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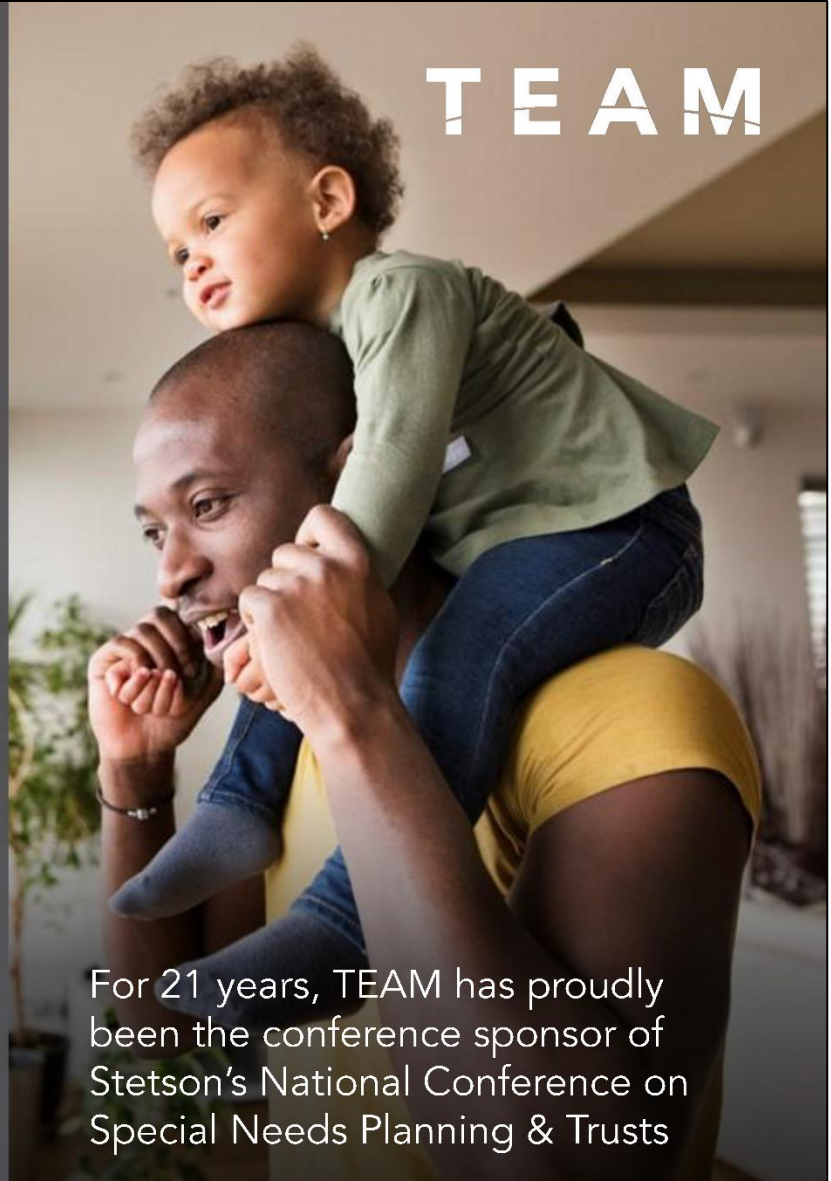
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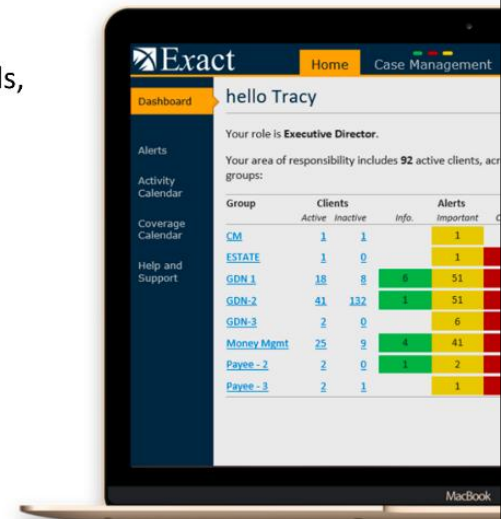
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The Foundations of Inclusive Housing



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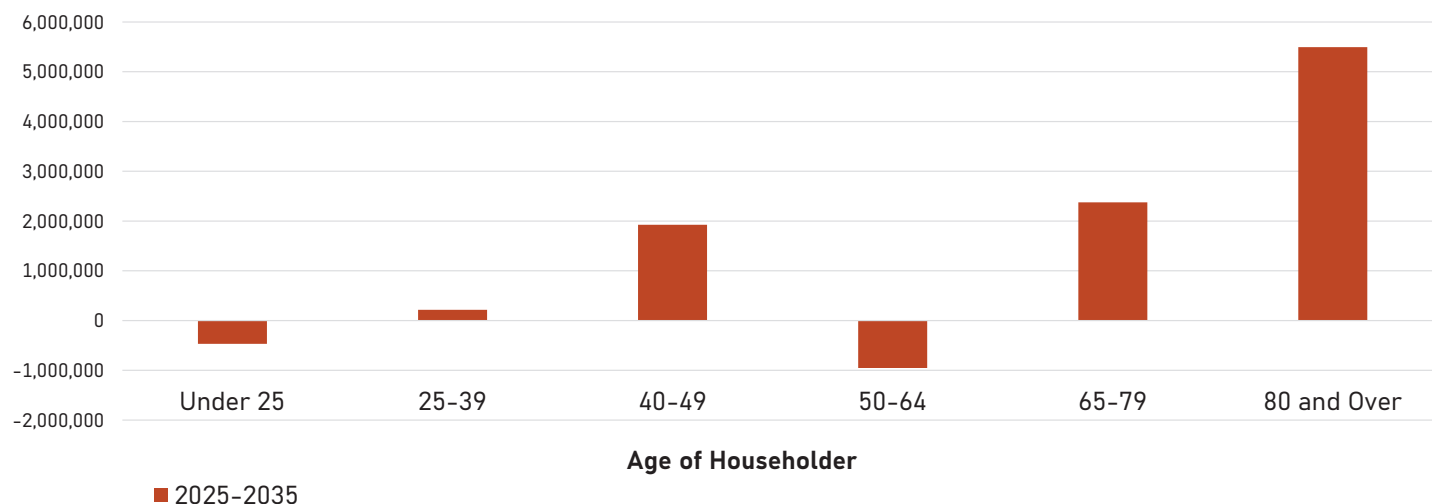
The Foundations of Housing Older Adults

August 2026

Samara Scheckler, PhD (presenter) Senior Research Associate, Housing an Aging Society Program, Harvard Joint Center for Housing Studies

The Number of Older Households Are Rising Faster than Other Age Group

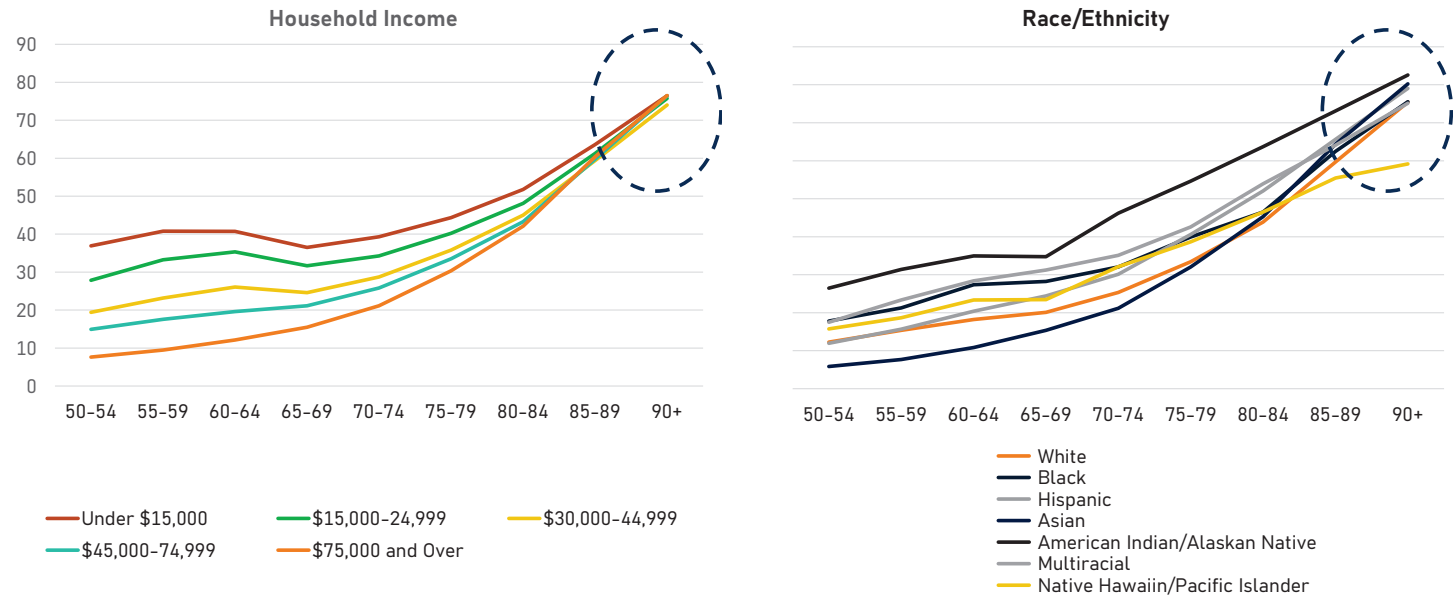
Projected Net Change in Households



Source: JCHS 2024 Household Projections.

Most People Experience Functional Difficulty in Later Life

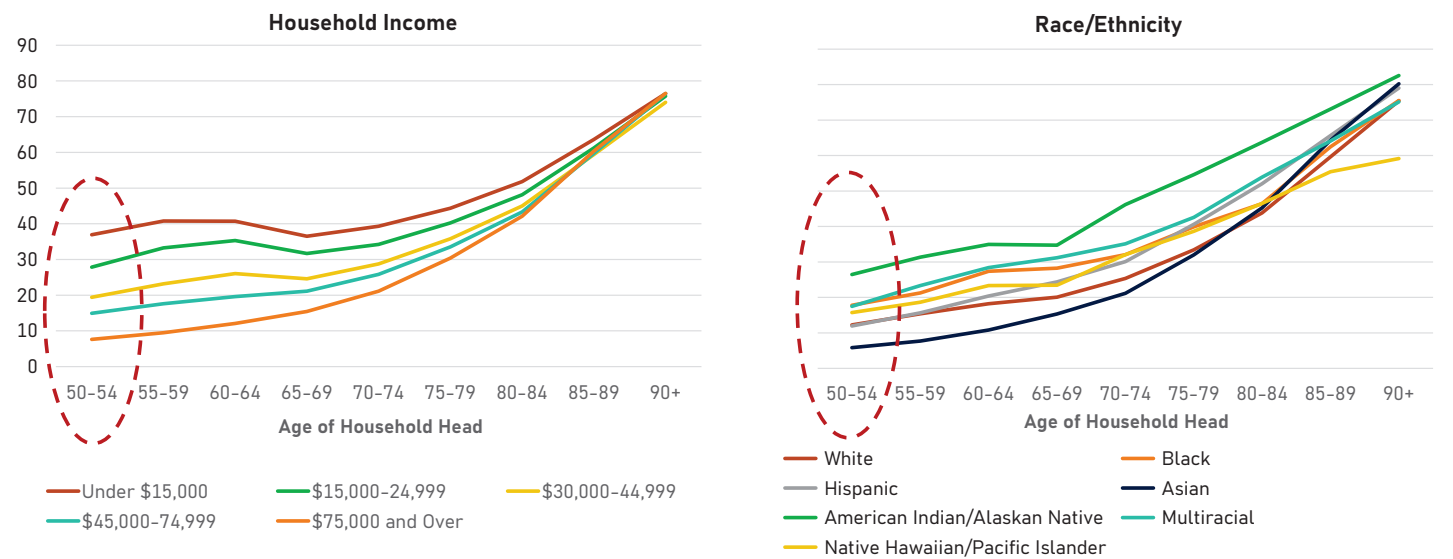
Adults Who Report Having a Functional Difficulty (Percent)



Notes: People who are white, Black, Asian, American Indian/Alaska Native, and multiracial are non-Hispanic. People who are Hispanic can be of any race. Difficulties include those related to hearing, vision, cognition, ambulation, self-care, and independent living.
Source: JCHS tabulations of US Census Bureau, 2021 American Community Survey 1-Year Estimates.

Difficulties Begin Earlier for Older Adults with Low Income and People of Color

Adults Who Report Having a Difficulty (Percent)



Notes: People who are white, Black, Asian, American Indian/Alaska Native, and multiracial are non-Hispanic. People who are Hispanic can be of any race. Difficulties include those related to hearing, vision, cognition, ambulation, self-care, and independent living.
Source: JCHS tabulations of US Census Bureau, 2021 American Community Survey 1-Year Estimates.

A Good Fit Home Is...



Photo by Point3D Commercial Imaging Ltd. on Unsplash

Accessible for the Resident

- Less risk of injury, hospitalization, institutionalization¹
- More independence in tasks of daily living²
- Can lower costs of care³

Connected to Community and Services

- Lower risk of isolation⁴
- Improved medical compliance⁵

Affordable for the Resident

- Reduced precarity⁶
- Lower risk of unnecessary nursing home use⁷
- Less rationing of utilities, food, and healthcare⁸

Sources:

1. Georlee et al., 2020; Iwarsson et al., 2009; Stark et al., 2017
2. Gitlin, et al., 2001
3. Carnemolla & Bridge, 2019; Fried et al., 2001; Wahl et al., 2009
4. Gardiner, et. al, 2016; Molinsky & Forsyth, 2026

5. Wroth & Pathman, 2006

6. Park, 2024; Gande, et al, 2026

7. Jenkins Morales & Robert, 2020

8. Drehoobl, et. al, 2020; Kong, et. al, 2026, ; Garcia, et. al, 2024; Aday, et. al, 2022; Mehdipanah, et. al, 2020

Very Few Homes are Accessible to People with Functional Limitations



Photo by Jason Hawke Unsplash



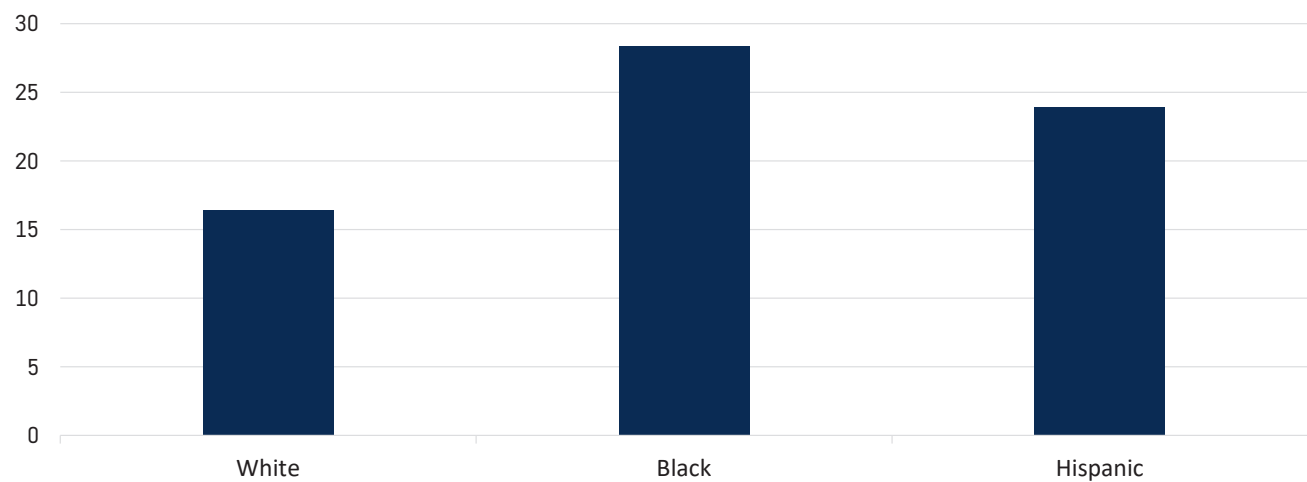
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<https://www.mycratedays.com/10-best-split-foyer-entry-makeovers/>

Older Black and Hispanic Residents Disproportionately Report Difficulties with their Home

Share of Householders Age 80 and Over with Difficulty Entering, Navigating, or Using the Home (Percent)



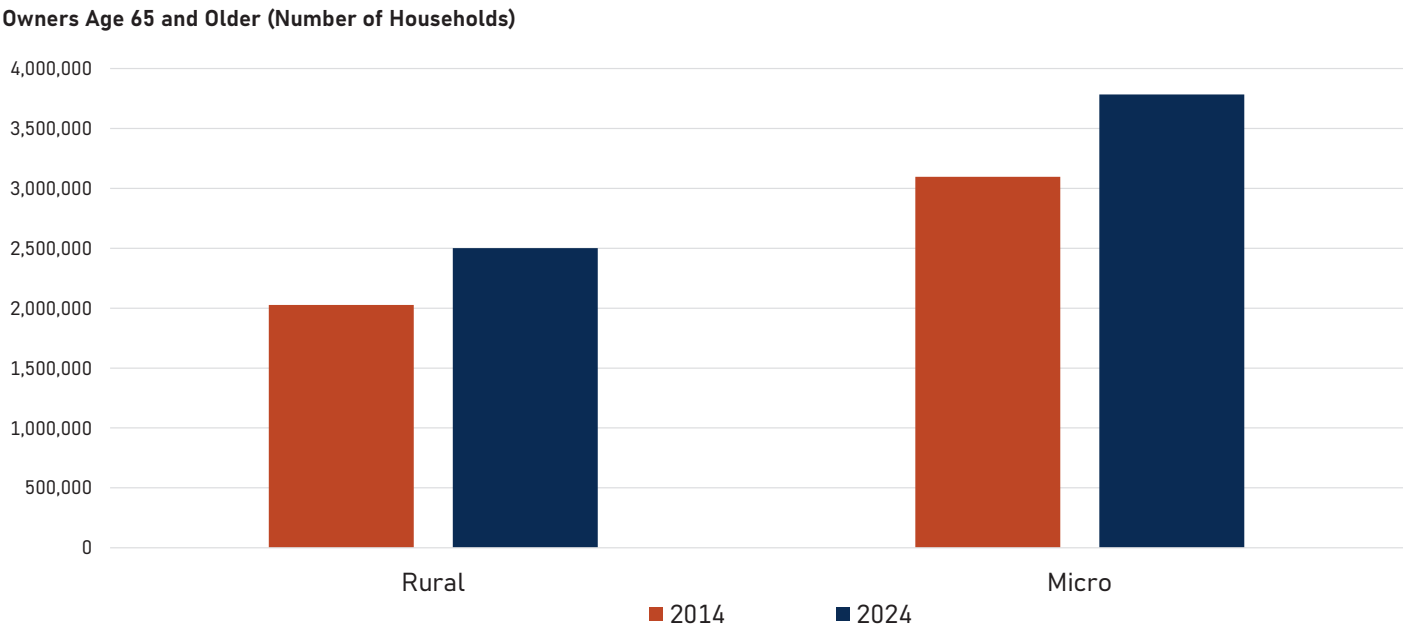
Note: Difficulties entering, navigating, and using the home without assistance are the result of a condition other than a temporary injury and apply to occupants over 6 years old. Source: JCHS tabulations of HUD, 2019 American Housing Survey.



Many older adults live alone

Photo by Milena Trifonova on Unsplash

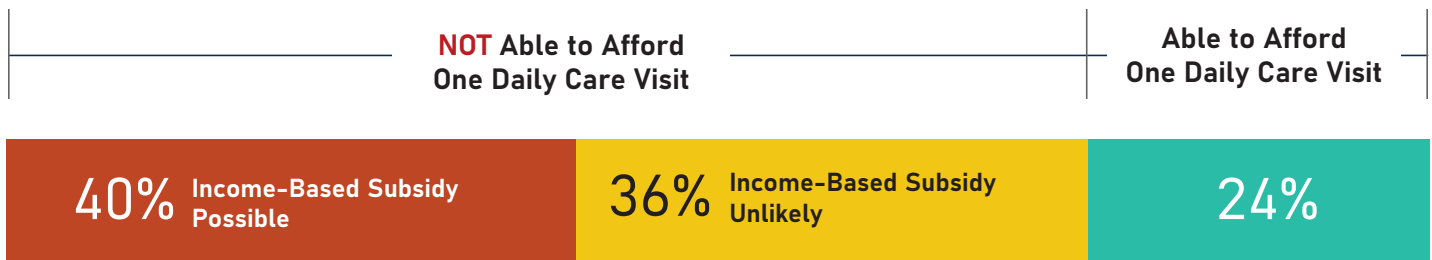
A Growing Number of Older Adults Live in Low-Density Areas



Source: JCHS tabulation of 2014 and 2024, Census American Community Survey.

Daily Care Unaffordable for Most Lower- and Middle-Income Households

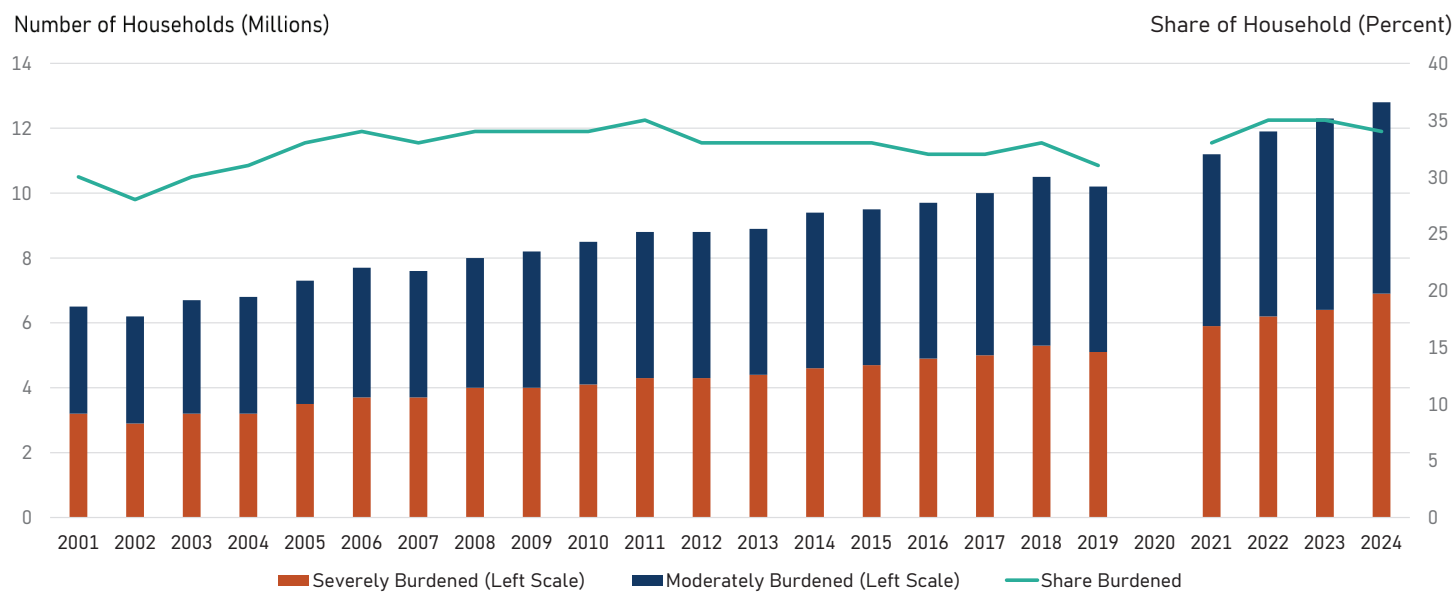
Residents 75 or Older Living Alone or with a Partner in a Metro Area



Able to Afford LTSS = Household Income > (Housing Costs + Cost of Living Daily + LTSS)

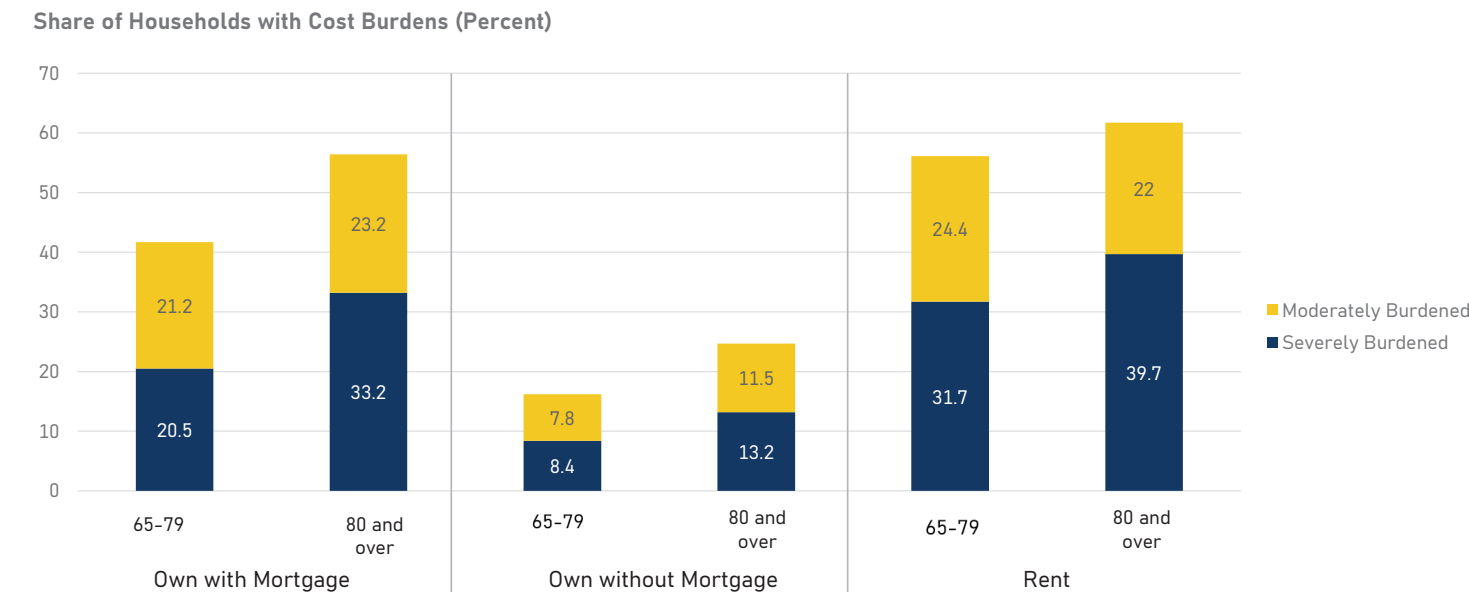
Notes: Sample includes only single and partner households in metro areas with the younger resident at least 65 and the older resident at least 75. Households able to afford daily care have incomes higher than total housing plus living cost plus one daily four-hour visit. If any resident in the household reports problems with independent living, self-care, or mobility, there is a difficulty in the household.
Source: JCHS analysis of 2021 Genworth Cost of Care Survey data; US Census Bureau, 2021 American Community Survey; and University of Massachusetts, Boston 2021 Elder IndexTM.

Cost Burdens Among Older Households Are at an All-Time High



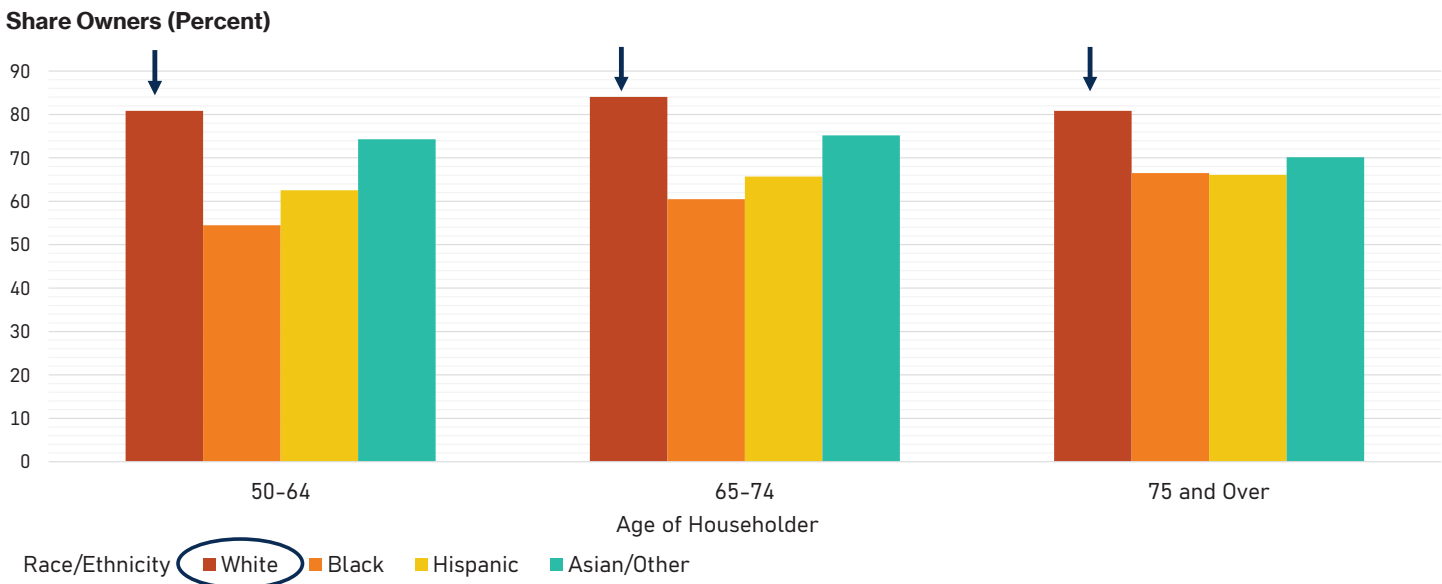
Notes: Moderately (severely) cost-burdened households pay 30-50% of income (more than 50% of income) for housing costs, which include mortgage payments or rent, utilities, and for homeowners, property tax and property insurance. 2020 is omitted due to data collection difficulties during the pandemic.
Source: JCHS tabulations of US Census, American Community Surveys.

The Oldest Households Are Most Likely to Be Severely Cost Burdened



Notes: Moderately (severely) cost-burdened households pay 30-50% of income (more than 50% of income) for housing costs, which include mortgage payments or rent, utilities, and for homeowners, property tax and property insurance.
Source: JCHS tabulations of US Census, 2024 American Community Survey.

White residents are most likely to own their homes



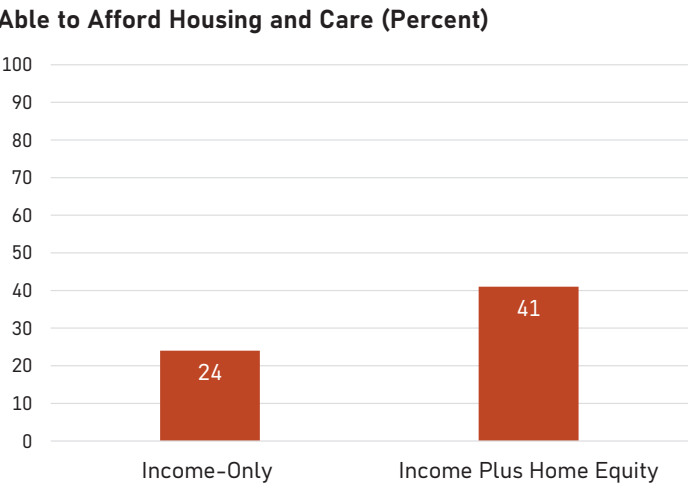
Notes: People who are white, Black, Asian, American Indian/Alaska Native, and multiracial are non-Hispanic. People who are Hispanic can be of any race.
Source: JCHS tabulations of US Census Bureau, 2024 American Community Survey 1-Year Estimates.

Housing Can Create Options in Late-Life

House-related options:

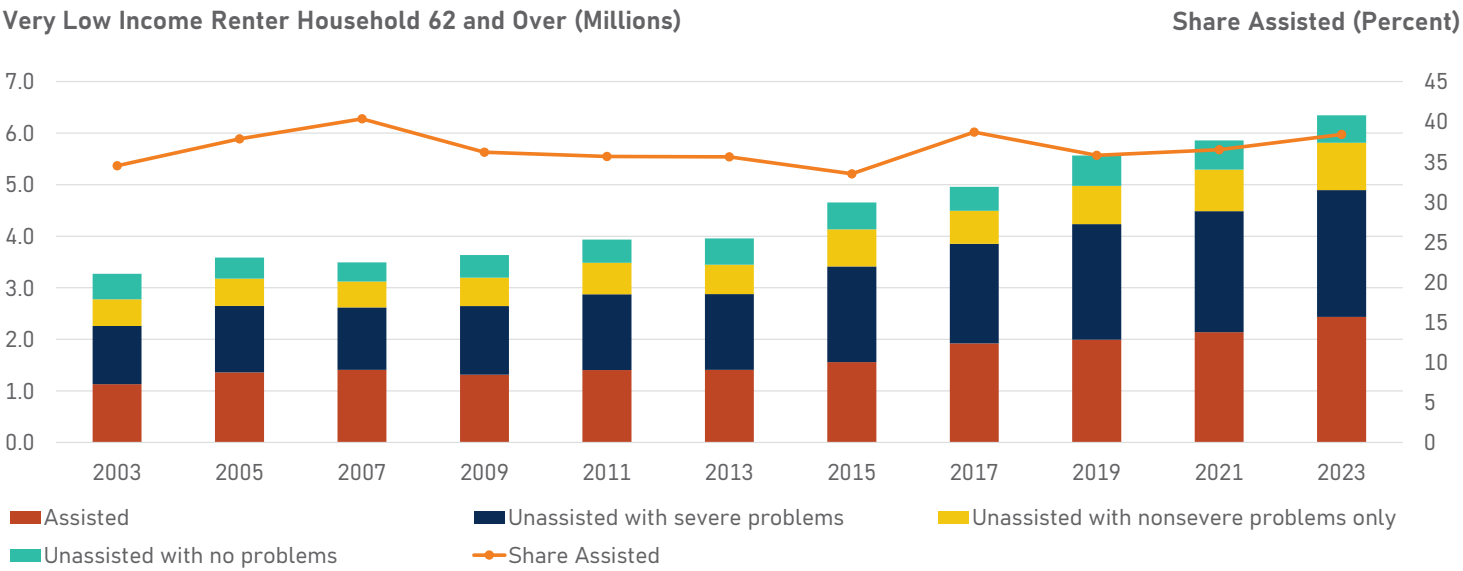
- Multigenerational family living
- Home sharing with a roommate
- Cashing out equity
 - Downsizing
 - Mortgaging the home

71% Rate of Increase in Affordability if Homeowners without a Mortgage Used Equity for LTSS



Notes: Sample includes only single and partner households in metro areas with the younger resident at least 65 and the older resident at least 75. Households able to afford daily care have incomes higher than total housing plus living cost plus one daily four-hour visit. If any resident in the household reports problems with independent living, self care, or mobility, there is a difficulty in the household.
Source: JCHS analysis of 2021 Genworth Cost of Care Survey data; US Census Bureau, 2021 American Community Survey; and University of Massachusetts, Boston 2021 Elder Index™.

