit and the client lives in one of those units, the EW must use the following formula:

Compute the market value less encumbrances and divide that amount by the number of units. Multiply the remainder by the number of units other than the home. The result is the amount used in the CalWORKs resource limit.

This is to be used when the dwelling is a duplex, triplex, etc.

16.2 Excluded Real Property

16.2.1 The Home [EAS 42-213.3]

A home OWNED and OCCUPIED by the Assistance Unit (AU), regardless of its value, is excluded. Any house, mobile home, camper, trailer, houseboat, or any other dwelling whether assessed as real or personal property by the county assessor is excluded if such an item of property is owned and used by the AU as their home (place of residence).

16.2.2 Temporary Absence from the Home

Temporary absence from the home due to repairs, seasonal employment, illness, vacations, etc., does not affect the exemption, provided the AU expects and is able to return to the home.

If the client is absent from the home for a period of time which seems unreasonable when compared to the reason for the absence, the EW must contact the client and determine if the AU will be able to return to the home and still intends to do so. The reason for the prolonged absence must be documented in the case record.

The home remains exempt as long as the intention and the ability to return to the home remain clear.

16.2.3 The Home of a Seasonal Worker

A seasonal worker's home in another community or state which meets the residency requirements may be excluded from the property evaluation as long as:

- The absence is for temporary employment in California.
- The seasonal worker intends to return to the home when the temporary employment ends.
- The client will be able to return to the home in the foreseeable future.

Note:

Only one exemption of this type is permitted.

16.2.4 A House Not Yet Occupied

The exemption for the home may also extend to a house damaged by fire or other circumstances that the AU has not yet occupied but intends to occupy, and which was not occupied by anyone else at the time of the damage.

16.2.5 Multiple-Dwelling Unit as the Home [EAS 42-213.32]

The unit which is occupied by the AU as a home may be exempt. The remainder of the multiple units are considered a resource and included in the property limit.

The remainder of the units not occupied by the AU may be exempt for a period of nine months as excess real property. [Refer to "Excess Real Property Exclusion [EAS 42-213.12]," page 16-7].]

If the units not occupied by the family cannot be sold separately from the home, they are considered unavailable and excluded from the property evaluation.

A home and a separate unit adjacent to the home is treated as a multiple-dwelling unit.

16.2.6 Acreage Contiguous to the Home

Agency policy is to consider all acreage contiguous to the home that is not separated by natural and artificial barriers or local legal and planning considerations as part of the home and land that are exempt.

Questions to assist in determining if the land is part of the home:

- Is the size of the acreage separated by road, right-of-way, or any other recognized boundary?
- Is any of the acreage separated by road, right-of-way, or any other recognized boundary?

- Is the acreage assessed as one parcel?
- Can any of the acreage be legally subdivided and sold separately from the house?

The property which is contiguous to the home which is not separated by natural or legal boundaries as above is considered a part of the home.

If there is another dwelling on the contiguous land, the property is considered a multiple-dwelling unit, treated and evaluated as such.

16.2.7 Excluding Home During Marital Separation

When a client moves from the usual family home due to a marital separation, the home may be EXEMPT AS OTHER REAL PROPERTY FOR THREE MONTHS in determining property eligibility for the AU.

- For applicants, the three-month exemption lasts for three full months following the month aid begins.

If the exemption period ends mid-period, the county shall not act on the information during the SAR Payment Period. The usual home shall be used to determine eligibility for the SAR Payment Period following the SAR Payment Period in which the exemption period ended.

Example:

The client applies for CalWORKs in March. Her aid begins April 5. The exemption ends on July 31.

- For recipients, the exemption lasts for three full months following the month in which the separation occurs and the AU moves from the home.

If the exemption period ends mid-period, the county shall not act on the information during the SAR Payment Period. The usual home shall be used to determine eligibility for the SAR Payment Period following the SAR Payment Period in which the exemption period ended.

Example:

A family has been receiving CalWORKs for a number of months. On March 25 the mother takes two of her children and moves out of the home the family is purchasing. The home may be exempt in the property determination through June 30.

At the time the exemption is established, the EW must inform the client that the exemption is time-limited and that at the end of the three-month period the AU may be ineligible.

At the end of the three-month exemption, the EW must explore continuing eligibility for the next nine months. The excess property exemption may apply. [Refer to “Excess Real Property Exclusion [EAS 42-213.12],” page 16-7].]

Note:

The client must complete the lien agreement, even if the spouse who is a joint owner refuses to do so. The client must attempt to sell part ownership of the property as specified on the next pages.

