



Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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Assisting People with Disabilities to Purchase a Home

While the decision to buy a home is a big decision for any first-time home-buyer, it is an especially complex decision for persons with disabilities. Persons with disabilities often have a fixed, low income and are typically dependent upon government assistance or support. This complicates not only the process of qualifying and obtaining financing, but may also trigger scrutiny of the home-buying decision itself: is home ownership the best solution for the individual? Should the individual own a home alone outright in fee, or would some other type of limited ownership like tenancy in common, joint tenancy, or a life estate, be a better solution? Should the individual take on a tenant or perhaps rent him or herself instead of buying? These are just some of the additional issues that need to be considered by a person with disabilities who is considering home ownership.

This *Legal Update* outlines the home-buying process for a person with disabilities from the perspective of a REALTOR®. This *Update* overviews the planning process involved when a person with disabilities considers the freedom, control, and independence of home ownership. This process includes an analysis of financial and budgetary matters, including government benefits such as SSI and Medical Assistance (MA), an evaluation of different types of home arrangements other than just fee ownership, and consideration of future planning issues such as moving out, and the MA lien and estate recovery program. The role of the REALTOR® in this process is highlighted, including special points

to be considered when drafting the offer to purchase.

Members must be aware, however, that the materials in this *Update* only scratch the surface. The myriad rules and regulations that impact the financial and medical decisions of many persons with disabilities cannot even begin to be mentioned in this publication. Rather, the summaries and examples provided are intended to allow REALTORS® to appreciate the complexity involved and better understand the role they can fill when a person with disabilities seeks the benefits of home ownership.

Home-Buying Process for Persons with Disabilities

When a typical first-time home buyer makes that big leap and decides that they want to purchase a home, the major considerations may have only been that he or she needs more room and has pre-qualified at the bank for financing. The buyer may have also considered issues such as proximity to schools, places of worship, job, etc., and perhaps whether additional financial support was available from family members.

While all of these considerations will certainly be involved in the decision of a person with disabilities, many other concerns need be considered and many more people will usually need to be involved. The people who provide assistance to the person with disabilities, such as direct care providers, guardians, and parents may give valuable input regarding the individual's resources and

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needs. If the individual has a low or fixed income, receives government assistance or support, and/or may require subsidy assistance in making any purchase, a housing specialist or counselor will be a critical participant. Bankers, real estate brokers, attorneys, accountants, home inspectors, and other advisors often will also have a role to play in the home-buying process. All of these various professionals and friends have to come together and work together as a team to reach a successful outcome for the person with disabilities.

A person with disabilities who is looking at home ownership may be coming from an institution, moving out of his or her parents' home, or already living on his or her own. There are several other factors that may complicate the home-buying process for the person with disabilities. As mentioned above, his or her personal income may be very low and fixed, for example, modest wages plus SSI. Receipt of a financial settlement (e.g. court judgment, award of back benefits), which would typically be seen as a positive event for most homebuyers, may place the person at risk of losing his or her benefits. The person may have limited knowledge about home buying and little experience handling money. There may be a guardian, conservator or trustee who needs to be involved in the process.

The complex balance achieved in obtaining various support services through different programs and funding sources can be easily disrupted by any change in circumstances. Clearly the prospect of home ownership in such situations requires a new budget plan to consider all costs and expenses, and to maximize use of all available subsidy and funding sources. Part of the new budget plan may require that the person with disabilities share his or her new home with another person due to support needs or economic reasons.

The process for a person with disabilities considering home ownership should involve five distinct steps. These

include (1) an analysis of housing problems and goals, (2) deciding upon an approach to address housing problems and obtain housing goals, (3) exploring the practical issues of affordability, availability, essential features, and timelines, (4) locating a home and making an offer to purchase, and (5) buying the home.

Although the REALTOR® will not necessarily be involved in all of these steps, it is important to understand that home ownership for a person with disabilities often means a complicated, time-consuming planning process. If the person with disabilities jumps into the middle of the process and doesn't carefully first follow through on the planning and preliminary contacts included in the first three steps, the transaction may fail.

Analysis of Housing Problems and Goals

This is a critical step for a low-income person with disabilities. The person's current living situation must be carefully analyzed to take account of the person's current support services and arrangements, costs and expenses, etc. This must be done before the person can begin to evaluate the feasibility of a changed living arrangement and how it would impact the person's budget and general living conditions.

Aspects of the person's current living situation that should be examined include the person's rental history, any landlord problems, any current lease and the lease termination date, who is paying for the person's current housing and how, amount of rent payments, amounts of any other debts, any credit problems, utility costs, household expenses, and whether or not the person presently shares his or her housing with another person. Low-income persons with disabilities often need to live with one or more unrelated persons in order to obtain support, or to afford the housing.

The person with disabilities should also carefully evaluate the person's current

housing problems and needs. Does the person need more space, a change in the make-up of his or her household, better accessibility, more stability, lower payments, and/or to stop having to move so often. The person may also have an inheritance or benefit back payment that the person must spend quickly to avoid jeopardizing government assistance and benefits.