Numbers of Older Households with Worst Case Housing Needs Are Rising, Now Exceed 2.5 Million



Source: JCHS tabulations of Worst Case Housing Needs Reports to Congress, 2005 through 2025.

Experiences Compound for Some



- Households of color
- Non-English speakers
- Citizenship status



- Renters



- Lower Income
- Middle Income



- Low population density
- High living cost



- People living alone

Housing and Neighborhoods Can Create Barriers to Community Living



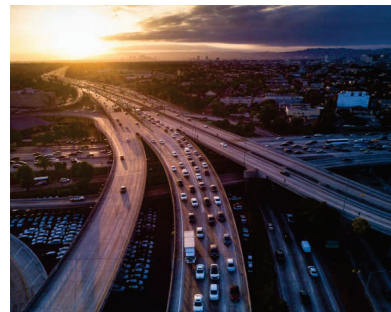
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CLOSING THE GAP: Expand Options For Residents to Live in their Current Home

Shallow subsidies improve housing affordability



Photo by Andre Guerra on Unsplash



Supportive Services for Veteran Families (SSVF) Shallow Subsidy Services



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Measure H: Preventing and Reducing Homelessness
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Modifications and maintenance increase housing fit and independence



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making home a safer place to stay



HOME MODIFICATION LOAN PROGRAM

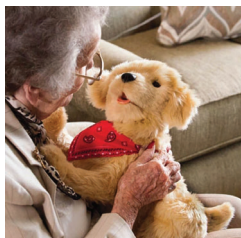
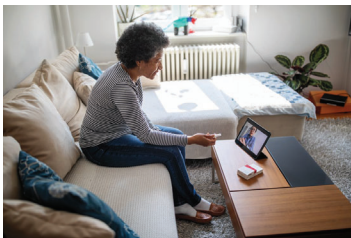
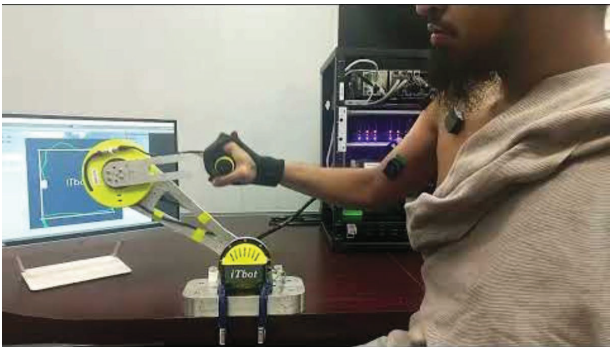


Paid caregiving expands housing options



Respite Voucher Programs

Technology can enhance the delivery of care at home



Source: Sources: Jennifer Molinsky, Samara Scheckler, & Bailey Hu, 2023, Centering the Home in Conversations about Digital Technology to Support Older Adults Aging in Place, Joint Center for Housing Studies, [Centering the Home in Conversations about Digital Technology to Support Older Adults Aging in Place \(harvard.edu\)](#)
Photos of therapeutic technology: Polak, et. al, 2018, Playmate Pets, Photo by FDATA ROBOT on Unsplash Video: <https://uwm.edu/engineering/how-a-tabletop-robot-may-revolutionize-physical-therapy-delivery/>

Residents benefit from connected communities



Osher Lifelong Learning Institute



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Regional and inter-disciplinary coordination lowers barriers



Partners in Home Preservation



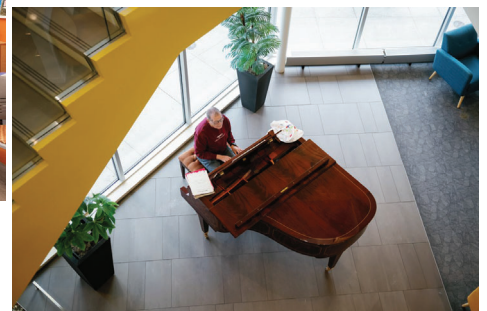
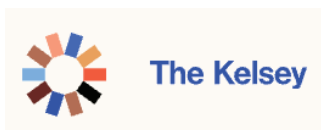
<https://o2sl.com/spartanburg-to-launch-first-in-the-state-situation-table-to-address-community-safety-and-well-being/>

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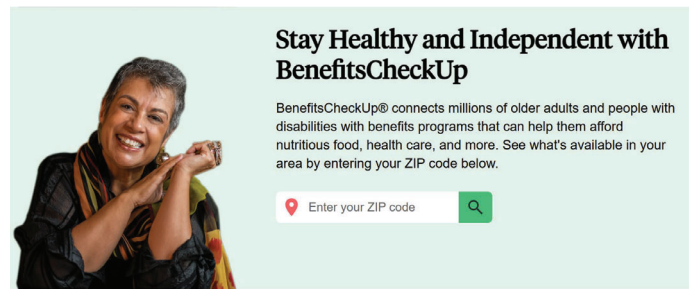
CLOSING THE GAP: Expand Options for Residents to Move

Create diverse housing options



<https://2lifecommunities.org/news/day-life-brighton-campus-part-one>

Ensure residents have the information they need



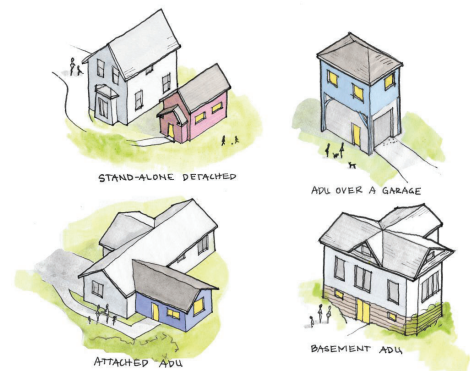
Area Agencies on Aging



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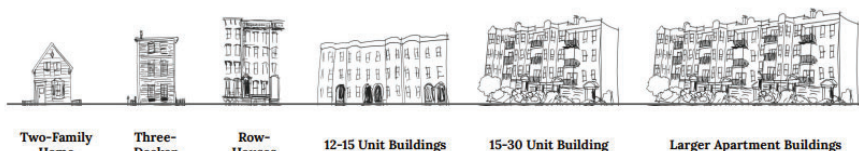
JCHS JOINT CENTER FOR HOUSING STUDIES

Support multigenerational and nontraditional households



<https://housingolutionsnetwork.org/adu/>

CITY of BOSTON | Mayor Michelle Wu **FUTURE DECKER INITIATIVE**



<https://www.boston.gov/sites/default/files/buildinghousing/project/future-decker-initiative/attachment/document/0698b00000MU5rJAAT.pdf>

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Thank you

Samara Scheckler
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STETSON LAW

Housing Boot Camp: Laws, Benefits, and Creative Solutions

October 21, 2026

The Unhoused Beneficiary



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The Unhoused Beneficiary

The Intersection of Homelessness, Disability, Public Benefits, and
Special Needs Planning

Janet L. Lowder, CELA

Audrey E. McConihe

Hickman Lowder Lidrbauch & Welch Co., L.P.A.

2026 National Conference on Special Needs Planning and Special Needs Trusts

OVERVIEW

Individuals with disabilities are disproportionately vulnerable to homelessness, and homelessness in turn worsens health, disability, and access to legal protections. I will address the relationship among housing instability, Supplemental Security Income (SSI), Medicaid, Special Needs Trusts (SNT), caregiver succession, and supportive services. I will also provide practical recommendations for attorneys, trustees, and multidisciplinary teams.

Who is the “Unhoused Beneficiary?”

The phrase, “unhoused beneficiary”, captures an apparent contradiction. A beneficiary is a person who is legally chosen to benefit from a will, trust, life insurance policy, etc. In a perfect world, Social Security, Medicaid, housing assistance, or a special needs trust, addresses all the needs of a disabled beneficiary. Yet, a person may possess all or one of these resources and still become homeless.

Throughout this presentation, I will be discussing how disability, homelessness, public benefits, Medicaid, and special needs planning interact. So, the central inquiry is this: How can a person qualify for disability benefits, Medicaid, housing assistance, or have a special needs trust and still become homeless? Once housing instability occurs, what can an elder-law attorney, trustee, or other advocate do to restore the disabled beneficiary’s housing?

First, we must broaden our meaning of “homelessness.” We often picture a person sleeping on the sidewalk of a busy city. However, that is not the whole picture – a client may be in a shelter, sleeping in a vehicle, hotel/motel hopping, staying temporarily with family/friends, or couch surfing. It also includes clients who are soon to be evicted or discharged from a hospital, correctional facility, or nursing facility with no stable destination.

This broadened definition is important because Social Security recognizes that homelessness can include the absence of a fixed, regular, and adequate residence; sleeping in unorthodox places; and temporarily staying with other people. Furthermore, clients do not always describe themselves as “homeless.” So, if we only ask “are you homeless?” we may miss the imminent problem.

According to The U.S. Department of Housing and Urban Development (HUD)’s 2024 Annual Homelessness Assessment Report to Congress, they estimated about 771,480 people experience homelessness on a single night. (U.S. Dep’t of Hous. & Urb. Dev., 2024 Annual Homelessness Assessment Report to Congress, Part 1 (2024)). Roughly 1-in-5 were age 55 or older, and nearly half of those older adults were unsheltered. (*Id.*). People with disabilities are significantly overrepresented in the homelessness population. Nearly one-quarter of all homeless individuals have disabilities and meet chronic homelessness criteria. (U.S. Dep’t of Hous. & Urb. Dev., 2024 Annual Homelessness Assessment Report to Congress, Part 1 (2024)). Additionally, research estimates that about 18 million people with disabilities qualify for housing assistance but do not receive it, and less than one percent of the nation’s housing stock is accessible to wheelchair users. (Urban Institute &

The Kelsey, *People with Disabilities Living in the U.S. Face Urgent Barriers to Housing* (2022)).

These numbers show us that it is not simply a failure by an individual to budget, follow rules, or ask for help. Rather, it is a collision among inadequate income, scarce housing, disability, fragmented service systems, and legal rules that are extremely difficult to navigate without stability.

A running hypothetical with a fictional client illustrates these issues: John Doe is 58 years old and has an intellectual disability, diabetes, and increasing mobility limitations. He has lived with his mother for his entire adult life. His mother never enrolled John in the local DD system, and she provided housing, transportation, meals, medication reminders, help with finances, and communication with government agencies. John Doe receives Medicaid and SSI, but his mother handled everything else. John Doe's mother unexpectedly dies. She leaves John Doe a modest inheritance outright. The house must be sold to pay expenses and divide the estate. John Doe stays with relatives for a few weeks, but no one can provide permanent housing or the level of daily support his mother provided. As a result, John Doe misses mail from Social Security, does not understand the Medicaid renewal process, and moves between couches, motels, and shelters. Within months, John Doe is not simply a person with a disability who lost his mother – he is an unhoused beneficiary.

As we work through today's issues, I want you to keep asking: At what point could this outcome have been prevented? And after the crisis begins, what combination of legal advice, benefits, housing, and human support might restore stability?

Why Disability and Homelessness Reinforce Each Other

The relationship between disability and homelessness runs in both directions. Disability can increase the risk of homelessness because it may limit employment, reduce income, create medical costs, and/or require a type of housing that is both accessible and near transportation, health care, and services. A psychiatric, cognitive, or intellectual disability may make it harder to understand a lease, complete recertification, respond to a notice, keep an appointment, or identify a scam. Additionally, a physical disability may make an available shelter bed unusable because the building, bathroom, or sleeping arrangement is inaccessible.

Then homelessness worsens disability because medication is harder to obtain, store, and take consistently; sleep is interrupted; nutrition suffers; medical appointments are missed; loss of assistive equipment or identification documents; anxiety, depression, trauma, and chronic health conditions worsen etc. The individual becomes less able to complete their basic daily needs to obtain benefits and housing.

The result is a cycle: disability increases housing instability; housing instability worsens health and functional capacity; and worsening disability makes it even harder to leave homelessness.

Many adults with disabilities may appear stably housed because a parent or other family member is quietly supplying an entire support system. The family caregiver is supplying housing, transportation, food, medication management, supervision, advocacy, bill payment, appointment scheduling, managing benefits, and emotional regulation. Much of this work goes unpaid and is invisible.

Thus, when the family caregiver dies, becomes ill, develops dementia, or simply cannot continue to provide, the disabled individual loses every single service at once. Although living with a parent caregiver may be the best option for a disabled adult child at present, the longer the parent-caregiver delays developing a plan, the more vulnerable their disabled adult child becomes to housing insecurity in the future.

This is why estate planning should include more than the question, “who should be the beneficiaries?” For a family caring for an adult with a disability, we also need to ask: Where will the beneficiary live when the caregiver is gone or unable to care for them anymore? What services is the disabled individual receiving? Who will communicate with benefit agencies? Who will coordinate among the trustee, family, and providers? What happens if the first housing arrangement fails?

Often, families run into affordability issues. According to CareScout’s 2025 Cost of Care Survey, the national average monthly cost of long term care is between \$9,581 and \$10,798, assisted living is \$6,200, and adult day care is \$2,058. (Care Scout, *Calculate the cost of long-term care near you*, <https://www.carescout.com/cost-of-care> (last visited Sept. 10, 2026)). Without the support of Medicaid, this monthly bill may be a ruinous

expense. But even if housing is affordable for some families, it may still be physically inaccessible. Or, may be accessible, but isolated from transit. Or near transportation, but lacks the staffing or services that allow the individual to remain there. A lease alone does not ensure that a person can shop for food, manage medication, avoid exploitation, or respond to notices.

This creates the need for disability-forward housing: housing that is affordable, accessible, inclusive, integrated into the community, and connected to the supports a person needs. (Urban Institute & The Kelsey, *People with Disabilities Living in the U.S. Face Urgent Barriers to Housing* (2022)). Individuals with disabilities should not be forced to make a false choice between institutionalization and homelessness.¹

Ensuring that disability-forward housing exists is only part of the solution. People with disabilities must also have sufficient financial resources to access and remain in that housing. Yet, public benefits intended to provide financial stability are inadequate, leaving individuals caught between the need for safe, accessible housing and the limited resources available to afford it.

¹ We may soon see the loss of choice between institutionalization and community integration. On August 31, 2026, the Department of Justice (DOJ) and the Department of Health and Human Services (HHS) joined Texas, Florida, and Alaska in filing a [proposed settlement](#) in *Texas v. Kennedy*. The states sued HHS over 2024 regulations implementing Section 504 of the Rehabilitation Act. Specifically, their challenge focused on the rule's requirement that people with disabilities be served in integrated community settings. If approved, the settlement would strike every mention of community integration from the Section 504 regulations.

Public Benefits: A Safety Net That Often Is Not Enough

Supplemental Security Income (SSI) is a means-tested program for people who are aged, blind, or disabled and who have limited income and resources. In 2026, the federal benefit rate for an individual is \$994/month, subject to reductions and possible state supplementation, and the countable resource limit for an individual is \$2,000. (Social Security Administration, *2026 Cost-of-Living Adjustment Fact Sheet*.)

For individuals who receive SSI or other Social Security benefits, the Housing Choice Voucher (HCV) Program, or “Section 8,” can theoretically bridge the gap between limited monthly income and the cost of housing. The program generally requires a participating household to contribute approximately 30% of its adjusted monthly income toward rent and utilities (their Total Tenant Payment, “TTP”), with the local Public Housing Agency (“PHA”) subsidizing the remaining eligible housing cost. (Housing Choice Voucher Program Guidebook, *Calculating Rent and Housing Assistance Payment (HAP)* (2019). Tying the tenant’s contribution to income makes housing that would otherwise be unaffordable potentially sustainable for a person whose primary or sole source of income is Social Security.

However, the principal obstacle is obtaining the voucher for the HCV program. The demand for Section 8 housing substantially exceeds the available supply. Fewer than one in four households eligible for federal rental assistance actually receive it because of funding limitations. (Sonya Acosta and Brianna Guerreo, Center on Budget and Policy Priorities, *Long Waitlists for Housing Vouchers Show Pressing Unmet Need for Assistance*,

(Oct. 6, 2021). Of the families who received the HCV, the average time they spent on the waitlist was two and a half years, and unfortunately, many households placed on waiting lists never receive a voucher at all. (*Id.*).

As of April 2026, HUD reported approximately 2.38 million HCV were leased nationwide. (U.S. Dep’t of Hous. and Urb. Dev., Office of Public and Indian Housing, *Housing Choice Voucher Dashboard*, (April 2026). Although that is an 11% increase from 2015, the cost of providing voucher assistance has risen much more rapidly. (*Id.*). HUD reports that the average per-unit cost increased from \$646.75 in 2015 to \$1,187.18 in 2026 which is an increase of about 84%. (*Id.*). Thus, although the number of households receiving voucher assistance has grown over the past decade, the cost of providing that assistance has increased substantially faster. (*Id.*).

Even receiving a voucher does not necessarily mean that an individual has secured housing. As of April 2026, HUD reported about 47,739 uncontracted vouchers, or “vouchers on the street,” meaning vouchers had been issued but had not yet resulted in a lease. (*Id.*). Thus, for an unhoused beneficiary, access to subsidized housing involves (1) obtaining a voucher through the waitlist process and (2) finding an eligible rental unit and successfully completing the PHA approval process.

This process may be particularly difficult for individuals with disabilities who are experiencing homelessness. It requires applicants to maintain contact with the PHA, receive and respond to notices, provide documentation, comply with deadlines, and navigate administrative requirement all of which are complicated by lack of consistent

mailing address, reliable transportation, or necessary support. Consequently, even when subsidized housing is financially affordable and a voucher becomes available, practical and administrative barriers may prevent the unhoused beneficiary from successfully converting that assistance into stable housing.

These statistics illustrate the disconnect between public-benefit eligibility and housing stability. A person with a disability may receive SSI and qualify for federal rental assistance, yet neither benefit guarantees access to affordable housing. SSI alone is generally insufficient to meet market-rate housing and other living expenses – it cannot cover rent, utilities, food, transportation, and other disability-related needs. Thus, there is no direct correlation between benefit eligibility and housing stability because a person can be fully eligible, receive the correct benefit, but still be unable to afford the appropriate housing and care needed.

Obtaining SSI or SSDI can also be difficult, especially for someone who does not have stable housing. Disability determinations depend on forms, medical records, examinations, and reliable communication which become significantly more difficult to complete when an individual lacks a mailing address, phone service, internet access, transportation, identification, or consistent treatment records. Records may be scattered among hospitals, clinics, shelters, and emergency departments. It is also important to recognize that individuals may not fully understand or cannot effectively describe their limitations. Certain disabilities affect insight, memory, judgment, and the ability to provide a coherent work history.

SSA guidance does provide for identifying and flagging homeless disability cases. (SSA, POMS DI 11005.004 and SI 00835.060). This alerts the agency to the claimant's circumstances and the need for appropriate case handling. Despite this guidance, homeless disability cases are undercounted because a claimant may give a friend's address that they are temporarily staying at, so the file will look ordinary. Thus, it is important for claimants and advocates to affirmatively disclose housing instability and request appropriate case handling.

The POMS defines someone as homeless or transient if they do not have a fixed, regular and adequate nighttime residence, or if they expect to lose their current accommodation within 14 days. (POMS DI 11005.004 B.) When an individual is flagged as homeless, Social Security must make a reasonable effort to identify a third party who will be contacted if the field office is unable to reach the claimant. (POMS DI 23007.010)

Maintaining benefits can be equally difficult. Social Security may suspend SSI under "whereabouts unknown" status when it cannot locate a recipient and determine continuing eligibility or the correct benefit amount. (SSA, POMS SI 02301.240). Returned mail, unreported address change, disconnected phone, or a missed review can therefore cause a serious interruption of SSI. Hence, creating a reliable mailing plan like the address of a shelter, trusted friend or family, social service agency, or general delivery at a post office that will be checked consistently, can recognize agency mail, and has the ability to respond, is essential to maintaining benefits.

Transient living arrangements can also raise SSI living-arrangement and in-kind support and maintenance (ISM) issues. Shelter provided by another person or trust may reduce SSI payment, which is more thoroughly explained in SSA, POMS SI 00835.060 which provides specific guidance for transient and homeless individuals. Some of the assistance the person receives may not count as ISM to the individual. In-kind food and shelter provided by charitable nonprofit organizations is not income when the requirements listed in SI 00830.605 are met. ISM may be determined to be of no value, such as discarded food, sleeping in an abandoned building, park or vehicle. (SI 00835.060 B.2.). The caseworker must determine all the places the individual has stayed during a month, and determine which resulted in countable ISM. For example, if the individual was living in their car, but moved in with their sister for 2 weeks during a severe cold spell, the ISM provided by the sister must be counted. If ISM is counted, the individual must be advised of their rebuttal rights. (SI 00835.320.).

Trustees should not automatically avoid shelter payments merely because they may reduce SSI. ABLE accounts may add flexibility because housing is a qualified disability expense and can be coordinated with a special needs trust and public benefits. Appointing a representative payee may also be an option so the payee can manage benefit payments and reporting without having to control every aspect of the beneficiary's life.

Because obtaining and maintaining benefits is difficult, no tool should be used in isolation. For the unhoused beneficiary, the public-benefits checklist is essential: identify the correct benefit; establish reliable communication; affirmatively disclose housing instability; document functional limitations and transient living arrangements; respond

quickly to agency notice; and analyze the real effect of shelter support. Public benefits provide essential income but do not by themselves create an accessible way of life.

Medicaid: Health Coverage and a Platform for Community Living

Medicaid is the next essential layer. A permanent conventional address is not necessarily required for Medicaid because eligibility turns on state residency; homelessness does not mean a person lacks a state of residence. In Ohio, for example, the residency rule permits self-declaration unless the state has information contradicting it. A reliable contact address is still important, but it can be a shelter, trusted person, county agency, or another location the client can regularly check.

Medicaid generally does not pay rent or mortgage. But, it may fund services that make housing possible and sustainable, including personal care, behavior-health treatment, case management, habilitation, transportation, and other home- and community-based services, depending on the program. Medicaid is not only an “insurance card” but also a potential platform for community living. The goal is to avoid the cycle of street, emergency department, hospital, shelter, and institution.

During the previous four presidential administrations, Medicaid §1115 waivers expanded to address beneficiary health-related social needs, including supported housing, nutrition supports, medical respite care and employment supports. But in 2025, the administration announced that §1115 waivers may no longer include job supports or job training (just as the new Medicaid work requirements are going into effect), and prohibited federal support for “housing first” programs. (Addressing Health-Related Social Needs

Through Medicaid Section 1115 Waivers: Challenges and Opportunities, “Health Affairs Brief, March 12, 2026).

In certain states, Medicaid §1115 waivers have financed certain services designed to address health-related social needs. For example, an individual experiencing homelessness who was hospitalized may no longer require inpatient hospitalization but may still be too medically fragile to safely recover in a shelter or on the street. Medical respite can provide a temporary setting in which an individual experiencing homelessness can recover while receiving medical and supportive services. Some states have received Medicaid §1115 authority to cover medical respite as a health-related social need. Although this is not a permanent housing solution, it can help bridge the gap between hospitalization and a safe return to the community, reducing the risk that housing instability will result in another emergency room visit.

Special Needs Planning When Housing Is Unstable

A special needs trust is a tool, not a housing plan. It cannot create an accessible unit, guarantee cooperation with a landlord, supply unavailable caregivers, or coordinate disconnected systems. When the parent of an disabled adult dies and leaves their inheritance outright to their disabled adult child, the inheritance will likely exceed their SSI’s resource limit and interrupt means-tested benefits until the money is spent down or otherwise addressed. Crisis planning may involve a first-party special needs trust, a pooled trust, spend-down strategies, etc. But even if these were established, the trustee would still need an actual housing strategy.

Our first-party special needs trust emphasize that no property belonging to the beneficiary should be added to the trust after they turn 65, once funded the trust is irrevocable, and that the distribution is based on the Trustee's sole, absolute, and uncontrolled discretion for the beneficiary's benefit. This is to ensure that the Trust does not interfere with the beneficiary's benefits. Then we advise Settlers and Trustees how to use the Trust Property for the benefit of the beneficiary. For example, the trust should not be the first payer for everything, rather, use income benefits like SSI or SSDI, use Medicaid for health coverage and services, use rental assistance or supportive-housing programs, then use the ABLE account and Trust Property to fill gaps, improve quality of life, and then whatever else those resources cannot cover. We have also encourage clients to write a letter of intent to the acting Trustees to preserve their knowledge about their routines, communications, health needs, triggers, preferences, providers, and benefits for their disabled adult child. This coordinates the Settlor of the trust and potential Trustees who will be managing the disabled adult's Trust Property. Notably, this first-party special needs trust contains a Medicaid payback provision. Consequently, at the death of the beneficiary, if there are any assets remaining in the trust, Medicaid is the first to be reimbursed because the trust was funded with the beneficiary's own assets.

Alternatively, another important planning tool is a wholly discretionary trust, commonly referred to as a third-party special needs trust. This type of trust is generally established and funded by the parent, grandparent or other family member of the disabled beneficiary. It is solely funded with assets that never belonged to the beneficiary either upon the death of the Settlor or during the life of the beneficiary. The critical aspect of this

trust is the control the Trustee has over the distributions to the beneficiary. The trustee has the sole, absolute discretion in all the distributions made from the Trust to the beneficiary. Because the beneficiary cannot revoke or terminate the trust, compel distributions, or otherwise direct the use of the trust assets, the trust is not treated as a countable resource for the purposes of Medicaid and thus preserves the beneficiary's eligibility for needs-based benefits.

Often times, family members want to leave assets to a disabled family member, but directing the assets outright to the disabled beneficiary may be detrimental to their eligibility for needs-based benefits. So instead of leaving assets outright to the beneficiary, family members can direct assets to the beneficiary's wholly discretionary trust. Accordingly, this type of planning can preserve a source of supplemental support without family members jeopardizing the beneficiary's eligibility for needs-based benefits.

Unlike the first-party special needs trusts, properly drafted third-party special needs trusts are not subject to the Medicaid payback provision because the trust was never funded with the beneficiary's own assets. Thus, there is more flexibility for the Settlor to direct the remaining assets to other family members or charities.

For the unhoused beneficiary, the practical value of a third-party trust is it gives the Trustee the flexibility to respond to needs that public-benefit programs may not adequately address. However, the Trustee must be cautious in making distributions related to certain things like shelter because the distribution may be treated as "income" for SSI purposes, therefore risking the reduction or termination the beneficiary's SSI benefits.

With any trust, the biggest challenge may be to maintain contact with the beneficiary if the beneficiary is not in a secure living situation. The Trustee may need to develop a relationship with a local agency who serves the homeless. These agencies often keep rosters of individuals with information about where they are sheltering and their most recent contact with the individual.

What Works: Housing First, Supportive Housing, and Coordinated Teams

In 2022, The U.S. Interagency Council on Homelessness (USICH) created a national strategic plan to prevent and end homelessness, titled “All In.” The plan emphasized the necessity of “Housing First” approaches to improve stability for those experiencing housing instability. Housing First treats stable housing as the platform for addressing medical, behavioral-health, and substance-use needs – not a reward earned only after those issues are resolved. Permanent supportive housing combines long-term housing with individualized services. Housing First increases time in stable housing, and the intensive case management provided improves housing outcomes. (Munthe-Kaas et al., *Effectiveness of Interventions to Reduce Homelessness* (2018)). One systematic review found that high-intensity case management roughly halved the number of people remaining homeless after 12 to 18 months compared to usual services.

The Housing First model reduces repeated and costly emergency-department visits, hospitalizations, crisis interventions, police contacts, shelter stays, and institutional placements. Those systems respond to the immediate event but do not necessarily change the condition producing the next event.

Thus, stable housing changes the sequence. It produces a permanent address improving agency communication, consistent medication storage and management, improved sleep, consistent meals, and provider access and coordination. Consequently, with the stability and consistency of housing, the beneficiary can meet deadlines, attend appointments, and maintain a routine.

However, the support in housing must match the person's needs because a lease without adequate services may simply delay another housing failure and put the beneficiary back into the homelessness cycle. This reiterates disability-forward housing – housing should be affordable, accessible, inclusive, integrated into the community, and connected to necessary supportive services.

Thus, multidisciplinary practice is essential. Lawyers address rights, trusts, benefits and agency advocacy; housing professionals locate and sustain placements; social workers and care managers coordinate services; providers document needs; fiduciaries manage funds. A law practice that incorporates social-work expertise can ensure that the legal solution and social-service solution can occur at the same time. It allows the attorney to address the trust, Medicaid, SSI, estate plan, guardianship while the social worker/care coordinator can identify housing resources, communicate with providers, help organize applications, and coordinate transportation all under the same company.

No professional can do all of this alone. A coordinated team turns separate fragments into a plan that further prevents the beneficiary from reentering the homelessness cycle.

Practical Approach for Attorneys and Trustees

1. Planning.

Planning begins before the beneficiary's caregivers death. Set up their estate plan and discuss SNT, third-party trusts, pooled trust for their disabled adult child; needs, routines, and preferences are documented in a letter of intent; successor supports are identified; trust, housing, benefits and services are coordinated.

But if it is too late...

2. Ask about housing.

"Where are you staying right now, and how stable is that arrangement?"

3. Protect access to benefits.

Ensure agencies have reliable contact information and properly identify homelessness/housing instability. Verify current benefit and verify that the individual is enrolled in the important programs that serve their needs

4. Make housing part of the special needs plan.

Do not wait until the beneficiary loses a caregiver or residence.

5. Coordinate resources rather than viewing programs in isolation.

Combine public benefits, Medicaid services, housing programs, trust/ABLE funds, and community supports.

6. Build a multidisciplinary team.

Attorneys, trustees, social workers, care coordinators, housing advocates, benefits specialists, health providers, and family/support networks each play a role.

Closing

Homelessness is often followed by the loss of a caregiver, an unprotected inheritance, inadequate income, scarce appropriate housing, missed agency communication, and absent succession planning.

We professionals can prevent this by communicating the benefits and importance of a special needs trust, early program applications, preserving agency communication, coordinated services, and successor support team.

The unhoused beneficiary reminds us that a benefit is not a security, a trust is not a plan, and an address is not a home. Stable housing is often the foundation that allows benefits, health care, services, and autonomy to function.

The goal is broader than preserving eligibility, it's coordinating income, health coverage, housing, services, advocacy, and human support so the beneficiary can live safely and with dignity. We can prevent the homelessness cycle for disabled beneficiaries through advocacy and multidisciplinary practice.

THE UNHOUSED BENEFICIARY

The Intersection of Homelessness, Disability,
Public Benefits, and Special Needs Planning

Janet L. Lowder, CELA
Hickman Lowder Lidrbach & Welch Co., L.P.A.
2026 National Conference on Special Needs Planning and Special Needs Trusts

1

Presentation Roadmap

- Define the “unhoused beneficiary” beyond the stereotype of street homelessness.
- Trace the disability ↔ housing instability cycle and the role of caregiver succession.
- Examine SSI, housing assistance, Medicaid, SNTs, and ABLE accounts as interconnected tools.
- Translate the legal framework into a practical approach for attorneys, trustees, and multidisciplinary teams.

Central inquiry: How can a person have benefits, housing assistance, or a special needs trust—and still become homeless?

THE UNHOUSED BENEFICIARY • 2026 National Conference on Special Needs Planning and Special Needs Trusts 2

2

Who Is the “Unhoused Beneficiary”?

Housing instability can look like...

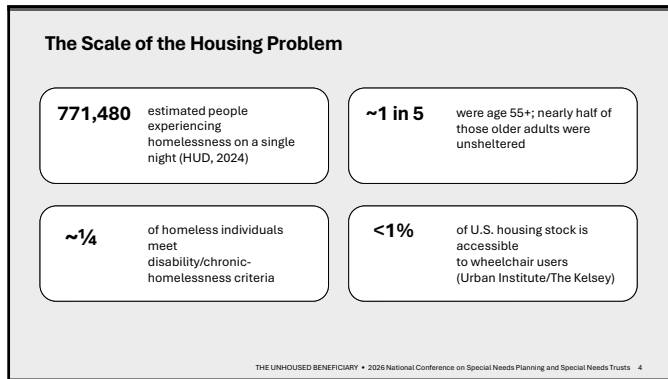
- Shelter, vehicle, hotel/motel hopping
- Temporary stays with family or friends
- Couch surfing
- Imminent eviction or discharge with no stable destination

Why the label matters

- Social Security focuses on the absence of a fixed, regular, adequate residence.
- Clients may not describe themselves as “homeless.”
- Asking only “Are you homeless?” can miss an imminent crisis.
- The legal and planning response starts with identifying instability early.

THE UNHOUSED BENEFICIARY • 2026 National Conference on Special Needs Planning and Special Needs Trusts 3

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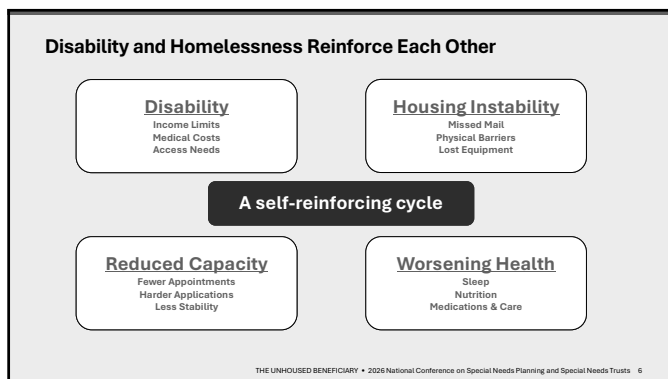
Case Study: John Doe's Downward Spiral

- 58-year-old with intellectual disability, diabetes, and increasing mobility limitations.
- Lives with his mother, who provides housing, transportation, meals, medication reminders, financial help, and agency communication.
- John receives Medicaid and SSI—but his mother is the infrastructure behind those benefits.
- Mother dies unexpectedly; the house is sold and John receives a modest inheritance outright.
- John moves among relatives, couches, motels, and shelters; mail and Medicaid renewal are missed.

The crisis is not simply "loss of a parent." It is loss of an entire support system.

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The Hidden Infrastructure: Family Caregiving

- A parent or family caregiver may quietly provide an entire support system:
 - Housing, transportation, food, medication management, supervision
 - Advocacy, bill payment, appointments, benefit management, emotional support
- When the caregiver dies, becomes ill, develops dementia, or can no longer fully support their disabled adult child, multiple services can disappear at once.
- Estate planning therefore must ask not only “Who are the beneficiaries?” but also “Where will this beneficiary live, and who will coordinate support?”

