

TO BE RESCINDED

5160:1-3-05.17 **Medicaid: life estates and life leases.**

(A) This rule describes life estates and life leases as resources.

(B) Definitions.

- (1) "Date of signature" is the date that the individual authorized to transfer the property actually signed the deed or transfer instrument.
- (2) "Life estate" means an ownership interest in property wherein one person holds the right to possess, use, and obtain profits from the property as long as he or she lives, while another person holds the actual ownership interest in the property.
 - (a) A life estate is a form of legal ownership.
 - (b) It is usually created through an instrument such as deed or will or by operation of law.
 - (c) A life estate instrument often identifies remaindermen who will take possession of the property upon the expiration of the life estate.
 - (d) A life estate owner owns the property only for the duration of the life estate. The owner can sell only his or her interest in the life estate. The owner cannot take any action concerning the interest of the remainderman.
- (3) "Life lease" means a written tenancy agreement giving a person certain rights to property during the person's lifetime.
- (4) "Look-back period" is defined in rule 5160:1-3-07.2 of the Administrative Code.
- (5) "Recording date" means the date that the deed is recorded with the county auditor, county recorder, or other appropriate government agency charged with the responsibility for recording real estate transfers and titles.
- (6) A "remainderman" has an ownership interest in the physical property but normally does not have the right to possess and use the property until termination of the life estate.

(C) General description of life estates.

- (1) Unless the instrument establishing the life estate places restrictions on the rights of the life estate owner, the owner has the right to possess, use, and obtain profits from the property and to sell his or her life estate interest.

- (2) Unless restricted by the instrument establishing the remainder interest, the remainderman is generally free to sell his/her interest in the physical property even before the life estate interest expires.

(D) Categories of life estates.

- (1) Life estates established with the individual's property within the look-back period.

- (a) A life estate held by an individual falls within this category if it is established with property that the individual held an ownership interest in, and it was established within the applicable look-back period.

- (b) If the individual has the right to transfer or sell the life estate, it is considered a countable resource unless it qualifies as an excluded resource as described in rule 5160:1-3-05.14 of the Administrative Code.

- (c) If the individual does not have the right to sell the life estate, the value of the life estate is presumed improperly transferred.

- (d) The administrative agency must examine the transferred remainder interest under the rules governing the transfer of assets.

- (2) Life estates established with the individual's property prior to the look-back period.

- (a) A life estate held by an individual falls within this category if it is established with property that the individual held an ownership interest in, and it was established prior to the applicable look-back period.

- (b) If the individual has the right to transfer or sell the life estate, it is considered a countable resource unless it qualifies as an excluded resource as described in rule 5160:1-3-05.14 of the Administrative Code.

- (c) A life estate that cannot be sold and was established prior to the look-back period must not be considered an improper transfer.

- (d) A remainder interest established prior to the look-back period must not be considered an improper transfer.

- (3) Life estates not established by the individual.

- (a) A life estate held by an individual falls within this category if it is established with property that the individual did not hold an ownership interest in at the time of the establishment of the life estate.

- (b) If the individual has the right to transfer or sell the life estate, it is considered a countable resource unless it qualifies as an excluded resource.

(E) Effective date of the creation of a life estate.

- (1) For life estates that are recorded within six months after the date of signature, the date of signature is the date of transfer.
- (2) If a life estate is recorded more than six months after the date of signature, the individual must produce documentation from other sources verifying that the transfer occurred on the date of signature rather than the date of recording.
 - (a) Such documentation may consist of financial records from lending institutions, tax records from governmental agencies, or records from other agencies or private or public institutions.
 - (b) The individual may provide statements of persons holding a remainder interest, or other persons who participated in the creation of the life estate.

(F) Calculating the value of a life estate.

- (1) The administrative agency must first determine the value of the property as established by the county auditor. If a valuation by a county auditor is unavailable, the value shall be based upon a valuation by the appropriate governmental agency charged with the responsibility for valuation of real property.
- (2) The administrative agency must deduct from the value of the property all liens and encumbrances that have been placed against the property.
- (3) The administrative agency must deduct from the value of the property all liens and encumbrances that have been placed against the life estate.
- (4) After the deductions, the balance is the equity value of the property.
- (5) The administrative agency must multiply the equity value of the property by the product that corresponds to the life estate owner's age at the time of determination for medical assistance on the following life estate table:

AGE	LIFE ESTATE	REMAINDER
0	.97188	.02812
1	.98988	.01012

2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322

26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422

50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429

74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450

98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

- (G) If the individual disagrees with the county auditor's determination of the value of the property as described in paragraph (F)(1) of this rule, the individual may have a licensed real estate broker perform an appraisal of the property's value, which may be substituted as the current value of the property in paragraph (F)(1) of this rule. Such appraisal services may be provided through the use of administrative funds if the individual is unable to obtain an appraisal due to insufficient funds of his or her own.
- (H) If the individual transfers or sells a life estate, the individual must receive fair market value for the life estate.
- (1) The fair market value for the life estate shall be calculated in accordance with paragraph (F) of this rule.
 - (2) If the individual receives less than fair market value for a transferred life estate, the transfer must be examined under the rule governing the transfer of assets.
- (I) With respect to a transfer of assets, as referenced in rule 5160:1-3-07.2 of the Administrative Code, the purchase of a life estate interest in another individual's home is a countable resource unless the purchaser resides in the home for a period of at least one year after the date of purchase.

(J) If a life lease is not excluded as the principal place of residence, it must be evaluated as a countable resource. The current market value of a life lease will vary according to the terms agreed upon and the life expectancy of the lessee.

(K) Administrative agency responsibilities. The administrative agency shall:

- (1) Review the life estate instrument to determine the rights, responsibilities, and/or restrictions placed on the life estate owner and/or the remainderman for new applications for long term care facility (LTCF) services, home and community-based services (HCBS) and program of all inclusive care for the elderly (PACE) services.
- (2) Determine the effective date of the creation of a life estate.
- (3) Accept the statements of persons holding a remainder interest, or other persons who participated in the creation of the life estate, only upon a finding that their statements are corroborated and credible.
- (4) Use the date of recording as the effective date of the creation of the life estate if the individual fails to produce documentation verifying that the transfer occurred on the date of signature.
- (5) If the life estate has not been recorded, the administrative agency shall request that the individual verify transfer by recording the life estate and, unless the life estate was created within the prior six months, provide documentation as required in paragraph (E)(2) of this rule. If the individual does not provide documentation that the life estate has been recorded, disregard the life estate and consider the entire property as an available resource to the individual.

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Certification

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