These analyses will not often involve the REALTOR®. Rather, this evaluation ideally will be led by a supportive housing specialist who knows how to navigate the home-buying process for persons with disabilities and how to tap into the available subsidies and financial assistance programs for low-income persons with disabilities. To find the nearest Wisconsin housing specialist, see the resource material on page 10 of this *Update*. The person's parents, guardians, direct care providers, and others familiar with the person's day-to-day life may also participate in this evaluation. Once the present housing situation has been assessed and current problems and concerns have been identified, the person with disabilities may start to look at solutions to those, including the prospect of some type of home ownership.

Addressing Current Housing Concerns: Is Moving the Only Solution?

The person with disabilities should consider whether the person's current housing problems might be better addressed through an alternate approach. For example, would remodeling, improved weatherization, or improved accessibility be an alternative way to solve the person's problems? Would mediation or fair housing advocacy resolve landlord/tenant issues? What other resources or subsidies may be available to solve the person's problems other than moving?

If moving remains a possible alternative, is the person with disabilities prepared for all the implications of moving? Will other members of the person's

household also make the move or will the make-up of the household change? Will support services follow to the new home or will new support services need to be arranged? Will housing subsidies follow or change? Will transportation be more or less convenient? Will a new home be more or less convenient to the person's job, family, and friends? Are current accessibility modifications portable?

The person with disabilities must also seriously consider if home ownership is truly a desirable possibility for him or her. Is the person prepared to make the long-term commitment to a house? Is the person equipped to engage in the complex and time-consuming process typically required when a buyer purchases a home? Can the person with disabilities afford the costs of home maintenance and upkeep?

Specific Home Ownership Issues: Affordability, Availability, Essential Features, & Timelines

If the person is committed and feels sufficiently comfortable with the demands of home ownership, the person could proceed, under the guidance of a housing specialist and other professionals, to seriously evaluate the specifics of home ownership for this person and develop a housing plan.

What Housing Options Can Be Afforded

Several different issues may require attention on the financial front, including current and future income, debts, credit worthiness, household budget, building modifications for accessibility, help with property maintenance and management, zoning considerations, and lenders for primary and secondary financing. The person with disabilities must analyze his or her income, debts, and household budget, and determine how much he or she can afford to borrow, both now and long term. People with very low incomes have fewer discretionary expenses to trade off against a mortgage debt and thus fewer choices in the level of debt that they can

manage. The person should also take into account direct costs such as the earnest money payment, and indirect costs such as taking time off of work for the closing and the move. The person with disabilities ideally will be working with a housing specialist or a budget counselor in making these determinations.

Like any other homebuyer, the person with disabilities should shop around and determine which lender offers the best mortgage in terms of rates, terms, etc., and then get pre-qualified with a lender. Borrowing on a 30-year, fixed-rate mortgage allows a person with disabilities to fix his or her costs for 30 years, which is recommended for persons with low, fixed income. The amount of the primary mortgage is often quite modest in comparison to the substantial mortgages in many home purchases.

Once a primary mortgage has been settled upon, the person with disabilities should explore additional subsidy and downpayment programs to fill in the projected gap between the loan amount and projected purchase price. Many of these types of programs will provide a loan that is repaid only upon the sale of the property.

For example, the Federal Home Loan Bank of Chicago awards Affordable Housing Program (AHP) grants. One of these grants was awarded in 1996 to First Federal Savings Bank for its Down Payment & Closing Cost Assistance Grant Program, given to households with members who have disabilities (although the original grant is effectively out of funds, an application for additional funding is pending). This program awards grants of up to \$5,000 for housing purchase downpayments, closing costs, and necessary property rehabilitation. The grant has to be repaid only if the house is sold within 5 years or ceases to be the primary residence of the person with disabilities during that 5-year period. 20% of the original grant is forgiven each year that the home is the primary residence of the person

with disabilities. If there are not enough proceeds to pay all the liens and the FHLB grant when the property is sold, less than the full amount of the grant may be accepted or the balance may be forgiven. This program may be used in combination with other downpayment and closing cost assistance programs, like those funded by the Wisconsin Division of Housing. For example, a purchase price of \$46,550 maybe paid by a person with disabilities using Home Program funds of \$4,000, a local grant for \$22,050, an FHLB-AHP grant of \$5,000, and a first mortgage of \$15,500. [The WRA was one of the development expense underwriters for the FHLB-AHP project.]

It is not uncommon for a person to use funds from several different programs when purchasing a home, a few thousand dollars coming from each source. This obviously adds to the complexity of the purchase when the financing from several different lenders and programs all has to be approved and ready to go at the same time.

Different options other than the traditional mortgage may also be considered. See the discussion on page 8 of this *Update* concerning alternatives to ownership interests, such as tenancy in common, joint tenancy, life estates, and trust beneficiary arrangements. Parents and other family members may also become involved in terms of loans, partial ownership, or payments of expenses.

What Housing is Available

A person with disabilities may check on housing availability by looking at the newspaper, driving around town, attending open houses, talking with friends, etc. Or the person with disabilities may work with a broker to find properties in the right price range with the desired features.

- ☛ This may be a perfect situation for a buyer agency relationship. A person with disabilities may feel more secure working with a broker who is working on behalf of the buyer and not the

seller. The person with disabilities will likely feel more confident working with a broker who is familiar with the complexity involved when a person with disabilities buys a home and is comfortable working with the team of professionals involved.

