

## DEPARTMENT OF HEALTH SERVICES

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August 20, 1996

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL LETTER NO.: 167

TO: All Holders of the Medi-Cal Eligibility Procedures Manual

Enclosed are revised procedures for Article 9A -- Property Held in Life Estate.

Procedures RevisionDescription

Article 9A

This section provides information on how life estates are treated and valued in determining eligibility for Medi-Cal.

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If you have any questions on this issue, please feel free to contact either Sharyl Shanen-Raya at (916) 657-2942 or Kathy Harwell at (916) 657-0146.

Sincerely,

Original signed by

Frank S. Martucci, Chief  
 Medi-Cal Eligibility Branch

Enclosures



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## MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

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### 9A—PROPERTY HELD IN LIFE ESTATE

#### **SCOPE:**

This procedure section defines the terms used when referring to a "life estate" and provides instructions regarding the methods for determining the value of real and personal property held in nonexempt life estates or the values needed for transfer of property purposes.

**NOTE:** Life estates may be exempt as the principal residence if any of the conditions of Title 22, California Code of Regulations (CCR), Section 50425(c) exist.

#### **BACKGROUND:**

*A life estate is an interest in real or personal property whose duration is limited to the life of the person holding it, or the lives of one or more other designated persons. Generally, a life estate entitles the owner of the life estate to possess, use, and obtain profits from the property as long as he/she lives. Actual ownership of the property is passed to another individual. A purchaser of the property would have to buy the property subject to the life estate, unless the life estate was also sold.*

A life estate is a legal arrangement which may be created by any method of voluntary transfer of ownership permitted by law, for example, deed or testamentary will. Title 22, CCR, Section 50442, states that a life estate interest in real property shall be considered real property and a life estate interest in personal property shall be considered personal property. Procedures for determining the value of a life estate are based on whether the life estate is one or more of the following:

- ✓ revocable, or
- ✓ irrevocable, and
- ✓ whether the applicant/beneficiary was the owner of the property contained in the life estate when title of the property was transferred and the life estate was established.

Life estates held by Medi-Cal clients are often exempt as the principal residence. In many cases the applicant/owner of the property will grant a remainder (future) interest in his/her property to another individual(s) and reserve a life estate interest for him/herself. Frequently a life estate is created upon the death of one spouse from his/her separate property. The deceased spouse bequeaths the ownership of the property to a son or daughter but grants the surviving spouse a life estate interest in the property so that the surviving spouse may continue to live in the property for the remainder of his/her life.

Generally a life estate guarantees the life tenant/beneficiary the right to make full use of the property for as long as he/she lives and the right to income (if any) earned from the property. Some life estates may be restricted, however. Some may require the life estate owner to actually reside on the property and may not allow the property to be rented. Some entitle the remainderman (see definition below) to any and all income from the property. Some also require the remainderman to pay part or all of the maintenance, taxes or other expenses related to the property rather than the life tenant. The document granting the life estate should reflect any restrictions, if they exist, and must be viewed by the EW.

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Although life estates in the strict legal definition, refer only to estates in real property, common usage of the term also refers to interests in personal property based on the life of the life tenant or some other person(s). For example, a brother could put certificates of deposit into a life estate for a sister so that she may receive the interest income for the rest of her life, with the actual certificates of deposit reverting to the brother's children upon the death of the sister.

### DEFINITIONS:

- **LIFE ESTATE** - An interest in real or personal property whose duration is limited to the lifetime of a person holding it, or to the lifetime of one or more other designated persons. It is also not essential that the words "life estate" be used when a life estate is created. Other phrases commonly used are:
  1. "To person A for the term of his/her life",
  2. "Person A reserves the possession or use of the property for the term of person A's lifetime",
  3. "To person A for the life of person X", or
  4. "To person A, but on person A's death to go to person B and his/her heirs."
- **LIFE TENANT/BENEFICIARY** - The person who holds a life estate interest. The life tenant/beneficiary need not be the same person as the grantor.
- **GRANTOR/TRUSTOR** - The person who owns property and gives a life estate to a life tenant with a future interest to one or more remainderman. The grantor may reserve a life estate interest for someone other than him/herself.
- **REMAINDERMAN** - The person(s) who owns the property subject to the life estate and who is entitled to the use of the property once the life estate ends (usually upon the death of the life tenant). Remainderman have a remainder interest or future interest (i.e., right to use or right to income) in the property.
- **REVOCABLE** - A life estate which can be revoked or terminated by its own terms.
- **IRREVOCABLE** - A life estate which cannot, in any way, be revoked by its own terms.