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A Lease Alone Is Not a Housing Plan

Disability-forward housing

- Affordable
- Accessible
- Inclusive
- Integrated into the community
- Connected to needed supports

What a lease does not guarantee

- Ability to shop for food
- Medication management
- Protection from exploitation
- Transportation and provider access
- Ability to respond to notices or maintain the tenancy

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Public Benefits: A Safety Net That Often Is Not Enough

SSI — 2026 figures

- \$994/month federal benefit rate for an individual
- \$2,000 individual countable-resource limit
- Subject to reductions and possible state supplementation
- Income is rarely enough to cover rent plus food, utilities, transportation, and disability-related needs

Housing Choice Voucher (HCV)

- Tenant contribution generally tied to ~30% of adjusted monthly income
- Voucher can bridge the gap between limited income and eligible housing cost
- But supply is limited and access can require long waits
- Eligibility does not equal immediate housing

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The Voucher Bottleneck

- Fewer than one in four households eligible for federal rental assistance receive it, according to the cited 2021 CBPP analysis.
- The cited analysis reported an average HCV wait of about 2½ years among families who received a voucher.
- HUD reported approximately 2.38 million HCVs leased nationwide as of April 2026.
- HUD also reported about 47,739 “uncontracted” vouchers—issued but not yet resulting in a lease.

The unhoused beneficiary must overcome two hurdles: obtaining the voucher and successfully converting it into an approved rental

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Why Benefits Can Fail to Become Housing

- Maintaining contact with agencies and housing authorities
- Receiving and responding to notices
- Providing identification and documentation
- Meeting deadlines and completing recertifications
- Maintaining transportation, phone/internet access, and treatment records
- Managing scattered medical records and communicating functional limitations

Benefit eligibility ≠ housing stability

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SSI/SSDI: Identify Housing Instability Affirmatively

- SSA guidance provides for identifying and flagging homeless disability cases.
- POMS defines homeless/transient status to include lack of a fixed, regular, adequate nighttime residence — or expected loss of current accommodation within 14 days.
- A reliable mailing plan can be essential: shelter, trusted person, service agency, or consistently checked general delivery.
- Returned mail, an unreported address change, disconnected phone, or missed review can lead to serious benefit interruption.
- Advocates should affirmatively disclose housing instability rather than assume the agency will see it from the file.

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Transient Living and SSI: The ISM Problem

Key issues

- Shelter from another person or trust may affect SSI (ISM).
- Charitable nonprofit food/shelter may be excluded when applicable requirements are met.
- Some forms of shelter can be treated as having no value under SSA guidance.
- Caseworkers consider where the individual stayed during the month.

Planning response

- Do not automatically avoid shelter payments because of possible SSI impact.
- Analyze the actual benefit consequence.
- Consider ABLE for qualified disability expenses.
- Consider a representative payee where appropriate.

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Medicaid: More Than an Insurance Card

- A permanent conventional address is not necessarily required for Medicaid eligibility; state residency is self-declared.
- A reliable contact address remains important and may be a shelter, trusted person, county agency, or other regularly checked location.
- Medicaid generally does not pay rent or mortgage.
- Depending on the program, Medicaid may fund services that make housing sustainable: personal care, behavioral health, case management, habilitation, transportation, and other HCBS.
- The goal is to avoid the cycle of street → emergency department → hospital → shelter → institution.

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Bridging the Gap: Health-Related Social Needs

Potential Medicaid §1115 waiver tools

- Supported housing-related services
- Nutrition supports
- Medical respite
- Employment supports in programs where available
- State-specific health-related social-needs initiatives

Medical respite example

- Post-hospitalization setting for someone too medically fragile for a shelter or street
- Temporary housing
- Can provide medical and supportive services
- May reduce the risk of another emergency-room visit while a safer community placement is arranged

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Special Needs Planning When Housing Is Unstable

First-party SNT

- Addresses outright inheritance that threatens means-tested eligibility.
- Not funded after beneficiary turns 65.
- Requires an actual housing strategy in addition to trust funding.
- Medicaid payback applies to remaining assets at beneficiary's death.

Third-party SNT

- Funded with assets that never belonged to the beneficiary.
- Trustee exercises sole/absolute discretion over distributions.
- Properly structured trust assets are not counted as the beneficiary's resource.
- No Medicaid payback; remainder can pass to family or charity.

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A Special Needs Trust Is a Tool—Not a Housing Plan

TRUST

HOUSING

BENEFITS

SUPPORTS

- A trust cannot create an accessible unit, guarantee landlord cooperation, supply unavailable caregivers, or coordinate disconnected systems.
- Trust distributions — especially shelter — must be analyzed for SSI consequences.
- For practical planning, coordinate resources rather than making the trust the first payer for everything.
- Consider income benefits, Medicaid services, rental assistance/supportive housing, ABLE, then trust assets to fill gaps and improve quality of life.

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Trustee Practice: Preserve Knowledge and Contact

- A letter of intent can preserve knowledge about routines, communication, health needs, triggers, preferences, providers, and benefits.
- The trustee may need a relationship with a local agency serving people experiencing homelessness.
- Homeless-service agencies may maintain rosters or recent contact information.
- The practical challenge is often not only managing money — it is maintaining contact with the beneficiary and coordinating the people around them.

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Housing First and Supportive Housing

- "Housing First" treats stable housing as the platform for addressing medical, behavioral-health, and substance-use needs — not a reward earned only after those issues are resolved.
- Permanent supportive housing combines long-term housing with individualized services.
- The cited systematic review found high-intensity case management roughly halved the number of people remaining homeless after 12–18 months compared with usual services.
- Stable housing can create a permanent address, improve agency communication, medication storage, sleep, meals, provider access, and routine.
- A lease without adequate services may only postpone another housing failure.

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No Professional Can Do This Alone

Attorney	rights • trusts • benefits • advocacy
Housing professional	placement • tenancy • sustainability
Social worker / care manager	services • applications • coordination
Health provider	documentation • treatment needs
Fiduciary / Trustee	funds • distributions • oversight

The goal is coordination — not parallel silos.

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Practical Approach for Attorneys and Trustees

- 1 PLAN BEFORE CRISIS**
Estate plan • SNT/pooled trust • successor supports • letter of intent
Always ask about the long-term plan for living arrangements
- 2 ASK ABOUT HOUSING**
"Where are you staying right now, and how stable is that arrangement?"
- 3 PROTECT BENEFITS**
Reliable contact information • disclose instability • verify current programs
- 4 MAKE HOUSING PART OF THE PLAN**
Do not wait for caregiver loss or eviction

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Practical Approach: Coordinate and Build the Team

- Coordinate resources rather than viewing programs in isolation.
- Combine public benefits, Medicaid services, housing programs, trust/ABLE funds, and community supports.
- Build a multidisciplinary team: attorneys, trustees, social workers, care coordinators, housing advocates, benefits specialists, health providers, and family/support networks.
- Use the team to prevent reentry into the homelessness cycle—not merely to respond after a housing loss.

Housing + Income + Health coverage + Services + Advocacy + Human support

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Closing: The Core Takeaways

- A benefit is not a security.
- A trust is not a plan.
- An address is not a home.
- Stable housing is often the foundation that allows benefits, health care, services, and autonomy to function.
- The goal is broader than preserving eligibility: coordinate income, health coverage, housing, services, advocacy, and human support.

Prevent the homelessness cycle through early planning, advocacy, and multidisciplinary practice.

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Discussion / Questions

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How can we identify housing instability earlier — and build the support system before the crisis?

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THANK YOU

The Unhoused Beneficiary – The Intersection of Homelessness, Disability,
Public Benefits, and Special Needs Planning

Janet L. Lowder, CELA
Audrey E. McConihe
Hickman Lowder Lidrbauch & Welch Co., L.P.A.
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**Supplemental Security Income Policy Related to
Shelter and Housing Support**

**Presented by Ken Brown
October 21, 2026**

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Gimme Shelter - Supplemental Security Income Policy Related to Shelter and Housing Support

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INTRODUCTION

This session will cover SSI rules related to shelter and housing support, including: the home exclusion and its application; In-kind support and maintenance rules related to shelter; how payments from trusts and ABLE accounts may be used to obtain shelter and how they may impact benefits. Additional discussion will also include accessory dwelling units (ADUs) as a potential housing option for individuals receiving SSI, how they fit into current policy and some possible issues that may require further exploration.

Housing is often the single biggest barrier to independence for eligible individuals with disabilities who rely on Supplemental Security Income (SSI) and Medicaid.

Where a person lives can affect their eligibility for and amount of Supplemental Security Income (SSI) benefits. We will examine the current SSI policy on home ownership, renting or sharing a living space or other living arrangements.

Families sometimes try to solve housing through special needs trusts (SNTs). However, housing support from a trust can create SSI complications because SSI treats certain third-party payments for shelter as support that may reduce the monthly SSI payment. Even when families have resources, paying for rent or utilities the “wrong” way can cause an SSI payment reduction, create overpayment notices, or raise questions about continued eligibility.

We will look at some alternative methods to providing housing without significantly impacting eligibility for and the amount of benefits.

THE SSI HOME EXCLUSION

What is a Home?

An individual’s home is property in which they have an ownership interest and that serves as their principal place of residence. It can include:

- the shelter in which they live;
- the land on which the shelter is located; and
- related buildings on such land.

An individual's principal place of residence is the dwelling the individual considers their established or principal home and to which, if absent, they intend to return. It can be real or personal property, fixed or mobile, and located on land or water.

The Exclusion

An individual's home, regardless of value, is an excluded resource.

Ownership

For the home exclusion to apply, the individual must have an ownership interest in the property. Then ownership interest can be legal or equitable. An “equitable” ownership interest in property can result from personal considerations or from:

- making mortgage payments;
- making or paying for additions to a shelter; or
- making improvements to a shelter.

If an individual alleges an unwritten equitable ownership interest, SSA will gather all the necessary information and forward it to the Regional Chief Counsel for an opinion based on State law.

If an individual lives in a home owned by a trust and is the beneficiary of the trust, even though the trust holds legal title to the property, the individual, as trust beneficiary, still has an (equitable) ownership interest in it.

Exclusion of the Home Includes Land on Which the Shelter is Located

For purposes of excluding “the land on which the shelter is located,” it is not necessary that the individual own the shelter itself.

EXAMPLE: If an individual lives on their own land in someone else's trailer, the land meets the definition of a home and is excluded. However, if the individual does not own the shelter, it is necessary to consider whether the shelter results in in-kind support and maintenance (ISM) (e.g., rent-free shelter).

Exclusion of the Home Includes Adjoining Property and Related Buildings

a. Land

The home exclusion applies not only to the plot of land on which the home is located, but also to any adjoining land. Land that adjoins the home plot is land not completely

separated from the home plot by land in which neither the individual nor their spouse has an ownership interest.

Easements and public rights of way (e.g., utility lines, roads, etc.) do not separate other land from the home plot.

b. Buildings

The home exclusion applies to all buildings on excluded land.

Continued Exclusion of the Home During Periods of Absence

If an individual is temporarily absent from the home he or she owns, the home continues to be excluded as long as,

- If the individual is in an institution, and a spouse or dependent relative is living in the home.
- If not institutionalized, the individual intends to return to the home or
- If the house is co-owned, sale of the home would cause undue hardship, due to loss of housing for the co-owner.
- If the individual has left his or her home due to domestic abuse, the individual has not established a new principal place of residence or otherwise has taken action rendering the home no longer excludable.

Intent to Return

An individual's home continues to be excluded if the individual leaves the home but intends to return to it.

When an individual is absent from the home, SSA obtains the individual's statement either signed or recorded on a Report of Contact as to:

- when and why they left the home;
- whether they intend to return; and
- if they do not intend to return, when that decision was made.

This statement governs the "intent to return" determination unless the statement is self-contradictory. If the individual's statement of intent is self-contradictory, SSA will contact someone who knows the situation, such as a physician, family member, or close friend or relative, to clarify the situation.

SSA does not consider other factors, such as the individual's age, physical condition, or other circumstances when determining intent to return home. Assuming the individual is mentally competent, age, mental capacity, and physical condition are not factors in evaluating the individual's statement of intent.

EXAMPLE: The recipient is 93 years old and in the intensive care unit of a hospital. They tell the field representative that their doctor believes they may not be able to leave the hospital and return home. However, they state that they intend to return to their former residence as soon as they are well enough to leave the hospital. Based on the recipient's statement, "intent to return home" is established.

EXAMPLE: The recipient's home was partially destroyed by fire. They do not know when the necessary repairs will be completed. In the meantime, they are living with a family member. They state that they intend to return to the former residence as soon as possible. Based on this statement, "intent to return home" is established.

SSI TRUST POLICY AND THE HOME EXCLUSION

There are several policies associated with the home exclusion that interact with trust policy that may be advantageous to a trust beneficiary receiving SSI.

Home Exclusion

If the trust is a resource to the individual, the property at issue is subject to exclusion as a home. Even though the trust holds legal title to the property, the individual, as trust beneficiary, still has an (equitable) ownership interest in it. Therefore, whether the property can be excluded as a home likely will depend on whether the property serves as the individual's principal place of residence.

If the trust is not a resource to the individual, then the property also is not a resource to the individual, regardless of whether the property serves as the individual's principal place of residence (that is, regardless of possible exclusion as a home, because the property is part of the trust principal that is not a resource to the individual).

In-Kind Support and Maintenance (ISM)

More information on how ISM is calculated is contained in the following section.

An eligible individual does not receive in-kind support and maintenance (ISM) in the form of rent-free shelter while living in a home in which he or she has an ownership interest. Accordingly, a trust beneficiary with an "equitable ownership interest in the trust principal" does not receive rent-free shelter (ISM).

The purchase of a home by a trust for the trust beneficiary establishes an equitable ownership interest for the trust beneficiary, the purchase results in the receipt of ISM, in the

form of shelter, in the month of purchase. This ISM is valued at no more than the presumed maximum value (PMV).

Even if the trust beneficiary has an ownership interest in the home that he or she resides in and is not receiving ISM in the form of rent-free shelter, the purchase of the home or payment of the monthly mortgage by the trust is a disbursement from the trust to a third party that results in the receipt of ISM in the form of shelter.

If the trust, whose principal is not a resource, purchases the home outright and the trust beneficiary lives in the home in the month of purchase, the home is income in the form of ISM, and reduces the trust beneficiary's payment no more than the PMV in the month of purchase only, regardless of the value of the home.

If the trust, whose principal is not a resource, purchases the home with a mortgage and the trust beneficiary lives in the home in the month of purchase, the home would be ISM in the month of purchase. Each of the subsequent monthly mortgage payments results in the receipt of income in the form of ISM to the trust beneficiary living in the house, each valued at no more than the PMV.

If the trust pays for repairs, maintenance, improvements, or renovations to the home, such as renovations to the bathroom to make it handicapped accessible, installation of a wheelchair ramp or assistive devices, or replacement of a roof, the trust beneficiary does not receive income. Disbursements from the trust for improvements increase the value of the resource and, unlike household operating expenses, do not provide ISM.

GENERAL IN-KIND SUPPORT AND MAINTENANCE (ISM) POLICY

SSA has two rules that apply to determining the value of ISM. The rules are mutually exclusive in that when one rule applies, the other does not. These two rules are the Value of the One-Third Reduction (VTR) Rule and the Presumed Maximum Value (PMV) Rule.

When it applies, the VTR is a statutory one-third reduction in the SSI payment rate. On the other hand, the PMV is a regulatory maximum cap on the amount of ISM that can be charged.

Value of the One-third Reduction (VTR) Rule

SSA will reduce the applicable Federal benefit rate (FBR) by one-third when an individual or couple:

- Lives throughout a month in another person's household; and
- Receives both food and shelter from others living in that household.

The following policies apply to the VTR:

- In 2026, the VTR is equal to \$331.33 for an individual and \$497.00 for a couple based on an FBR of \$994.00 and \$1,491.00, respectively.
- When the VTR applies, it applies in full or not at all. The amount of the VTR cannot be rebutted.
- When the VTR applies, no additional ISM is countable, even if it is received from outside of the household.
- When the VTR applies, no income exclusions apply to the VTR (including the \$20 general income exclusion). The VTR is a reduction in the payment rate and not a charge of unearned income.
- The VTR may apply even if the individual receives part of his or her food and shelter from inside the household and part from outside. It is not necessary that an individual receive food and shelter from inside the household on each day of the month to apply the VTR.
- The VTR (couple rate) can continue to apply to both members of an eligible couple in the month that they separate. For example, when an eligible couple subject to the VTR separates, the VTR continues to apply to the member who leaves the household, moves into the household of another, and does not contribute toward the household operating expenses. For ISM purposes, SSA treats the members of an eligible couple as individuals in the month following the separation month. For example, if a married couple separates in May, for ISM purpose, they are two eligible individuals beginning in June.
- An individual is not subject to the VTR unless he or she lives throughout the entire calendar month in the household of another.

NOTE: If temporarily absent from the household, an individual who is not physically present in the household throughout the month may still meet the throughout a month requirement (see SI 00835.040). In addition, an individual may reside in more than one household where the VTR applies and meet the throughout a month requirement.

Under the new regulations, the VTR will continue to be calculated based on the individual receiving both food and shelter from within the household.

Presumed Maximum Value (PMV) Rule

When a beneficiary or couple receives ISM, is eligible for payment and the VTR does not apply, SSA uses the PMV rule to determine the value of ISM received.

The VTR may not apply because:

- The individual does not live in a household, e.g., they are transient, homeless or are residents of an institution.

- They do not live in the household of another, e.g., they live alone, are in non-institutional care, have an ownership interest in the home they live in, have rental liability for the residence, or are a member of a public assistance household.
- They do not receive both food and shelter from inside the household because they are separately consuming food, separately purchasing their food, earmarking their contributions for food or shelter, they are paying their pro rata share, or the household expenses do not include either food or shelter.
- They did not live throughout an entire month in the household of another.

The amount of the PMV is equal to one-third of the Federal benefit rate for an individual or couple, plus \$20. In 2026 the PMV is equal to \$351.33 for an individual and \$517.00 for an eligible couple, based on an FBR of \$994.00 and \$1,491.00, respectively.

The PMV is a regulatory cap on the amount of ISM that can be charged. The PMV is a rebuttable presumption, i.e., the regulation presumes that the value of ISM is worth one-third of the FBR plus \$20. If the individual or couple successfully presents evidence that the food or shelter has a lower value or cost (rebutts the PMV), SSA values the ISM at the current market value (CMV) or the actual value (AV), whichever is less.

While the VTR is a reduced payment level, the PMV is actually considered a type of unearned income and is charged as such. The PMV amount is equal to one-third of the FBR plus \$20 because, in application, the \$20 is equal to the \$20 general income exclusion, which when applied means that the maximum amount of the VTR and the PMV are the same.

Under the new regulations, individuals subject the PMV will only have ISM reductions calculated based on the receipt of shelter.

ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNTS: USING A TRUST WITH ABLE ACCOUNTS AND VICE-VERSA

The enactment of the Stephen Beck Jr., Achieving a Better Life Experience Act provided trustees/beneficiaries/practitioners with probably the most useful tool in decades. I cannot imagine a situation where it would not be advantageous for a special needs trustee and beneficiary to have an ABLE account to use in conjunction with the trust.

Transfers From a Trust to an ABLE Account/Income Avoidance

The POMS explicitly permits transfers from a special needs or pooled trust to an ABLE account up to the annual contribution limit (\$20,000 for 2026). The benefit to this arrangement is that a transfer that would otherwise count as income is excluded from income. Furthermore, if those same funds are subsequently disbursed from the ABLE account to directly pay for housing (shelter) expenses, the shelter received does not count

as income in the form of in-kind support and maintenance. The use of an ABLE account provides a legal way to “launder” money to avoid income counting for housing expenses. Of course, any other expenditure for an item that qualifies as a Qualified Disability Expense is also excluded.

Support Payments

The use of a trust with an ABLE account also provides a method to avoid income counting for support payments such as child support or alimony. If a support payment is paid directly into an ABLE account, the payment is income because the ABLE account owner is the person legally entitled to receive that payment. Even if paid directly into the ABLE account, the individual is considered to have constructively received the payment prior to deposit into the ABLE account. However, if support payments are irrevocably assigned to a trust (a court order is deemed to be an irrevocable assignment), the payment is not income when deposited into the trust. The support payment can then be transferred into an ABLE account for the use of the trust beneficiary, avoiding income counting upon receipt, and if used correctly, avoiding income counting upon expenditure.

Why Housing Creates Benefit Problems

Housing is often the single biggest barrier to independence for eligible individuals with disabilities who rely on Supplemental Security Income (SSI) and Medicaid.

Families sometimes try to solve housing through special needs trusts (SNTs). However, housing support from a trust can create SSI complications because SSI treats certain third-party payments for shelter as support that may reduce the monthly SSI payment. Even when families have resources, paying for rent or utilities from a trust can cause an SSI payment reduction, create overpayments, or raise questions about continued eligibility.

This is where using an Achieving a Better Life Experience (ABLE) accounts provides benefits. One of the most practical uses of an ABLE account is paying housing costs such as rent and utilities directly while staying within SSI and Medicaid rules.

An ABLE account can be the tool that helps families fund stable living arrangements, cover immediate needs, and plan for future expenses, without triggering the same level of concern with means-tested eligibility.

What Counts as a Qualified Disability Expense for Housing

ABLE accounts are designed to pay for qualified disability expenses (QDEs), broadly defined as costs related to living with a disability and maintaining or improving quality of life, health, or independence.

Housing expenses for purposes of an ABLE account are similar to household costs for in-kind support and maintenance purposes. Housing expenses include expenses for:

- Mortgage (including property insurance required by the mortgage holder);
- Real property taxes;
- Rent;
- Heating fuel;
- Gas;
- Electricity;
- Water;
- Sewer; and
- Garbage removal.

Because housing is a major expense category, it is important to keep documentation that shows how the expenses support the person's independence and is related to their disability — leases, utility bills, invoices, and payment confirmations.

The SSI Timing Rule That Families Miss Most Often

The biggest avoidable mistake is not the expense — it's the timing.

For SSI purposes, housing support can reduce SSI payments when treated as in-kind support. ABLE accounts are often used to prevent that reduction, but only when housing payments are handled correctly.

A Practical Rule of Thumb

Withdraw funds from the ABLE account and pay the housing bill in the same calendar month.

If ABLE money is withdrawn and then the individual retains it into the next month (for example, in a personal checking account), it may be treated as a countable resource for SSI in the following month. That can create a benefits problem even if the original intent was perfectly legitimate.

EXAMPLE: Retained distribution intended for housing expenses is a resource

Amy takes a distribution of \$500 from their ABLE account in May to pay a housing expense for June. They deposit the \$500 into their checking account in May, withdraws \$500 in cash on June 3, and pay their landlord. This distribution is a housing expense and part of their checking account balance as of June 1, which makes it a countable resource for the month of June.

A Simple System for Paying Rent and Utilities from an ABLE Account

Many families succeed by choosing one consistent method and sticking to it. The goal is a clean paper trail and predictable timing.

Option 1: Pay housing providers directly. If the ABLE program allows it, pay rent and utilities directly from the ABLE account to the landlord or utility provider. This could be through a debit card connected to the account.

Option 2: Use a dedicated “housing-only” checking account. Use a separate checking account as a pass-through but keep the balance low and avoid carrying withdrawn ABLE funds past month-end.

Option 3: Schedule automatic recurring payments. Recurring payments reduce missed deadlines and make it easier to show that withdrawals were used promptly for QDEs.

Best Practices That Make ABLE Housing Spending Easier to Defend

Save Housing Documentation in One Place

- Lease agreements and renewals
- Utility bills
- Proof of payment (transaction history, confirmations)
- A short, written budget showing the purpose of withdrawals

Use Clear Transaction Descriptions. If the ABLE program provides memos or categories, label transactions “Rent,” “Electric,” “Internet,” and so on. Clean labeling reduces confusion later.

Avoid Cash Withdrawals for Housing. Cash is hard to document. When possible, use traceable electronic payments or checks tied to the ABLE account.

ACCESSORY DWELLING UNITS

Introduction

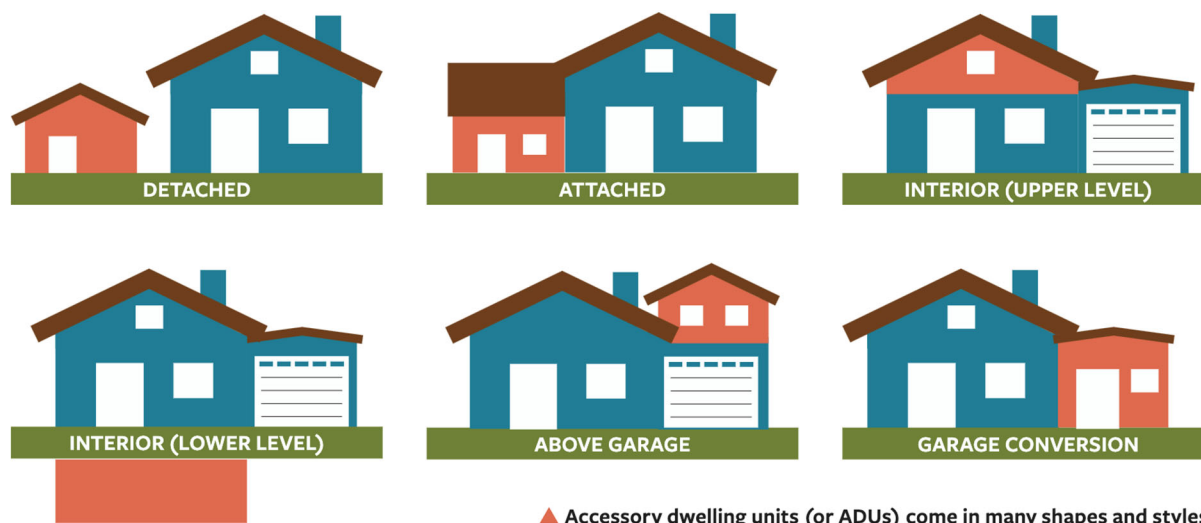
An “Accessory Dwelling Unit” or “ADU” is defined by the American Planning Association as “a smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home.” [Accessory Dwelling Units](#), American Planning Association, (Retrieved September 22, 2026). ADUs can be converted portions of existing homes (i.e., internal ADUs), additions to new or existing homes (i.e., attached ADUs), or new stand-alone accessory structures or converted portions of existing stand-alone accessory structures (i.e., detached ADUs).

Although most government regulations, zoning laws and urban planners refer to them as accessory dwelling units, ADUs have been around for decades (or centuries) and have been referred to by various names:

- accessory apartment
- backyard bungalow
- basement apartment
- casita
- carriage house
- coach house
- English basement
- garage apartment
- granny flat
- guest cottage
- guest house
- in-law suite
- multi-generational house
- ohana unit
- secondary dwelling unit

Generally, as an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area. However, an attached ADU may share kitchen or bathroom facilities with the main dwelling unit (depending on local zoning requirements).

Once commonplace, after World War II, many local governments placed restrictions on or prohibited the construction of ADUs. With the advent of the housing affordability problem, many local, city, county and even State governments are relaxing restrictions on and encouraging the use of ADUs and even requiring communities to allow them.



[The ABCs of ADUs](#), AARP (last visited September 23, 2026).

OWNERSHIP ISSUES RELATED TO ACCESSORY DWELLING UNITS

Ownership issues related to Accessory Dwelling Units (ADUs) often arise because the ADU is located on the same parcel as the primary home, creating questions about property rights, control, financing, and inheritance. Common issues include:

Single Property Ownership

In many jurisdictions, an ADU cannot be sold separately from the primary residence because both structures share one legal lot. The homeowner owns both the main house and the ADU. This can create complications when family members or a trust contribute money to build an ADU but do not receive a legal ownership interest.

Co-Ownership and Family Arrangements

When parents, adult children, other relatives, or a trust help finance or occupy an ADU, disputes can arise over:

- Who owns the ADU structure.
- Rights to occupy the unit.
- Responsibility for maintenance and repairs.
- What happens if the property is sold.

Without a written agreement, these arrangements can become contentious.

Title and Financing Concerns

Because the ADU is usually part of the same real estate parcel:

- It generally cannot have a separate deed.
- Mortgages and liens typically affect both the main house and the ADU.
- Lenders may require all owners of the property to sign financing documents.

Inheritance and Estate Planning

If an ADU is intended for a child or elderly parent, problems may arise after the property owner's death:

- The ADU may pass with the entire property under a will or state inheritance laws.
- Occupants of the ADU may not automatically gain ownership rights.
- Heirs may disagree about whether to keep, occupy, rent, or sell the property.

Estate planning can help clarify these issues.

Zoning, Land Use and Property Rights Disputes

Ownership conflicts can arise when:

- Neighbors challenge ADU construction.
- Property boundaries are unclear.
- Easements or access rights affect the ADU.
- Owners disagree about use restrictions or rental rights.
- Zoning restrictions on and requirements of rental units or owner-occupancy requirements.

WHY OWNERSHIP MATTERS FOR SSI BENEFITS

Home Exclusion

Regardless of its physical form, legally an ADU is part of the same property as the main home. It cannot be bought or sold separately, as a condominium or a dwelling on wheels might be. The owner of the ADU is the owner of the main home. To qualify for the home exclusion, an individual must have an ownership interest, legal or equitable, in the home. You should note however, that without an ownership interest, a home would not count as a resource to the individual, but there are other consequences that flow from not having an ownership interest.

ISM

Without an ownership interest, the individual would be required to pay rent or else be charged with in-kind support and maintenance (ISM) in the form of rent-free shelter. Or they could be subject to the value of the one-third reduction (VTR) in their benefits because they are residing in the household of another.

Paying rent or shelter costs is not a bad thing in and of itself, but if the goal is to maximize benefits, paying rent and expenses or incurring a reduction for ISM is a step in the wrong direction.

If there is a rental situation, it is likely that there may be a parent-child relationship between the landlord and the tenant (anyone in the household is a parent or child of the landlord or landlord's spouse). In that case, rental subsidy (where the tenant is not paying CMRV (current market rental value)) may be an issue. However, a recent regulatory change now provides that effective 09/30/2024, a business arrangement exists when the monthly required rent (including a flat fee payment) equals or exceeds the PMV (\$351.33 for an individual and \$517.00 for an eligible couple in 2026). If the verified monthly required rent equals or exceeds either the CMRV or the PMV, no rental subsidy applies. If the monthly required rent is less than both the CMRV and the PMV, the amount of rental subsidy is determined by subtracting the monthly required rent from the CMRV or PMV, whichever is less.

Trust Management

If a trust is paying for the construction of an ADU for the use of the trust beneficiary, the trustee may feel it is necessary, in its fiduciary duty, for the trust to obtain an interest in the ADU. The following options would provide the beneficiary a place to live for life, give the trust a legal or equitable interest in the ADU for its payments and not benefit a non-beneficial interest, at least not immediately.

POSSIBLE SOLUTIONS FOR THE OWNERSHIP ISSUE

Equitable Ownership

As previously discussed, an “equitable” ownership interest in property can result from personal considerations or from:

- making mortgage payments;

- making or paying for additions to a shelter; or
- making improvements to a shelter.

If an individual alleges an unwritten equitable ownership interest, SSA will gather all the necessary information and forward it to the Regional Chief Counsel for an opinion based on State law.

Condominium or Separate Ownership Structures

Some states and local governments allow legal mechanisms, such as condominiumization or lot splits, that can create separate ownership interests for an ADU. However, such situations are currently very rare and availability varies significantly by jurisdiction. Local zoning and property laws determine whether separate ownership is allowed.

In most cities and towns, there's a preferred way to create separate ownership of homes: the subdivision process. But what if there's a desire to separate ownership and subdivision isn't an option?

This situation arises most often when (1) properties are on top of one another as described previously in multi-story buildings, or (2) land use regulations make it difficult or impossible to subdivide property horizontally (i.e., minimum lot sizes can't be met; subdivision regulations that preclude a desired site layout; there's no way to provide every lot required street frontage). For these instances, use of condominium ownership to separate ownership is the only choice. Conveniently, all 50 states and the District of Columbia have adopted condominium statutes that allow property to be converted to condominium ownership and back again, if desired. The power and appeal of the condominium legal structure is to offer a way to separate ownership between units in settings where subdivision doesn't work. Legally, condominiums are 'creatures of the state,' meaning that their existence depends on state laws that lay out the rules for their creation, maintenance, and dissolution. Each condominium project contains a group of housing units, defined by a map ('the 'Plat') and narrative description (found within the 'Declaration'). Condo unit owners each own a defined volume of air plus an undivided interest in the shared elements of the condominium property (called "General Common Elements") as drawn on the Plat and defined in the Declaration. These typically include the underlying land and any structures or parts of structures that need to be maintained by the association rather than by individual unit owners. In traditional multi-story buildings, the common elements include the underlying land and the building's foundation, structural elements, insulation, common utility lines, windows & doors, roof and siding. Individual units are usually defined to include the volume of air 'from the paint in' or some other appropriate demarking surface. [ADUs and Condos: Separating Ownership](#), Accessory Dwellings (Retrieved September 23, 2026).

Condominiumization and subsequent transfer of ownership to the trust would provide the trust beneficiary a home for as long as they wanted or need it and legal ownership of the ADU by the trust.

Condominium conversion most often makes sense in a commercial situation where the ADU will be sold as a separate unit or in a rental situation rather than in a family-occupied ADU since the legal costs involved may reach several tens of thousands of dollars.

Life Estate

One possible avenue that could be explored – as I could not find any examples where it had been used before – is the use of a partial life estate. I say “partial” life estate since both the primary house and the ADU are part of the same deed and property, and a regular life estate would give the tenant use of and rights to the entire property. A partial life estate can legally apply to a specific portion or acreage of a larger piece of real estate (such as an ADU) rather than the entire property.

When you create a partial life estate, you split the legal ownership and use rights for just a designated section of land or a specific structure (such as a house while leaving surrounding acreage out, or vice versa). It can apply to a specific floor, a guest house, or a defined acreage of a larger farm.

The deed or trust must explicitly describe the specific portion assigned to the life tenant. It requires an accurate, legally sound survey and distinct legal description of the specific portion attached to the deed.

How a Partial Life Estate Works

- The Life Tenant: Obtains the exclusive right to use, occupy, or collect income from that specific part of the property for the rest of their life.
- The Remainderman: Holds the future interest to inherit that exact portion of the property automatically when the life tenant passes away, and, if the remainderman is not the original grantor, bypassing probate.

Duties like taxes and maintenance are typically prorated or assigned based on the terms of the agreement.

Key Advantages

- Targeted Inheritance: Directs a specific house, cabin, or section of land to a chosen heir, unless it returns to the grantor.
- Probate Avoidance: Transfers the designated portion automatically to the remainderman upon death.

- Continued Control: Guarantees the life tenant a secure place to live or use during their lifetime without interference.

Critical Risks & Limitations

- Subdivision Restrictions: Local zoning laws, county ordinances, or HOA rules may legally restrict dividing a single residential structure or lot.
- Shared Control: Depending on whether it is with or without "powers," you may need the remainderman's signature to sell, mortgage, or alter the designated portion later.
- Practical conflicts: Sharing access to utilities, land, or common areas can create friction between the life tenant and the remainderman.
- Maintenance & Taxes: The life tenant remains legally responsible for taxes, insurance, and upkeep on the property, which can get complicated if only a sub-portion is metes-and-bounds defined.