Detailed specific items will comprise the list of desired property features. The person with disabilities may have exacting requirements as to location, size, parking, pet policies, accessibility, space for live-in caregivers, property maintenance and management services, and other requirements imposed by programs providing funding.

The person with disabilities may also have a different timeline than the fast-paced approach desired by many buyers. The person's timeline may depend upon the termination date on any current lease, a planned moving date, or a job change. Otherwise, the person with disabilities often will have plenty of time for planning, unless the person suddenly receives financial resources that must be immediately spent to avoid jeopardizing benefits.

Locating a Home

This part of the process may be more complex, intense, and stressful for the person with disabilities, and it may also seem that way to any brokers involved, as compared to their owner home-buying transactions. The timelines at this stage will be longer and more people will be involved than most brokers may be accustomed to. Brokers, lenders, accountants, and attorneys may spend more time on the job because of the level, number, and types of different subsidies involved.

At this point, the person with disabilities should specify the type of property that he or she wants, detailing amenities, location, etc. The person should also designate the team of professionals he or she wants to have work on the purchase (under the guidance of the housing specialist), the person's budgetary and borrowing constraints, and

the desired timetable. The person with disabilities may also have enlisted the support and assistance of family and friends, service providers, and guardians to help ensure that the home-buying plan is implemented as expeditiously as possible.

Home ownership counseling or training for the person with disabilities should also be arranged. Some subsidy programs will require this type of training as a requirement for awarding the loan or grant.

- ☛ It is up to the broker working with the person with disabilities to locate those homes that most closely match the person's specified requirements, check on availability, and perform any other preliminary investigations requested by the buyer. It may be important to know how soon the seller needs to close.

The Offer to Purchase

The broker working with the person with disabilities must pay careful attention to detail when drafting an offer to purchase for a person with disabilities.

- ☛ Financing contingencies will be required for the primary mortgage plus each subsidy program providing a loan or downpayment assistance. Subsidy programs have varying timetables and requirements, so a prudent broker will work with a housing specialist or counselor who has knowledge of subsidy and grant programs and can help work with the lenders to get these in order. Also keep in mind that the buyer may need help getting to the bank to officially apply for primary financing and downpayment assistance, and that accommodations such as a signature stamp and accessible locations may need to be arranged.
- ☛ Allow for additional time with respect to all deadlines and the closing, particularly if there are numerous subsidy programs providing financial assistance. An offer to purchase for a per-

son with disabilities may take longer to come together than other offers because of the complexity involved.

- ☛ If the person with disabilities has a legal guardian, court approval of the offer should be listed as a contingency. Ample time must be allowed for obtaining this approval - it may be impractical to state any deadline in such a provision.
- ☛ If the person with disabilities does not have the opportunity to review the offer to purchase with his or her attorney before signing, an attorney approval contingency should be included.
- ☛ Allow extra time in the inspection contingency. Any defects and the cost of correcting them are often critical to a person with disabilities. The person also may wish to use the inspection report as the basis for estimating the cost of making other immediate improvements that may not be part of the offer. Replacing appliances; repairing the roof, eaves, and siding; and making modifications for accessibility and live-in caregivers lowers maintenance costs and improves the future affordability of the home. The inspection report will also help the person with disabilities project long term and ongoing property management needs. It may be helpful to retain a home inspector who is familiar with accessibility issues.
- ☛ The person with disabilities may wish to consult his or her attorney when evaluating what work the seller should be asked to perform, whether it be the correction of defects, or upgrades and other improvements. The buyer may require that the seller pay to correct any code violations or perform needed upgrades, even if it means raising the purchase price. Obviously, any proposed amendment regarding repair costs and responsibilities must be carefully considered - a notice of defects will not be used unless the buyer is willing to risk losing the property or if the buyer wants to terminate the offer and draft a new

offer. An amendment for repairs may also include deadline and closing date extensions, depending upon who is performing the work, how long it will take, and when the buyer needs to take occupancy.

The Closing

Accommodations such as a signature stamp for signing documents and an accessible location may be needed. Pursuant to Wis. Stat § 990.01(38), if a person is unable to write, then he or she may request another person to write his or her name in his or her presence, and this will constitute a legal signature. The person with disabilities is wise to attend the closing with his or her attorney to ensure that all is in order for a successful closing.

Fair Housing Considerations when Buying or Renting a Home

When working with a person with disabilities who is either buying or renting housing, REALTORS® must remember that the federal and Wisconsin equal opportunity in housing (or fair housing) laws safeguard the rights of persons with disabilities as well as afford them certain accommodations. Under fair housing law, a “disability” means a physical or mental impairment that substantially limits one or more major life activities, a record of having such impairment, or being regarded as having such impairment. A disability may include diseases and conditions such as speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, HIV, diabetes, mental retardation, emotional illness, alcoholism, and drug addiction. A disability does not include the current illegal use of controlled substances, unless the individual is participating in a supervised drug rehabilitation program.

