

# FASTFacts – Section 8 Asset Restrictions – Real Property Suitable for Occupancy - HOTMA



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*Owner/agents are not required to have a written Hardship Exemption Policy but it is strongly recommended.*

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*This FASTFact was created using information available as of 8/2024.*

# FASTFacts – Section 8 Asset Restrictions – Real Property Suitable for Occupancy

## **INTRODUCTION**

Note from RBD: HUD has specifically stated that owner/agents **should not** implement the new Section 8 Asset Restrictions until HOTMA compliant site software is available and implemented.

HOTMA introduces many changes to the treatment of assets and the determination of income from assets. In addition, HOTMA introduces Section 8 Asset Restrictions that establish new eligibility criteria for Section 8 applicants and in some cases, Section 8 residents. These include:

1. A new Asset Cap limiting the net cash value of included assets; and
2. The Real Property Rule excluding families who own a dwelling suitable for occupancy that a family member has a right to sell (certain exceptions apply).

This FASTFact addresses the Real Property Rule.

## **THE REAL PROPERTY RULE - APPLICANTS**

The Section 8 Asset Restriction related to Real Property excludes applicants from receiving assistance if a family member owns Real Property Suitable for Occupancy (Real Property Rule). This rule also applies to existing residents whose Section 8 assistance has been terminated and who have requested that the owner/agent reinstate assistance.

The owner/agent must ask and the applicant must self-certify whether or not any family members owns Real Property Suitable for Occupancy.

A dwelling unit may not be rented and assistance may not be provided to any family if any member has a present ownership interest in, legal right to reside in, and the effective legal authority to sell real property, in the jurisdiction in which the property is located, that is suitable for occupancy by the family as a residence. This includes, but is not limited to a home, condominium, townhome, duplex, mobile home, etc. A dwelling will be considered “suitable for occupancy” unless the family demonstrates that it:

1. Does not meet the disability-related needs for all members of the family (*e.g.*, physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
2. Is not sufficient for the size of the family;
3. Is geographically located so as to be a hardship for the family (*e.g.*, the distance or commuting time between the property and the family’s place of work or school would be a hardship to the family, as determined by the owner);
4. Is not safe to reside in because of the physical condition of the property (*e.g.*, property’s physical condition poses a risk to the family’s Health & safety and the condition of the property cannot be easily remedied); or
5. Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

The Real Property Rule applies only when the family has the legal right to reside in the dwelling.

The applicant or resident is exempt from the Real Property Rule if:

1. Any property is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the person resides in the jointly owned property;
2. The member is a survivor of a VAWA crime (domestic violence, dating violence, sexual assault, or stalking); or
3. The family is offering such property for sale;
4. The family is receiving assistance under 24 CFR 982.620; or under the Homeownership Option in 24 CFR part 982.

The owner/agent must verify eligibility for exemptions as applicable.

## **THE REAL PROPERTY RULE - EXISTING ASSISTED RESIDENTS**

*Note: For Component 1 PH to PBRA RAD residents whose TTP is equal to or greater than Gross Rent, the resident is still considered “assisted” unless the resident’s assistance has been terminated for cause.*

## FASTFacts – Section 8 Asset Restrictions – Real Property Suitable for Occupancy

When determining continued eligibility for existing assisted residents, owner/agents have three options:

1. Owner/agents may choose not to review eligibility based on the Asset Restrictions at AR/IR (Non-enforcement); or
2. Owner/agent may choose to enforce the rule and may review eligibility based on the Asset Restrictions at AR/IR. If a resident is determined ineligible, the owner/agent may provide the family up to six months to before beginning the process to terminate assistance (Enforcement); or
3. Owner/agent may choose to enforce the rule and may review eligibility based on the Asset Restrictions at AR/IR. If a resident is determined ineligible, the owner/agent may provide the family up to six months to “cure” ineligibility before beginning the process to terminate assistance. If the family can “cure” ineligibility, the owner/agent will continue to provide housing assistance based on HUD’s rules. (Limited-enforcement);

Owner/agents must choose Non-enforcement, Enforcement or Limited Enforcement and the policy must be described in the property Tenant Selection Plan.

If an owner/agent is Enforcing or implementing Limited Enforcement, it is strongly suggested that the decision is also documented in the property House Rules which are an attachment to the lease and enforceable in court.

### **INCLUDING REAL PROPERTY WHEN DETERMINING THE ASSISTANCE PAYMENT**

Once HOTMA compliant site software (TRACS 2.0.3.A) is available and implemented, treatment of assets will change to comply with new HOTMA rules. Regardless of whether or not the property is considered “Real Property Suitable for Occupancy” or “Other Real Property”, the asset must be included on the 50059 as an asset. The cash value of the property is listed. For example:

Real Property Fair Market Value	\$125,000	must be verified
Outstanding Mortgage	(\$62,000)	must be verified
Cost to sell Realtor Fee 6%	(\$7,500)	must be verified
Closing Costs 1%	(\$1,250)	must be verified
Net Cash Value	\$54,250	

Generally, dwellings do not generate income so, if the Net Cash Value of all Included Assets is more than the current threshold, than income would be imputed.

If the resident disposes of the asset for less than fair market value, then the net cash value of the property would be included on the 50059 as Non-necessary Personal Property (suggested description: Disposed Dwelling) and the income from the asset is presumed to be \$0 (actual income from the asset). For example, if the resident turned the asset over to the adult child via a Quick Claim Deed (\$1,000 exchanged), then the net cash value would be determined as follows.

Real Property Fair Market Value	\$125,000	must be verified
Outstanding Mortgage	(\$62,000)	must be verified
Cost to sell Realtor Fee 6%	(\$7,500)	must be verified
Closing Costs 1%	(\$1,250)	must be verified
Cash Value	\$54,250	
Less Amount Received for Quick Claim Exchange	(\$1,000)	must be verified
Net Cash Value of Asset Disposed	\$53,250	