If a trust is paying for the construction of an ADU for the use of the trust beneficiary, the trustee may feel it is necessary, in its fiduciary duty, for the trust to obtain an interest in the ADU. Naming the trust as the life estate grantee would provide the beneficiary a place to live for life, give the trust a legal interest in the ADU for its payments and not benefit a non-beneficial interest, at least not immediately.

A FEW NOTES ON TINY HOUSES

A thorough discussion of tiny houses could take a session in itself because of the wide variety of structures that could qualify as tiny houses. This would include both fixed-site and mobile varieties.

There is some variation in defining a tiny home, but there are examples and they are usually based on floorspace. The International Residential Code states that a tiny house's floorspace is no larger than 400 square feet (37 m²). Merriam-Webster says they can be up to 500 ft². One architectural firm used a threshold of 600 ft² to define a tiny home. What further complicates the definition is that tiny homes may or may not be mobile and lack clearly defined features.

The tiny home movement started in the late 1990s has grown through the 2020s. The movement's core involves living full-time in a very small floorspace building. In some cases, tiny houses are very small houses with a foundation, plot, and traditional sewage and electrical hookups, while in other cases, they are more mobile, like an RV or mobile home. Types of tiny houses include shipping container homes, small houseboats, bus conversions, and more. [Tiny House Movement](#), Wikipedia (Retrieved September 23, 2026).

One of the biggest obstacles faced by the tiny-house movement is the difficulty of finding a region in which such a house can be constructed. Zoning regulations typically specify minimum square footage for new constructions on a foundation, and for tiny houses on wheels, parking on one's own land may be prohibited by local regulations against camping. Prohibitions may also extend to mobile homes, RVs, or temporary structures. Many localities do not allow these forms as legal dwellings, primarily due to concerns over stability, sanitation, and permanence.

In addition, RV parks do not always allow tiny houses unless they meet the criteria required for RVs. Tiny houses on wheels are considered RVs and are not suitable for permanent residence, according to the Recreational Vehicle Industry Association (RVIA). From *RV Business*, "The RVIA will continue to shy away from allowing members who produce products that are referred to as 'tiny houses' or 'tiny homes.'" Vail, K. (2016). "Saving the American Dream: The Legalization of the Tiny House Movement". *University of Louisville Law Review*, 54(2), 357–379.

In general, SSA should consider any tiny house built on a foundation with utility hookups as real property, the same as it would consider an ADU or other full-sized house and the same policy considerations would apply.

Considering a mobile tiny house (which would be considered as personal property), for purposes of the home exclusion, a home can be real or personal property, fixed or mobile, and located on land or water. For purposes of excluding "the land on which the shelter is located," it is not necessary that the individual own the shelter itself.

EXAMPLE: If an individual lives on their own land in someone else's trailer, the land meets the definition of a home and is excluded. However, if the individual does not own the shelter, it is necessary to consider whether the shelter results in in-kind support and maintenance (ISM) (e.g., rent-free shelter).

Use of Land

The use of land alone is not a household cost. Thus, if an individual receives land or the use of land without charge, this does not result in outside ISM. Similarly, third party vendor payments of real property tax, rent or mortgage on land alone do not cause an individual to receive ISM in the form of shelter.

A trailer space rental fee which is for space alone is not a household operating expense for purposes of determining inside ISM, nor is it outside ISM if someone outside the household pays the fee. However, if the fee is not for use of land alone, that part of the fee which is for water, sewer, etc., is part of the household costs for purposes of determining inside and outside ISM.

EXAMPLE: James Smith, an eligible individual, lives alone in a house trailer they own. The trailer is situated on the property of their sibling, Bill. James pays no rent for the use of the land. Bill provides water and electricity free of charge. The free use of the land results in no ISM to James. However, James is charged with outside ISM based on the CMV of the water and electricity.

NOTE: The use of land without charge may result from the individual holding an easement, a life estate, or a similar arrangement. If so, resource development of the arrangement may be necessary. POMS, SI 00835.465D.4.

APPENDICES

APPENDIX A

POMS SI 01130.100 The Home Exclusion

CITATIONS:

Social Security Act [1613](#);
20 CFR [416.1210](#)
20 CFR [416.1212](#)

A. Definitions

1. The home

An individual's home is property in which they have an ownership interest and that serves as their principal place of residence. It can include:

- the shelter in which they live;
- the land on which the shelter is located; and
- related buildings on such land.

2. Principal place of residence

An individual's principal place of residence is the dwelling the individual considers their established or principal home and to which, if absent, they intend to return. It can be real or personal property, fixed or mobile, and located on land or water.

3. Dependent relative

a. Dependency may be of any kind (e.g., financial, medical, etc.).

b. Relative means:

- child, stepchild, or grandchild;
- parent, stepparent, or grandparent;
- aunt, uncle, niece, or nephew;
- sibling (i.e., traditional sibling, step sibling, half sibling);
- cousin; or
- in-law.

4. Equitable ownership

An “equitable” ownership interest in property can result from personal considerations or from:

- making mortgage payments;
- making or paying for additions to a shelter; or
- making improvements to a shelter.

(For the definition of equitable ownership, see [SI 01110.515A.2.b.](#))

5. Shared ownership

Shared ownership of property means that two or more people own it concurrently. For information regarding different types of shared ownership, see [SI 01110.510](#).

B. Policy for excluding the home

1. Exclusion of the home

An individual's home, regardless of value, is an excluded resource. For the definition of a home, see [SI 01130.100A.1](#).

2. Exclusion of the home includes land on which the shelter is located

For purposes of excluding “the land on which the shelter is located” (see [SI 01130.100A.1](#)), it is not necessary that the individual own the shelter itself.

EXAMPLE: If an individual lives on their own land in someone else's trailer, the land meets the definition of a home and is excluded. However, if the individual does not own the shelter, it is

necessary to consider whether the shelter results in in-kind support and maintenance (ISM) (e.g., rent-free shelter). For information on rent-free shelter, see [SI 00835.370](#).

3. Exclusion of the home includes adjoining property and related buildings

a. Land

The home exclusion applies not only to the plot of land on which the home is located, but also to any adjoining land. Land that adjoins the home plot is land not completely separated from the home plot by land in which neither the individual nor their spouse has an ownership interest.

Easements and public rights of way (e.g., utility lines, roads, etc.) do not separate other land from the home plot.

b. Buildings

The home exclusion applies to all buildings on excluded land.

4. Continued exclusion of the home during periods of absence

An individual's home continues to be excluded if the individual leaves the home but intends to return to it. For development instructions on "intent to return," see [SI 01130.100C.7.c](#) and [SI 01130.100E](#) in this section.

5. General rule for property that no longer serves as the principal place of residence

Property ceases to be the principal place of residence as of the date that the individual left it with no intention of returning. Such property, if not excluded under another provision, is included in determining countable resources as of the first moment of the first day of the following month.

6. Exceptions to the general rule for property that no longer serves as the principal place of residence

Even if the individual leaves the home with no intention of returning, the property remains an excluded resource for as long as:

- a. a spouse or dependent relative of the individual continues to live there while the individual is institutionalized; or
- b. its sale would cause undue hardship, due to loss of housing for a co-owner of the property; or
- c. an individual leaves their home due to domestic abuse and has not:

- Established a new principal place of residence (for the definition of principal place of residence, see [SI 01130.100A.2.](#)); or
- Taken action to render the home no longer excludable.

EXAMPLE: Due to domestic abuse, on February 9 a recipient leaves the home in which they lived and have shared ownership and moves into their parent's home. They do not intend to return to the home. The recipient submits evidence of domestic abuse to the field office (FO). On October 20, the recipient "closes" on a second home (i.e. a sale is completed and the property is officially transferred into their name). Despite their absence and continued ownership interest in the first home, the first home is an excluded resource through October.

The FO must determine whether the first home is a resource effective November 1 (e.g. whether the recipient has the legal authority to sell without consent of a co-owner and whether a co-owner consents or refuses to sell). If the FO determines the first home is a resource, it is a countable resource, unless excluded under another provision (e.g. undue hardship), effective November 1 because the recipient established a new principal place of residence. The second home meets the definition of a "home" and thus is an excluded resource.

EXAMPLE: Due to domestic abuse, on January 24 a recipient leaves the home in which they lived and has shared ownership. They do not intend to return to the home. The recipient submits evidence of domestic abuse to the FO. On February 5, the recipient's spouse also vacates the home because they are not financially able to maintain the household expenses. Instead of returning to the home, the recipient develops a rental agreement and rents out the home to a couple effective February 15. Despite their absence and continued ownership interest in the home, the home is an excluded resource through February.

The FO must determine whether the home is a resource effective March 1 (e.g., whether the recipient has the legal authority to sell without consent of a co-owner and whether a co-owner consents or refuses to sell). If the FO determines the home is a resource, it is a countable resource effective March 1, unless excluded under another provision (e.g. undue hardship), because the recipient's action (i.e. to rent the residence) renders the home no longer excludable.

For information on the different types of shared ownership, see [SI 01110.510](#). For information on assets that are not resources, see [SI 01110.115](#).

SI 01130.100 The Home Exclusion

C. Procedure for initial claims

4. How to develop equitable ownership

If an individual alleges equitable ownership (e.g., an unwritten ownership interest or right of use for life), follow applicable regional instructions. In the absence of regional instructions, obtain

any pertinent documents and a statement either signed or recorded on a Report of Contact from each of the parties involved regarding any arrangement that has been agreed to. Forward the case to the Assistant Regional Commissioner, Management and Operations Support (ARC MOS), for an opinion from the Regional Counsel.

APPENDIX B

SI 01110.515 Ownership in Fee Simple or Less Than Fee Simple

A. Definitions

2b. Equitable ownership - An equitable ownership interest is a form of ownership that exists without legal title to property. It can exist despite another party's having legal title (or no one's having it). See C. below.

C. POLICY — EQUITABLE OWNERSHIP INTEREST

Basically, existence of an equitable ownership interest is determined by a court of equity. However, under certain circumstances, an adjudicator can conclude that an equitable ownership interest exists and make a resources determination accordingly.

2. Trust

A trust is a right of property established by a trustor or grantor. One party (trustee) holds legal title to trust property which they manage for the benefit of another (beneficiary). The beneficiary does not have legal title but does have an equitable ownership interest.

SI 01120.200 contains instructions concerning the income and resources treatment of trusts in the SSI program.

3. Equitable Home Ownership

An individual may acquire an equitable ownership interest in their home through personal considerations or by performing certain activities such as:

- making mortgage payments or paying property taxes;
- making or paying for additions to a shelter; or
- making improvements to a shelter.

SI 01130.100C.4., contains instructions on how to determine whether equitable ownership in home property exists.

APPENDIX C

Effective Dates: 05/06/2024 - Present

TN 102 (12-24)

SI 01120.200 Information on Trusts, Including Trusts Established Prior to January 01, 2000, Trusts Established with the Assets of Third Parties, and Trusts Not Subject to Section 1613(e) of the Social Security Act

F. Policy for home ownership and purchase of a home by a trust

1. Home as a resource

If the trust is a resource to the individual, the property at issue is subject to exclusion as a home under [SI 01130.100](#). Even though the trust holds legal title to the property, the individual, as trust beneficiary, still has an (equitable) ownership interest in it. Therefore, whether the property can be excluded as a home under [SI 01130.100](#) likely will depend on whether the property serves as the individual's principal place of residence.

If the trust is not a resource to the individual, then the property also is not a resource to the individual, regardless of whether the property serves as the individual's principal place of residence (that is, regardless of possible exclusion as a home under [SI 01130.100](#)), because the property is part of the trust principal that is not a resource to the individual.

2. Rent-free shelter

An eligible individual does not receive ISM in the form of rent-free shelter while living in a home in which they have an ownership interest. Accordingly, an individual with an "equitable ownership interest in the trust principal" does not receive rent-free shelter (see [SI 01120.200F.1](#), in this section).

3. Receipt of income from a home purchase

Because the purchase of a home by a trust for the trust beneficiary establishes an equitable ownership interest for the trust beneficiary, the purchase results in the receipt of ISM, in the form

of shelter, in the month of purchase. This ISM is valued at no more than the presumed maximum value (PMV). For ISM to one person, see [SI 00835.400](#).

Even if the trust beneficiary has an ownership interest in the home where they reside and is not receiving ISM in the form of rent-free shelter (see [SI 00835.370B.1.](#)), the purchase of the home or payment of the monthly mortgage by the trust is a disbursement from the trust to a third party that results in the receipt of ISM in the form of shelter (see [SI 01120.200E.1.b.](#) in this section).

a. Outright purchase of a home

If the trust, whose principal is not a resource, purchases the home outright and the trust beneficiary lives in the home in the month of purchase, the home is income in the form of ISM and reduces the trust beneficiary's payment no more than the PMV in the month of purchase only, regardless of the value of the home (see [SI 01120.200E.1.b.](#) in this section).

b. Purchase by mortgage or similar agreement

If the trust, whose principal is not a resource, purchases the home with a mortgage and the trust beneficiary lives in the home in the month of purchase, the home would be ISM in the month of purchase. Each of the subsequent monthly mortgage payments results in the receipt of income in the form of ISM to the trust beneficiary living in the house, each valued at no more than the PMV (see [SI 01120.200E.1.b.](#) in this section).

c. Additional household expenses

If the trust pays for other shelter or household operating expenses, these payments are income in the form of ISM in the month of the trust beneficiary's use. For computations of ISM from outside the household, see [SI 00835.350](#). For countable shelter expenses, see [SI 00835.465D](#).

If the trust pays for repairs, maintenance, improvements, or renovations to the home, such as renovations to the bathroom to make it handicapped accessible, installation of a wheelchair ramp or assistive devices, or replacement of a roof, the trust beneficiary does not receive income. Disbursements from the trust for improvements increase the value of the resource and, unlike household operating expenses, do not provide ISM. For disbursements that are not income, see [SI 01120.200E.1.c.](#) in this section.

APPENDIX D

POMS SI 00835.001 Introduction to Living Arrangements and In-Kind Support and Maintenance – EDITED (POMS not yet

revised to account for 09/24 regulatory change)

CITATIONS:

Social Security Act as amended, Section 1612(a)(2)(A) ;
Regulations - [20 CFR 416.1130](#)

A. Policy on living arrangements and in-kind support maintenance

In-kind support and maintenance (ISM) is unearned income in the form of ~~food or shelter, or both~~. The Social Security Act (the Act) considers ISM, along with other forms of unearned income, when determining supplemental security income (SSI) eligibility and payment amounts. We use two rules to determine the value of ISM an individual receives:

1. the Value of the One-Third Reduction (VTR) rule, discussed in [SI 00835.200](#); and
2. the Presumed Maximum Value (PMV) rule, discussed in [SI 00835.300](#).

NOTE:

Based on a change in the SSI regulations, beginning 03/09/2005, we do not count receipt of clothing as ISM. Based on a change in the SSI regulations, beginning September 30, 2024, we do not count the receipt of food as ISM. For policy and procedures pertaining to in-kind support and maintenance to one person, see [SI 00835.400](#).

1. Value of the one-third reduction (VTR) rule

We reduce the applicable Federal benefit rate (FBR) by one-third when an individual or couple:

- Lives throughout a month in another person's household; and
- Receives both food and shelter from others living in that household.

(For a detailed explanation of the VTR, see [SI 00835.200](#)).

2. Presumed Maximum Value (PMV) rule

When a beneficiary or couple is eligible for payment and the VTR does not apply, use the PMV rule to determine the value of ISM received. The amount of the PMV is equal to one-third of the Federal benefit rate for an individual or couple, plus \$20. If the individual or couple successfully rebuts the PMV, value the ISM at the current market value (CMV) or the actual value (AV), whichever is less. (For a detailed explanation of the PMV rule, see [SI 00835.300](#) and for information about rebutting the PMV, see [SI 00835.320](#)).

NOTE: When the VTR rule applies in any one month, the PMV rule cannot apply in the same month.

APPENDIX E

Effective Dates: 05/17/2024 - Present

TN 121 (05-24)

POMS SI 00835.465 ISM and Households - Household Costs

CITATIONS:

Regulations 20 CFR 416.1133(c)

D. Policy — what are household (shelter) costs

1. List of applicable items

When computing household operating expenses for inside ISM or the CMV of household costs for outside ISM, the following 10 items are the only ones used in the applicable computations:

- Mortgage (including property insurance required by the mortgage holder)
- Real property taxes (less any tax rebate/credit)
- Rent
- Heating fuel
- Gas
- Electricity
- Water
- Sewer
- Garbage removal

NOTE: Condominium fees in themselves are not household costs. However, condominium fees may include charges which are household costs (e.g., garbage removal). To the extent that such charges are identifiable, use them in the computation of inside and outside ISM.

D.4 Use of land

The use of land alone is not a household cost. Thus, if an individual receives land or the use of land without charge, this does not result in outside ISM. Similarly, third party vendor payments of real property tax, rent or mortgage on land alone do not cause an individual to receive ISM in the form of shelter.

A trailer space rental fee which is for space alone is not a household operating expense for purposes of determining inside ISM, nor is it outside ISM if someone outside the household pays the fee. However, if the fee is not for use of land alone, that part of the fee which is for water, sewer, etc., is part of the household costs for purposes of determining inside and outside ISM.

EXAMPLE: James Smith, an eligible individual, lives alone in a house trailer they own. The trailer is situated on the property of their sibling, Bill. James pays no rent for the use of the land. Bill provides water and electricity free of charge. The free use of the land results in no ISM to James. However, James is charged with outside ISM based on the CMV of the water and electricity.

NOTE: The use of land without charge may result from the individual holding an easement, a life estate, or a similar arrangement. If so, resource development of the arrangement may be necessary. (See [SI 01140.110](#) and [SI 01130.100](#).)

APPENDIX F

Effective Dates: 02/26/2026 - Present

TN 135 (04-26)

SI 01130.740 Achieving a Better Life Experience (ABLE) Accounts

Citations: [Public Law 113–295](#) The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) – Enacted December 19, 2014

A. What is an ABLE account?

An Achieving a Better Life Experience (ABLE) account is:

- a tax-advantaged savings account;
- used by eligible individuals to pay for qualified disability expenses;
- owned by the eligible individual and designated beneficiary of the ABLE account; and

- established by an eligible individual provided the individual is blind or disabled by a condition that began before the individual's 46th birthday.

NOTE: Prior to 1/1/2026, individuals with blindness or a disability were eligible only if their condition began before age 26.

An ABLE program can be established by a State (or State agency or instrumentality of a State). An eligible individual can open an ABLE account through the ABLE program in any State, if the State permits it.

You may see different types of arrangements between States administering ABLE programs. Some States:

- formed partnerships to improve access for eligible individuals to enroll in ABLE programs;
- formed a consortium where the States have their own ABLE program, but join together to provide lower administrative costs and better investment options than they could on their own;
- established their own ABLE program, but contract with private companies to manage their ABLE program for them;
- established their own ABLE program, but contract with other States to manage their ABLE program for them;
- do not operate their own ABLE program, but partner with another State to offer the other State's ABLE program to their residents.

1. One ABLE account

A designated beneficiary is limited to one ABLE account, which a qualified ABLE program administers. Except in the case of a rollover or program-to-program transfer, if a designated beneficiary has an additional account, it generally will not be treated as an ABLE account, and will be subject to normal resource counting rules.

EXCEPTION: If an additional account closes within 90 days from the account open date, the account is not a countable resource for any period the additional account was open.

2. Medicaid reimbursement

Upon the death of the designated beneficiary, funds remaining in the ABLE account, after payment of all outstanding qualified disability expenses, must be used to reimburse the State(s) for Medical Assistance (Medicaid) benefits received by the designated beneficiary, if the State(s) files(s) a claim for reimbursement.

B. Definition of ABLE terms

1. ABLE program

An ABLE program is established and maintained by a State (or State agency or instrumentality thereof) through which eligible individuals can open ABLE accounts.

2. Contributions to ABLE account

- Contributions are payments of funds into an ABLE account
- Contributions must be in cash and may be made in the form of cash or a check, money order, credit card, electronic transfer, Gift of Independence card, or a similar method.
- Contributions may be made by any person. (“Person,” as defined by the Internal Revenue Code (IRC), includes an individual, trust, estate, partnership, association, company, or corporation.)
- Following is a chart listing the annual contribution limit by calendar year:

Calendar Year	Annual Contribution Limit
2014	\$14,000
2015	\$14,000
2016	\$14,000
2017	\$14,000
2018	\$15,000
2019	\$15,000
2020	\$15,000
2021	\$15,000
2022	\$16,000
2023	\$17,000
2024	\$18,000
2025	\$19,000
2026	\$20,000

3. Designated beneficiary

The designated beneficiary is the individual who:

- owns the ABLE account;
- was an eligible individual when the account was established; or

- succeeded the former designated beneficiary in that capacity.

To be an eligible individual, they must be:

1. receiving Supplemental Security Income (SSI) based on blindness or disability that began before age 46; or
2. in SSI suspense due solely to excess income or resources, but otherwise eligible for SSI based on blindness or disability that began before age 46; or
3. receiving disability insurance benefits (DIB), childhood disability benefits (CDB), or disabled widow's or widower's benefits (DWB) based on blindness or disability that began before age 46; or
4. the subject of a disability certification.
 - a disability certification, to be signed by the individual or someone else establishing the ABLE account for the individual:
 - certifies that the individual is blind or has a physical or mental impairment that results in marked and severe functional limitation and that such blindness or disability began before age 46.
 - includes a certification that the individual has a copy of the diagnosis relating to their relevant impairment(s), signed by a physician.
 - conditions on SSA's "List of Compassionate Allowances Conditions" are deemed to meet the requirements for filing a disability certification if the condition was present and produced marked and severe functional limitations before the individual attained age 46.

NOTE: Do not draw an inference regarding disability under the Social Security Act from a disability certification. Prior to 1/1/2026, individuals with blindness or a disability were eligible only if their condition began before age 26.

4. Distributions

A distribution is any payment from an ABLE account. A program-to-program transfer is not a distribution. The designated beneficiary or person with signature authority determines when a distribution is made. Distributions (other than rollovers and returns of contributions) may be made only to or for the benefit of the designated beneficiary.

5. Member of the family

A member of the designated beneficiary's family means a sibling by blood, marriage, or adoption, and including a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

6. Person with signature authority

A person with signature authority can establish and administer an ABLÉ account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. Signature authority is not the equivalent of ownership. The person with signature authority may be the eligible individual's agent under a power of attorney or, if none, a conservator or legal guardian, spouse, parent, sibling, grandparent of the eligible individual, or a representative payee appointed for the eligible individual by SSA, in that order. Always consider the designated beneficiary to be the owner of the ABLÉ account, regardless of whether someone else has signature authority over it.

NOTE: In some instances, the representative payee appointed by SSA may not be the same person who has signature authority over the beneficiary's ABLÉ account. For example, a legal guardian may have signature authority for a beneficiary who has an organizational representative payee. If a payee does not have the signature authority over the ABLÉ account, they cannot deposit SSA benefits to the ABLÉ account because they do not control the account.

7. Program-to-program transfer

A program-to-program transfer means the direct transfer of:

- the entire balance of an ABLÉ account into an ABLÉ account of the same designated beneficiary in which the first ABLÉ account is closed upon the transfer of the funds; or
- part or all of the balance to an ABLÉ account of an eligible individual who is a member of the family of the designated beneficiary.

8. Qualified disability expenses

Qualified disability expenses (QDEs) are related to the blindness or disability of the designated beneficiary and for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, an expense for:

- Education;
- Housing;
- Transportation;
- Employment training and support;
- Assistive technology and related services;
- Personal support services;
- Health;

- Prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for ABLE account oversight and monitoring;
- Funeral and burial; and,
- Basic living expenses.

9. Housing expenses

Housing expenses for purposes of an ABLE account are similar to household costs for in-kind support and maintenance purposes. However, for ABLE purposes, food is considered a qualified disability expense (basic living expense), but not a housing expense. Housing expenses include expenses for:

- Mortgage (including property insurance required by the mortgage holder);
- Real property taxes;
- Rent;
- Heating fuel;
- Gas;
- Electricity;
- Water;
- Sewer; and
- Garbage removal.

10. Rollover

A rollover is the contribution to an ABLE account of a designated beneficiary (or a family member of the designated beneficiary), of all or a portion of an amount withdrawn from the designated beneficiary's ABLE account, provided that:

- the contribution is made within 60 days of the date of the withdrawal; and

- no rollover has been made into an ABLE account of the designated beneficiary within the prior 12 months.

C. When to exclude ABLE account contributions, balances, earnings, and distributions

1. Exclude contributions as income

A payment made into an ABLE account constitutes a contribution. Consider the contribution made by the person to whom the funds belong or are due. Exclude contributions to an ABLE account from the income of the designated beneficiary. Excluded contributions include:

- Rollovers from a family member's ABLE account to the SSI applicant, recipient, or deemor's ABLE account;
- Rollovers in limited amounts from a qualified tuition plan (also called a 529 plan) to the SSI applicant, recipient, or deemor's ABLE account. The ABLE account must be for the same beneficiary as the 529 account or for a member of the same family as the 529 account holder; and
- Contributions in excess of the annual limit if the designated beneficiary worked and did not contribute for the taxable year to any of the following types of retirement plans:
 - defined contribution plan (within the meaning of section 414(i) of the IRC) with respect to which the requirements of section 401(a) or 403(a) of the IRC are met;
 - annuity contract under section 403(b) of the IRC; or
 - eligible deferred compensation plan under section 457(b) of the IRC.

Additional excluded contributions by an employed beneficiary are limited per year to the lesser of:

- The poverty level for a one-person household, as determined for the calendar year preceding the calendar year in which the taxable year begins as found in [HI 03001.020](#); or
- The amount of the designated beneficiary's earnings and other compensation (as defined by Section 219(f)(1) of the IRC).

The designated beneficiary is potentially eligible for a tax credit for contributions that they make to their ABLE account.

NOTE: The fact that a person uses their income to contribute to an ABLE account does not mean that their income is not countable for SSI purposes as it normally would be. Income received by the designated beneficiary and deposited into their ABLE account is income to the designated beneficiary. For example, an applicant, recipient, or deemor can have contributions automatically

deducted from their paycheck and deposited into an ABLE account. In this case, include the income used to make the ABLE account contribution in the applicant, recipient or deemor's gross wages.

a. First party contributions

A contribution made by the designated beneficiary into their ABLE account is not income to the designated beneficiary. However, income received by the designated beneficiary and deposited into their ABLE account is income to the designated beneficiary.

An individual cannot use direct deposit to avoid income counting.

When a payment belonging to or due to the designated beneficiary is direct deposited into their ABLE account:

- consider the payment received by the designated beneficiary;
- count the payment as income to the designated beneficiary as it otherwise would be counted;
- consider the designated beneficiary the contributor for ABLE purposes; and
- do not consider the ABLE contribution as income to the designated beneficiary.

Examples of payments that might be direct-deposited into an ABLE account, but still are counted as income as they otherwise would be, include:

- Wages;
- Benefit payments (Title II, Veterans Administration, pensions, etc.); and
- Mandatory Support payments (child support or alimony).

NOTE: Social Security and SSI monthly benefit payments can be directly deposited into ABLE accounts because they are considered acceptable types of financial accounts. For more information see [GN 02402.030B.1.](#)

b. Third party contributions

Third party contributions:

- are not income to the designated beneficiary;
- are contributions made by persons other than the designated beneficiary;
- are made with funds that do not otherwise belong, or are not otherwise due, to the designated beneficiary;

- are made with the third party's funds; and
- are treated as a completed gift when made by a person other than the designated beneficiary

NOTE: "Completed gift" refers to the IRS definition for gift-tax rules, not the definition of a gift in [SI 00830.520](#). For ABLE, we exclude third party contributions, regardless of their status as a gift for SSI purposes.

2. Exclude ABLE account earnings

The funds in an ABLE account can accrue interest, earn dividends, and otherwise appreciate in value. Earnings increase the account's balance. Exclude these earnings from the income of the designated beneficiary.

3. Exclude up to and including \$100,000 of balance

Exclude up to and including \$100,000 of the balance of funds in an ABLE account from the resources of the designated beneficiary.

4. Do not count ABLE account distributions as income

A distribution from an ABLE account is not income but is a conversion of a resource from one form to another, see [SI 01110.600B.4](#).

Do not count distributions from an ABLE account as income of the designated beneficiary, regardless of whether the distributions are for a QDE that is not related to housing, for a housing expense, or for a non-qualified expense.

5. Exclude retained distributions for a QDE not related to housing

a. Distribution for a QDE not related to housing

Exclude a distribution for a QDE not related to housing from the designated beneficiary's countable resources if they retain it beyond the month received.

This exclusion applies while:

- The designated beneficiary maintains, makes contributions to, or receives distributions from the ABLE account;
- The distribution is unspent;

- The distribution is identifiable. NOTE: Identify excludable funds commingled with non-excludable funds, see [SI 01130.700A](#); and
- The individual intends to use the distribution for a QDE not related to housing.

Apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account.

EXAMPLE: Elizabeth takes a distribution of \$500 from their ABLE account in May to pay for a health-related QDE that they expect to pay in September. They deposit the distribution into their checking account in May and withdraw it in September to pay the health-related QDE. Exclude the \$500 from Elizabeth's countable resources from June through September. Starting in June, document the deposit on the Financial Institution Account page. Input \$500 as the “excluded amount.” Select “Other” as the exclusion reason and input “ABLE QDE distribution” as the “other reason.”

b. Previously excluded distribution used for non-qualified expenses or housing expenses

If a designated beneficiary uses a distribution previously excluded for a non-qualified expense or a housing expense, or the individual’s intent to use it for a qualified disability expense (not related to housing) changes, see [SI 01130.740D.3](#), in this section.

c. Example of an excluded distribution

Eric takes a distribution of \$500 from their ABLE account in June to pay for a health-related QDE. Their health-related expense is not due until September, and Eric deposits the distribution into their checking account in June. The distribution is not income in June. Eric’s distribution is both unspent and identifiable until Eric pays their health-related expense in September. Exclude the \$500 from Eric's countable resources in July, August, and September. For instructions to identify commingled, excluded, and non-excluded funds, see [SI 01130.700](#).

d. Example of an excluded QDE purchase

Fred takes a distribution of \$1,500 from their ABLE account in September to buy a health-related item that is a QDE. The item is an excluded resource in October and continuing, because it is the individual’s personal property required for a medical condition. For instructions on household goods, personal effects, and other personal property, see [SI 01130.430](#).

D. When to count ABLE account balances and distributions

1. Count ABLE account balance amounts over \$100,000

Count the amount by which an ABLE account balance exceeds \$100,000 as a resource of the designated beneficiary.

a. Ineligibility for other reasons

If an individual is ineligible for any reason other than excess resources in an ABLE account, suspend the individual's SSI eligibility using normal procedures.

EXAMPLE: Ineligibility for a reason other than excess resources in an ABLE account

In April, Sam's ABLE account balance is \$102,500 as of the first of the month. However, Sam also has excess deemed income in April and is N01. They are not eligible for Medicaid. Before the end of April, Sam leaves the U.S. and does not return until July 1. Sam is N03 for May, June, and July. If Sam still has excess resources in their ABLE account effective August 1 and is otherwise SSI eligible, place them in the resource suspension status. They are eligible for Medicaid effective August 1.

b. Ineligibility due to excess resources other than the ABLE account balance

The suspension does not apply when:

- The balance of an SSI recipient's ABLE account exceeds \$100,000 by an amount that causes the recipient to exceed the SSI resource limit; but
- The value of resources other than the ABLE account alone make the individual ineligible for SSI due to excess resources.

When this situation happens:

- Suspend the recipient's SSI benefits using the payment status code N04. While in N04, the recipient loses eligibility for Medical Assistance (Medicaid) and the individual's SSI eligibility terminates 12 months later if the suspension continues throughout this period.
- Reinstate the recipient's regular SSI eligibility and Medicaid benefits for all months in which the individual's resources, including the ABLE account, no longer cause the recipient to exceed the resource limit.

EXAMPLE: Combination of resources — recipient loses SSI eligibility

Christine is the designated beneficiary of an ABLE account with a first of the month balance of \$101,000. Christine's only other countable resource is a checking account with a balance of \$3,000. Christine's countable resources are \$4,000 and therefore exceed the SSI resource limit.

However, because their ABLE account balance is not the cause of their excess resources (i.e., their countable resources other than the ABLE account are more than \$2,000), the suspension rule does not apply, and Christine is not eligible for SSI because of excess resources. Suspend Christine's SSI benefits using payment status N04. Their Medicaid benefits stop.

c. Rule for indefinite benefit suspension and continuing eligibility for Medicaid during periods of excess resources attributable to an ABLE account

Suspension applies when the balance of an SSI recipient's ABLE account exceeds \$100,000 by an amount that causes the recipient to exceed the SSI resource limit--whether alone or with other resources. When this situation happens:

- We suspend the recipient's SSI benefits without time limit (as long as they remain otherwise eligible);
- The recipient is SSI eligible for Medical Assistance (Medicaid); and
- The individual's eligibility does not terminate after 12 continuous months of suspension.

Reinstate the recipient's regular SSI eligibility for all months in which the individual's ABLE account balance no longer causes the recipient to exceed the resource limit and is otherwise eligible.

NOTE: "SSI eligible for Medicaid purposes" means that the individual is eligible for Medicaid in States where Medicaid eligibility is based on SSI eligibility. For SSA determinations of Medicaid Eligibility in 1634 States see [SI 01730.000](#).

If an individual reaches the \$100,000 account balance limit, please contact your regional office so that they can alert the central office.

EXAMPLE: Excess resources — recipient is suspended but retains eligibility for Medicaid

Paul is the designated beneficiary of an ABLE account with a balance of \$101,000 on the first of the month. Paul's only other countable resource is a checking account with a balance of \$1,500. Paul's countable resources are \$2,500 and therefore exceed the SSI resource limit. However, since Paul's ABLE account balance causes them to exceed the resource limit (i.e., their countable resources other than the ABLE account are less than \$2,000), suspend Paul's SSI eligibility and stop their cash benefits, but retain their eligibility for Medicaid in their State.

2. Count retained distributions for housing expenses or expenses that are not QDEs as a resource

A distribution from an ABLE account is not income, but is a conversion of a resource from one form to another, see [SI 01110.600B.4](#).

Count a distribution for a housing expense or for an expense that is not a QDE as a resource, if the designated beneficiary retains the distribution into the month following the month of receipt. If the designated beneficiary spends the distribution within the month of receipt, there is no effect on eligibility. Apply normal SSI resource counting rules and exclusions to items purchased with funds from an ABLE account.

EXAMPLE: Retained distribution intended for housing expenses is a resource

Amy takes a distribution of \$500 from their ABLE account in May to pay a housing expense for June. They deposit the \$500 into their checking account in May, withdraws \$500 in cash on June 3, and pay their landlord. This distribution is a housing expense and part of their checking account balance as of June 1, which makes it a countable resource for the month of June.