16.3 Other Excluded Real Property [EAS 42-213.1]

The following items are excluded when evaluating real property:

- Real property held in trust if the child or parent does not have control of the trust of which that individual is the beneficiary.
- The separate and community share of real property of a parent who has surrendered full custody of his child, pursuant to a court order.
- The separate and community share of real property of the father of a child who is not married to the mother and the parents are not maintaining a home together.

Exception:

If the father has legitimatized the child under Section 230 of the Civil Code, his property is included whether or not the parents are maintaining a home together.

- The separate and community share of real property of the stepfather.
- Property purchased with funds received under Title I or Title II of the Economic Opportunity Act, when such funds were excluded from consideration as income or resources. This exclusion does not extend to income or profits from such property.
- An Indian’s interest in land held in trust by the U.S. government.
- The separate and community share of real property of the absent parent which are unavailable to the CalWORKs AU or child (i.e., the AU or child does not have possession or control of the property so that the property may be used to meet current needs). Such unavailable property is to be excluded in cases where the child is living apart from his/her parent or parents.

  An availability determination of the separate community shares of real property of an absent parent must be made by the EW as part of the initial eligibility determination. After that, the EW only needs to make another availability determination when information is received that there has been a change.

- The real property in which a CalWORKs recipient has an ownership interest and which is considered in an SSI/SSP resource evaluation.
  - The total value of the property owned separately by the CalWORKs recipient who is either the spouse or parent of the SSI/SSP recipient and resides in the same household.
  - The total value of the property owned jointly between the CalWORKs recipient and the SSI/SSP spouse or child when they reside in the same household.
- A maximum of one burial plot for each member of the AU. For purposes of this section, a burial plot is defined as an interment space, crypt, or niche intended for the interment of the individual.

16.4 Excess Real Property Exclusion [EAS 42-213.12]

16.4.1 Nine-Month Exclusion

Real property, not otherwise excluded, may be exempt from consideration in the resource limit for a ONE-TIME ONLY period of no more than nine (9) consecutive months if the AU demonstrates a good faith effort to sell the property. [Refer to “Applicant/Recipient Responsibility,” page 16-9] for the definition of “good faith effort.”]

The EW MUST inform the client of all of the following at the time this exemption is granted:

- The exemption is limited to a ONE-TIME ONLY period of no more than nine consecutive months;
- If the property has not been sold at the end of the nine-month period, aid must be discontinued;
- A break in aid does not alter the nine-month period.
- A lien must be signed against the property.

Example:

An applicant with excess real property is set up on aid effective 4/1. Aid is discontinued for no SAR 7 effective 10/31. The client reapplies for aid in December. If all other eligibility conditions are met, the client can receive aid for December. Aid must be discontinued effective 12/31. The client cannot receive aid again until the property is sold and all other conditions of eligibility are met.

The three months discussed previously [Refer to "Excluding Home During Marital Separation," page 16-5].] can be given in addition to the nine months discussed above for a total of twelve months, if circumstances permit.

16.4.2 Inability to Use Nine-Month Exclusion

The nine-month period CANNOT be extended except in the following circumstances:

- If the client loses the legal ability to sell the property such as when it is tied up in litigation, the property will be considered unavailable.
  - The nine-month period will stop running effective the month in which the property becomes unavailable.
  - The nine-month period will resume beginning the month following the month in which the property becomes available again.
  - A new "Agreement to Sell Property" (CW 82) must be signed when the property becomes available again. A new "Agreement to Reimburse" (SC 355) is not required.

Example:

An applicant signs an excess property lien and is eligible for CalWORKs beginning in January. On April 14th a law suit is filed by creditors with a lien against the property which prohibits its sale. The nine months stops running at the end of March. Three of the nine months have been used. On September 21st the litigation is completed and the property is again available. The period resumes in October and will expire at the end of next March.

- When a client has previously signed an excess property lien agreement and received aid in another state, a new lien agreement and a new lien period may be granted when the client applies in California.

Example:

An applicant applies for CalWORKs in California in May. The applicant owns excess real property in Washington. The applicant tells the EW that she signed an excess property lien in Washington against the property she still holds and received aid for six months in the previous year. The applicant may sign a new lien agreement in this state against the same property for a new nine month period.

Note:

For this section the definition of "sold" is when escrow has closed.

