

Assets are available if the owner has both legal authority and actual ability to use them for self-support. Do not count assets that are legally unavailable.

Do not consider the terms of a premarital agreement in determining the availability of assets for a married couple.

When an applicant or enrollee owns an asset in whole or in part, presume that the value of the portion the client owns is available unless the client proves it is not. A client may prove unavailability by verifying a legal or actual barrier to disposal of the asset that cannot reasonably be overcome. If a client claims a legal barrier and its status is unclear, consult the Health Care Policy Center or refer the case to the county attorney for a legal opinion on availability.

**EXAMPLE:**

Jerry applies for GAMC. He is involved in a lawsuit, and a preliminary court ruling prevents him from selling or disposing of his assets pending further order of the court. Consider his assets unavailable. Consult the county attorney if the order is unclear. Review unavailability at each renewal and when you anticipate a change in availability

See §0909.07 (Jointly Owned Assets) to determine what portion of a jointly-owned asset is presumed to belong to each owner. Except for jointly owned bank accounts, consider an asset to be unavailable when:

- ▶ The permission of a joint owner is required to sell or dispose of the asset.

AND

- ▶ The joint owner is not a member of the household or a financially responsible relative whose assets are deemed to the MA/GAMC client.

AND

- ▶ The joint owner refuses to allow the sale or disposal of the asset.

**EXAMPLE:**

Marlene applies for MA for herself and her children. She is separated from her husband. They jointly own several acres of undeveloped land separate from their homestead. Marlene's husband will not agree to

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list the land for sale. Consider the land as unavailable to Marlene unless her husband agrees to sell the land or a court awards the land to Marlene. Review unavailability at each renewal.

**EXAMPLE:**

William and Myrna are a married couple who reside together in the community. They jointly own an apartment building with an equity value of \$35,000. William applies for MA. Myrna does not apply and refuses permission to list the property for sale. Because Myrna is a spouse whose assets are deemed to William, her refusal to sell does not make the property unavailable. Count the full \$35,000 equity toward William's asset limit.

In some cases, a jointly owned account is still available even when another owner refuses access. Determine whether the account was titled jointly with the intent of allowing both parties full access.

**EXAMPLE:**

Steve opened a brokerage account in his name 10 years ago. Two years ago, he had some health problems and put his son Tom's name on the account so Tom could help manage the funds. Steve has continued to receive income from the account and has made deposits. Tom has not withdrawn or placed funds in the account. Steve applies for MA. The account balance exceeds the asset limits. Tom, as the joint owner, signs a statement that he will no longer allow Steve access to the account. Review the following factors:

- ▶ How the account is titled, and laws governing the type of account
- ▶ What agreements, if any, were signed when the account was opened or the 2nd owner's name was added
- ▶ What policies the financial institution has governing access by joint owners
- ▶ Who contributed to the account
- ▶ Who has had access to the account
- ▶ Who has received income and/or 1099 tax forms from the account
- ▶ Who gets the proceeds if the account is closed
- ▶ Whether the account has named death beneficiaries

Determine whether Steve still has access to the account. If he does not, evaluate whether placing Tom's name on the account was an improper transfer. Submit a HealthQuest with all available information if access is unclear.

See §0909.25 (Spousal Asset Assessments) for treatment of assets when 1 spouse is applying for long term care services.

Consider real property not used as a home to be unavailable as long as the applicant or enrollee is making a good faith effort to sell the property. See §0909.13.03 (Real Property: Non-Homestead). Do not consider non-liquid personal property to be unavailable while for sale.

**EXAMPLE:**

Paul applies for GAMC. He owns a boat with equity value in excess of the GAMC asset limit. Paul must sell the boat and properly reduce the proceeds to be eligible for GAMC. See §0909.29 (Excess Assets--Applicants). Do not consider the boat unavailable while Paul has it listed for sale.

A community spouse's share of assets held by an LTCF resident are not available to the LTCF resident up to the date of the 1st recertification. See §0909.25.03 (Spousal Asset Allowance).

See §0909.21 (Trusts) and §0909.23 (Annuities) for information on determining the availability of these types of assets.