3. Count previously excluded distributions used for a non-qualified purpose or housing expense

- Count the amount of funds used for a non-qualified expense or housing expense as a resource as of the first moment of the month in which the funds were spent if the designated beneficiary uses the distribution (that was previously excluded) for a non-qualified purpose or a housing expense.
- Count the retained funds as a resource as of the first of the following month if an individual's intent to use the funds for a QDE changes at any other time, but they have not spent the funds.

a. EXAMPLE: Previously excluded distribution used for a non-QDE

Sam takes a distribution of \$25,000 from their ABLE account in May for an assistive technology and related service. They pay a \$10,000 deposit. While waiting for the service to be completed, Sam takes a trip to a local casino in July where they lose \$1,000 of their ABLE distribution gambling. The \$1,000 they lost gambling is a countable resource in July. The other \$14,000 Sam retains is an excluded resource while it meets the requirements in this section.

b. EXAMPLE: Previously excluded distribution used for a housing expense

In June, Jennifer takes a \$7,000 distribution from their ABLE account to pay an educational expense that is a QDE. Their educational expense is due in September. However, they have to make a \$750 advance rent payment to their landlord for their college apartment in August. They use some of the distribution they took in June to make the rent payment – a housing expense. The \$750 is a countable resource in August. Exclude the remaining \$6,250 of the retained distribution while it continues to meet the requirements in this section.

c. EXAMPLE: Change of intent on the use of a distribution

In June, Jennifer takes a \$7,000 distribution from their ABLE account to pay an educational expense that is a QDE. Their educational expense is due in September. In August, Jennifer gets a job offer and decides not to return to school. The \$7,000 becomes a countable resource in September because they no longer intend to use it for an educational expense that is a QDE, unless Jennifer re-designates it for another QDE or returns the funds to their ABLE account prior to September.

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STETSON LAW

2026 National Conference on Special Needs Planning and Special Needs Trusts
Housing Boot Camp: Laws, Benefits, and Creative Solutions

Gimme Shelter
Supplemental Security Income Policy
Related to Shelter and Housing Support

Presented by Ken Brown
October 21, 2026

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INTRODUCTION

This session will cover SSI rules related to shelter and housing support, including:

- the home exclusion and its application;
- In-kind support and maintenance rules related to shelter;
- how payments from trusts and ABLE accounts may be used to obtain shelter and how they may impact benefits.

Additional discussion will also include accessory dwelling units (ADUs) as a potential housing option for individuals receiving SSI, how they fit into current policy and some possible issues that may require further exploration.

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Supplemental Security Income Policy Related to Shelter and Housing Support

- Housing is often the single biggest barrier to independence for eligible individuals with disabilities who rely on Supplemental Security Income (SSI) and Medicaid.
- Where a person lives can affect their eligibility for and amount of Supplemental Security Income (SSI) benefits. We will examine the current SSI policy on home ownership, renting or sharing a living space or other living arrangements.
- Families sometimes try to solve housing through special needs trusts (SNTs). However, housing support from a trust can create SSI complications.
- Even when families have resources, paying for rent or utilities the "wrong" way can cause an SSI payment reduction, create overpayment notices, or raise questions about continued eligibility.
- We will look at some alternative methods to providing housing without significantly impacting eligibility for and the amount of benefits.

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The SSI Home Exclusion

An individual's home, regardless of value, is an excluded resource.

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What is a Home?

An individual's home is property in which they have an ownership interest and that serves as their principal place of residence. It can include:

- the shelter in which they live;
- the land on which the shelter is located; and
- related buildings on such land.

An individual's principal place of residence is the dwelling the individual considers their established or principal home and to which, if absent, they intend to return. It can be real or personal property, fixed or mobile, and located on land or water.

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Ownership

- For the home exclusion to apply, the individual must have an ownership interest in the property. Then ownership interest can be legal or equitable.
- An "equitable" ownership interest in property can result from personal considerations or from:
 - making mortgage payments;
 - making or paying for additions to a shelter; or
 - making improvements to a shelter.
- If an individual lives in a home owned by a trust and is the beneficiary of the trust, even though the trust holds legal title to the property, the individual, as trust beneficiary, still has an (equitable) ownership interest in it.

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Exclusion of the Home Includes Land on Which the Shelter is Located

For purposes of excluding “the land on which the shelter is located,” it is not necessary that the individual own the shelter itself.

EXAMPLE: If an individual lives on their own land in someone else's trailer, the land meets the definition of a home and is excluded. However, if the individual does not own the shelter, it is necessary to consider whether the shelter results in in-kind support and maintenance (ISM) (e.g., rent-free shelter).

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Exclusion of the Home Includes Adjoining Property and Related Buildings

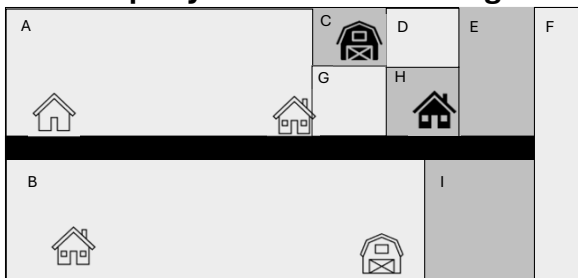
The home exclusion applies not only to the plot of land on which the home is located, but also to any adjoining land. Land that adjoins the home plot is land not completely separated from the home plot by land in which neither the individual nor their spouse has an ownership interest.

Easements and public rights of way (e.g., utility lines, roads, etc.) do not separate other land from the home plot.

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Exclusion of the Home Includes Adjoining Property and Related Buildings



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Continued Exclusion of the Home During Periods of Absence

If an individual is temporarily absent from the home he or she owns, the home continues to be excluded as long as,

- If the individual is in an institution, and a spouse or dependent relative is living in the home.
- If not institutionalized, the individual intends to return to the home, or
- If the house is co-owned, sale of the home would cause undue hardship, due to loss of housing for the co-owner.
- If the individual has left his or her home due to domestic abuse, the individual has not established a new principal place of residence or otherwise has taken action rendering the home no longer excludable.

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Intent to Return

An individual's home continues to be excluded if the individual leaves the home but intends to return to it.

This statement governs the "intent to return" determination unless the statement is self-contradictory. If the individual's statement of intent is self-contradictory, SSA will contact someone who knows the situation, such as a physician, family member, or close friend or relative, to clarify the situation.

SSA does not consider other factors, such as the individual's age, physical condition, or other circumstances when determining intent to return home. Assuming the individual is mentally competent, age, mental capacity, and physical condition are not factors in evaluating the individual's statement of intent.

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SSI Trust Policy And The Home Exclusion

There are several policies associated with the home exclusion that interact with trust policy that may be advantageous to a trust beneficiary receiving SSI.

- If the trust is a resource to the individual, the property at issue is subject to exclusion as a home. Even though the trust holds legal title to the property, the individual, as trust beneficiary, still has an (equitable) ownership interest in it.
- If the trust is not a resource to the individual, then the property also is not a resource to the individual, regardless of whether the property serves as the individual's principal place of residence.

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General In-Kind Support and Maintenance (ISM) Policy

SSA has two rules that apply to determining the value of ISM. The rules are mutually exclusive in that when one rule applies, the other does not. These two rules are the Value of the One-Third Reduction (VTR) Rule and the Presumed Maximum Value (PMV) Rule.

When it applies, the VTR is a statutory one-third reduction in the SSI payment rate. On the other hand, the PMV is a regulatory maximum cap on the amount of ISM that can be charged.

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Value of the One-Third Reduction (VTR) Rule

SSA will reduce the applicable Federal benefit rate (FBR) by one-third when an individual or couple:

- Lives throughout a month in another person's household; and
- Receives both food and shelter from others living in that household.

In 2026, the VTR is equal to \$331.33 for an individual and \$497.00 for a couple based on an FBR of \$994.00 and \$1,491.00, respectively.

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Presumed Maximum Value (PMV) Rule

- When a beneficiary or couple receives ISM, is eligible for payment and the VTR does not apply, SSA uses the PMV rule to determine the value of ISM received.
- The amount of the PMV is equal to one-third of the Federal benefit rate for an individual or couple, plus \$20. In 2026 the PMV is equal to \$351.33 for an individual and \$517.00 for an eligible couple, based on an FBR of \$994.00 and \$1,491.00, respectively.
- The PMV is a regulatory cap on the amount of ISM that can be charged. The PMV is a rebuttable presumption, i.e., the regulation presumes that the value of ISM is worth one-third of the FBR plus \$20. If the individual or couple successfully presents evidence that the food or shelter has a lower value or cost (rebutts the PMV), SSA values the ISM at the current market value (CMV) or the actual value (AV), whichever is less.

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In-Kind Support and Maintenance (ISM)

An eligible individual does not receive in-kind support and maintenance (ISM) in the form of rent-free shelter while living in a home in which he or she has an ownership interest.

A trust beneficiary with an "equitable ownership interest in the trust principal" does not receive rent-free shelter (ISM).

They also are not subject to the PMV since they are not living in the "household of another."

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Purchase of a Home

- If the trust, whose principal is not a resource, purchases the home outright and the trust beneficiary lives in the home in the month of purchase, the home is income in the form of ISM, and reduces the trust beneficiary's payment no more than the PMV in the month of purchase only, regardless of the value of the home.
- If the trust, whose principal is not a resource, purchases the home with a mortgage and the trust beneficiary lives in the home in the month of purchase, the home would be ISM in the month of purchase. Each of the subsequent monthly mortgage payments results in the receipt of income in the form of ISM to the trust beneficiary living in the house, each valued at no more than the PMV.

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Household Expenses (Shelter Costs)

In any month that a trust pays household expenses (shelter costs), the individual receives ISM valued at no more than the PMV.

When computing ISM, only the following 10 items are used:

- Mortgage (including property insurance required by the mortgage holder)
- Real property taxes (less any tax rebate/credit)
- Rent
- Heating fuel
- Gas
- Electricity
- Water
- Sewer
- Garbage removal

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Household Expenses

If the trust pays for repairs, maintenance, improvements, or renovations to the home, such as renovations to the bathroom to make it ADA accessible, installation of a wheelchair ramp or assistive devices, or replacement of a roof, the trust beneficiary does not receive income.

Disbursements from the trust for improvements increase the value of the resource and, unlike household operating expenses, do not provide ISM.

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Achieving a Better Life Experience (ABLE) Accounts

Using a trust in conjunction with an ABLE account provides many advantages, especially in providing for housing.

- The POMS explicitly permits transfers from a special needs or pooled trust to an ABLE account up to the annual contribution limit (\$20,000 for 2026). The benefit to this arrangement is that a transfer that would otherwise count as income is excluded from income.
- If those same funds are subsequently disbursed from the ABLE account to directly pay for housing (shelter) expenses, the shelter received does not count as income in the form of in-kind support and maintenance.

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Support Payments

The use of a trust with an ABLE account also provides a method to avoid income counting for support payments such as child support or alimony.

- If a support payment is paid directly into an ABLE account, the payment is income because the ABLE account owner is the person legally entitled to receive that payment.
- If support payments are irrevocably assigned to a trust (a court order is deemed to be an irrevocable assignment), the payment is not income when deposited into the trust.
- The support payment can then be transferred into an ABLE account for the use of the trust beneficiary, avoiding income counting upon receipt, and if used correctly, avoiding income counting upon expenditure.

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Timing Problem – Retained Funds

Withdraw funds from the ABLE account and pay the housing expenses in the same calendar month.

- SSA counts a distribution for a housing expense or for an expense that is not a QDE as a resource, if the designated beneficiary retains the distribution into the month following the month of receipt.
- If the designated beneficiary spends the distribution within the month of receipt, there is no effect on eligibility.

EXAMPLE: Retained distribution intended for housing expenses is a resource
Amy takes a distribution of \$500 from their ABLE account in May to pay a housing expense for June. They deposit the \$500 into their checking account in May, withdraws \$500 in cash on June 3, and pay their landlord. This distribution is a housing expense and part of their checking account balance as of June 1, which makes it a countable resource for the month of June.

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Paying Housing Expenses from an ABLE Account

Helpful Hints for Paying Rent and Utilities from an ABLE Account

- Pay housing providers directly from the ABLE account
- Schedule automatic recurring payments
- Save Housing Documentation in One Place
- Use Clear Transaction Descriptions
- Avoid Cash Withdrawals for Housing

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Accessory Dwelling Units (ADUs)

An “Accessory Dwelling Unit” or “ADU” is defined by the American Planning Association as “a smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home.”

Generally, as an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area. However, an attached ADU may share kitchen or bathroom facilities with the main dwelling unit (depending on local zoning requirements).

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ADU, aka...

- accessory apartment
- backyard bungalow
- basement apartment
- casita
- carriage house
- coach house
- English basement
- garage apartment
- granny flat
- guest cottage
- guest house
- in-law suite
- multi-generational house
- ohana unit
- secondary dwelling unit

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Types of ADUs



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Ownership Issues Related to ADUs

Ownership issues related to ADUs often arise because the ADU is located on the same parcel as the primary home, creating questions about property rights, control, financing, and inheritance.

Common issues include:

- Single Property Ownership
- Co-Ownership and Family Arrangements
- Title and Financing Concerns
- Inheritance and Estate Planning
- Zoning, Land Use and Property Rights Disputes

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Co-Ownership and Family Arrangements

When parents, adult children, other relatives, or a trust help finance or occupy an ADU, disputes can arise over:

- Who owns the ADU structure.
- Rights to occupy the unit.
- Responsibility for maintenance and repairs.
- What happens if the property is sold.

Without a written agreement, these arrangements can become contentious.

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Title and Financing Concerns

Because the ADU is usually part of the same real estate parcel:

- It generally cannot have a separate deed.
- Mortgages and liens typically affect both the main house and the ADU.
- Lenders may require all owners of the property to sign financing documents.

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Inheritance and Estate Planning

If an ADU is intended for a child or elderly parent, problems may arise after the property owner's death:

- The ADU may pass with the entire property under a will or state inheritance laws.
- Occupants of the ADU may not automatically gain ownership rights.
- Heirs may disagree about whether to keep, occupy, rent, or sell the property.

Estate planning can help clarify these issues.

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Zoning, Land Use and Property Rights Disputes

Ownership conflicts can arise when:

- Neighbors challenge ADU construction.
- Property boundaries are unclear.
- Easements or access rights affect the ADU.
- Owners disagree about use restrictions or rental rights.
- Zoning restrictions on and requirements of rental units or owner-occupancy requirements.

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Why Ownership Matters for SSI Benefits

Home Exclusion

- Regardless of its physical form, legally an ADU is part of the same property as the main home. It cannot be bought or sold separately. The owner of the ADU is the owner of the main home.
- To qualify for the home exclusion, an individual must have an ownership interest, legal or equitable, in the home.

You should note however, that without an ownership interest, a home would not count as a resource to the individual, but there are other consequences that flow from not having an ownership interest.

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Why Ownership Matters for SSI Benefits

ISM

- Without an ownership interest, the individual would be required to pay rent or else be charged with in-kind support and maintenance (ISM) in the form of rent-free shelter. Or they could be subject to the value of the one-third reduction (VTR) in their benefits because they are residing in the household of another.
- Paying rent or shelter costs is not a bad thing in and of itself, but if the goal is to maximize benefits, paying rent and expenses or incurring a reduction for ISM is a step in the wrong direction.

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Trust Management

If a trust is paying for the construction of an ADU for the use of the trust beneficiary, the trustee may feel it is necessary, in its fiduciary duty, for the trust to obtain an interest in the ADU.

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Possible Solutions for the Ownership Issue

Equitable Ownership

An "equitable" ownership interest in property can result from personal considerations or from:

- making mortgage payments;
- making or paying for additions to a shelter; or
- making improvements to a shelter.

If an individual alleges an unwritten equitable ownership interest, SSA will gather all the necessary information and forward it to the Regional Chief Counsel for an opinion based on State law.

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Possible Solutions for the Ownership Issue

Condominium or Separate Ownership Structures

- In most jurisdictions, there's a preferred way to create separate ownership of homes: the subdivision process. But what if there's a desire to separate ownership and subdivision isn't an option?
- Some states and local governments allow legal mechanisms, such as condominiumization or lot splits, that can create separate ownership interests for an ADU. However, such situations are currently rare and availability varies significantly by jurisdiction. Local zoning and property laws determine whether separate ownership is allowed.

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Condominiumization

This situation arises most often when:

- (1) properties are on top of one another as in multi-story buildings, or
- (2) land use regulations make it difficult or impossible to subdivide property horizontally (i.e., minimum lot sizes can't be met; subdivision regulations that preclude a desired site layout; there's no way to provide every lot required street frontage).

Conveniently, all 50 states and the District of Columbia have adopted condominium statutes that allow property to be converted to condominium ownership and back again. Legally, condominiums are 'creatures of the state,' meaning that their existence depends on state laws that lay out the rules for their creation, maintenance, and dissolution.

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Possible Solutions for the Ownership Issue

Partial Life Estate

- One possible avenue that could be explored is the use of a partial life estate. I say "partial" life estate since both the primary house and the ADU are part of the same deed and property, and a regular life estate would give the tenant use of and rights to the entire property. A partial life estate can legally apply to a specific portion or acreage of a larger piece of real estate (such as an ADU) rather than the entire property.
- When you create a partial life estate, you split the legal ownership and use rights for just a designated section of land or a specific structure (such as a house while leaving surrounding acreage out, or vice versa). It can apply to a specific floor, a guest house, or a defined acreage of a larger farm.

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How a Partial Life Estate Works

- The deed or trust must explicitly describe the specific portion assigned to the life tenant. It requires an accurate, legally sound survey and distinct legal description of the specific portion attached to the deed.
- **The Life Tenant:** Obtains the exclusive right to use, occupy, or collect income from that specific part of the property for the rest of their life.
- **The Remainderman:** Holds the future interest to inherit that exact portion of the property automatically when the life tenant passes away, and, if the remainderman is not the original grantor, bypassing probate.
- Duties like taxes and maintenance are typically prorated or assigned based on the terms of the agreement.

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Key Advantages

- **Targeted Inheritance:** Directs a specific house, building, or section of land to a chosen heir, unless it returns to the grantor.
- **Probate Avoidance:** Transfers the designated portion automatically to the remainderman upon death.
- **Continued Control:** Guarantees the life tenant a secure place to live or use during their lifetime without interference.

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Critical Risks & Limitations

- **Subdivision Restrictions:** Local zoning laws, county ordinances, or HOA rules may may legally restrict dividing a single residential structure or lot.
- **Shared Control:** Depending on whether it is with or without "powers," you may need the remainderman's signature to sell, mortgage, or alter the designated portion later.
- **Practical conflicts:** Sharing access to utilities, land, or common areas can create friction between the life tenant and the remainderman.
- **Maintenance & Taxes:** The life tenant remains legally responsible for taxes, insurance, and upkeep on the property, which can get complicated if only a sub-portion is metes-and-bounds defined.
- **Medicaid recovery implications:** Medicaid estate recovery depends on the rules of the State where the property is located. There may also be transfer implications for the original property owner.

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Tiny Houses

There is some variation in defining a tiny home, but there are examples and they are usually based on floorspace.

- The International Residential Code states that a tiny house's floorspace is no larger than 400 square feet (37 m²).
- Merriam-Webster says they can be up to 500 ft².
- One architectural firm used a threshold of 600 ft² to define a tiny home.

What further complicates the definition is that tiny homes may or may not be mobile and lack clearly defined features.

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Tiny Houses

One of the biggest obstacles faced by the tiny-house movement is the difficulty of finding a location in which such a house can be constructed.

- Zoning regulations typically specify minimum square footage for new constructions on a foundation, and
- For tiny houses on wheels, parking on one's own land may be prohibited by local regulations against camping.
- Prohibitions may also extend to mobile homes, RVs, or temporary structures. Many localities do not allow these forms as legal dwellings, primarily due to concerns over stability, sanitation, and permanence.

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Tiny Houses on Wheels

- RV parks do not always allow tiny houses unless they meet the criteria required for Recreational Vehicles (RVs).
- Tiny houses on wheels are considered RVs and are not suitable for permanent residence, according to the Recreational Vehicle Industry Association (RVIA).
- From *RV Business*, "The RVIA will continue to shy away from allowing members who produce products that are referred to as 'tiny houses' or 'tiny homes.'"

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SSI Policy on Tiny Houses

- In general, SSA should consider any tiny house built on a foundation with utility hookups as real property, the same as it would consider an ADU or other full-sized house and the same policy considerations would apply.
- Considering a mobile tiny house (which would be considered as personal property), for purposes of the home exclusion, a home can be real or personal property, fixed or mobile, and located on land or water. For purposes of excluding "the land on which the shelter is located," it is not necessary that the individual own the shelter itself.
- EXAMPLE: If an individual lives on their own land in someone else's trailer, the land meets the definition of a home and is excluded. However, if the individual does not own the shelter, it is necessary to consider whether the shelter results in in-kind support and maintenance (ISM) (e.g., rent-free shelter).

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Use of Land

- The use of land alone is not a household cost. Thus, if an individual receives land or the use of land without charge, this does not result in outside ISM. Similarly, third party vendor payments of real property tax, rent or mortgage on land alone do not cause an individual to receive ISM in the form of shelter.
- A trailer space rental fee which is for space alone is not a household operating expense for purposes of determining ISM. However, if the fee is not for use of land alone, that part of the fee which is for water, sewer, etc., is part of the household costs for purposes of determining inside and outside ISM.

EXAMPLE: James Smith, an eligible individual, lives alone in a house trailer they own. The trailer is situated on the property of their sibling, Bill. James pays no rent for the use of the land. Bill provides water and electricity free of charge. The free use of the land results in no ISM to James. However, James is charged with outside ISM based on the CMV of the water and electricity.

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Questions?

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STETSON LAW

Housing Boot Camp: Laws, Benefits, and Creative Solutions

October 21, 2026

Promise and Pitfalls in Assisted Living



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Promise and Pitfalls in Assisted Living

Eric Carlson
Justice in Aging

Stetson Law

Housing Boot Camp:
Laws, Benefits and Creative Solutions

October 21, 2026

STATE ASSISTED LIVING LAWS FREQUENTLY GIVE EXCESSIVE FLEXIBILITY TO FACILITIES.¹

Many Variations from State to State, and Also Within States

Assisted living facilities offer residential care and services for older persons who are unable to live independently. Some residents require relatively limited assistance with dressing, bathing, or other activities of daily living. Other residents, however, require significantly more assistance, and many require health care services on an ongoing basis. For example, some residents are non-ambulatory or incontinent, and others require oxygen administration or treatment for pressure sores.

Assisted living facilities are licensed by individual states under laws developed by those states. Terminology varies from state to state; these types of facilities are variously denominated as (for example) assisted living facilities, assisted living residences, or personal care homes.

In some states, the specifics of assisted living depend significantly on the admission agreement between the facility and resident. Illinois, for example, follows a contract model that goes so far as to suggest that residents may contract to inadequate care, through the law's supportive attitude towards residents accepting risk:

Assisted living, which promotes resident choice, autonomy, and decision making, should be based on a contract model designed to result in a negotiated agreement between the resident or the resident's

¹ This discussion of state law is adapted from Best Practices in Assisted Living: Considering Potential Reforms for California, a Justice in Aging publication written by Eric Carlson.

representative and the provider, clearly identifying the services to be provided. ... This model supports the principle that there is an acceptable balance between consumer protection and resident willingness to accept risk and that most consumers are competent to make their own judgments about the services they are obtaining.²

This attitude towards risk is inappropriate, as a matter both of policy and law. Reliance on contract provides insufficient assurance that the facility will provide an appropriate level of care. Also, assumption of risk generally is limited to optional, risky activities such as downhill skiing and skydiving, and when applied to health care has been found by courts to violate public policy.³

Many states offer broad definitions of assisted living, encompassing as a practical matter many facilities that offer significantly different levels of care. California provides one example, defining its “residential care facilities for the elderly” as a:

housing arrangement chosen voluntarily ... where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility.⁴

This type of broad definition presents significant problems. Consumers will assume, wrongly, that status as assisted living facility guarantees more than it actually does.

² 210 Illinois Statutes 9/5.

³ Eric Carlson, Protecting Rights or Waiving Them? Why “Negotiated Risk” Should Be Removed from Assisted Living Law, 10 J. Health Care L. & Pol’y 287 (2007).

⁴ Cal. Health & Safety Code § 1569.2(o)(1).

Also, facilities may attempt to evict unwanted residents by declining to provide a service that the resident needs.

With a broad definition, quality of care regulations often are inadequate, since they are largely based on the lowest-common-denominator of facilities providing low levels of care. In a related matter, the law may be difficult to reform to address such problems; reform initiatives tend to be stymied by arguments from low-level-of-care facilities that they don't need or can't afford the proposed reform.

These problems can be ameliorated if the state offers multiple levels of care within the assisted living category. For example, New York licenses assisted living while giving providers the option of obtaining additional certification for "enhanced" assisted living, or assisted living with care of "special needs." Under "enhanced" assisted living, the facility's staff is authorized to provide additional care to meet the needs of residents who (for example) need assistance to walk, are incontinent, or depend upon medical equipment. "Special needs" facilities focus on care of residents with particular conditions; generally these are facilities specializing in dementia care.⁵

Mississippi licenses two types of facilities: "personal care homes - assisted living" and "personal care homes - residential living." The primary difference between the two is that certain health-related services (medication administration, for example) can be made available in personal care homes - assisted living.⁶

⁵ N.Y. Comp. Codes R. & Regs. tit. 10, §§ 1001.2, 1001.5.

⁶ Code Miss. R. 15 016 047 §§ 5.1 – 5.2, 15 016 048 § 2.2.

Assisted Living Should Incorporate Health Care Expertise.

Today's assisted living facilities house many residents who, in past years, would have resided in nursing facilities. As the years have gone by, state laws increasingly have allowed increased admission and retention of residents with significant health care needs. It's noteworthy that many assisted living facilities accept reimbursement through Medicaid Home and Community-Based Services waivers, and a condition of eligibility for those waivers is that the beneficiary require care at a nursing facility level of care.⁷

This increase in resident acuity has led to greater incorporation of health care in assisted living, most notably through nursing services requirements. Connecticut is one of the states that give nurses a significant role in assisted living. Connecticut licenses assisted living services agencies, rather than facilities; in part because of this different orientation, the state's rules have a greater focus on nurses and nursing services. Each assisted living services agency must have written policies regarding the delivery of nursing services. Nursing services include hands-on services, medication administration, disease prevention, wellness counseling, and health promotion. A registered nurse also is responsible for a variety of other important tasks including assessments, service coordination, training, and discharge planning.⁸

In Kansas, if a functional capacity screening has indicated a need for health care services, a nurse participates in developing a health care service plan. Then the nurse

⁷ 42 U.S.C. 1396n(c)(1).

⁸ Conn. Agencies Regs. § 19-13-D105(a)(2), (h)(1), (3).

provides any skilled nursing care that may be required, along wellness and health monitoring as specified in the resident's service agreement.⁹

In Arkansas, a Level II facility must employ or contract with licensed nurses to provide nursing care and direct care services, including medication administration. In addition, a Level II facility must employ or contract with at least one registered nurse. The registered nurse is responsible for the preparation, coordination and implementation of a resident's direct care services plan, and also reviews and oversees all direct-care staff. The registered nurse need not be physically present at the facility, but must be available by phone or pager.¹⁰

Despite the increase in resident acuity, provider representatives often object to proposed requirements for health care expertise (such as nurse staffing) by claiming that assisted living is based on a social model rather than a medical model, and that imposition of health care requirements would improperly tend to make assisted living facilities too much like nursing facilities. Such arguments should be rejected. As mentioned, assisted living residents increasingly have health care needs, and those needs should be met. The either/or framing of the social model versus the medical model is deceptive, because a facility should be able to offer both health care expertise and a good quality of life.

⁹ Kan. Stat. Ann. § 39-923(5); Kan. Admin. Regs. § 26-41-204(b), (g)-(h).

¹⁰ Code Ark. R. § 20-411-402, -403.

FEDERAL LAW SETS LIMITED STANDARDS FOR FACILITIES ACCEPTING MEDICAID HCBS REIMBURSEMENT.¹¹

State Medicaid programs generally can pay for assisted living care through Medicaid home and community-based services (HCBS). If a facility is certified to accept Medicaid HCBS payment, it must comply with relevant federal law, specifically the HCBS Settings Rule that was promulgated in 2014 and became effective in 2023.¹² The standards apply to all settings in which Medicaid HCBS recipients receive HCBS, including private homes, day centers, and residential facilities. Certain of the standards apply only to the residential facilities, which are described in the regulations as “provider-owned or controlled residential settings.”¹³ This term includes assisted living facilities, and also facilities for adults or children with disabilities, such as group homes.

To this point, the federal law has been poorly implemented and enforced, so violations of the federal law may be relatively common. Here are some common violations, along with explanations of the relevant law.

¹¹ This discussion of federal law is adapted from Rights and Wrongs in Medicaid-Funded Assisted Living, a Justice in Aging publication written by Eric Carlson.

¹² See 42 C.F.R. § 441.301(4), (5); 79 Fed. Reg. 2948 (2014). Section 441.301 applies to settings reimbursed through Medicaid HCBS Waivers. The same regulatory language is repeated in other sections of the CFR to cover settings reimbursed through the Community First Choice Option or the HCBS state plan benefit. See 42 C.F.R. §§ 441.530(a)(1) (Community First Choice Option), 441.710(a)(1) (HCBS state plan benefit).

¹³ See 42 C.F.R. § 441.301(4)(vi).

Violations Relating to Autonomy and Privacy

Freedom in Schedules and Activities

Wrong: A resident cannot do longtime exercises because the facility does not make appropriate space available.

Correct: Under federal regulations, a resident must “have the freedom and support to control their own schedules and activities.”¹⁴ Accordingly, the facility should arrange for an appropriate space to be made available for an adequate number of days per week, with sufficient time per session.

Privacy

Wrong: Residents share a bedroom with no barrier between them.

Correct: Federal regulations require that “[e]ach individual has privacy in their sleeping or living unit.”¹⁵ A shared bedroom, at a minimum, must have a curtain for visual privacy.

...

Wrong: Facility staff go in and out of a resident’s room whenever they please.

Correct: Entrance doors to the living unit must be lockable by the resident, with only appropriate staff having keys. Because residents have a right to privacy, staff should knock and ask permission to enter, even if the door is unlocked or they have a key.¹⁶

¹⁴ 42 C.F.R. § 441.301(4)(vi)(C).

¹⁵ 42 C.F.R. § 441.301(4)(vi)(B).

¹⁶ 42 C.F.R. § 441.301(4)(vi)(B)(1).

Choice of Roommates

Wrong: The facility tells a resident that a roommate is moving into the living unit tomorrow.

Correct: Federal regulations say: “Individuals sharing units have a choice of roommate in that setting.”¹⁷ Accordingly, the facility should consult with all affected residents in deciding who will be sharing with whom.

Decorating and Furnishing Living Unit

Wrong: The facility tells a resident that they cannot bring in furniture or hang anything on the walls.

Correct: A resident has the right under federal regulations to furnish and decorate their living unit.¹⁸

Access to Food

Wrong: The facility serves breakfast, lunch and dinner, but offers no snacks or other food.

Correct: Under federal regulations, a resident must “have access to food at any time.”¹⁹ Food should be available whenever a resident may want something to eat, night or day. Furthermore, for this right to be meaningful, food options should be reasonably

¹⁷ 42 C.F.R. § 441.301(4)(vi)(B)(2).

¹⁸ 42 C.F.R. § 441.301(4)(vi)(B)(3).

¹⁹ 42 C.F.R. § 441.301(4)(vi)(C).

appropriate and appealing. It would not be adequate, for example, for a facility to claim compliance by leaving out a few bags of snack crackers.

Access to the Community

Wrong: When a resident says they want to leave the facility (go shopping, attend church service, etc.), the facility's only assistance is to provide the resident with a city bus schedule. Or possibly the facility will provide transportation but only one morning a week, and only to one shopping center.

Correct: The facility must support residents' "full access" to the community, including the ability to engage in community life and receive services.²⁰ The level of needed support will vary with the resident, and could include transportation and hands-on assistance.

Right to Accept Visitors

Wrong: The facility sets visiting hours from 10 a.m. to 8 p.m.

Correct: Under federal regulations, a resident has a right "to have visitors of their choosing at any time."²¹ "Any time" must mean exactly that: 7 days a week, 24 hours a day. If a resident with a shared living unit chooses to accept a visitor when the roommate is sleeping, the resident and facility should arrange for an appropriate place for the visit, away from the sleeping roommate.

Physical Access and Freedom to Move

Wrong: The bathroom door is too narrow for a resident's wheelchair.

²⁰ 42 C.F.R. § 441.301(4)(i).

²¹ 42 C.F.R. § 441.301(4)(vi)(D).

Correct: Under the federal regulations, the facility must be “physically accessible” to the resident.²²

...

Wrong: Using a vest restraint, the facility prevents a resident from leaving their chair.

Correct: Facilities cannot use physical restraints: federal regulations guarantee “freedom from coercion and restraint.”²³

Evictions, & Unit-to-Unit Moves Within a Facility

Wrong: The facility tells a resident that they are being evicted and have no right to appeal.

Correct: The resident must have eviction protections and appeal rights comparable to a tenant’s rights under the state’s landlord/tenant law. Either the state’s landlord/tenant law includes assisted living or, if not, a written residency agreement with the facility must create comparable protections.²⁴

...

Wrong: A resident has been paying the private-pay rate for one year but, after spending down savings, now is eligible for the HCBS program. The facility refuses HCBS Medicaid from the resident and says that the resident has to pay the private-pay rate or

²² 42 C.F.R. § 441.301(4)(vi)(E).

²³ 42 C.F.R. § 441.301(4)(iii).

²⁴ 42 C.F.R. § 441.301(4)(vi)(A).

move out, claiming that the admission agreement obligates the resident to pay the private-pay rate for at least 18 months before converting to Medicaid.

Correct: Because the facility is Medicaid-certified, a federal regulation (not part of the Settings Rule) requires that the facility accept Medicaid as payment in full.²⁵ This follows the general rule that when a health care provider is certified for a patient's health care coverage (Blue Cross, for example), the provider must not charge the private-pay rate and must instead bill the insurance coverage.

...

Wrong: The facility tells a resident that they must move from one living unit to another.

Correct: Under the federal regulations, the living unit is a "specific physical place" rented under a "legally enforceable agreement."²⁶ The resident's situation is comparable to living in an apartment. Just as a landlord generally cannot force an apartment tenant to move from one apartment to another, an assisted living facility cannot force a resident to move to a different living unit.

Legal Protections Under Some Circumstances Can Be Reduced Through Individual Service Plans.

Under limited circumstances, some of the resident rights discussed above can be reduced through the resident's service plan, which is developed by the agency

²⁵ 42 C.F.R. 447.15.

²⁶ 42 C.F.R. § 441.301(4)(vi)(A).

operating the HCBS program. Specifically, only the following legal protections can be reduced:

- Rental of a “specific physical space” in the facility.
- Eviction protections comparable to protections available under landlord/tenant law.
- Lockable doors.
- Choice of roommate.
- Decorating and furnishing living unit.
- Freedom and support to control schedules and activities.
- Visitors at any time.