### IMPLEMENTATION:

Counties shall implement the use of the revised Life Estate Value Table, (based on the California State Gift Inheritance Tax Formula and the Internal Revenue Service Actuarial Table) per Title 22, CCR, Section 50442, included here, on June 1, 1996, at application and redetermination. No potential overpayments shall be calculated. When a life estate results in ineligibility due to excess resources, counties shall issue an adequate 10-day notice and take action on a prospective basis only.

### VERIFICATION:

Obtain a copy of the legal document which created the life estate. This is usually a grant deed.

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### TREATMENT:

The value of a life estate must be calculated as part of the eligibility determination when:

1. The life estate is a nonexempt resource; or
2. The nonexempt life estate was transferred and the transfer is determined to be a disqualifying transfer. A determination must be made as to whether adequate consideration was received for the transfer; or
3. Nonexempt property was transferred with retention of life estate. The value of the life estate is needed to determine the amount of consideration received for the property transfer.

### CALCULATING THE VALUE OF A LIFE ESTATE:

Title 22, CCR, Section 50442, states that a life estate interest in real property shall be considered real property and a life estate interest in personal property shall be considered personal property.

The three different sets of criteria for determining the value of a life estate for Medi-Cal eligibility purposes are as follows.

#### REVOCABLE LIFE ESTATE:

The net market value of a revocable life estate is determined by using the net market value of the property on which the life estate is held if all of the following conditions exist.

- ✓ The life estate is revocable by someone in the MFBU or the community spouse, and
- ✓ The MFBU member or community spouse was the owner of the property when the life estate was established, and
- ✓ The MFBU member or community spouse is retaining a life estate interest in the property.

To determine the net market value of a revocable life estate:

- a. Determine the current market value of the property in accordance with Title 22, CCR, Section 50412 (i.e., assessed value or appraised value).
- b. Deduct all encumbrances of record from the market value to determine the net market value of the property in accordance with Title 22, CCR, Section 50415.

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### IN ALL OTHER CASES:

The net market value of the life estate is determined by using the "Life Estate Value Tables". The following are some examples of when to use this method.

- ✓ The life estate is irrevocable.
- ✓ The MFBU member or community spouse was not the owner of the property when the life estate was established.
- ✓ The life estate is revocable, but not by anyone in the MFBU or the community spouse.

To determine the net market value of life estates "in all other cases" using the "Life Estate Value Table":

- a. Determine the current market value of the property in accordance with Title 22, CCR, Section 50412 (i.e., assessed value or appraised value).
- b. Deduct the all encumbrances of record from the market value to determine the net market value of the property in accordance with Title 22, CCR, Section 50415.
- c. Using the "Life Estate Value Table", determine the life estate value factor based upon the life tenant's current age.
- d. Multiply the life estate value factor by the net market value found in b (above).

☞ **NOTE:** A lesser value will be used if the applicant or beneficiary provides an appraisal of the life estate with a lesser value, determined by a party qualified to appraise life estates, i.e., a real estate appraiser, bank, savings and loan association, credit union, licensed loan or mortgage broker.

☆ **Example:** Mrs. Jones is 85 years old and has entered a long-term care facility. She does not intend to return to her home. No family member is living in the home. Her deceased sister had granted Mrs. Jones a life estate interest in the home and Mrs. Jones lived in it prior to entering long-term care. The life estate is not otherwise exempt as a principal residence in accordance with Section 50425(c). The value of her life estate interest, which is now considered other real property and not her principal residence, must be determined for utilization purposes. The net market value of the real property is \$20,000. The property is unencumbered.

☆ **Discussion:** Since Mrs. Jones is 85 years, her life estate value factor is .35359. The value of her life estate is ( $\$20,000 \times .35359 =$ ) \$7,071.80. The value of her life estate interest must be utilized in order for her to have a \$6,000 exemption. In accordance with Title 22, CCR, Section 50427(c)(2), the net market value in excess of \$6,000 (in this example \$1,071.80) shall be included in the property reserve.

DETERMINATION OF PAST VALUE: To determine the value of a life estate at a time in the past when a nonexempt property transfer occurred:

- a. Determine the market value in accordance with Title 22, CCR, Section 50412 (i.e., assessed value or appraised value) at the time of transfer.



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- b. Deduct the all encumbrances of record at the time of the transfer from the market value to determine the net market value of the property.
- c. Use the "Life Estate Value Table" to determine the life estate value factor based on the life tenant's age at the time of transfer.
- d. Multiply the life estate value factor by the net market value found in b (above).