It is illegal to segregate, separate, exclude, or treat a person with disabilities unequally with regard to housing. Specifically, no person may segregate, separate, exclude, or treat a person with disabilities unequally in the sale or

rental of housing, or otherwise make unavailable or deny housing to a buyer or renter with a disability. Equal treatment must extend to the terms, conditions, and privileges of the sale or rental of housing, and to the provision of services or facilities in connection with such housing.

It is also illegal to refuse to permit reasonable modifications of existing housing that is occupied, or is to be occupied, by such a person with disabilities if the modifications may be necessary to the person’s full enjoyment of the housing. A modification means any change to the dwelling unit or to the common areas of a building. For example, a person in a wheelchair may wish to install grab bars in the bathroom, lower kitchen cabinets, widen doorways, or install a ramp at an entrance to the building. Such modifications are made at the expense of the person with disabilities. Where reasonable, a landlord may require that the premises be restored to their prior condition when the person with disabilities moves out. For example, it may be reasonable to require the removal of grab bars, but it is unreasonable to require the narrowing of the doorway because it will not interfere with the subsequent use of the premises by others.

If interior modifications to a unit are extensive, the landlord may negotiate a restoration agreement with the tenant. In a restoration agreement, the tenant agrees to restore the interior of the housing to the condition that existed before the modifications, reasonable wear and tear excepted. The landlord may require that the tenant pay a reasonable amount of money over a reasonable period of time to cover the cost of restoring the premises. This amount may not exceed the cost of the restorations and is deposited into an interest-bearing escrow account with the interest accruing for the benefit of the tenant. The landlord, however, may not increase the amount of any customary security deposit. Any funds not used by the landlord for restorations are returned to the tenant.

Fair housing laws are also violated by a refusal to make reasonable accommodations in rules, policies, practices, or services that are associated with the housing. This is true when such accommodations are necessary to afford the person with disabilities an equal opportunity to use and enjoy the housing, unless the accommodation would impose an undue hardship on the owner. For example, it may be necessary to assign a person with disabilities a reserved parking space near the entrance to the building where the person resides, even if the general parking policy is first come, first served.

A person with disabilities generally must be allowed to have a service animal, even if there is a general no pets policy. If a person's vision, hearing, or mobility is impaired, the owner may not refuse to rent or sell housing to the person, evict the person, require extra rent or security deposit, or harass the person because he or she keeps a trained service animal. Upon the request of a landlord, seller, or condominium association representative, the person with disabilities must produce credentials for the service animal issued by an accredited animal training school. The person also must accept responsibility for sanitation and any damage to the premises caused by the animal. However, the owner need not permit the person with disabilities to have his or her service animal in owner occupied housing if the owner, or a member of his or her family, has a physician's certificate stating that the owner or family member is allergic to the animal. There also have been a number of court cases in which persons with mental illness have been permitted to have an animal as a policy accommodation.

The Role of the REALTOR®

A REALTOR® working with a person with disabilities must keep in mind that he or she is part of a team effort. If the person with disabilities is on a fixed income and receives public benefits, the transaction typically becomes complex

and requires the input of professionals with expertise beyond that of most real estate licensees. Simply accomplishing a purchase does not serve the best interests of the buyer if the buyer is not first equipped to handle his or her financial obligations and the basics of home ownership.

If a person with disabilities on a fixed income approaches a licensee, the licensee will be prudent to determine whether this person has carefully planned the desired purchase. The licensee may ask whether the person has pre-qualified for financing - this will give some reasonable indication of whether the person has engaged in some planning. A licensee may also ask whether the person intends to utilize any subsidy programs in making the housing purchase. If the answer is yes, the licensee may then ask if the person has been through housing and budget counseling, as this is often required for these types of programs. If the person hasn't received any counseling, the licensee may suggest that the person meet with a local housing specialist before proceeding with an offer to purchase.

The licensee's goal should be to help ensure that the person with disabilities has received the appropriate counseling and planning assistance, if the person is on a low, fixed income, without discriminating or treating this person any differently from any other buyer prospect. A licensee should certainly not do or say anything to dissuade the person with disabilities from the goal of home ownership, but may try to ensure that the person has gone through a logical planning sequence before moving toward an offer to purchase.

Licensees should also be cognizant that not all persons with disabilities have low incomes or receive government benefits. Some persons with disabilities have private financial resources involving family or trusts established to assist the person with disabilities, and do not qualify for government assistance programs. These persons should be

encouraged to work with their attorneys throughout the home buying process to help ensure that any private resources are being appropriately managed.

Government Assistance Programs

Most, but not all, persons with disabilities have low, fixed incomes. Many of these people will receive financial benefits from one or more government assistance programs. Most often these government programs will include Supplemental Security Income (SSI) and Medical Assistance (MA). Both of these programs contain complicated rules and eligibility requirements that real estate brokers are certainly not expected to know. Accordingly, the following discussion of SSI and MA is provided solely as background to enhance the understanding of REALTORS® who work with persons with disabilities. While some of this information may sound like it may apply in other situations, it is intended to apply only to those receiving SSI or MA.

SSI and MA should not be confused with Social Security Retirement, Survivors and Disability Insurance, and Medicare. Social Security Retirement, Survivors and Disability Insurance, and Medicare do not have eligibility standards based upon income and resource limits as do SSI and MA. Social Security Disability Insurance, for example, is available to persons who previously worked and paid Social Security taxes, but who are now unable to work due to disability. Medicare is a health insurance program open to most Americans.