Importantly, reductions to legal protections are allowed only after the facility first has tried “less intrusive methods,” and only if the resident (or resident’s representative) agrees to the reduction. Any reduction must be proportionate to the relevant issue, so the resident loses legal protection only to the extent necessary.²⁷

Note some ambiguity in the potential reduction of a resident’s privacy rights. While the protection for “privacy in their sleeping or living unit” can be reduced, no reduction is authorized for a broader requirement that a facility ensure the resident’s “rights of privacy, dignity and respect.”²⁸

Remember that legal protections can be reduced under a service plan only if the resident (or resident’s representative) consents. If a resident does not want a legal

²⁷ 42 C.F.R. § 441.301(4)(vi)(F).

²⁸ 42 C.F.R. § 441.301(4)(iii), (vi)(B).

protection reduced, they should give the facility clear written notice that they do not consent to any reduction.

When a Facility Violates the Federal Law

Ideally, the state assisted living licensing agency will have authority to enforce the relevant federal laws. In many cases, however, authority to enforce the federal regulations will rest with the state Medicaid agency, which may not yet have a good enforcement mechanism. The majority of these federal regulations did not become effective until March 2023. State Medicaid agencies are required to establish grievance systems for their HCBS programs by July 2026, but the Centers for Medicare & Medicaid Services has told states that they won't enforce this requirement until (at the earliest) January 2028.²⁹

Because of the relatively recent effective date, many state enforcement systems are extremely limited at this time. Systemic advocacy is sorely needed. Residents, resident representatives, and resident advocates should advocate with state officials to create effective systems for accepting consumer complaints and enforcing federal regulations against noncompliant facilities.

²⁹ 42 C.F.R. § 441.301(c)(7); 89 Fed. Reg. 40,542, 40,550 (2024); CMS, CMCS Informational Bulletin, Exercise of Enforcement Discretion for Requirements for a Medicaid Fee-For-Service (FFS) Grievance System for Home and Community-Based Services (HCBS) Until December 2027 (Feb. 26, 2026).

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Promise and Pitfalls in Assisted Living

Eric Carlson

October 21, 2026

1

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ+ individuals, and people with limited English proficiency.

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Flexibility, for Better or Worse

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Little Uniformity in Assisted Living

- Almost entirely creature of state law.
- Significant differences from
 - State to state, and
 - Facility to facility.
- Differences in
 - Service package.
 - Type of conditions that can be accommodated.
 - Presence of health care expertise.
 - Staff and staff training.
 - Ability to administer medication.

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Regulatory "Flexibility" Often Is Not in Consumers' Best Interests

- Providers often tout flexibility of assisted living model.
- Supposedly provider and resident negotiate care arrangements.

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Illinois Law Claims Reliance on Contract Model

- E.g., 210 Illinois Statutes 9/5:
 - "Assisted living ... should be based on a contract model designed to result in a negotiated agreement This model supports the principle that there is an acceptable balance between consumer protection and resident willingness to accept risk and that most consumers are competent to make their own judgments about the services they are obtaining."

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Negotiation Model Is Unrealistic and Improper

- Residents don't have enough bargaining power.
- Many aspects of facility care (e.g., staff composition) can't realistically be changed for individual residents.
- Public policy generally doesn't allow consumers to assume risk of inadequate care.
 - See Eric Carlson, Protecting Rights Or Waiving Them? Why "Negotiated Risk" Should Be Removed From Assisted Living Law, 10 J. Health Care L. & Pol'y 287 (2007).

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Broad Definitions of Assisted Living

- Definition may include facilities very different from each other.
 - E.g., "[H]ousing arrangement chosen voluntarily ... where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility."
 - Cal. Health & Safety Code § 1569.2(o)(1).

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Drawbacks to Broad Definition (1 of 2)

- Consumers will assume, wrongly, that status as assisted living facility guarantees more than it actually does.
- Facilities may attempt to evict unwanted residents by declining to provide service that resident needs.

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Drawbacks to Broad Definition (2 of 2)

- Quality of care regulations often are inadequate, since they are based on the lowest-common-denominator of facilities providing low levels of care.
- Reform initiatives tend to be stymied by arguments from low-level-of-care facilities that they don't need or can't afford proposed reform.

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Some States Require Disclosure to Support Consumers

- Texas, Washington, & others have state-developed forms.
 - 26 Tex. Admin. Code § 553.259(a)(3); Wash. Rev. Code § 18.20.300(2).
- More commonly, format of disclosure is within facility's discretion.

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Evaluating Disclosure As a Public Policy Strategy

- Disclosure doesn't change fact that facilities may be very different from each other.
- Many consumers won't/cannot look carefully at disclosure statements.
- Reliance on disclosure limits state's ability to support quality of care through licensing standards and enforcement actions.

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Some States Have Levels of Assisted Living

- E.g., Arkansas licenses assisted living at Level I and Level II.
- Level II facilities are allowed to house residents who need nursing facility level of care.
- Level II facilities must
 - Employ or contract with registered nurse, who does not have to be on-site.
 - Employ licensed practical nurses and certified nurse aides.
 - 20 Ark. Admin. Code 410 (Level I); 411 (Level II).

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Levels Better Allow for Health Care Expertise

- State law can require nurses (for example) for the higher level without worrying that nurses are unnecessary and/or too expensive for the lower level.

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Arguments Re: Social Model of Care

- Arguments against regulation often claim that particular requirement would be inconsistent with assisted living's "social model of care."
- But assisted living should be able to deliver BOTH adequate health care and humane quality of life.
- Today's assisted living facilities house many residents with significant health conditions; it's vital that these facilities have adequate health care expertise.

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Transfer/Discharge Rules Similarly Are Too Vague

- Transfer/discharge rules often have similar problems:
 - Too vague about necessary level of care, giving facility broad discretion to evict for supposedly being unable to meet resident's needs.
 - Allowing justifications for eviction to be created by facility's contract.
- Also, not providing for meaningful appeal opportunity.

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Transfer/Discharge Example (1 of 2)

- Eviction allowed if resident has "pattern ... of not abiding by agreements necessary for assisted living."
- Appeal option is "informal conference" with facility "to determine if a satisfactory resolution can be reached."
 - Haw. Admin. R. § 11-90-10(b).

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Transfer/Discharge Example (2 of 2)

- Eviction allowed if
 - "Failure of the resident to comply with general policies of the facility."
 - 22 Cal. Code Regs. § 87724(a)(3).
 - "Care is required that is inconsistent with the [facility's] program statement and beyond that which the facility is required to provide under the terms of the admission agreement and this chapter."
 - Wis. Adm. Code DHS § 83.31(4)(b)(3).

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Thinking About Intergenerational Models

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What Do People Want?

- Attractiveness of
 - Active residents involved with activities and community.
 - Interacting with children.
- E.g., Glencroft Generations in Phoenix, AZ
 - CCRC sharing space with
 - Preschool and
 - Residence for young adults aged out of foster care.

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Considering Integration with Community

- Federal Setting Rule prioritizes access to broader community (as we'll discuss).
- On other hand
 - Adults often seek communities with other older persons.
 - Fair Housing Act has exception for older persons, allowing discrimination against families with children.
 - 42 U.S.C. § 3607(b).

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Assisted Living and Medicaid

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No "Assisted Living" Benefit in Medicaid

- Medicaid has certain mandatory services:
 - E.g., Hospital services
 - Doctor services
 - Nursing facility care, etc.
- Also optional services:
 - E.g., Dental care
 - Home and community-based services, etc.
- "Assisted living" is not listed as either mandatory or optional

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So How Does Medicaid Cover Assisted Living?

- Generally classified as home and community-based services (HCBS), via programs that mostly are used to provide services at participant's home.
 - HCBS Waiver (aka Section 1915(c) waiver)
 - Medicaid Demonstration Waiver (Section 1115 waiver)
 - Community First Choice Option (Section 1915(k))

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Also Might Be State Plan Service

- Personal care services.
 - Since these are an optional service, rather than a waiver service, they must be made available without enrollment caps or waitlists.

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HCBS-Funded Residential Facilities

- HCBS regulations refer to these facilities as “provider-owned or controlled residential settings.”
- Includes but not limited to assisted living.
 - E.g., can include group homes and other facilities for persons with disabilities.

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HCBS Settings Rule

- Establishes minimum standards to ensure that Medicaid HCBS consumers live and receive services in settings that are truly non-institutional.
 - 42 C.F.R. § 441.301(c)(4)-(5).
- Became effective March 2023.

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"Assisted Living" Rights?

- Regulation sets standards for "provider-owned or controlled residential setting" aka residential facility, that accepts Medicaid HCBS reimbursement.
 - E.g., Eviction protections at least as good as landlord/tenant law.
 - Privacy, including lockable doors to living unit.
 - Choice of roommates.
 - Right to accept visitors.

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Rights and Wrongs

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Access to Community

- Wrong: When resident says she wants to go to public concert, facility does nothing more than providing city bus schedule.
- Law: Facility must support "full access" to the community, including engaging in community life.
- Depending on circumstances, facility may need to provide transportation and assistance.

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Schedules and Activities

- Wrong: No space for resident to do exercises.
- Law: Resident must "have the freedom and support to control their own schedules and activities."

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Staff Access to Room

- Wrong: Staff goes in and out of resident's room whenever they please.
- Law: Entrance doors to living room must be lockable, with only appropriate staff having keys.
- Even with keys, staff should knock before entering.

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Food

- Wrong: Facility serves breakfast, lunch and dinner, but no other food is available.
- Law: Resident must "have access to food at any time."

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Roommates

- Wrong: Facility tells resident that roommate is moving in tomorrow.
- Law: "Individuals sharing units have a choice of roommate in that setting."
- Facility should consult with all affected residents in deciding who will be sharing with whom.

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Visitors

- Wrong: Facility sets visiting hours from 10 a.m. to 8 p.m.
- Law: Resident has right "to have visitors of their choosing at any time."

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Decorating and Furnishing Living Unit

- Wrong: Facility prohibits resident from hanging anything on walls.
- Law: Resident has right to furnish and decorate living unit.

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Restraints

- Wrong: Facility routinely restrains residents for convenience. State law allows restraints as long as they are called for in the service plan.
- Law: The setting must ensure “freedom from coercion and restraint.”

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Transfer Within Facility

- Wrong: Facility tells resident they must move from one living unit to another.
- Law: Living unit is “specific physical place” rented under a “legally enforceable agreement.”
- Resident has right to remain in original unit.

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Eviction Protections

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Eviction

- Wrong: Facility tells resident that they must move out due to excessive care needs, and they have no right to appeal facility's decision.
- Law: Resident must be protected by state's landlord/tenant law, or have comparable rights provided by admission agreement.

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The Eviction Law (1 of 2)

- Resident at a minimum has "the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity."

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The Eviction Law (2 of 2)

- "For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law."

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Ways for State to Explicitly Comply

- Via landlord-tenant law.
 - Specifying that landlord-tenant law applies, or
 - Supplementing landlord-tenant law with good-cause requirements appropriate for residential facilities.
- Requiring written agreements that establish protections equivalent to landlord-tenant law.
 - Developing compliant template agreement, or
 - Requiring that facilities develop and use compliant agreements.

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One Other Common Approach: Providing Administrative Appeals

- Creating administrative appeal system that establishes “comparable” protections.
 - Maybe not technically in compliance with federal regulation – because landlord-tenant law doesn’t apply, and there’s no separate written agreement – but may be seen as good outcome regardless.

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First Rule of Defending Evictions in Assisted Living

- Don’t Move Out!
- Yes, this is obvious ... but, due to the power dynamic within facilities, residents can be very hesitant to contest an eviction.

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Utilize Available Appeal Processes

- Either:
 - Unlawful detainer processes under landlord-tenant law;
 - Landlord-tenant look-alike processes as set forth in residency agreements; or
 - Administrative appeal procedures.

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Multiple States Do Not Provide Required Eviction Protections

- Nevada's landlord/tenant law does not apply to "[r]esidence in an institution, public or private, incident to detention or the provision of medical, geriatric, educational, counseling, religious or similar service."
 - Nev. Stat. § 118A.180.

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Nevada Transition Plan Fails to Address Non-Compliance

- "Action Steps" are:
 - Update manuals to add exact eviction-related language from Settings Rule.
 - "[Medicaid agency] will meet with [Behavioral Health] to propose remediation of language to ensure compliance with the lease agreement requirement. If [BH] does not support the proposal, [Medicaid] plans to update the policy to include the required language and will require HCBS providers to adhere to this requirement."

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Hawaii Also Non-Compliant

- Informal conference if requested in writing within 10 days of receipt of discharge notice.
- Purpose is to determine if "satisfactory resolution" can be reached.
- "Participants in the conference may include the facility representative, the resident, and others as designated by the resident, a family member, or all of these individuals."
 - Hawaii Admin. Rules 11-90-10(b)(3).

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Hawaii Transition Plan Fails to Address Non-Compliance

- An inconsequential promise:
 - "The State will amend the provider contract to add language that ensures legally enforceable agreement by the individual receiving services."
- Also, claiming compliance while ignoring eviction issue:
 - State regulations requires "a service contract which documents a completed agreement between the resident and the facility, describing services to be provided, rates charged, and conditions under which additional services or fees may be charged."

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Washington Non-Compliant; LTC Ombudsman Files Lawsuit

- Issue is whether WA law provides "comparable" protections. Missing rights include:
 - No nonpayment eviction for debt for something other than rent.
 - Right to reinstate tenancy by court-ordered payment plan.
 - No attorney's fees award to facility if eviction for less than two months of rent.

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Additional Missing Rights

- Right to be evicted only for one of sixteen reasons listed in landlord-tenant law.
- No waivers of eviction rights.
- Right to have property stored after eviction.
- Rent control protections.

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Addressing State Noncompliance with Eviction Protections

- CMS was beginning to be useful in addressing noncompliance, but that changed beginning in January 2025.
- Litigation against state probably the best strategy at this point.

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Three Guides from Justice in Aging

- Rights and Wrongs in Medicaid-Funded Assisted Living
- Defending Evictions from Medicaid-Funded Assisted Living Facilities
- An Illusion of Protection: Meaningless Federal "Quality Measures" Endanger Assisted Living Residents

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Questions?

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October 21, 2026

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SSI and Medicaid and Housing Issues

David Lillesand and Steven Hitchcock

Introduction

The thrust of this presentation is much broader and more complete than just when a Special Needs Trust may purchase a residence for a trust beneficiary. Sometimes an unplanned inheritance includes real property that is thrust upon a disabled person, including real property that is not a residence or a home that will never become the disabled person's excludable principal residence. Sometimes receiving a dilapidated residence is more a headache than a benefit to the disabled person or the trustee of the person's SNT seeking to help the beneficiary keep eligibility.

Understanding national SSI rules is important because it is the floor for most Medicaid eligibility determinations. The Medicaid Act prohibits state Medicaid agencies from employing a methodology for determining income and resource eligibility that is more restrictive than the methodology which would be employed under the SSI program, as administered by the United States Social Security Administration (the "SSA"). See 42 U.S.C. §§ 1396a(a)(10)(C)(i), 1396a(r)(2). But even in 209b states, some SSI rules trump the state's position on many issues as the State of Connecticut found out in the Second Circuit Court of Appeals in *Simonsen v. Bremby*, No 15-cv-1399 (VAB), 2015 U.S. Dist. D. Conn. (Dec. 25, 2015), *aff'd* 679 Fed. Appx 57 (2d Cir. 2017).

Before we talk about housing, including real estate in any form (single family home, condo, raw land, etc.) and places of abode (sailboats, campers, mobile homes, etc.), we must understand the concept of when SSA and Medicaid may regard the real estate or home as a countable resource and when they may not. Several issues related to real estate require that we understand the important difference between an asset and a resource.

The discussion includes several issues, including when an unplanned inheritance names the SSI beneficiary of a home and when it counts and doesn't; the rules excluding replacement funds after the home is destroyed by natural disaster – e.g., fire, hurricane, flood; how to dispose of excess houses or real property while retaining SSI and Medicaid pending the sale by using SSA's conditional sales agreement; as well the pros and cons of holding title in the name of the disabled individual versus title retained in the special needs trust.

Initial considerations -Assets vs. Resources

In the Social Security Administration's (SSA) Program Operations Manual System (POMS)—specifically under **SI 01110.100, SI 01110.115, SI 01120.010 and SI 01120.020**—the distinction between an “**asset**” and a “**resource**” is a foundational concept for Supplemental Security Income (SSI) and Medicaid eligibility. While the terms are often used interchangeably in general finance, the POMS establishes a strict "a rectangle is a square, but a square isn't a rectangle" relationship: **all resources are assets, but not all assets are resources.**

Key Definitions

Concept	Definition in POMS	Core Principle
Asset	Any real or personal property that an individual has an ownership interest in.	Broad category: Includes everything you legally own, regardless of whether you can access, spend, or sell it.
Resource	Cash, or any other real/personal property, that an individual owns AND can convert to cash to use for their support and maintenance .	Subset of assets: Property that meets specific legal and operational criteria allowing it to be used for basic needs (food and shelter).

The Three-Part Criteria for an Asset to be a Countable Resource

For an **asset** to qualify as a **resource** for SSI and Medicaid purposes, it must meet **all three** of the following conditions (POMS SI 01110.100B.1):

1. **Ownership:** The individual (or their spouse) holds legal ownership or interest in the property.
2. **Liquidation Power:** The individual has the legal right, authority, or power to convert the property into cash (if it is not already cash).
3. **Usage Capability:** The individual is not legally restricted from using the property (or its liquidated proceeds) for their own support and maintenance (food or shelter).

If an item fails **any single one** of these criteria, it remains an asset but is **not** classified as a resource. That can make the difference between SSI and Medicaid eligibility or not. However, as you'll see, actions by third parties can make a non-countable resource into a countable resource, and actions by a claimant can cause a countable resource to be temporarily not countable with potential to last decades or longer.

SSA Policy and Specific Examples of Assets That Are NOT Resources

Knowing SSA policy and understanding their examples expands your opportunities to help claimants achieve eligibility. In POMS SI 01120.010 SSA further expands their description of SSA “policy” with regard to the resource criteria:

- **Ownership Interest** – The claimant has to have some form of ownership interest. The fact that an individual has access to property or has a legal right to use it does not make it a resource if there is no ownership interest.
- **Legal Right to Access (Spend or Convert property)** – The claimant must have a legal right to access property; if the owner lacks the legal ability to access funds for spending or convert noncash property into cash it is not a countable resource.
- **Legal Ability to Use for Personal support and Maintenance** – Even if the claimant has an ownership interest and legal ability to access property, a legal restriction against the property's use for the owner's own support and maintenance (food and shelter, or ISM) means the property is not their resource.
- **Access via an Agent** – does not mean unrestricted use of property even though the can take action only through an agent such as a representative payee or a legal guardian or other person.
- **Access Only Via Litigation** – However, when litigation is required to sell property (e.g., a co-owner blocks sale) SSA does not require litigation to accomplish the sale, but that is not true for funds in a guardianship or conservatorship account, even if the guardian has to petition the court for access and the ability to withdraw funds for ISM expenses.

SSA examples. SSA then gives some very enlightening and surprising examples that most of us don't know or don't use when applying the policy expressed in the POMS above:

1. Lack of ownership:

Situation - In response to unstated income development, John Hart, an SSI recipient, explains that their sibling, Ted, who lives in an adjacent State, allows John access to Ted's bank account in emergencies. John Hart says John withdrew funds to pay an overdue utility bill to avoid shutoff.

The CR confirms that the account is titled "Ted Hart by Ted Hart or John Hart." John Hart states that John uses the funds solely for John's own benefit and not as an agent for their sibling.

Analysis - Even though John Hart has unrestricted access to the account and can use the funds at John's own discretion, the funds are not John's resources because John has no ownership interest in them. The title of the account clearly designates Ted Hart as sole owner. However, whatever funds John withdraws from Ted's account are John's income in the month of withdrawal.

2. Court Order Restricts Access:

Situation - At the time of their divorce in 1989, Thomas, an SSI recipient, was sole owner of the house in which their ex-spouse and their two young children are living. Under the terms of the divorce decree, Thomas must pay the taxes on the property and maintain it as a home for their ex-spouse and the children until the younger child reaches age 18 in 1997. The decree also specifies that they are free to sell the property only after the younger child's eighteenth birthday.

Analysis - Although Thomas clearly owns the property, they are legally barred from converting it to cash to be used for their own support and maintenance until 1997. Therefore, it is not their resource until the month following the month of their younger child's eighteenth birthday.

3. Binding Agreement Restricts Access:

Situation - As a gift from their parents, Tom Brown, an SSI recipient, and their ineligible sibling received some shares of stock valued at \$3,000. The stock certificates show that the siblings are joint tenants (SI 01110.510 C.2.), but the siblings have a legally binding agreement that one will not sell without consent of the other. The CR confirms that Tom's sibling will not consent to sell.

Analysis - Normally, the gift would be valued under the income rules in the month of receipt and the resources rules thereafter. However, since Tom's sibling will not consent to sale of the stock, Tom's share of the stock is not income in the month of receipt nor resources thereafter since it cannot be used for Tom's support and maintenance. If Tom's sibling consents to sell, Tom's share would be a countable resource beginning with the month following the month that consent was given.

4. Lack of Possession Restricts Ability to Use - Savings Bonds:

Situation - During a posteligibility review, the CR learns that George Jones, an adult SSI recipient, is co-owner along with their parent of U.S. Savings Bonds with a face value of \$3,500. The CR learns that George's parent bought the bonds over a period of years with

their own money and designated George as co-owner. The bonds are in the parent's safe deposit box to which they will not give George access under any circumstances.

Analysis - The CR questions George's parent and confirms that they will not give George the bonds under any circumstances. George's parent states that, under the terms of their will, George can take possession of the bonds only after they (the parent) dies. Generally, lack of physical possession of an otherwise liquid resource does not affect its status as a resource. However, physical possession of savings bonds is a legal requirement for cashing them. Although George is a legal owner, they cannot legally redeem the bonds for their own use. Therefore, they are not their resources.

5. Insurance Settlement Restricts Use

Situation - Bob Warfield, an SSI recipient, was injured in an automobile accident. A court awarded them damages of \$10,000 to be used solely for medical expenses related to the accident.

Analysis - Although Warfield owns the funds and has direct access to them, they are not legally free to use them for their own support and maintenance. Therefore, the award funds are neither income nor resources.

6. State Law Restricts Use

Situation - Barbara Bradley, resident of a State institution, receives SSI payments of \$30 per month through their representative payee. Bradley has \$8,460 in a bank account which includes conserved SSA funds. The account title shows Bradley as owner with access to the funds through their representative payee. However, Bradley's payee is also an officer of the institution where Bradley lives and State law prohibits use of the funds for support and maintenance provided by a State institution under these circumstances unless the agent (payee) is also the individual's legal guardian.

Analysis - Since Bradley cannot use the funds for their own support and maintenance, either directly or through their representative payee, the funds are not their resources. The accumulated funds would become their resources and would be included in determining their resource eligibility beginning with the month following that in which:

Bradley's payee also becomes their legal guardian; Bradley becomes their own payee or acquires a payee who is not an officer of the institution; or •Bradley moves out of the institution into the community.

The accumulated funds would **not** be counted as income in the month Bradley first becomes able to use the funds for their own support and maintenance, since Bradley does not "receive" new funds. Instead, they obtain the right to use an asset for their support and maintenance, making that asset a resource for SSI purposes.

7. No Access Without Litigation

Situation - Andrea Matthews, a disabled SSI recipient, has been separated from their ineligible spouse for 5 years. Matthews and their spouse own a summer cottage in another State as tenants-by-the-entirety. Their spouse lives in the cottage and refuses to sell.

Analysis - If Matthews were to take action to dissolve the marriage, they would, as a tenant-in-common, have the right to market their interest in the property without their ex-spouse's consent. However, since we do not require litigation to obtain access, the property is not a resource unless their spouse changes their mind about the sale. Therefore, the cottage is not Matthews' resource.

Even if Matthews could market their ownership interest in the cottage, the cottage would be excluded from countable resources if its sale would cause undue hardship for their spouse due to loss of housing ([SI 01130.130](#)).

8. Funds Held In A “Conservatorship” Account (See [SI 01140.215](#)).

Situation - Art Tyler, a disabled SSI recipient, has \$5,000 in a savings account. Tyler's legal guardian informs the CR that the guardian must petition the court whenever they wish to withdraw funds for Tyler's care. The guardian adds that the court has never denied them permission to withdraw funds on Tyler's behalf.

Analysis - The CR refers to regional instructions on “conservatorship” accounts. The instructions confirm that State law requires that funds in such accounts be made available for the care and maintenance of the incapable owner, that the guardian must act in a way consistent with State law, and that the court is exercising its oversight responsibility appropriately.

The CR properly concludes that the funds are accessible by petition (as opposed to litigation) and so are Tyler's resources.

Some of the examples above deal very specifically with real property and others could be applied to ownership of real property. For example, examples 2 (divorce and court order applying exclusive use and possession of marital home) and 7 (long separated couple co-owns cottage that spouse refuses to sell) but there are situations where many of the examples could apply to real property.

Unprobated Estates that may contain real property – when do they become countable resources

General SSI Rule: An inheritance from a deceased relative where the estate remains in probate—and the beneficiary does not yet have legal title, possession, or the right to sell or transfer their share—is an asset, but it **does not become a resource** until the probate process completes and ownership rights legally vest.

The General Statement focuses on *formal legal title* and *final administration* of probate, treating the asset as “frozen” (and thus non-countable) while probate is open. However, the Regional Chief Counsel in many regions of the country has analyzed whether state law grants the heir an **alienable or assignable interest** (even an equitable or undivided share) at death that the heir could legally sell or transfer before probate closes. If state law

permits the heir to assign or sell that underlying interest, **the interest becomes a countable resource the month following receipt of income**, despite ongoing probate proceedings.

However, the general rule may be over-ruled by a RCC opinion in your state. The opinions are found in the POMS at **PS - Title XVI Legal Opinion Precedents**. Instead, RCC precedents hold that in many states, an heir acquires an immediate equitable or legal ownership interest in inherited property at the exact moment of the decedent's death—even while the estate is still in probate.

RCC opinions generally agree that an unprobated estate may **NOT** a resource under exceptions:

1. **Active Will Contests or Litigation:** Where a will is actively contested in probate court, clear title cannot pass, rendering the value indeterminate and unliquidatable (PS 01805.008).
2. **Co-Owner Consent Barriers:** In states where inherited property passes to multiple co-heirs as tenants-in-common, and state law requires the consent of all co-heirs to partition or sell the property, if another heir refuses to consent, the asset is not a resource until probate finishes (POMS SI 01120.215B.3 / PS 01805.043).
3. **Estate Debts Exceeding Assets (Abatement):** If the estate's liabilities exceed its assets, the heir's interest has zero net equity value (PS 01805.008).

If those situations don't apply, some Regional Chief Counsels have issued precedents (legal opinions) based on individual states' local statutes, that vest real property at the moment of death of the decedent even though the SSI claimant does not receive legal title to sell the property.

For example, in the RCC precedents for Region VII, the Kansas City Region, the Regional Chief Counsel for Missouri, Iowa, Kansas, and Nebraska found that under state laws across the Kansas City region, equitable title or ownership rights in real and personal property **vest immediately upon the death of the decedent**, rather than upon the completion of probate. POMS PS 01810.028 (Missouri) and POMS PS 01810.018 (Iowa).

The RCC noted that in Missouri (citing *Trenton Motor Co. v. Watkins*) and Iowa (citing *DeLong v. Scott*), an heir has the legal right to assign, sell, or mortgage their underlying interest in the estate immediately upon death without waiting for probate to finalize. Therefore, the property **is evaluated as a countable resource** the month following death/receipt, unless the will is actively contested or co-owners withhold legally required consent to sell.

In Region I the RCC concluded that for Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, and Vermont(POMS PS 01805.008 - Region I Synopsis that a beneficiary possesses an alienable property interest (at minimum, an assignable beneficial interest in the estate) as of the decedent's date of death, and that even though full legal title is not complete until the fiduciary's final account is allowed by the probate court, the beneficiary's right to share in the estate vests at death and can be assigned or sold under state equity rules. Thus, the interest is not categorically excluded during probate; its valuation may be adjusted for debts or co-ownership, but it remains a potential resource unless blocked by an active will contest.

In Region IV (Atlanta) and specifically for Florida, the SSA Regional Chief Counsel issued precedents that do NOT follow general SSI law on unprobated estates, including inheriting real property.

While general SSI guidelines suggest that inherited property in an unprobated estate is not a resource until probate finishes, Florida property and probate statutes dictate that title vests in the beneficiary immediately upon the decedent's death, making the inherited asset a countable resource prior to the completion of probate per Florida statutes, Fla. Stat. § 732.514 & § 732.101. Upon the death of a decedent, title to devises (real property willed) and intestate shares vests immediately in the heirs or devisees. Even though a personal representative is appointed to administer the estate and pay debts, the heir holds an immediate vested legal and equitable interest in the property from the exact moment of death. Under Florida equity rules, an heir or beneficiary has the immediate power to assign, mortgage, or convey their vested underlying interest in an unprobated estate to a third party.

Because an heir in Florida has an immediate assignable property interest upon the decedent's death, the Atlanta Regional Chief Counsel and Florida Regional POMS precedents apply the following rules:

- **Resource Countability:** An inheritance or unprobated estate interest in Florida becomes a countable resource starting the first day of the month following receipt/vesting (unless specifically excluded under another rule).
- **Probate Delays Do Not Toll Resource Status:** The fact that the estate is open in a Florida Circuit Court (Probate Division), or that letters of administration have not yet been granted, does **not** stop the Social Security Administration from counting the heir's share as an available asset.

There are two exceptions under Florida Law one of which is somewhat unique to Florida. The first is Homestead Property as defined in the Florida Constitution, Fla. Const. Art. X, § 4 / Fla. Stat. § 732.401. If the inherited real estate was the decedent's protected

Florida homestead and the SSI beneficiary moves into it or uses it as their primary residence, it becomes completely excluded as a primary residence under POMS SI 01130.100, regardless of probate status. Secondly, if a co-heir refuses to consent per POMS SI 01120.215B.3 to its sale, assignment, or mortgage and multiple heirs inherit real property as tenants-in-common, and the SSI beneficiary cannot sell or partition their individual share without the joint consent of the other co-heirs, if any co-heir refuses in writing to consent to the sale, the property is barred from liquidation and is not counted as a resource during probate.

Conditional Benefits & Reasonable Efforts to Sell (POMS SI 01130.140)

So, if all else fails and the real property the claimant acquires or has at the time of filing an application for SSI and SSI-related Medicaid is countable and puts the beneficiary over the \$2,000 resource limit, what can be done? The beneficiary can request **Conditional Benefits from SSA** while attempting to sell the property.

The beneficiary agrees in writing to make continuous, reasonable efforts to sell the real estate at market value. A listing agreement with a reputable real estate sales agent is sufficient.

- SSI cash payments continue for up to 9 months (with potential extensions without limits) while the property is listed for sale. Often, it is not the issue of just continuing to receive the SSI cash benefit, but more importantly, it is continuing SSI to trigger SSI-related Medicaid health insurance. And some properties will just never find a buyer.
- Once the property sells, the real estate closing document describes the gross proceeds and the net cash received. The net is used to reimburse the SSA for conditional payments made during the disposition period.

At that point, regular opportunities to spend down, transfer the excess cash to a Special Needs Trust, or other techniques like prepaying ISM for a term of years or for a lifetime, become available and useful for maintaining SSI and Medicaid.

Every house is not an excluded Home – the Home Exclusion

Under Social Security Administration (SSA) rules for Supplemental Security Income (SSI), a person's primary residence, their home, is usually excluded from counting as a resource. However, real property can lose its "home" status — meaning it becomes a countable resource that can cause an individual to exceed the SSI resource limit—when it fails to meet specific regulatory criteria.

The Supplemental Security Income Policy Operating Manual System (POMS) outlines the precise rules where a property stops being considered a home resource.

1. Loss of Intent to Return

POMS Citation: SI 01130.100 (*The Home Exclusions*)

Rule: A home is excluded from resources only if the SSI recipient resides in it, or if they do not reside in it, they maintain an **intent to return** to the home.

Why it makes a house not a home: If an individual leaves the home (e.g., enters a nursing facility, moves into an adult family care home, or moves in with a relative) and no longer intends to return to the property, the property immediately loses its home status and becomes a countable resource as non-home real property on the first day of the following month.

2. Absence Without Intent to Return or Lacking One of the Protection Exceptions

POMS Citation: SI 01130.100 B.1 & SI 01130.100 B.5

Rule: If the owner lives elsewhere, the property retains its "home" status **only** if one of the following conditions is met:

- The owner states in writing that they intend to return.
- A spouse or dependent relative continues to reside in the property.
- Institutionalization is temporary and intent to return remains, even if unlikely, as long as the recipient asserts the intent.

Why it makes a house not a home: If an individual moves out, states they do not intend to return, and no qualifying spouse or dependent relative resides in the home, the house ceases to be an excluded home resource.

3. Out-of-State and Out of Country Real Property

POMS Citation: SI 01130.100 A.1

Rule: A home is defined as property in which the individual has an ownership interest and that serves as their **principal place of residence**. One cannot live in a home out of state nor out of the country.

Why it makes a house not a home: If an SSI recipient owns residential property in a state or foreign country other than where they actually live and reside, the secondary property cannot qualify as an exempt home. It is classified as non-home real property and its net equity value counts against the resource limit.

4. Property Purchased Without Intent to Occupy

POMS Citation: SI 01130.100 C.1

Rule: Real property purchased with the intention of becoming a home is treated as an excluded home only if the recipient intends to occupy it within a reasonable period.

Why it makes a house not a home: If an individual buys a residence but does not move into it, and lacks a plan or intent to occupy it as a principal residence, it is treated as a countable non-home real property resource from the time of purchase.

5. Transfer of Ownership Interest

POMS Citation: SI 01130.100 B.6

Rule: For property to be excluded as a home, the SSI recipient (or their spouse) must retain an equitable or legal ownership interest in the real property.

Why it makes a house not a home: If an individual transfers or gives away their legal title to the property while continuing to live there, the property is no longer "their" home for resource exclusion purposes. Furthermore, transferring a non-excluded home for less than fair market value triggers transfer-of-resources penalty rules under SI 01150.001.

Summary Table of Exclusions vs. Non-Home Status

Scenario	Retains "Home" Exclusion?	Primary POMS Reference
Living in the property as principal residence	Yes (Excluded)	SI 01130.100 A.1
In a nursing home, but states intent to return	Yes (Excluded)	SI 01130.100 B.1
Absent, no intent to return, but spouse/dependent lives there	Yes (Excluded)	SI 01130.100 B.5
Absent, no intent to return, no qualifying family inside	No (Countable Resource)	SI 01130.100 B.1
Owning real estate not used as principal residence	No (Countable Resource)	SI 01130.100 A.1

Property destroyed by natural disaster – fire, hurricane, flood, etc.

Disaster strikes! Sometimes to a whole community or area, sometimes just to the SSI claimant. When an SSI recipient receives insurance payouts or disaster assistance money from the government to repair or replace an excluded home (or other excluded property), the Social Security Administration (SSA) provides specific rules to prevent those funds from disqualifying the claimant from SSI and Medicaid.

