



COMBINED MEDICAID 404-3

Asset Transfers Involving Life Estates

Supersedes: MA 404-3 (01/01/07)

Reference: OBRA '93; ARM 37.82.101 & .417; 20 CFR 416.1246; 42 CFR 435 Subpart G; Deficit Reduction Act of 2005

Overview: ABD and ACA: If a nursing home or HCBS/waiver client transfers an asset and retains a life estate in the property, the life estate and status of a remainder ownership must be evaluated to determine if the client received fair market value.

LIFE ESTATE:

A life estate is a durational property right limited to the life estate owner's life, or to another person's life. The life estate owner does not have the property title and cannot sell the property. They can, however, sell their interest in the property, unless the contract terms restrict the sale (life estate value is excluded if the sale is restricted), and they are entitled to any property income.

GIVING UP RIGHTS TO LIFE ESTATE INCOME:

A person holding a life estate generally has the right to do anything with the property that a full owner could do during his or her life. The life estate owner may not need to live on the property and use it as home, but instead may choose to rent it out. In addition, life estates are marketable which allow the life estate owners to sell their life estate interest in the property. Forfeiting rights to an income stream from a life estate is a disqualifying asset transfer.

EXAMPLE:

1. John has life estate ownership in real property containing a home. John does not live in the home, instead, the home is rented for \$1000 per month. John is entitled to this rental income as life estate owner, but his family members retain the rental income themselves. Every month the rental income is either transferred to or retained by the family is a disqualifying asset transfer.
2. Mary has life estate ownership in real property containing a home. Mary does not live in the home, instead, a family member resides in the home rent-free. Every month the house is occupied without rental compensation is a disqualifying asset transfer because Mary is forfeiting the potential rental income stream. The net transfer value of the asset is the current fair market rent amount minus the property's taxes.

NOTE: An uncompensated asset transfer penalty is evaluated when the client purchases a life estate in another person's home. The client can overcome the penalty if they live on the property as their principal place of residence for at least one full year after the purchase date.

Effective Date: July 01, 2016