16.4.3 Applicant/Recipient Responsibility

As a condition of receiving cash assistance and BEFORE the EW grants aid, the applicant/recipient must take the following steps:

STEP	ACTION
1.	GRANT THE COUNTY A LIEN, which is payable to the county when the property is sold, against the property. An “Agreement to Reimburse” (SC 355), is used to record the lien. The lien is binding on the applicant/recipient, his/her heirs, executors, administrators and assignees.
2.	AGREE IN WRITING to begin immediately to make a good faith effort to sell the property. The “Agreement to Sell Property” (CA 82), must be used as the agreement document.
3.	MAKE A “GOOD-FAITH EFFORT” to sell the property by: • Listing the property for sale with a licensed real estate broker at the property's approximate fair market value and be willing to negotiate the terms of the sale with potential buyers. OR • Make an individual effort to sell the property which must include ALL of the following: **Note:** Advertise once a week in at least one publication of general circulation that the property is for sale. Once the client becomes resource eligible it will no longer be required that this person use out of pocket expenditures to market the property, but they must continue to list the property with the licensed broker. • Place a “FOR SALE” sign on the property. The sign must be visible from the street, whenever possible. • Offer the property for sale at its approximate fair market value. The fair market value is the client's choice of: (1) The assessed value of the property, OR (2) The valuation of the market value of the property from a licensed real estate broker, obtained by the applicant/recipient. If the property is located in a remote area and it is impossible or impractical to obtain a valuation and the client believes that the assessed value is too high or too low, the county and the client may agree on the market value based upon other available information.
4.	Be willing to negotiate the terms of the sale with potential buyers and respond to ALL reasonable inquiries about the property.
5.	Verify a “good faith effort” to sell the property by: • Furnishing his/her EW with a copy of the contract with the licensed real estate broker, OR • Cooperating with the county if he/she chooses to make an individual effort to sell the property.

Reminder:

If at anytime, prior to the end of the nine month period, the client elects not to sell the property, that property is no longer exempt and must be counted in the resource limit.

16.4.4 Resource Eligible

When an AU becomes resource eligible, it will no longer be required that this person use out of pocket expenditures to market the property but they must continue to list the property with the licensed broker. Resource eligibility exists when the equity value of the real property plus all countable resources is less than the property limit. When determining the equity value of real property, the EW must allow all encumbrances.

16.4.5 End of Nine-Month Period

If the client has not disposed of the property at the end of the nine-month period, the EW must insure that the case is discontinued in a timely manner.

16.4.6 Agency Procedures

When it has been determined that a client must complete the process to establish a lien on real property, these procedures must be followed:

STAGE	WHO	ACTION
1.	EW	Complete an “Agreement to Reimburse” (SC 355). Enter the address, legal description (Parcel Number) and all co-owners of the property , appearing on the County Assessor's Property Tax Statement. Route the original, yellow, and pink carbons to Collections at 333 W. Julian Street, Attn: Reimbursement Desk. Establish case, once eligibility cleared. Create a User to User alert due in eight (8) months. Scan a copy of the SC 355 into IDM.
2.	Collections	Establish a control on the SC 355 and “Excess Real Property” (SC 1366). Send the SC 355 to the County Recorder's Office.
3.	County Recorder's Office	Record the lien. Return the copy of the SC 355 to the continuing EW.
4.	Unit Clerk	Document the lien in the **Case Comments** window of CalWIN.
5.	EW	Scan the copy of the SC 355 into IDM. Determine if the combined value of ALL real and personal property continues to exceed the property limit for the AU, at the end of the 8th month. If it does, discontinue cash aid effective the end of the ninth (9th) month and send a timely NOA. Determine the amount of aid to be repaid when notified of the sale of the property. [Refer to “Determining Repayable Aid from Sale of Excess Real Property [EAS 42-213.12],” page 16-11]. Complete the “Excess Real Property” (SC 1366) when the cash aid program is closed or when the property is sold. • Send the original to Collections, 333 W. Julian St., Attn: Reimbursement Desk. • Scan a copy of the SC 355 into IDM. • Send a copy to the client.

16.5 Determining Repayable Aid from Sale of Excess Real Property [EAS 42-213.12]

Any aid paid during the nine-month period or until the property is sold, whichever comes first, is considered repayable when the property is sold. The repayment amount is collected from the "net proceeds" of the sale of the property.

16.5.1 Rule #1

The "net proceeds" of the sale is determined by subtracting the COSTS OF THE SALE from the gross amount of the sale. The costs directly related to the sale of the property is determined by the EW and may include:

- Loans and liens of the seller, other than the lien granted to the county, that are secured by the property.
- Title insurance fees paid by the seller.
- Broker's fees paid by the seller.
- Prepaid interest or loan processing fees (points) paid by the seller.
- Appraisal fees paid by the seller.
- Fees paid by the seller to advertise the property, i.e., newspaper ads and "For Sale" signs.