Supplemental Security Income (SSI)

SSI provides a minimum cash income for persons who are either over age 65 or have a physical or mental impairment that keeps them from performing any substantial work (earning \$500 or more per month), and who have limited income and limited resources, determined upon a monthly basis. "Limited

income” means that a single person cannot have more than \$500 a month in countable income. Exclusions (income that does not count) include, \$20 per month of most income, \$65 per month of wages and one-half of wages over \$65, food stamps, and home energy/housing assistance. “Limited resources” means that a single person may not own more than \$2,000 in countable property and other assets. Exclusions (resources that do not count) include, the house the person lives in, a car (depending upon use and value), burial plots for the individual and immediate family, burial funds up to \$1,500, and life insurance with a face value of \$1,500 or less. The maximum monthly SSI payment levels for 1999 are \$500.00 for an individual living in his or her own household, and \$333.34 for an individual living in the household of another, \$751.00 for a couple living in their own household, and \$500.67 for a couple living in the household of another.

Medical Assistance (MA)

Medical Assistance (MA or Medicaid) pays for the medical, rehabilitation and support services for people who are over age 65 or who meet the disability test for SSI, and who meet income and resource limitations. MA provides coverage for many services that permit persons with disabilities to remain in their homes and communities and to function as independently as possible. These services include habilitative and rehabilitative therapy, home health services, personal care services, prescription medications, medical supplies and equipment, and other services through community-based waiver programs. Thus MA is often essential for people who need long-term support services, even if they can meet their needs for food, clothing and shelter. Persons who receive SSI will automatically receive MA. The same rules are used to compute countable income and resources when determining SSI and MA eligibility.

Countable Resources and Income

For SSI and MA, countable resources in a given month will be the money and property owned at the beginning of the month that could be used for food, clothing, and shelter. Countable income is the money, property, and benefits received during the month that could be used for food, shelter, and clothing. If a person’s countable resources are above the SSI limit (\$2,000) on the first day of the month, the person will not be eligible for a SSI payment for that month, even if the resources are spent during the month. If a person does not have an MA card and is over the resource level at the time that a medical service is received, the person cannot get coverage for that service.

With respect to countable income, SSI compares a person’s countable income for a month with the SSI payment level that applies to that person (e.g., an individual in his or her own home @ \$500.00/month) and pays the amount needed to make up the difference. Thus, a dollar increase in countable income results in a dollar decrease in the SSI payment. With MA, on the other hand, when a person has income over the countable income limit (\$500), the person becomes ineligible for MA and must apply the excess income towards medical expenses under the MA deductible program before reapplying for MA.

In-Kind Support

In-kind support is income received in the form of food, clothing, or shelter. For example, if someone lets a person stay for free in a house or an apartment, the market value rent may be considered in-kind support. If someone else pays part of the housing costs for a person with disabilities on SSI and MA, this may increase the person’s countable income and thus reduce the amount of the SSI benefit – or make the person ineligible for SSI and MA. In-kind shelter costs include rent, mortgage payments (principal and interest), land contract payments (principal and inter-

est), payments on a mobile home (principal and interest), property insurance required by the mortgage holder, real estate taxes, heating fuel, gas, and electricity, water and sewerage costs, and garbage collection services.

If a person lives in the household of another (parents, sibling, etc.) and receives in-kind support from someone else in the household other than a spouse, SSI automatically reduces the person’s SSI payment by one-third of the federal maximum SSI benefit (\$166.67 in 1999 for single person), no matter how much the in-kind support is worth. Thus, it is to the advantage of a person with disabilities if any in-kind support received exceeds the one-third reduction amount. For example, a person with disabilities, whose only income is SSI, lives with her brother and his family in a large home that he owns. If the fair share of shelter and food costs for the person with disabilities is \$650 per month and the person contributes \$300 toward the household expenses, the person’s SSI payment will be reduced only by the one-third deduction (\$166.67) even though the person is receiving \$350 a month in in-kind support from her brother.

On the other hand, if a person with disabilities lives in his or her own household and receives in-kind support from someone other than the spouse, the person will not be subject to the one-third reduction. Instead, SSI and MA will count the in-kind support as income, but only up to the presumed maximum value, which is equal to one-third of the federal maximum SSI benefit, plus \$20 (\$186.67 in 1999 for single person). Again, it is to the advantage of a person with disabilities if the in-kind support received exceeds the presumed maximum value, as long as the presumed maximum value, when added to other income, does not put the person with disabilities over the \$500 countable income limit. For example, a person with disabilities lives by himself in his sister’s apartment rent free, and his mother gives him \$85 in groceries each month. If the person’s

only income is SSI, the person's SSI benefit is reduced by \$186.67 while he receives \$485 in in-kind support. If, however, he also receives other income or benefits, for example, \$400 per month in Social Security disability benefits, the \$400 plus the \$186.67 put the person over the \$500 countable income limit and the person loses his SSI benefits. He will have to apply with the county to receive MA, which will no longer come automatically.