☆ **Example:** Mr. Johnson, age 83, transferred his nonexempt, second home [other real property (ORP)] to his son one year ago prior to applying for Medi-Cal. Mr. Johnson retained a irrevocable life estate interest in the ORP. In order to compute the value of the property transferred, the value of the life estate interest at the time the property was transferred must be determined. The period of ineligibility can then be determined. The assessed value of Mr. Johnson's ORP at the time it was transferred was \$19,000. Encumbrances of record totaled \$4,000 at the time of the transfer; therefore the net market value of the property was \$15,000.

☆ **Discussion:** Mr. Johnson was 82 years old when he transferred ownership to his son. The life estate value factor for an 82 year old is .40295. The value of Mr. Johnson's life estate interest at the time of the transfer was ( $\$15,000 \times .40295 =$ ) \$6,044.25. The value of the life estate is subtracted from the net market value of the ORP at the time of the transfer, to determine the value of the ORP transferred without receipt of adequate consideration ( $\$15,000 - \$6,044.25 =$  \$8,955.75). The remaining amount, \$8,955.75, is used to determine the period of ineligibility in accordance with draft regulation Sections 50411.3 and 50411.5 in ACWDL 90-01.



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**LIFE ESTATE SUMMARY CHART**

<b>Status of Property Transferred</b>	<b>Status of Life Estate</b>	<b>Treatment</b>	<b>Example</b>
Property Was Exempt	Life Estate Exempt	Nothing to Count / No Disqualifying Transfer	Real Property Exempt Principal Residence Transferred and Exempt Life Estate Retained
Property Was Exempt	Life Estate Not Exempt	Value Life Estate / No Disqualifying Transfer	Real Property Exempt Principal Residence Transferred and Life Estate Retained But Currently No Intent to Return
Property Was Not Exempt	Life Estate Exempt	Potentially Disqualifying Transfer / Value Both the Life Estate and the Property Transferred to Determine Adequate Consideration / Value of Life Estate Not Included in the Property Reserve	Other Real Property Transferred and Life Estate Retained / Became Principal Residence
Property Was Not Exempt	Life Estate Not Exempt	Potentially Disqualifying Transfer / Value Both the Life Estate and the Property Transferred to Determine Adequate Consideration / Value of Life Estate Included in Property Reserve / Utilization	Other Real Property Transferred and Life Estate Retained with Right to Rental Income



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### LIFE ESTATE VALUE TABLE

Based on the California State Gift Inheritance Tax Formula and the Internal Revenue Service Actuarial Table

AGE	LIFE ESTATE VALUE FACTOR	AGE	LIFE ESTATE VALUE FACTOR	AGE	LIFE ESTATE VALUE FACTOR	AGE	LIFE ESTATE VALUE FACTOR
1	.98988	28	.96062	55	.80046	82	.40295
2	.99017	29	.95813	56	.79006	83	.38642
3	.99008	30	.95543	57	.77931	84	.36998
4	.98981	31	.95254	58	.76822	85	.35359
5	.98938	32	.94942	59	.75675	86	.33764
6	.98884	33	.94608	60	.74491	87	.32262
7	.98822	34	.94250	61	.73267	88	.30859
8	.98748	35	.93868	62	.72202	89	.29526
9	.98663	36	.93460	63	.70696	90	.28221
10	.98565	37	.93026	64	.69352	91	.26955
11	.98453	38	.92567	65	.67970	92	.25771
12	.98329	39	.92083	66	.66551	93	.24692
13	.98198	40	.91571	67	.65098	94	.23728
14	.98066	41	.91030	68	.63610	95	.22887
15	.97937	42	.90457	69	.62086	96	.22181
16	.97815	43	.89855	70	.60522	97	.21550
17	.97700	44	.89221	71	.58914	98	.21000
18	.97590	45	.88558	72	.57261	99	.20486
19	.97480	46	.87863	73	.55571	100	.19975
20	.97365	47	.87137	74	.53862	101	.19532
21	.97245	48	.86374	75	.52149	102	.19054
22	.97120	49	.85578	76	.50441	103	.18437
23	.96986	50	.84743	77	.48742	104	.17856
24	.96841	51	.83674	78	.47049	105	.16962
25	.96678	52	.82969	79	.45357	106	.15488
26	.96495	53	.82028	80	.43659	107	.13409
27	.96290	54	.81054	81	.41967	108	.10068

50425

SECTION NO.: 50442

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