16.5.2 Rule #2

If the "net proceeds" from the sale plus the value of other non-exempt real and personal property at the BEGINNING OF THE (9) MONTH EXEMPT PERIOD is less than the property limit for the AU, there is no repayable aid.

Example:

At the beginning of the exempt period, the AU had $300 in savings and a parcel of land that was exempt for nine months. The property was sold for $8000. Loans and liens, except for the lien granted to the county, equaled $6000. Costs directly related to the sale were $1400.

	$8000	Gross amount of sale
–	6000	Loans and liens (not including this county lien)
–	1400	Costs of sale

	$600	Net proceeds of the sale
+	300	Total value of all other countable resources at the BEGINNING of the exempt period.

	$900	

Nine hundred dollars ($900) is less than the property limit for the AU. Therefore, there is NO repayable aid.

16.5.3 Rule #3

If the "net proceeds" from the sale plus the value of other non-exempt real and personal property at the BEGINNING OF THE NINE-MONTH EXEMPT PERIOD EXCEED the property limit for the AU, the amount repayable is the amount of the "net proceeds" or the amount of aid paid during the exempt period, whichever is less.

Example:

At the beginning of the exempt period, the AU owned an unoccupied house. They had no other real or personal property. The house sold for $529,000. Aid paid during the exempt period was $3960. Net proceeds were $3000.

	$529,000	Gross proceeds
–	520,000	Loans and liens (not including this county lien)
–	6,000	Costs of sale

	$3,000	Net proceeds of sale
	0	Total value of all other countable resources at the beginning of the exempt period.

	$3,000	

As $3000 is the "net proceeds" and is less than $3960 (the amount of aid paid during the exempt period) then $3000 is the amount to be repaid.

16.6 Special Property Considerations [EAS 42-223]

16.6.1 Property in Another State

When a client owns property in another state, it is necessary to convert that state's values into figures that are comparable to California's. This is accomplished by using the following conversion formula:

STEP	ACTION
1.	Determine the assessed value of the property in the other state. This may be accomplished by viewing a property assessment statement or may necessitate a telephone call to the other state.
2.	Divide the above figure by the assessment rate from that state.
3.	Use the figure arrived at in step 2, to determine the value of the client's real property.

16.6.2 Property Outside of United States

If the client owns or is buying property located outside of the United States, the full value is determined on the basis of the rate of exchange in American dollars, regardless of the manner by which other units of government determine the full value.

16.6.3 Property in Militarily Occupied Areas

The ownership and value of property is considered to be doubtful and the facts concerning the property cannot be ascertained when the country is:

- Actively at war, or
- In conquered or occupied status.

If it is impossible to obtain information on the property located in this area, then the presumption is that continued ownership is in doubt and the property has no present value in determining eligibility.

16.6.4 Tax Exemptions

Veterans, and in some cases their widows and parents, are allowed certain tax exemptions which are then applied to their real property. If the record used to determine the full value of the property shows only the amount of the assessment upon which taxes are based, the amount of the exemption must be determined and added to the taxable base to determine the full value. The EW may need to contact the appropriate assessor's office for information about the exemptions and the value of the property.

16.6.5 Adjacent or Contiguous Property

To determine the value of contiguous real property not considered part of the home but assessed with the home, use the following chart:

STEP	ACTION
1.	Determine the market value of the contiguous property. This is computed by adding the prorated share of the value of the total acreage to the value of the encumbrances which are on the contiguous property.
2.	Determine the encumbrances against the contiguous property. This equals the total encumbrances against the property times the market value of the contiguous property divided by the market value of the total property.
3.	Determine the value of the contiguous property. This is computed by subtracting the encumbrances against the contiguous property (from Step 2) from the market value of the contiguous property (from Step 1).

Example:

A client owns a parcel of land of three adjacent city lots. Their home is on one. One has the family garden and one has a small cottage. The parcel has always been assessed as one parcel. The client still owes a total of $18,000 on the whole parcel. The property assessment shows:

Acreage market value		$45,000 ($15,000 per lot)
Improvements	1 house	$30,000
	1 cottage	$15,000

Total Market Value		$90,000

The EW determines that one of the contiguous lots and the cottage are not actually part of the home as they can be sold separately. A value on the contiguous property would be computed as follows:

Market Value of the Contiguous Property:

1/3 x $45,000 = $15,000 + 15,000 = $30,000

Prorated Encumbrances against the Contiguous Property:

$18,000 x $30,000/$90,000 = $6,000

The Value of the Contiguous Property:

$30,000 – $6,000 = $24,000