

5101:1-39-32

Medicaid: life estates and life leases.

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

(B) Definitions.

- (1) "Administrative agency" means the county department of job and family services, the Ohio department of job and family services, or other entity that determines eligibility for a medical assistance program.
- (2) "Individual" means an applicant for or recipient of a medical assistance program.
- (3) "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.
- (4) "Life lease" means a written tenancy agreement giving a person certain rights to property during the person's lifetime.
- (5) "Look-back period" is defined in rule 5101:1-39-07 of the Administrative Code.
- (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) A life estate is a form of legal ownership. It is usually created through an instrument such as deed or will or by operation of law. A life estate instrument often identifies remaindermen who will take possession of the property upon the expiration of the life estate.
- (2) 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.
- (3) Additionally, 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.
- (4) 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.

(D) 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, the administrative agency must review the life estate instrument to determine the rights, responsibilities, and/or restrictions placed on the life estate owner and/or the remainderman. The life estate and remainder interest will fall under one of three categories.

(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 by any person 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 exempt resource.

(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.

(e) The value of the life estate and the value of the remainder interest must be calculated in accordance with this rule.

(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 by any person with property that the individual held an ownership interest in, and it was established prior to the applicable look-back period.

(b) An individual having the right to transfer or sell the life estate must consider the life estate a resource, unless it qualifies as an exempt resource.

(c) The value of the life estate must be calculated in accordance with this rule.

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

(e) 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 by any person with property that the individual did not hold an ownership interest in at the time of the establishment of the life estate.
 - (b) An individual having the right to transfer or sell the life estate must consider the life estate a resource, unless it qualifies as an exempt resource.
 - (c) The value of the life estate must be calculated in accordance with paragraph (F) of this rule.
- (E) The administrative agency must determine the effective date of the creation of a life estate as follows. The recording date is 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. The date of signature is the date that the individual authorized to transfer the property actually signed the deed or transfer instrument.
- (1) For life estates that are recorded within six months after the date of signature, the administrative agency must consider the date of signature as 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. 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. The individual may provide statements from persons holding a remainder interest, or other persons who participated in the creation of the life estate. The administrative agency must accept the statements of these persons only upon a finding that their statements are corroborated and credible. If the individual fails to produce documentation verifying that the transfer occurred on the date of signature, the administrative agency must use the date of recording as the effective date of the creation of the life estate.
 - (3) If a life estate is not recorded at all, the individual must record the deed. The individual must produce documentation evidencing the date of the creation of the life estate. 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 verifying the creation of the life estate. The individual may provide statements from persons holding a remainder interest, or other persons who participated in the creation of the life estate. The administrative agency must accept the statements of these persons

only upon a finding that their statements are corroborated and credible. If the individual fails to produce documentation verifying that the transfer occurred on the date of signature, then the administrative agency must use the date of recording as the effective date of the creation of the life estate.

(4) If the individual fails to record the life estate in accordance with paragraph (E)(3) of this rule with the appropriate governmental agency, the administrative agency must disregard the life estate and consider the entire property as an available resource to the individual.

(F) The value of a life estate is calculated as follows:

(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 on the life estate table as defined in 26 C.F.R 20.2031-7 as in effect on April 1, 2005.

(G) If the individual disagrees with the determined value of the property, an appraisal may be secured from a licensed real estate broker, which may be substituted as the current value of the property in the calculation in paragraph (F) 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 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 5101:1-39-07 of the

Administrative Code, the purchase of a life estate interest in another individual's home is an asset 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 exempt as the principal place of residence, it must be evaluated with other countable resources. The current market value of a life lease will vary according to the terms agreed upon and the life expectancy of the lessee. For example, when held by a person more than sixty-five years of age, it would have little current market value.

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