How Insurance Payouts Are Classified

Not Treated as Income

Cash received from private property insurance or disaster grants to repair or replace an excluded resource (like your primary residence) is **not counted as income**. The money is placed under an initial **9-month resource exclusion period** starting from the month of receipt. As long as the intent remains to use those funds to rebuild or repair the property, the payout will not count toward the \$2,000 individual resource limit during this window.

What Happens When Rebuilding Takes a Long Time

Because construction delays, permit backlogs, and contractor shortages are common, the SSA allows extensions if you can show **good cause**:

First 9-Month Extension (Up to 18 Months Total)

If repair or replacement cannot be completed within the initial 9 months due to reasons beyond your control (e.g., contractor delays, zoning issues, permit delays, or supply shortages), you can request a 9-month good cause extension. This brings the total exclusion window to **18 months**.

Presidentially Declared Major Disasters (Up to 30 Months Total)

If the home was damaged or destroyed in an officially declared major disaster, SSA rules allow an **additional 12-month good cause extension**. This provides a **maximum exclusion period of up to 30 months** from the date the insurance money was received.

Key Requirements & Best Practices

Keep Funds Segregated

Do not mix disaster insurance payouts with everyday checking or savings accounts. Keep the funds in a separate, dedicated bank account to maintain clear accounting for SSA.

Document "Good Cause"

To secure extensions beyond 9 months, maintain written evidence showing active attempts to rebuild. This includes contractor estimates, architectural plans, permit applications, delay notices, or communication logs with insurance adjusters/builders.

Maintain Intent to Rebuild

The resource exclusion remains active only while you intend to use the money for repair or replacement. If you change your mind and decide not to rebuild, the remaining insurance money immediately becomes a countable resource in the following month.

Report Changes to SSA

Notify the local Social Security field office when the claimant receives the payout and provide updates before each 9-month window expires to request an extension under POMS SI 01130.630. It can take a lot of time to repair an individual home when a whole community is in the same boat. Our office has never encountered a refusal by the local SSA offices to extend the 9 month window many times as long as the repair funds were held in a separate bank account.

Homes and Real Property owned in SNTs – the Pros and Cons

Preface:

42 U.S.C. § 1396p(d)(4)(A) governs individual (first-party) special needs trusts, allowing assets to be excluded when determining eligibility for means-tested government benefits like Medicaid and Supplemental Security Income (SSI)

Upon the death of the beneficiary or the termination of the trust, any remaining funds must be used to reimburse the state for Medicaid benefits paid on the beneficiary's behalf, up to an amount equal to that assistance before any payments to residual beneficiaries.

Third-Party Trusts: Trusts funded with assets belonging to someone other than the disabled beneficiary (such as parents or grandparents leaving an inheritance) are governed under general trust and federal Medicaid/SSI guidelines and are not required to contain the (d)(4)(A) payback rules.

Medicaid lien in d4A SNT v. Probate lien

First party d4A SNT

As stated above upon the death of the beneficiary or the termination of the trust, any remaining funds must be used to reimburse the state for Medicaid benefits paid on the beneficiary's behalf, up to an amount equal to that assistance before any payments to residual beneficiaries.

There are no exceptions to this mandate based on the “quality” of the property, be it intangible or real property. If there are insufficient liquid funds to satisfy the mandatory lien, the real property, even what would otherwise be considered homestead property, if owned outright by the beneficiary (discussed below), will need to be sold to provide funds

for satisfaction of the lien. Under Florida Statute 409.9101(10), Florida Medicaid will not accept the transfer of real property to the State in satisfaction of a lien.

Estate Recovery Mandate: Federal law requires State Medicaid programs to seek recovery from the estates of deceased recipients who were 55 or older (or in some states institutionalized) to recoup payments for nursing facility services, home and community-based services, and related hospital and prescription drug services.

Along with the lack of estate recovery for an individual who dies under the age of 55, if the individual is over age 55 at the time of death, under **42 U.S.C. § 1396p(b)(2)** and related federal guidelines, states **cannot** enforce or pursue estate recovery while certain protected family members are still alive:

- **Surviving Spouse:** Recovery must be deferred (or is barred) during the lifetime of a surviving spouse.
- **Minor Children:** A child who is under the age of 21.
- **Blind or Disabled Children:** A child of any age who is blind or permanently and totally disabled (under Social Security definitions).
- **Caretaking Adult Children:** An adult child who resided in the home for at least two years immediately prior to the Medicaid recipient's institutionalization and provided care that delayed nursing home admission.
- **Siblings with Equity Interest:** A sibling who lived in the home for at least one year prior to the recipient's institutionalization and has an equity interest in the property.

Homestead protection against creditors

In Florida, constitutional homestead protection shields an individual's home from general creditors, including Medicaid recovery, if upon the death of the individual the property passes directly to a statutory "heir-at-law" (such as a spouse, child, or sibling).

What constitutes homestead in Florida: among other requirements, the primary requirements to receive homestead protection from creditors at death, including Medicaid, is that:

- 1) Legal title to the property must be in the name of the individual at the time of their death,
- 2) The individual must be residing in that property as the permanent residence, with certain exceptions such as residing in a nursing home or assisted living facility with the intent to return to the homestead, and

3) The home must be being inherited by an heir that is considered a homestead heir, meaning they are within the group of people that would be possible intestate heirs of the individual.

Florida Homestead protections against creditors at death, including Medicaid, are not available for a property owned within a Special Needs Trust.

Equitable ownership for property tax purposes (Florida)

To secure a Florida homestead property tax exemption for a beneficiary for property owned in a trust, including a first party d4A special needs trust or a third party trust, the trust agreement or the deed to the trust must be explicitly structured to grant the beneficiary an equitable title and a permanent right to reside on the property for life.

Under Florida Statute §196.041(2), a trust beneficiary can claim the exemption only if they hold a **beneficial interest for life** and a **present possessory interest** in the real estate, and states in part:

“A person who otherwise qualifies by the required residence for the homestead tax exemption ... shall be entitled to such exemption where the person’s possessory right in such real property is based upon an instrument granting to him or her a beneficial interest for life, such interest being hereby declared to be “equitable title to real estate,” ... and such person shall be entitled to the homestead tax exemption”

Liability issues (d4A vs. 3rd party)

d4A Special Needs Trusts: While this is a very state specific issue, assets held in d4A special needs trust are generally not exempt from the creditors of the beneficiary. The common law and uniform trust code agree that first party or self settled trusts do not include credit in protection in spite of the fact the beneficiary has no control or dominion over the asset.

The uniform trust code states:

SECTION 505. CREDITOR’S CLAIM AGAINST SETTLOR

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor’s creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

Florida and many states have enacted this statutory language in recent years.

Third party Special Needs Trusts: Third party Special Needs Trusts generally have creditor protections created under state law, provided there is a valid spendthrift clause. This is not a universal protection however as public policy considerations have created some exceptions for things such as child support, or alimony.

The uniform trust code states:

SECTION 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another State.

(b) Except as otherwise provided in subsection (c), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

- (1) the discretion is expressed in the form of a standard of distribution; or
- (2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

Minor or diminished capacity/incapacitated beneficiaries

In a situation where the beneficiary of the trust may be incapacitated or a minor leads to certain challenges for the special needs trust trustee. The decision of either to continue to title a home in the trust or to the beneficiary raises issues such as guardianship or

conservatorship, the absence of a Medicaid estate lien on someone who passes under the age of 55 or with one of the aforementioned exceptions, or even perhaps the beneficiary is at risk of exploitation or creating their own financial or benefits eligibility harm by selling or mortgaging the home or adding a co-owner.

All of these factors create real challenges in balancing the pros and cons of whether the trust will own the beneficiary's home or it is deeded to the beneficiary.

Pros and Cons of Special Needs Trust Owning Home

Issue	Pro	Con
Medicaid Trust Lien	Irrelevant with a Third Party SNT	d4A is always subject to Medicaid lien, may be forced to sell property to satisfy if insufficient other funds available. If owned by beneficiary many federal exemptions to Home included in Estate Recovery, also Florida Homestead creditor protection
Tax exemptions – Florida	Available for both d4A and Third Party trusts	Exact language requirement in trust instrument and/or deed for the exemption to apply
		Beneficiary has equitable title and right to live on property for life, possibly limiting trustee's options to sell property if necessary
Creditor's ability or inability to	With a third party trust: if valid spendthrift clause very difficult to force third party trust	With a d4A trust: No creditor protection under UTC, no Homestead creditor protection under Florida Law

Issue	Pro	Con
attach to property	trustee to satisfy claims, with exceptions	
Minor beneficiary	No guardianship /conservatorship and its related expenses court intervention required.	
Diminished or incapacitated beneficiary	Property is financially maintained, taxes paid etc.	
	Protection from beneficiary harming themselves financially including, selling or mortgaging the home, adding a co-owner	

SSI, Medicaid and Housing

SPECIAL NEEDS
PLANNING RULES
ON THE HOME
AND OTHER REAL
PROPERTY
ISSUES

1

Sometimes a house is not a home
and creates chaos more than help

- Unplanned inheritance – when it counts as a resource
- Can real property be used to avoid the transfer penalty
- Excess property – how to get rid of it, have it not count, and keep SSI and Medicaid health insurance in the interim
- What happens when fire, hurricane or flood damages property and it takes several years to repair
- When is it better to hold property, even the exempt home, in the name of the trust instead of the individual or his guardianship account

2

INITIAL PRESENTATION QUESTIONS:

- ▶ Married Bob is applying for SSI and SSI-Medicaid
- ▶ Bob lives in couple's family home in Miami.
- ▶ Mary, separated for 5 years from Bob, lives in their condo in N.C.
- ▶ **SSA denied the SSI claim** – saying Bob is joint owner with Mary on two properties, but his exempt principal resource is only the Miami home.

How do we win the appeal?

3

INITIAL PRESENTATION QUESTIONS:

- ▶ Bill and Jane divorce. Bill moves out of home to a rental apartment.
- ▶ Bill needs to apply for SSI benefits.
- ▶ Divorce judgement awards exclusive use for the children until age 18 of the home, with parents' joint ownership continuing until then.
- ▶ **SSI denied** because Bill owns a home he doesn't live in.

How do we win this appeal?

4

INITIAL PRESENTATION QUESTIONS:

- ▶ Valerie Payne on SSI lives with her sister & sister's husband in Miami.
- ▶ Mom dies, her Will gives \$185,000 home to Valerie; but sister wants the house.
- ▶ Sister cannot qualify for a mortgage to buy mom's old family home.
- ▶ Valerie cannot just give house to sister due to Transfer Penalty.

How do we fix the situation?

To avoid the Transfer Penalty. "Compensation may be in cash, real or personal property, assumption of a legal debt, personal service contract, or ISM for a term, or ISM for life" per POMS SI 01150.005.C.

5

INITIAL PRESENTATION QUESTIONS:

- ▶ Bob Warfield on concurrent SSI and SSDI benefits, settles Worker's comp claim and is awarded a **\$50,000** via a "**Medicare Set-Aside (MSA) agreement**" in a bank account in Bob's name that Bob uses to pay medical claims for WC-related injuries.
- ▶ **SSA denies SSI**, counting the \$50,000 bank account solely in Bob's name.

How do we win the SSI case?

POMS SI 01120.010.D.5 on resources says if an insurance settlement restricts use to medical expenses only, therefore, Bob is actually but not legally free to use them for support and maintenance, and therefore bank account is not a resource.

Same applies to **USDOJ Vaccine-related Injury Settlement in Reversionary Trust** with no Medicaid payback at death. Reversionary trust is an asset but not a resource.

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**Every resource is an asset,
but not every asset is a resource:**

Concepts	Definition in POMS ^a	Core Principles ^a
Assets	Any real or personal property that an individual has an ownership interest in. ^a	Broad category: Includes everything you legally own, regardless of whether you can access, spend, or sell it. ^a
Resources	Cash, or any other real or personal property, that an individual owns AND can convert to cash to use for their support and maintenance. ^a	Subset of assets: Property that meets specific legal and operational criteria allowing it to be used for basic needs (food and shelter). ^a

7

**The Three-Part Criteria for an Asset
to be a Countable Resource:**

1. **Ownership:** the individual (or spouse) holds legal ownership or interest in the property.
2. **Liquidation Power:** The individual has the legal right, authority, or power to convert the property into cash.
3. **Usage Capability:** the individual is not legally restricted from using the property or its liquidate proceeds for their own food and shelter.

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**The SSA Five General Policies for an
Asset to be a Countable Resource:**

1. **Ownership Interest** – Bank account “Ted Hart by Ted Hart or John Hart” is not a resource for disabled John although he can take funds for emergencies
2. **Legal Right to Access (Spend or Convert property)** – divorce case
3. **Legal Ability to Use for Personal ISM** – bank account in claimant's name DOJ reversionary trust, MSA agreement, PI settlement for future medicals only
4. **Access via an Agent** – still does count as resource if Rep Payee or Legal Guardian have access, even after court petition
5. **Access Only via Litigation** – co-owner blocks sale like non-divorce case, siblings inherited real farm but at least one blocks sale

9

► The Home Exclusion SI 01130.100 in general (summary covered by Ken Brown)

- serves as "the one and only" principal place of residence; including all land and all buildings; includes sailboats, motor boats, RVs, tents, S.F. homes, condos, mobile home parks;
- can be just ownership of land but not the shelter, or ownership of shelter without the land;
- continues when absent but claimant has "intent to return";
- even if no "intent to return" as long as spouse and "dependent relative" live there (adult or minor child, stepchild, grandchild, parent, stepparent, grandparent, aunt, uncle, niece, or nephew, siblings including step and half, cousins, or in-laws);
- includes equitable ownership including documents OR by having made mortgage payments, making or paying for additions or improvements on the shelter;
- Never add another joint owner to excluded home deed but can transfer life estate.

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► The Home Exclusion (frequent SSI issues in our practice regarding "homes")

- SSA asking the wrong question – Frequently asked at SSI interview by SSA staff "Do you own any other real property?" "No" (but name appears on deed with elderly mother) -- the right question: "Does your name appear on any other property?"
- Claimant blurting out the wrong response:
 - ❖ Maria Garcia #1, alleges Buenos Aires home as my "family home" (actually owned by her parents) – SSA denies claim for having second home – Issue: how to prove no "home" is your home in Argentina
 - ❖ Maria Garcia #2 – SSA Claims Specialist finds pages in Miami phonebook filled with Maria Garcia's owning owns lots of properties in Miami, Florida, and denies SSI claim
- Foreign property – like out-of-state property, it counts, no exceptions for additional homes, but for some reason, clients frequently don't think so

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- Claimant blurting out the wrong response:
 - ❖ "Maria Garcia" #1, blurts out "screw you, I'm returning to my Buenos Aires home" (actually owned by her parents) – SSA denies claim for having second home – Issue: how to prove no "home" is your home in Argentina before SSA's Miami Chief ALJ
 - ❖ "Maria Garcia" #2 – SSA Miami Claims Specialist finds multiple pages in Miami phonebook filled with "Maria Garcia" owning lots of properties in Miami, Florida, and denies SSI claim
- Foreign property – like out-of-state property, it counts, no exceptions for additional homes, but for some reason, clients frequently don't think so

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What to do with unwanted property

1. Cannot keep it if CMV causes excess resources
2. Cannot give it away - Transfer Penalty POMS SI 01150.001
3. Cannot Disclaim – POMS SI 01150.110.E on prohibited refused inheritance
4. Can transfer property - payment for "ISM for Life" or "ISM for term of years" without conversion to cash, sale and mortgage ("Valerie Payne" transfers \$185,000 to sister)
5. Can Use SSA's "Conditional Benefits Agreement"

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SSA's "Conditional Benefits Agreement"

1. Per POMS SI 01150.200 and Statute – SSA pays claimant's SSI benefits during attempt to sell excess resources
 - ▶ Must list with realtor and must make listing continuous
1. Initial period is 9 months but subject to extension for "good cause" listed in SSA examples, and per SI 01130.140 extra extension NOT subject to additional overpayments other than the original nine months
2. When period ends the 9 month SSI payments are overpayments

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Home destroyed by fire, flood, hurricane, etc.

- ▶ POMS SI 01130.630 Cash and In-Kind Items Received for the Repair or Replacement of Lost, Damaged, or Stolen Excluded Resources describes how insurance payouts, disaster relief grants, and assistance funds are provided
- ▶ Disaster Assistance is mostly excluded from income or resources for periods of time
- ▶ Good Cause Extensions for Major Disasters - Initial 9-month window can be extended for "good cause"
- ▶ Presidentially-Declared Major Disasters have a maximum exclusion period of 30 months
- ▶ Private insurance excluded for 9-Month – but with Extensions potentially much longer.

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Treatment of underlying land if home is obliterated and cannot be rebuilt?

- Physical house gone but exclusion for land remains - underlying land remains classified as an excluded primary residence as long as the recipient still owns it, considers it their home, and intends to re-build as primary dwelling.
- Keep stating intent to rebuild until you can't
- Nine month initial timeline to rebuild but extendable potentially for years
- Asset not resource? - If zoning change prevents rebuilding ever the land becomes an asset but not a resource
- Is value below resource limit? SSA defines equity value and CMV less encumbrances
- If over resource value, sell land under SSA conditional benefits agreement

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Pros and Cons of SNT Ownership

Should a Trust own a home that the beneficiary lives in?

These are some Factors that create real challenges in balancing the pros and cons of whether the trust will own the beneficiary's home or it is deeded to the beneficiary.

Medicaid lien in d4A SNT v. Probate lien

Homestead protection against creditors – Florida
Equitable ownership for property tax purposes (Florida)

Liability issues (d4A vs. 3rd party)

Minor or diminished capacity/incapacitated beneficiaries

17

Pros and Cons of SNT Ownership

Medicaid lien in d4A SNT v. Probate lien

A d4A is a mandatory payback Trust, even if the property of the trust is a home. There are different rules for Medicaid Estate recovery.

18

Pros and Cons of SNT Ownership

Homestead protection against creditors – Florida

In Florida, constitutional homestead protection shields an individual's home from general creditors, including Medicaid recovery, if upon the death of the individual the property passes directly to a statutory "heir-at-law" (such as a spouse, child, or sibling).

19

Pros and Cons of SNT Ownership

Equitable ownership for property tax purposes (Florida)

To secure a Florida homestead property tax exemption for a beneficiary for property owned in a trust, including a first party d4A special needs trust or a third party trust, the trust or the deed to the trust must be explicitly structured to grant the beneficiary an equitable title and a permanent right to reside on the property for life.

20

Pros and Cons of SNT Ownership

Liability issues (d4A vs. 3rd party)

Self settled Trusts (d4A) are generally not creditor protected during life.

Third Party Trusts are generally creditor protected – with exceptions

Very state specific – see Uniform Trust Code

21

Pros and Cons of SNT Ownership

Minor or diminished capacity/incapacitated beneficiaries
In a situation where the beneficiary of the trust may be incapacitated or a minor leads to certain challenges for the special needs trust trustee. The decision of either to continue to title a home in the trust or to the beneficiary raises several issues.

22

Pros and Cons of SNT Ownership

Pros and Cons of Special Needs Trust Owning Home

Issue	Pro	Con
Medicaid Trust Lein	Irrelevant with a Third Party SNT	d4A is always subject to Medicaid lein, may be forced to sell property to satisfy if insufficient other funds available. If owned by beneficiary many federal exemptions to Home included in Estate Recovery, also Florida Homestead creditor protection

23

Pros and Cons of SNT Ownership

Pros and Cons of Special Needs Trust Owning Home

Issue	Pro	Con
Tax exemptions - Florida	Available for both d4A and Third Party trusts	Exact language requirement in trust instrument and/or deed for the exemption to apply
		Beneficiary has equitable title and right to live on property for life, possibly limiting trustee's options to sell property if necessary

24

Pros and Cons of SNT Ownership

Pros and Cons of Special Needs Trust Owning Home

Issue	Pro	Con
Creditor's ability or inability to attach to property	With a third party trust: if valid spendthrift clause very difficult to force third party trust trustee to satisfy claims, with exceptions	With a d4A trust: No creditor protection under UTC, no Homestead creditor protection under Florida Law

25

Pros and Cons of SNT Ownership

Pros and Cons of Special Needs Trust Owning Home

Issue	Pro	Con
Minor beneficiary	No guardianship /conservatorship and its related expenses court intervention required.	
Diminished or incapacitated beneficiary	Property is financially maintained, taxes paid etc.	
	Protection from beneficiary harming themselves financially including, selling or mortgaging the home, adding a co-owner	

26

Questions?

27



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Intentional Living Communities – A How-To Guide



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Intentional Living Communities – A How-To Guide

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Intentional Living Communities – A How-To Guide

Riverflow Community: From Dream to Reality in 16 Months

I. Introduction – Who Am I & How I Got Here.

The story of Riverflow Community, Inc., in concrete terms, started with the rocket fuel of a pilot planning grant from the State of Vermont in the summer of 2023, but in many ways, it has been decades in the making. For the Caffry family, the quest for a stable, service-supported, meaningful, and dignified life for our son started in March of 2002 when our son was first diagnosed with autism. While the early years were consumed with OTs, PTs, SLPs, and AAC (“augmentative and alternative communications”), the stress and worry of “what happens for our son when we are gone?” was omnipresent. Starting in October 2006, attending the Stetson National Conference on Special Needs Planning and Special Needs Trusts has been a hugely important part of the Caffry family journey that led to the creation of Riverflow Community.

According to the [Administration for Community Living](#) within the Centers for Medicare and Medicaid Services (“CMS”), there are approximately 7.4 Million people with I/DD nationwide. According to the Vermont Agency of Human Services (“AHS”), Department of Aging, Disabilities and Independent Living’s (“DAIL”) Developmental Disabilities Services Division’s [FY 2024 Annual Report](#), there are approximately 55,000 people with I/DD in Vermont, a state with a total population of just under 650,000. The FY 2024 Annual Report states that there are only 3,394 Vermonters with I/DD that receive Developmental Services through the Home and Community-Based (“HCBS”) Waiver, constituting only 6% of all Vermonters with I/DD. Of the

3,394 Vermonters receiving DD-HCBS Waiver services, only 1,490 are eligible for 24/7 residential services, a/k/a “Home Supports”.

Since the closure of Vermont’s one and only large institution in 1993, the Vermont Developmental Disabilities Services Division has effectively provided only a single model of Home Supports for individuals who are eligible for 24/7 support. Of the 1,490 individuals receiving Home Supports in Vermont, 88% of them are in “Shared Living”, which is adult foster care. The remaining 173 individuals receive Home Supports, through either “Staffed Living” or “Group Living”, which are *placements*, typically made only after multiple failed Shared Living attempts, and are generally for individuals with I/DD that also have co-occurring high medical or high behavioral support needs.

Riverflow Community, Inc. opened its doors in October 2024, through the intense efforts of the founding group of families and most critically, the Riverflow operations team. This is how we went from dream to reality in 16 months.

II. The State of Our State and What You Need to Know About Your State

A. The Vermont Landscape for Developmental Disability Services

As special needs planning attorneys, all of you are in a position to play an important and positive role in the evolution of how services and supports are provided to Americans with I/DD.

While the federal government obviously plays an enormous role in how Medicaid-funded Home and Community-Based Services are delivered throughout the country, particularly with the March 2014 adoption of updated [Medicaid Home and Community-Based \(“HCBS”\) Regulations](#), which includes the so-called “Settings Rule”, each state government has a tremendous amount of discretion in how to provide developmental services. The CMS notice in the Federal Register for the Setting Rule makes it clear: “This rule offers states new flexibilities in providing necessary and

appropriate services to elderly and disabled populations.” In order to help client families and individuals with I/DD create and sustain residential models that will stand the test of time, that will require special needs planning attorneys to dig into how your particular state administers its developmental services programs.¹

The State of Vermont, like many states, has a long history of legislation and administration regarding whether, when, where, and how, to support people with disabilities, starting with “[poor farms](#)” at the end of the 18th Century. Also like many states in the late 19th Century and early 20th Century, Vermont ended up creating large institutions - one for people with mental illness in Waterbury, Vermont, and one for people with developmental disabilities, in Brandon, Vermont.

Vermont opened the “State School for Feeble Minded Children” in 1915, which was ‘re-branded’ as the “Brandon Training School” in the 1930s. The Brandon Training School was in operation for 78 years until 1993, when Vermont became the second state to close its large institution (New Hampshire was first), and the State proclaimed that it was committed to “[Opening the Hearts of Our Communities](#)”. The Vermont Agency of Human Services published this understandably self-congratulatory report in December 1993 about the closure of the Brandon Training School, and on the final page, the State declared:

In the years ahead, we must be careful not to settle into a particular way of providing services. We must continue to change, to give people what they want and what they tell us they need.

¹ Keep in mind that the 2014 CMS guidance memos regarding the “Settings Rule” were largely negated by the subsequent 2019 CMS guidance memos. Additionally, “heightened scrutiny” under the Settings Rule does not automatically mean a residential setting cannot be permitted. It is just another hoop to jump through, but that is for a different presentation.

Closing institutions is great. However, it is a 2-step process: (1) close institution, ***AND*** (2) ***create and properly fund*** a community-based system of services that provides the range of services and supports necessary to meet the range of needs of Vermonters with I/DD.

Three years after closing the Brandon Training School, Vermont passed the Developmental Disabilities Act of 1996, codified at [18 V.S.A., Chapter 204A](#). Among the “Principles of Service” laid out in the DD Act of 1996 are:

Full Information. In order to make good decisions, people with developmental disabilities and their families need complete information about the availability, choices and costs of services, how the decision-making process works, and how to participate in that process.

Individualized Support. People have differing abilities, needs, and goals. To be effective and efficient, services must be individualized to the capacities, needs, and values of each individual.

Family Support. Effective family support services are designed and provided with respect and responsiveness to the unique needs, strengths and cultural values of each family, and the family's expertise regarding its own needs.

Meaningful Choices. People with developmental disabilities and their families cannot make good decisions without meaningful choices about how they live and the kinds of services they receive. Effective services shall be flexible so they can be individualized to support and accommodate personalized choices, values and needs, and assure that each recipient is directly involved in decisions that affect that person's life.

Unfortunately, the Vermont Developmental Disabilities did exactly what it warned itself not to do – for the last 33 years, Vermont has very much “settled into a particular way of providing services”, much to the dismay, and sometimes outrage, of Vermonters with I/DD and their families. Without any statistical data backing this up, anecdotal evidence suggests that a majority of Vermont families with someone receiving HCBS/Developmental Services, feel that the lofty principles set out in the Vermont DD Act have never been achieved in the three decades since its passage.

In addition to the DD Act itself, the Vermont system is framed out under the [Developmental Disabilities Regulations \(March 2023\)](#), which states:

7.100.1 Developmental Disabilities Services Purpose and Scope

(a) The purpose of these regulations is to fulfill the requirements of the Developmental Disabilities Act of 1996 (DD Act) (18 V.S.A Chapter 204A) to include specific details for implementation of the Act. These rules are adopted pursuant to 18 V.S.A. § 8726.

(b) The Developmental Disabilities Services program operates within the State’s Global Commitment to Health 1115 Waiver, providing long-term services and supports to individuals with developmental disabilities.

(c) The Program is subject to approval by the Centers for Medicare and Medicaid Services (CMS) and is managed in compliance with CMS terms and conditions of participation.

Under the 1996 DD Act, the Department of Aging, Disabilities and Independent Living (“DAIL”) is required to re-adopt every three years the “[State System of Care Plan for Developmental Disabilities](#)”. The System of Care Plan does not go through the formal rulemaking

process under the [Vermont Administrative Procedures Act](#). On top of the statute, regulations, and System of Care Plan, there are over 60 additional “[Policies, Guidelines and Field Memos](#)” produced by DAIL over the last 30 years.

After digesting all of that information, replete with proclamations about choice, person centered planning, the reality is this – for the 1,490 Vermonters who qualify for HCBS “Home Supports”, there is really only one residential option – which is adult foster care, called Shared Living in Vermont. Under the Shared Living model, a Home Provider is paid an income tax-exempt stipend to care for one or two adult individuals with I/DD in *the Home Provider’s personal residence*. If a Home Provider retires, moves, or determines that it is ‘just not working out’, then the individual with I/DD is placed with the next Home Provider willing to take the person in. The next Home Provider located by a Designated Agency or Specialized Service Agency (one of Vermont’s 15 nonprofit “designated” service providers) could be anywhere within the same county or service territory (as many as three counties), and the new home is often in a town that the person with I/DD does not have any connection to.

The Vermont DD Services Division’s [FY 2024 Annual Report](#), notes:

Paid home supports, like all HCBS, are individualized and based on a needs assessment that address goals, strengths and needs. There are multiple types of paid home supports:

- **Shared Living:** Supports provided to one or two people in the home of a shared living provider. Shared living providers are home providers contracted by DA/SSAs. The home is owned or rented by the shared living provider.
- Shared Living – Hourly: Regularly scheduled or intermittent hourly supports provided to an individual who lives in a Shared Living home.

- **Staffed Living:** Supports provided in a home setting for one or two people that is staffed on a full-time basis by providers. The home is typically owned or rented by the service provider.
- **Group Living:** Supports provided in a licensed home setting for three to six people that is staffed full-time by providers. The home is typically owned or rented by the service provider.
- **Supervised Living:** Regularly scheduled or intermittent hourly supports provided to an individual who lives in his or her own home. Supports are provided on a less than full-time schedule (not 24 hours/7 days a week). The home is typically owned or rented by the individual.
- **In-Home Family Supports:** Regularly scheduled or intermittent hourly supports provided to an individual who lives in the home of unpaid family caregivers. Supports are provided on a less than full-time schedule (not 24 hours/7 days a week).

Individuals served – Living with 24-hour paid home supports (June 30, 2024)

- **1,317** – Shared Living (1,171 homes)
 - **95** – Staffed Living (61 homes)
 - **78** – Group Living (22 homes)
- 1,490** – Total

When 88% of all individuals receiving 24/7 Home Supports are being served under the Shared Living model, and the only way to end up in residential services are under the Staffed Living and Group Living models is after individuals who have tried, and failed, with multiple Shared Living Homes, then *that is not a choice*.

Within Vermont’s Department of Disabilities, Aging, and Independent Living [there are 5 different divisions](#), and the Developmental Disabilities Services Division is one of them. For Vermonters with I/DD, the other Division that matters the most is the [Division of Licensing and Protection](#) (“DLP”). Under current Vermont law, if there are [three or more individuals](#) that receive services and supports under the same roof, then that home must be licensed. There is no licensing requirement for a Shared Living home. For individuals with I/DD that live in a residence with three or more individuals, they are licensed either as “[Residential Care Homes](#)” or as “[Therapeutic Community Residences](#)”. The DLP is focused on people’s health and safety. The DLP does not appear to be hung up on public/social policy issues about whether adults with I/DD should be allowed to live with their peers.

B. Additional Considerations When Trying to Create a Residential Community

1. Zoning and Environmental Permitting

In addition to applicable statutory, regulatory, and policy considerations that are relevant to creating alternative residential models for adults with I/DD, it is also necessary to be aware of the land use and environmental permitting issues that must be complied with. Under Vermont’s state zoning statute a home providing support to *up to 8 persons* with a disability (of any kind) are considered a residential use by right under [24 V.S.A. §4412\(1\)\(G\)](#). Therefore, municipalities cannot enact zoning bylaws that would prohibit a single home serving 8 or fewer people with I/DD. The Vermont Supreme Court recently confirmed that “statute’s purpose was to preclude municipalities from excluding facilities that served those with disabilities”. [In re Vt. Permanency Initiative](#), 2023 VT 65, ¶ 17.

However, beyond a single residence serving not more than 8 people, all local zoning and state environmental regulations and permitting requirements apply.

2. Get to Know Your FOIA and APA

Every state has some form of a Freedom of Information Act (“FOIA”) and an Administrative Procedures Act (“APA”) statute, and you can find your state’s [FOIA here](#) and [APA here](#). In Vermont, the FOIA statute is called the [Vermont Public Records Act](#) (1 V.S.A. §§ 315 – 320), and the state’s APA is aptly referred to as the [Vermont Administrative Procedures Act](#) (3 V.S.A. §§ 800 – 849). Both FOIA and APA statutes are incredibly valuable tools of advocacy and can be enormously helpful in the human services context... so much so, that someone might even feel compelled to write an [article](#) about incorporating advocacy through FOIA and APA into one’s special needs planning practice.

But what if a state human services agency contracts with a private company to provide certain services? Well, in Vermont, under [Human Rights Defense Center v. Correct Care Solutions](#), 2021 VT 63, the Vermont Supreme Court sidestepped the question of whether a private company under contract with a state agency should be considered to be the “functional equivalent” (as many other states’ Supreme Courts have done) of a governmental agency under the Vermont PRA, and instead the Vermont Supreme Court held that the private prison healthcare contractor was an “instrumentality” of the Vermont Department of Corrections.

3. *Loper Bright v. Raimondo*, 144 S.Ct. 2244 (June 28, 2024)

The U.S. Supreme Court has stayed true to its current form, and two years ago, by a 6 – 3 majority, issued its decision in [Loper Bright Enterprises v. Raimondo](#), 144 S.Ct. 2244. In *Loper*, the U.S. Supreme Court wiped out 40 years of “*Chevron* Deference” that had been the law of the country since the Supreme Court decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Under *Chevron*, for the last 40 years, if a statute was ambiguous, then federal courts were required to give deference to a

federal agency's interpretation of the ambiguous statute, as long as the public agency's interpretation was "permissible". Deference was required even if the reviewing court would have reached a different conclusion. Under *Loper*, the deference to an agency's interpretation of an ambiguous statute is gone, with the majority holding that under the federal Administrative Procedures Act, only a court can do that.

What does the *Loper* decision mean for disability advocacy? TBD...

4. What's the Internal Revenue Code Got To Do With This? ... A Lot

While the evolution (...or *devolution*?) of societal norms and expectations and the resulting public policy will invariably change over time, providing human services, including to individuals with I/DD, costs money. Alas, questions about how to spend public money and how to treat the use of private money necessarily makes the Internal Revenue Code ("IRC") relevant to the issue of how to provide residential services to individuals with I/DD. A deep dive into the IRC is beyond the scope of the presentation, but when creating a residential living arrangement, special needs planning attorneys should be aware of:

- (i) [IRC 131](#) – In 1983, IRC 131 was adopted which provides an income tax exemption for payments made to individuals for being foster parents to minors. In 1986, IRC 131 was amended to allow for the same income tax exemption for adult foster care payments, for up to 5 individuals with I/DD. The cost effectiveness of the income tax exemption can be part of the problem... see, e.g. Vermont Shared Living has become the de facto only Home Supports model for individuals with I/DD who require 24/7 supports.
- (ii) [IRC 119](#) - Income tax exemption for the value of meals and lodging, if the employee is required to accept the lodging on the premises of the employer

as a condition of employment. ***But wait...*** the income tax exemption also applies to the value of room and board provided to the employee's spouse, or any of the employee's dependents!