If a person with disabilities receives a home as a gift or someone pays part of the purchase price, the gift or payment is also an in-kind shelter gift, subject to the presumed maximum value rule (\$186.67 per month). Thus, if the parents of a person with disabilities buy a condominium for \$85,000 and deed it to him as a gift, the gift of the condominium results in shelter income of \$186.67 per month, causing a decrease in the monthly SSI of \$186.67.

These examples portray only some of the SSI and MA rules, and only some of the scenarios that may be encountered by persons with disabilities. A real estate licensee certainly is not expected to know SSI rules. These examples are intended to give members a glimpse into the complexity faced by many low-income persons with disabilities and the intricate juggling act that is required to maximize benefits.

Home Ownership for Persons with Disabilities on SSI & MA

For the purposes of SSI and MA, a person with disabilities is considered to be the owner of a home as long as the person has an ownership interest in the home. This may include different types of ownership other than outright ownership in fee simple. A person with disabilities may share home ownership as a tenant in common or a joint tenant. A person with disabilities may also have a life estate or have an interest in a home as the beneficiary of a trust.

The ownership interest of a person with disabilities is not counted as a resource for purposes of SSI and MA as long as the home is the principal place of residence of the person with disabilities. The home may be a house, duplex, farm, condominium, mobile home, houseboat, or recreational vehicle as long as it is the principal place of residence. The exclusion includes the home, the land where the home is located, and any other buildings on the land.

SSI and MA rules can affect the decision of a person with disabilities as to the type of home ownership. If the person later has to move out of the home, the home may become a resource that has to be sold so that the proceeds can be applied to support and medical costs. If the person incurs certain MA costs, the person's interest in the home may become subject to a lien or benefits may have to be repaid from the person's estate to Wisconsin Medicaid. In both of these circumstances, it may be beneficial to limit the dollar investment made by the person with disabilities and his or her family and friends because their investment later may be used up for support and medical costs or may have to be paid over to the state to reimburse medical payments made on behalf of the person with disabilities. Payments made by other people to cover various costs associated with home ownership may count as in-kind income and either reduce SSI benefits or make the person with disabilities ineligible. The effect of these payments differs depending upon the type of home ownership chosen by the person with disabilities.

Effect of SSI & MA for Different Types of Home Ownership

Fee Ownership Subject to Mortgages.

SSI and MA do not consider a loan to be income. Thus borrowing money from a bank, a family member, or a trust does not affect the SSI or MA benefits of a person with disabilities as long as the money is used for the purchase of a home and the person with

disabilities moves in before the end of the month in which the funds are received. When the loans are secured by mortgages, the value of the ownership interest of the person with disabilities is limited to his or her equity in the home. Relatives who provide financial assistance in the form of a loan secured by a mortgage are protected because the loans cannot become a countable resource or become subject to MA liens or estate recovery.

Tenancy in Common.

If a person with disabilities is a co-tenant, for example, with a family member, the equity interest of the person with disabilities is limited. For example, if a person with disabilities lives in a \$100,000 home owned 90% by his or her mother and 10% by the person with disabilities, the equity of the person with disabilities is only \$10,000. Only the \$10,000 can be counted as a resource if the person with disabilities has to move out, and only the \$10,000 can be subject to MA liens or estate recovery. Because the person with disabilities has an ownership interest, the benefit of living in the house rent-free is not considered in-kind income.

However, co-tenancy means that there is another decision-maker who may not agree with the wishes of the person with disabilities. In the preceding example, there is a risk that the mother may be able to force the sale of the house, or may disagree over the management of the property (whether the mother should also live there, whether part of the house should be rented out to create income to pay expenses, etc.). However, if the person with disabilities moves out, the house is not counted as a resource if the house is the principal home of the co-tenant mother and she has no other available housing. On the other hand, the mother may not want to sell the house when the person with disabilities needs to get his money out of the house to buy another home, etc., at least not without bringing legal action.

Tenancy in common, however, may lower the shelter costs of the person with disabilities. If the person with disabilities only owns a 10% interest, the person is only responsible for 10% of the taxes and the mortgage payments (assuming the mortgage is shared by the co-tenants). If the mother pays 90% of these payments, it is not considered in-kind shelter because it is not an expense that the person with disabilities owes.

Joint Tenancy.

A joint tenancy offers most of the same advantages and disadvantages as a tenancy in common. However, the survivorship feature of joint tenancy offers an added advantage because the interest of the person with disabilities automatically goes to the surviving joint tenant(s) without passing through probate. This means the joint tenancy interest is not subject to MA estate recovery. It could, however, become subject to an MA lien if the person with disabilities becomes a nursing home resident, such that the interest received by the joint tenant(s) upon the death of the person with disabilities may continue to be subject to the MA lien.

Life Estate.

A life estate will typically give the person with disabilities the right to live in a home for the duration of his or her life. After the person with disabilities dies, the ownership of the house goes automatically to someone else (reversion or remainder interest). As long as the life estate property is used as the principal home of the person, it is an excluded resource. If the person moves out, SSI may count the life estate as a resource, but MA always treats life estates as excluded resources. A life estate can be structured so as to give the person with disabilities the right to live in the home for his or her life with the interest going back to the family upon the death of the person with disabilities.

Trust Beneficiary.