(iii) [IRC 501\(c\)\(3\)](#) - To Be, or Not To Be a 501(c)(3)?

- Independence of Entity – Private Benefit
- Apply Early! It could be as short as 4 days or as long as 10 months from the date of application until the date the IRS makes a decision.
- Do you need a [Fiscal Sponsor](#)?

III. What is Intentional Living/Lifesharing?

An “intentional community” is a group of people who have chosen to live together with a common purpose, working cooperatively to create a lifestyle that reflects their shared core values. The people may live together on a piece of rural land, in a suburban home, or in an urban neighborhood, and they may share a single residence or live in a cluster of dwellings. This definition spans a wide variety of groups, including (but not limited to) communes, student cooperatives, land co-ops, cohousing groups, monasteries and ashrams, and farming collectives. Although quite diverse in philosophy and lifestyle, each of these groups places a high priority on fostering a sense of community—a feeling of belonging and mutual support that is increasingly hard to find in mainstream Western society.

Geoph Kozeny, [Intentional Communities: Lifestyles Based on Ideals](#), 1995

There is tremendous variety in the types of intentional communities that have been created throughout the world. For a deep dive into intentional communities, the [Foundation for Intentional Community](#) can provide an “Intentional Communities 101” for the curious.

Within the context of supporting people with I/DD to live whole and meaningful lives, there are [L’Arche communities](#) and [Camphill communities](#). There are currently 23 L’Arche communities operating in the United States, and there are 15 Camphill communities in the U.S. and Canada.

There are over 100 Camphill communities in 22 different countries across the world. Succinctly put:

Camphill is a worldwide social initiative that creates communities designed to include people with and without intellectual disabilities. [Camphills] strive to empower people to grow, learn, and achieve together.

[Camphill Association of North America](#).

The Camphill movement began in Aberdeen, Scotland in 1939 by the Austrian doctor and refugee Karl Konig. Camphill is an outgrowth of work of Rudolph Steiner, who created Waldorf education. All Camphill communities are guided by three essential tenants:

- (1) To Recognize the Wholeness of Each Individual
- (2) To Strive Towards Personal, Inner Development
- (3) To Bring Equality, Freedom, and Fellowship into Our Communities

[Camphill Association of North America](#).

From a parent’s perspective, the result is a life of dignity and respect for a child (of any age) with I/DD, where the line between “Direct Support Professional” and “Consumer” is washed away.

IV. Riverflow Community

A. Prologue – the Vermont DDHI and Act 186

In some respects, the story of Riverflow starts with the story of the Vermont Developmental Disabilities Housing Initiative (“DDHI”). The DDHI came to life from the July 2021 op ed article written by Elizabeth Campbell, one of the Riverflow founding parents, about the [current state of Vermont residential options](#). That article motivated many Vermont parents of adults with I/DD and high support needs to band together through zoom meetings, the first of which took place in August 2021. Motivated advocacy by the DDHI parents resulted in the Vermont Legislature passing [Act 186](#), effective June 2022. Among other tweaks to the Vermont Developmental Disabilities Services System, Act 186 established a Residential Services Pilot Planning Grant program, allocating \$500,000 to fund planning for 3 residential pilot programs in 3 different locations throughout the state.

Act 186 specifically stated: “The pilot planning grants shall reflect the diversity of needs expressed by individuals with developmental disabilities and their families, including individuals with high support needs who require 24-hour care and those with specific communication needs”. Act 186 also created a new position within the Developmental Disabilities Services Division for a “Residential Program Developer”, with multiple express job duties, including “expanding housing and residential services options for individuals with developmental disabilities, in accordance with federal home-and-community-based services regulations.” Unfortunately, the Residential Program Developer position was a “limited service” position that expired in 2026.

Now in 2026, the DDHI has continued to be a parent-driven force for improvement to the Developmental Services system, and the DDHI has grown to about 140 families.

B. Riverflow – Start Your Engines

The timeline of Riverflow has been incredibly fast, or at least it has felt that way. The amount of time and energy required of both the core leadership team and founding families has been intense, often exhausting, and always worthwhile.

Here goes:

- June 27, 2023 – Vermont nonprofit incorporation
- July 15, 2023 – Act 186 grant application filed for 3 available grants
- August 15, 2023 – Grant was awarded and property found – *same day!*
 - The 30-acre property is located about 20 – 35 minutes from the University of Vermont, Middlebury College, Champlain College, and St. Michael’s College
- October 2023 – First in-person meeting of founding families and founding team
- December 2023 – 501(c)(3) application filed (*Pro Tip – Do not wait this long...*)
- January 2024 – Property purchased, strategic planning meeting, Fiscal Sponsorship Agreement entered – *Shift to Overdrive*
- January – September 2024
 - Fund raising begins
 - Went under contract for construction/renovations
 - Hired a full-time general manager for construction--full code review for public building and TCR requirements
 - Designed program and worked on several hundred pages of policies to get us licensed
 - Budget design based on income from HCBS/DD Services Medicaid and Supplemental Security Income

- Worked with Designated Agencies to confirm service contracts and funding guidelines
- Onboard a financial firm for accounting and bookkeeping
- September 18, 2024 – 501(c)(3) exemption status approved!
- October 8, 2024 – Therapeutic Community Residence license issued – ***SHOWTIME!***

The first four residents (a/k/a “Friends”) moved into Willow House and began life at [Riverflow Community](#) that day.

As of October 2024, Riverflow was the only one of the three Act 186 grantees awarded in August 2023 that had progressed to occupancy. The second Act 186 grantee opened in 2026, and the third Act 186 grantee is expected to open in 2027. Since October 2024, Riverflow has continued to be actively engaged with the local press, and it was the subject of an extensive article in January in [Vermont Business Magazine](#).

C. Essentials For Success

Riverflow would still be a concept (a/k/a pipe dream) without the ability to hire a community consultant ***BEFORE*** the founding parents really began anything. Riverflow was incredibly fortunate that Hannah Schwartz was not only available to consult under the Act 186 planning grant, but even more so that she made the decision a few months into the grant period that she would become the Executive Director.

Additionally, the ***entire team*** engaged in fundraising:

- Founding Families & Ground Team
- Their Circles of Support
- Non-Disability Sources of Public Funding

- [Vermont Housing Improvement Program](#) (\$240,000) – access to grants and forgivable loans designated to promote the renovation existing dilapidated structures or create new housings for vulnerable populations, e.g., refugees, persons emerging from homelessness, *and now* persons with I/DD.
- [Vermont Low Income Trust for Electricity](#) (\$50K) – VLITE funds projects “that advance the state’s energy goals with a particular focus on the energy needs of low-income Vermonters”.
- [Vermont Housing & Conservation Board](#) (\$425,000) – “Established in 1987, the Vermont Housing & Conservation Board remains the forerunner in the nation in pioneering a comprehensive approach to affordable housing and community development linked with land conservation and historic preservation.”

It is also critically important that the DD-HCBS Waiver budgets for the individual resident meets the operating and staffing expenses. All physical improvements are funded outside of any Medicaid dollars, through fundraising and grant applications.

D. The Future of Riverflow

In March 2025, Riverflow presented its preliminary Site Plan and Conditional Use Permit application for a “Planned Unit Development” to the Town of Monkton Development Review Board, with the local DRB being the first stop in the next phase of the community. Shortly thereafter, Riverflow began the state permitting processes for the necessary approvals from the Vermont Agency of Natural Resources (i.e., Water Supply & Wastewater Disposal, Stormwater Discharge Permit, Wetlands Conditional Use Permit). It took until June 2026 for all local and state land use/environmental permits to be issued, and appeal periods expired, for the full build out of

the community. Fund raising for House #2 was undertaken simultaneously with the permitting process.

The optimistic goal has been that the full community build out will be completed within 10 – 15 years:

- House #2 (infrastructure (road, power, and utilities) began September 2026, and occupancy is expected by June 2027
- Farm and Farmhouse (House #3) including gardening program and greenhouse
- Admin Offices
- House #4
- Community Center
- House #5

Since October 2024, the Riverflow team has worked to implement a modest farming program (currently 20 chickens and 4 sheep) and a substantial gardening program. Riverflow has continued to develop the relationship with our neighbors, and the broader community. With House #2 (Holly House) underway, Riverflow recently had a “Friends and Family Day”, where the four individual Friends who will move into Holly House in 2027 and their families and the Willow House Friends and their families, got together at Riverflow for a meet and greet. In the coming months, the Riverflow leadership team will begin holding “Sibling Zooms”, so that the brothers and sisters of the Friends in Willow House and Holly House can begin to get to know each other – no parents invited.

As Riverflow moves forward with the buildout of the community, and as the extended circle of the community grows, Riverflow will also seek to create an endowment.

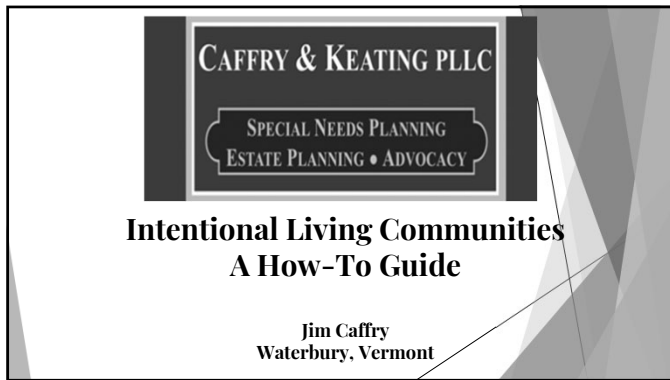
As with anything ‘different’, there will be questions about the wisdom and viability of any type of service model that is different than what currently exists. However, Camphill is the longest standing intentional community model in the United States, and the only existing Camphill community in Vermont had its quarter-century anniversary last year.

It is imperative to keep in mind that intentional living is a **CHOICE**, not a placement. It should be a one of many “meaningful choices” that have failed to materialize in the 33 years since the closure of the Brandon Training School and the 30 years since the Vermont Developmental Disabilities Act was passed. Intentional living will not be for everyone, but a one-size-fits-all approach is what the current I/DD services system has become, and it is clearly failing.

Will Riverflow survive and thrive for the next 50 years? To use an old New England expression, it’s hard sayin’, not knowin’. However, what can be said with certainty is that Riverflow opened its doors in October 2024, and as of September 2026, there have been over 100 applications submitted for the 16± additional spots in the community, which will take another 1 to 10 years to build.



1



2



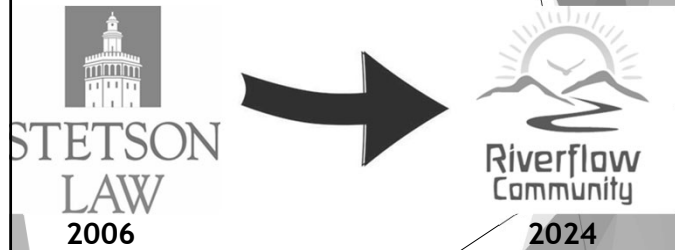
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Who I Am & How Did I Get Here?



4

Who I Am & How Did I Get Here?



5

But First...

THANK YOU!

...for your commitment to a specialty
practice for families like mine...
...where you'll meet all kinds different
people who will push your buttons
in all kinds of different ways...

6

Housing Soup

List of Ingredients:

- *Laws & Regs*
- *Policy & Politics*
- *Public & Private Money*
- *People to Make it All Work!*



7

***Begin at the End!
&
Know the Field of
Play***

8

Begin @ the End!

***What Do Your Clients
Want for Their Adult Child?***



***What Does The Individual
Want for Her/himself?***



9

Begin @ the End!

Give Yourself a Disability-Specific Education

&

Give Yourself a Disability-Services-Specific Education



10

Silos of Services

This will be *VERY* state specific - Vermont has *FOUR* separate silos of support services, with 4 sets of rules:

- ❖ I/DD
- ❖ Mental Health
- ❖ TBI
- ❖ Physical Disabilities
- ❖ Pick & Choose?



11

Sources of Sap?

- ❖ Disability Onset Before Age 22?
 - ❖ CDB can be game changer
 - ❖ 2026 SSI FBR = \$994 + AABD?
 - ❖ CDB = 50% higher earning parent's
 - ❖ PIA @ retirement & 75% @ death
 - ❖ SSI = \$11,928/year
 - ❖ PIA of \$3,200/mo - CDB @ death =
 - ❖ \$2,400/mo = \$28,800/year - \$17K bump!
- ❖ ABLE Accounts - Onset before 46 now & a great place to stash away "excess" CDB!



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Some Thoughts on the Legal Hierarchy of Social Services

- *Federal Statutes, e.g. Social Security Act (42 U.S.C. §§ 301-1397mm)*
- *Federal Regulations, e.g. the 2014 HCBS "Settings Rule" (42 CFR §§ 441.300 - 441.750)*
- *CMS Guidance & Policy Documents*

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Some Thoughts on the Legal Hierarchy of Social Services

- Vermont Developmental Disabilities Act of 1996
- Vermont DD Regulations (amended 2023)
- Vermont DD State System of Care Plan (FY 25-28)
- 60+!!! Policies, Guidelines and Field Memos!
- 🤔 🤔 🤔

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Some Thoughts on the Legal Hierarchy of Social Services *BUT WAIT...*

Loper Bright Ent. V. Raimondo, 603 U.S. 369
(June 2024)

... The Supremes do away with 40 years of "agency deference" jurisprudence under *Chevron v. NRDC*, 467 U.S. 837
...perhaps an opportunity for making some chicken salad...

15

Some Thoughts on the Legal Hierarchy of Social Services

- *Because “that is the way we have always done it” ain’t law and it ain’t binding!*
- *Federal law and CMS Regulations give states A LOT of discretion - if something is OK to do with HCBS \$\$\$ in State A, then it is OK (at the fed level) in State B too.*

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Historical Baggage - The Past Need Not Be Prologue

- 1779 - Vermont law requiring Towns to care for poor
- 1791 - 14th U.S. State
- 1797 - Vermont Towns authorized to build Poorhouses and Poor Farms



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Historical Baggage - The Past Need Not Be Prologue

- Poor Farms - poverty got you there - regardless of reason
- If you could work, you did



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Historical Baggage - The Past Need Not Be Prologue



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The State of My State and What You Need to Know About Yours...

- 1915 - the "Vermont State School for Feeble-minded Children" opened
- 1930s - became "Brandon Training School"
- 1968 - peak of 650 individuals
- 1976 - dropped to 450
- 1993 - closed



20

The State of My State and What You Need to Know About Yours...

- Vermont is a little state - 650,000 total, estimated 55,000+ with I/DD
- Total HCBS DD recipients 3,394; total receiving 24/7 "Home Supports" 1,490
- 88% of them in "Shared Living", i.e., adult foster care
- Remaining 11% in "Staffed" or "Group Living" - not there by choice!

21

A Few Words on the HCBS 2014 Settings Rule...

"The HCBS Setting Rule is *not about WHERE* you live, *it is about HOW you live*".

Kirsten Murphy, Executive Director of the Vermont Developmental Disabilities Council, July 2025

22

Intentional Community Living

- This NOT the same as "Group Living" where I come from. In Vermont, "Group Living" is a placement, NOT A CHOICE

- Group Living Homes - for 3 - 6 individuals, staffed 24/7 with DSPs on an 8-hour shift. In VT, generally for individuals who have been unsuccessful with multiple attempts with Shared Living Providers

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Intentional Community Living

An "intentional community" is a group of people who have chosen to live together with a common purpose, working cooperatively to create a lifestyle that reflects their shared core values. The people may live together on a piece of rural land, in a suburban home, or in an urban neighborhood, and they may share a single residence or live in a cluster of dwellings.

Geoph Kozeny, Foundation for Intentional Living

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Intentional Community Living

... in the context of disability services - people with and people without disabilities living together, sharing a life where everyone has something to contribute, and everyone has their needs met...

25

Intentional Community Living

Nonprofit community - BoD, Officers, Executive Director, Associate Director, Householders, Coworkers (DSPs), and Friends ... and also Parents...

- Some hourly employees, contracted RN for licensing
- Lots of volunteer engagement - families, broader community - also means lots of eyes on...

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The Camphill Movement

Camphill Association of North America
www.camphill.org

See also:

Cadmus - www.cadmuslifesharing.org

High Spirit - www.highspirit.org



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Question: What Does the Internal Revenue Code Have to Do With All of This???

Answer: A WHOLE LOT!

- *IRC 131 - DSP cost containment - adult foster care (Shared Living) through income tax exemption*
- *IRC 119 - DSP cost containment - income tax exemption of imputed value of "free" room & board (Intentional Living)*

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Another Tax Consideration

Your state's mileage may vary!

- *Under Vermont law, many, but not all non-profits owning real estate are exempt from property taxes*
- *Consider "payment in lieu of taxes" for local municipality...*

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Still More Considerations

- *Zoning - use by right? 24 V.S.A. § 4412(1)(G) - serving 8 or less considered single family residence*
- *Building a community? Then all the land use and permitting rules apply*
- *Licensing as a care home? Regardless of ownership and payment source for services - 3 or more people triggers license!*

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Riverflow Community, Inc.

- Vermont Developmental Disabilities Housing Initiative ("DDHI")
 - Starts with an Op Ed by Elizabeth Campbell in July 2021
 - First DDHI Meeting in August 2021
 - Stormin' the Statehouse in January 2022 (peacefully, of course...)
 - H. 720 introduced on March 9, 2022
 - Act 186 becomes law on June 9, 2022

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Riverflow Community, Inc.

Act 186

It is the intent of the General Assembly that:

(1) Individuals who qualify for developmental services...receive full and complete information in plain language regarding their options and services.

33

Riverflow Community, Inc.

Act 186

It is the intent of the General Assembly that:

(2) Individuals with developmental disabilities, their family members, allies, and advocates be respected and active participants in systems change activities, including... development of additional residential service options.

34

Riverflow Community, Inc.

2 Biggies in Act 186

1) \$500K for 3 pilot projects in different locations

2) Creation of Residential Program Developer with DD Services Division (needs to be made permanent position!)

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Riverflow Community, Inc.

Caffrys & Campbells - September 2022 - pizza & dreamin'...



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Riverflow Community, Inc.
June 2023 - 2 Biggies for Riverflow

- 1) Hannah Schwartz signs on as Executive Director
- 2) VT nonprofit incorporation

... start the 16-month clock



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A word about people...

All the money in the world is no guarantee of success... as with most things the key to success is knowledgeable, competent, & caring leadership... Hannah is all that and so much MORE!



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Riverflow Community, Inc.

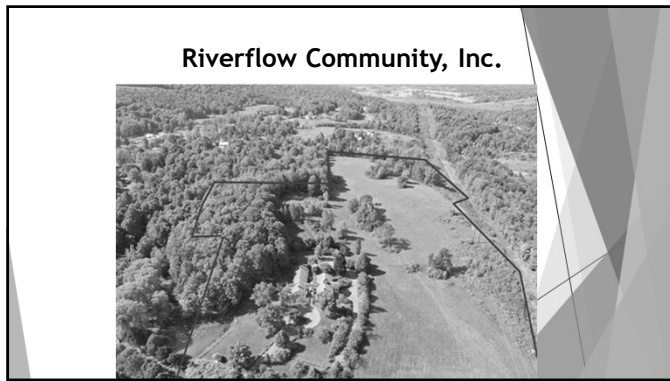
July 15, 2023 - Act 186 Grant Application filed

August 15, 2023 - Grant Awarded... and 30-acre property found same day ... coincidence or karma???

Lots of love & \$\$ needed.



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42

Riverflow Community, Inc.
January - October 2024
... and more Renovations...



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Riverflow Community, Inc.
Fundraising—an essential to success

- A good case statement and a strong list of potential donors (people want to help!)
- Founding Families and Team Members
- Extended Circles of Support
- Non-Disability Sources of Public Funding
 - VHIP (Vermont Housing Improvement Program) 240K
 - VLITE (Vermont Low Income Trust for Electricity) 50K
 - VHCB (Vermont Housing & Conservation Board) 425K



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Riverflow Community, Inc.
October 8, 2024 -
TCR License issued
SHOW TIME for Willow House!



45

The Future of Riverflow

The Sweet Spot for Community—

- Four to five houses seems the most sustainable. A neighborhood within a broader neighborhood—a porous environment that maintains person-centered practices.
- Not too big, and not too small... Camphill Copake has 22 house and is located on 600 acres. Some would challenge that if there is a café, store, and all things are on the campus, is it too enclosed? I think we need options and to ensure “it is not a placement, it is a choice!”
- Camphill Hudson is located downtown and each person lives in their own apartment. (We need a variety of options.)

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The Future of Riverflow



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In the meantime...



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Housing Boot Camp: Laws, Benefits, and Creative Solutions

October 21, 2026

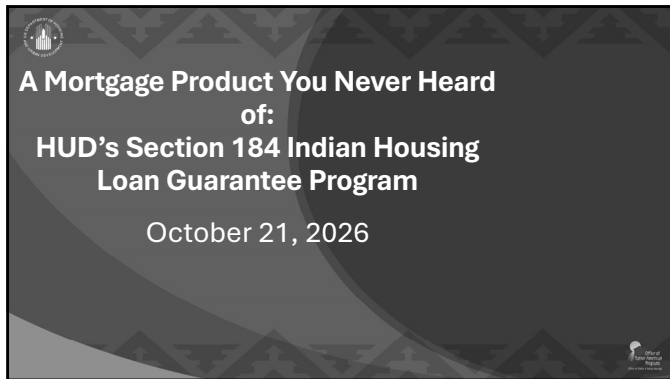
A Mortgage Product You Never Heard of: HUD's Section 184 Indian Housing Loan Guarantee Program



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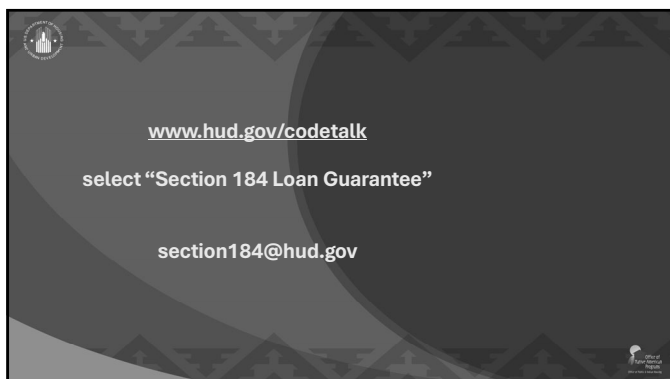
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Section 184 Program Overview

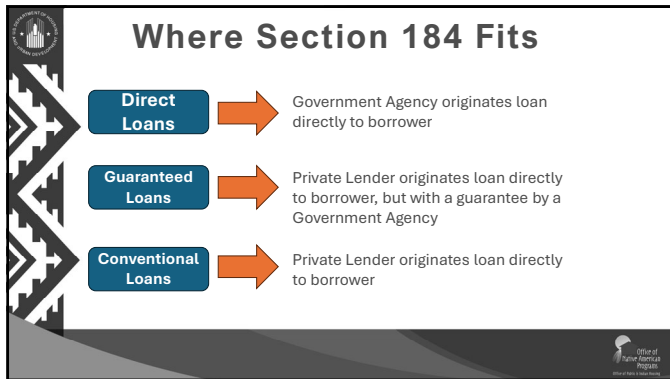
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Section 184 of the Housing and Community Development Act of 1992 (as amended)

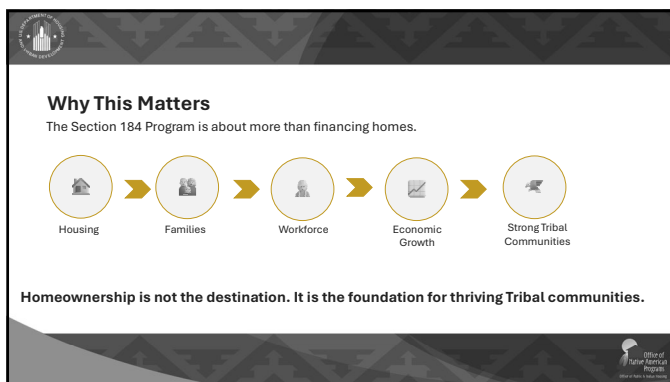
12 USCS 1715z-13a

24 CFR 1005

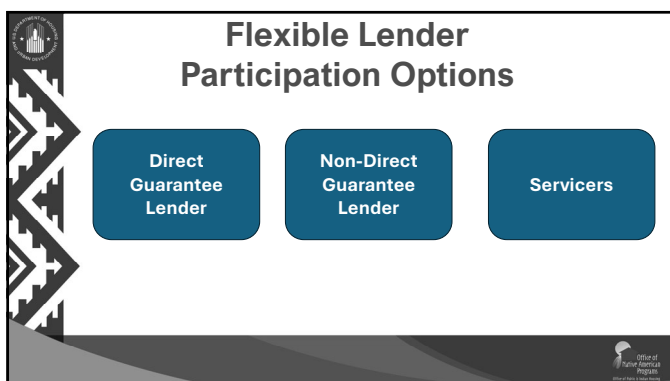
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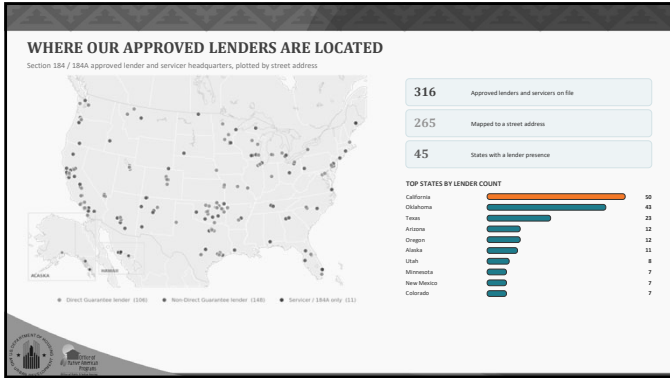
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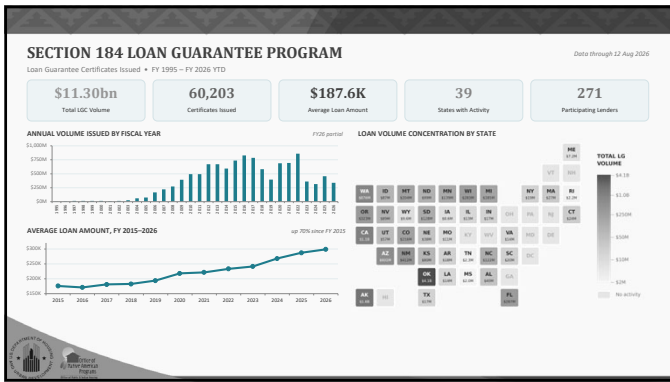
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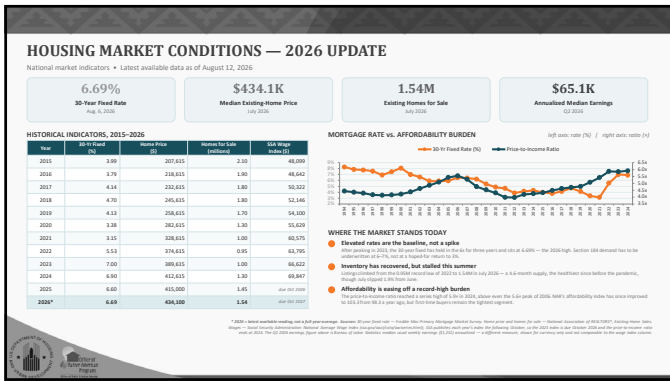
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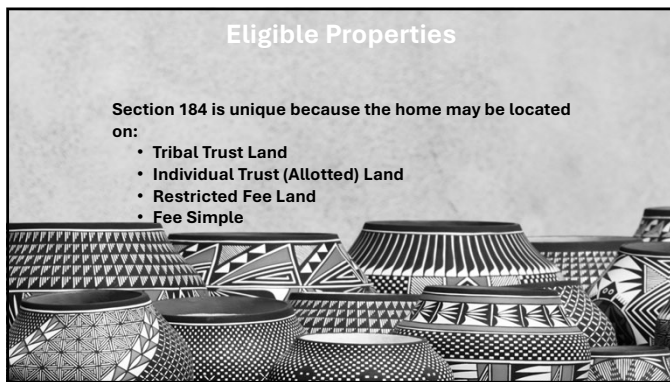
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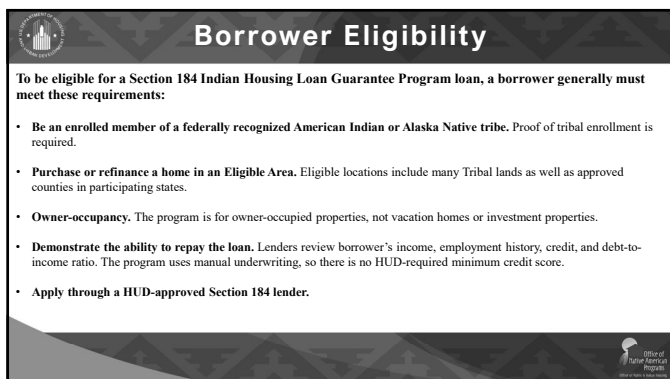
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Eligible Loan Purposes

- A **Section 184 Loans** must be for Eligible loan purposes, which includes:
 - **Purchasing an existing home**
 - **Building a new home** (including site-built homes and eligible manufactured homes on permanent foundations).
 - **Rehabilitating an existing home**, including weatherization improvements.
 - **Purchasing and rehabilitating a home** under one loan.
 - **Refinancing an existing mortgage**, including:
 - Rate-and-term refinance
 - Streamline refinance
 - Cash-out refinance



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Loan Parameters

- **Loan term:** Fixed-rate mortgages only, with terms of 30 years or less. Adjustable-rate mortgages (ARMs) are not permitted.
- **Occupancy:** Must be the borrower's primary residence. Second homes and investment properties are not eligible.
- **Property type:** one to four unit residential properties only. Commercial/mix-use properties are not eligible.
- **Maximum loan amount:** Subject to HUD county loan limits, which vary by location.



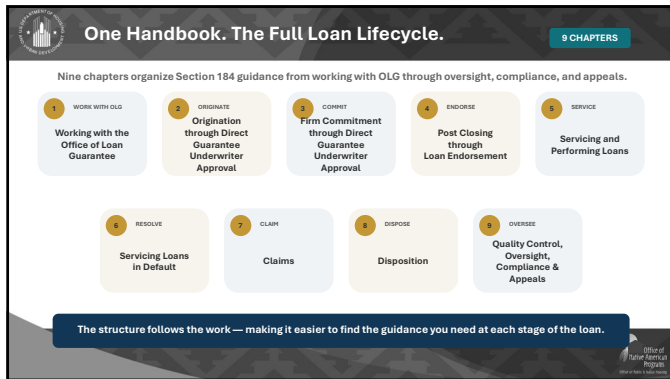
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Section 184 Handbook Update





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Exciting Things Are Happening!

NEW Regulations published.
[Federal Register :: Strengthening the Section 184 Indian Housing Loan Guarantee Program](#)

NEW Handbook on the way.
[NEW Section 184 Forms on the way](#)
[Handbook Trainings are coming](#)

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New and Improved Underwriting Policy Changes

CURRENT POLICY	TO	NEW HANDBOOK POLICY
Lifetime Ban	➡	Waiting Periods
Student Loans at 1%	➡	Student Loans at 0.5%
DTI at 43%	➡	DTI Increased to 45%
Collection Burdens	➡	Collections Relief
Cash Out Refinance \$25K Restriction	➡	Restriction Lifted; LTVs 80% or Lower
Streamline Refinance Appraisal Required	➡	Streamline Refinance Appraisal NOT Required
Single Close Construction Complete in 4-12 Months Depending On.....	➡	Single Close Construction Complete 12 Months Across the Board
Manufactured Home Must Be De-Titled	➡	Manufactured Homes De-Titling Exemption on Trust Land

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Chapter II Proposed Handbook Key Highlights of New Guidelines

Credit Profile Updates

Debt-to-Income Ratio Increase

- Now up to 45% with compensating factors.

Co-Borrower Flexibility

- Tribal members with an existing Section 184 loan can now be a non-occupying co-borrower on another Section 184 loan.

Collections & Judgments Flexibility

- Collections over \$2,000 may still be approved with payment arrangements or 5% added to DTI.
- Judgments acceptable with full repayment or documented payment plan.

Bankruptcy, Short Sale & Foreclosure Wait Times Reduced

- Chapter 7 eligible after 24 months; Chapter 13 eligible after 12 months.
- Foreclosures, Short Sales, Lease-in-Lieu/Deed-in-Lieu of Foreclosures - eligible after 3 years from date of title transfer to foreclosing entity/third-party.

Student Loan Calculation Update

- 0.5% used for DTI calculation, reducing borrower burden.



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Additional Key Highlights of New Guidelines

Collateral Updates

- Appraisal Validity**
 - Valid for 180 days; with an appraisal update allows a total of 1 year from date of initial appraisal.
- Accessory Dwelling Units (ADU) Allowed**
 - Allows "in-law" units.

Overall Program Updates

- Cash-Out Refinance Flexibility**
 - Cash out limit increased on LTV up to 80%.
- Native Advantage**
 - Lenders can order Case Numbers directly through Native Advantage.
- Income Documentation Requirement for Weekly or Bi-Weekly Paystubs**
 - Verification period reduced to 28 days.



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Section 184

Why It Works

- Low upfront cost
 - 1% currently
 - 1.5% increase this year
- Low Downpayment
 - 2.25% on loans over \$50,000
 - 1.25% on loans under \$25,000
- No annual mortgage insurance
- Flexible land types (fee simple + Tribal lands)
- Flexible underwriting

High Impact, Low Risk

- Over 11 Billion in Tribal homeownership since program inception
- Exceptionally low default rate

Who It Serves

- Tribal members
- Indian Tribes
- TDHEs and Housing Authorities (homeownership & rental)

How It Can Be Used

- Acquisition of existing homes
- Rehab/renovation
- New Construction
- Subdivision and scattered site housing development
- Refinance (rate/term or cashout)



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Nutshell Summary

Section 184 Program requires:

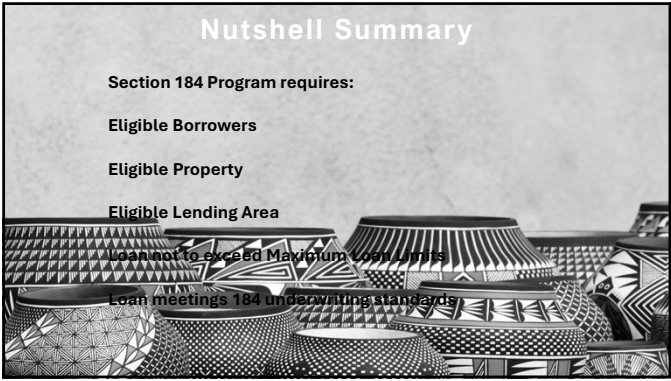
Eligible Borrowers

Eligible Property

Eligible Lending Area

Loan cannot exceed Maximum Loan Limits

Loan meetings 184 underwriting standards





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October 21, 2026

Overview of HUD Programs



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