If a person with disabilities is the beneficiary of a trust and the trust owns and

manages a home for the benefit of the person with disabilities, the person is considered to have an ownership interest in the home. Because the "home ownership interest" of the person with disabilities is governed by the trust, the interest generally will not be considered a resource nor will it be subject to MA liens and estate recovery.

To avoid touchy issues of in-kind benefits when the trust pays expenses, it may be better for the trust to rent the house to the person with disabilities for a monthly rent equal to the presumed maximum value. This offers a stable, predictable, and affordable housing cost. The trust can sell the house and buy another when the person with disabilities wants to move.

Moving Out

A person with disabilities may sell his or her home and use the money to buy another home. The proceeds from the sale do not count as income, and will not be considered a countable resource, if used to purchase another home within three months after receipt. However, if the proceeds are not all used for buying and fixing up a new home, the excess proceeds may count as a resource effective upon the day of receipt.

If a person with disabilities is absent from his or her home, SSI and MA will continue to treat it as an excluded resource as long as the person intends to return to the home. If the person moves out and does not intend to return, the person's home ownership interest becomes a countable resource unless one of the following applies: (1) the person is in an institution and either the person's spouse or some other relative dependent upon the person with disabilities for financial or other support continues to live in the home, (2) the person shares ownership of the home with another person who uses the home as his or her principal home and has no other readily available housing, or (3) the person with disabilities is making reasonable efforts to sell the home and has not rejected any reasonable offer to

purchase (an offer for 2/3 of fair market value is presumed to be reasonable).

Wisconsin's Estate Recovery and Lien Program for Medical Assistance (Medicaid)

The state of Wisconsin seeks repayment of certain long-term care MA or Medicaid benefits from the estates of recipients and from liens placed on recipients' homes. This Estate Recovery Program applies mainly to recipients of long-term care services such as nursing home services and Medicaid or MA community-based waiver services.

The state will attempt to recover all benefits received on or after October 1, 1991 from MA recipients who live in nursing homes. Recovery is made by filing claims in the recipients' estates and by filing liens against their homes. For other MA recipients who are inpatients in a hospital for 30 or more days, or who are age 55 or older and who reside in the community, only specific benefits will be recovered, based upon other rules. The state will recover these other MA funds by filing a claim in the person's probate estate.

The state seeks repayment of MA benefits by filing claims in probate estates to recover for community-based services, services received while a recipient resided in a nursing home, and services received while a recipient was considered institutionalized in an inpatient hospital. If there is a probate proceeding in court, the state will file a claim to recover MA benefits with the court and with the personal representative of the estate. The personal representative of the estate usually will pay the state's claim according to standard probate procedures. In the recovery of a claim against an estate, the court shall allow the heirs and beneficiaries to retain up to a total of \$3,000 in value of the following property: the deceased's wearing apparel and jewelry held for personal use, household furniture, furnishings and appliances, and other tangible per-

sonal property not used in trade, agriculture or other business, not over \$1,000 in value. If there are insufficient assets in the estate to pay the state's claim, the state is paid what is available and the recovery is ended. If the recipient's estate includes a home, the state may, in certain circumstances, file a lien on the home rather than seek immediate repayment.

However, the state may not seek repayment of any MA benefits from a recipient's estate if the recipient's spouse or a minor, disabled, or blind child survives the recipient. If the recipient's estate includes a home, the state will file a lien and repayment from the lien will be delayed until after the death of the surviving spouse or the minor, disabled, or blind children. The state may not file a claim in the estate of the surviving spouse to recover MA benefits. Additional exclusions also occur under different circumstances.

When there is no probate court proceeding, the state generally recovers benefits by filing a claim for payment with the individual handling the estate using a probate process called Transfer by Affidavit. The Transfer by Affidavit process can be used to close a person's estate when the deceased had less than \$10,000 in solely owned property in Wisconsin. The state can recover benefits if the recipient has no surviving spouse or minor, disabled or blind child, the recipient's solely owned property located in Wisconsin is valued at \$10,000 or less after funeral costs have been paid, and 20 days have passed since death and no one has petitioned the court to probate the deceased's estate.

Generally, liens may be filed on homes of permanent nursing home residents when the recipients are not expected to return to their homes. The state cannot place a lien on the home of an MA recipient in the community. The state may obtain a lien on the home of a nursing home resident only if the recipient cannot reasonably be expected to return home and none of the following

resides in the home: (1) the recipient's spouse or a minor, disabled, or blind child, or (2) a brother or sister of the recipient who has an ownership interest in the home and has resided in the home for at least a year prior to the nursing home admission of the MA recipient. If a lien is placed on the home, it must be removed if the recipient returns home.

The lien is paid from the sale proceeds after the costs of the real estate transaction are paid such as the broker's commission, other closing costs, and any mortgages on the home which pre-date the MA lien. A lien will not be paid at the sale of a home, before or after the recipient's death, if the recipient has a living spouse or a minor, disabled, or blind child. In addition, a lien will not be enforced after the recipient's death as long as either of the following resides in the home: (1) a son or daughter of the recipient who resided in the home for at least 24 months before the recipient was admitted to the nursing home and who provided care to the recipient that delayed the recipient's admission to the nursing home, or (2) a brother or sister of the recipient who resided in the home for at least 12 months before the recipient was admitted to the nursing home.

Other Resources

The following resource contacts may prove helpful to those involved with assisting persons with disabilities purchase homes, as well as REALTORS® in various other situations.

Supported Living

The Wisconsin Council on Developmental Disabilities (WCDD) offers a series of booklets addressing the issues involved when a person with disabilities owns or rents a home. These publications, which formed the basis for this *Legal Update*, include:

- **Threshold: A House-Buying Guide for People with Disabilities** (Marcie Brost, Terri Johnson, Sally Mather, 1998)

- **Threshold: Housekeeping Details on Renting or Owning a Home for People with Disabilities – A Set of Four Booklets** (Attorney Ray Froemming, 1998)
 - (1) *SSI, MA, In-Kind Income*
 - (2) *Owning Your Own Home*
 - (3) *Impact on Benefits, Paying Expenses*
 - (4) *Divestment, Liens, Estate Recovery*
- **One Step Ahead: Resource Planning for People with Disabilities who Rely on Supplemental Security Income and Medical Assistance** (Attorney Ray Froemming, reprinted 1998)
- **Provisions: Sample Language for Supplemental Needs Trusts** (Attorney Ray Froemming, 1998).

These booklets all sell for \$4.00 each, except for the **One Step Ahead** booklet, which sells for \$3.00. Checks may be made payable to WCDD and mailed to PO Box 7851, Madison, WI 53707-7851 or orders may be faxed to 608/267-3906.

For additional information or assistance regarding options for home ownership, or to locate the nearest supportive housing specialist, use the following contact information:

- **Marcie Brost
Housing Specialist
Wisconsin Department of Health and Family Services**
Bureau of Developmental Disabilities Services
Division of Supportive Living
PO Box 7851
Madison, WI 53707-7851
608/266-9366 fax 608/261-6752
E-mail: brostmm@dhfs.state.wi.us
- **Movin' Out, Inc.**
600 Williamson Street, Suite J
Madison, WI 53703
608/251-4446 fax 608/251-1403
E-mail: Movin@chorus.net
E-mail requests preferred.

Social Security Administration (SSI)

People may apply for Supplemental Security Income at the nearest Social Security Office. To set up an appointment, they may use the following contact information:

Toll-free: (800) 772-1213
(Between 7 a.m. and 7 p.m., M-F)
[TDD-(800) 325-0778]

On-line: Contact one of the offices listed at this Web site:

[http://www.dhfs.state.wi.us/medicaid/updates/99/99OCT4.HTM#Social%20Security%20Offices.](http://www.dhfs.state.wi.us/medicaid/updates/99/99OCT4.HTM#Social%20Security%20Offices)

Though the Social Security toll-free number operates from 7 a.m. to 7 p.m., Monday to Friday, recorded information regarding SSI and other services is available 24 hours a day, including weekends and holidays, with a touch-tone phone.

Information about SSI and other benefits may also be obtained by contacting the Social Security Administration on the Internet at <http://www.ssa.gov>. If a person needs to contact a local office, the nearest office can be found by using the Social Security Office Locator at <http://s3abaca.ssa.gov/pro/fol/fol-home.html>. Persons who still need additional help after having contacted the local office and the 800 number may write to:

**Office of Public Inquiries:
Social Security Administration**
Office of Public Inquiries
6401 Security Blvd.
Room 4-C-5 Annex
Baltimore, MD 21235-6401.

Medical Assistance (MA)

Persons who receive Supplemental Security Income (people 65 years and older and people with disabilities who meet the program's financial requirements) are automatically covered under Wisconsin Medicaid or Medical Assistance (MA). Wisconsin's Medicaid

Certifying Agencies - the County Departments of Social or Human Services - are listed at the following Web site address:

[http://www.dhfs.state.wi.us/medicaid/contacts/medcontact2.htm#Wisconsin%20Medicaid.](http://www.dhfs.state.wi.us/medicaid/contacts/medcontact2.htm#Wisconsin%20Medicaid)

For further information about Wisconsin's Medicaid or MA Program, go to this address:

[http://www.dhfs.state.wi.us/medicaid/index.htm.](http://www.dhfs.state.wi.us/medicaid/index.htm)

The Health Care Financing Administration (HCFA), the federal agency that administers the Medicare, Medicaid and Child Health Insurance Programs, can be accessed at <http://www.hcfa.gov>. HCFA provides health insurance for over 74 million Americans through Medicare, MA, and Child Health.

Questions about Wisconsin's MA lien and estate recovery program maybe directed to the local county or tribal social or human services department or MA Recipient Services at 1-800-362-3002. SSI recipients may also contact the SSI/MA Unit at 1-800-888-7989. For additional information, write to:

Department of Health and Family Services
Estate Recovery Program
P.O. Box 309
Madison, WI 53701-0309.

Conclusion

Despite the challenges and complexity associated with home ownership for a person with disabilities, the benefits and rewards are substantial. Owning a home gives the person with disabilities as sense of "home," - a sense of pride, stability, control over one's surroundings, and a general feeling of well being. Home ownership enables the person with disabilities to more easily make physical accommodations and arrangements that enhance his or her living situation.

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