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B. REAL PROPERTY OWNERSHIP

Real property is land, including buildings or immovable objects attached permanently to the land.

Real property ownership can consist of an interest in the title or a right to the use of the property without title to the property. Since the types of real property ownership may influence the individual's interest and his right of disposition, it is necessary to determine and document the type of ownership. The various types of ownership are discussed below.

1. Sole vs. Shared Ownership

Sole ownership of real property means that only one person may sell, transfer or otherwise dispose of the property. However, sole ownership may be subject to conditions imposed by others as, for example, sole ownership of a remainder interest in property.

Shared ownership of real property means that two or more people own it concurrently. The different types of shared ownership are:

a. Tenancy-In-Common

In tenancy-in-common, two or more persons each has an undivided fractional interest in the whole property for the duration of the tenancy. These interests are not necessarily equal; e.g., two joint tenants do not necessarily each own half of the property. One owner may sell, transfer or otherwise dispose of his or her share of the property without permission of the other owner(s) but cannot take these actions with respect to the entire property.

When a tenant-in-common dies, the surviving tenant(s) has no automatic survivorship rights to the deceased's ownership interest in the property. Upon a tenant's death, the deceased's interest passes to his or her estate or heirs.

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For example: Don, Charles, and Fred Evans own property as tenants-in-common. Charles and Fred each owns an undivided one-fourth interest in the property while Don owns the remaining one-half interest. If Don Evans were to sell his half interest to Stanley Long, Mr. Long would become a tenant-in-common with Charles and Fred Evans. If Mr. Long were then to die so that his property passed to his four children, each of them would own a one-eighth interest as tenants-in-common with Charles and Fred who would each continue to own a one-fourth interest.

b. Joint Tenancy

In joint tenancy, each of two or more persons has one and the same undivided ownership interest and possession of the whole property for the duration of the tenancy. In effect, each owner owns all of the property.

Upon the death of one of only two joint tenants, the survivor becomes sole owner. On the death of one of three or more joint tenants, the survivors become joint tenants of the entire interest.

c. Tenancy By the Entirety

A tenancy by the entirety can exist only between the members of a married couple. The wife and husband as a unit own the entire property which can be sold only with the consent of both parties. However, if a marriage has been legally dissolved, the former spouses become tenants-in-common and one can sell his or her share without the consent of the other.

Upon the death of one tenant by the entirely, the survivor takes the whole.

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Absent evidence to the contrary, each owner of shared property owns only his/her fractional interest in the property. Divide the total value of the property among all the owners in direct proportion to the ownership share held by each.

2. Ownership in Fee Simple or Less Than Fee Simple

Fee simple ownership means absolute and unqualified legal title to real property. The owner(s) has unconditional power power of disposition of the property during his or her life-time. Upon his or her death, property held in fee simple can always pass to the owner's heirs. Fee simple ownership may exist with respect to property owned jointly or solely.

Less than fee simple ownership in property involves the following types of property ownership:

a. Life Estate

A life estate conveys upon an individual or individuals for his lifetime certain rights in property. A life estate can be created by deed, will, or division of property. Its duration is measured by the lifetime of the tenant or of another person or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest unless the contract establishing the life estate restrains one or more of the life estate holder's rights. The owner of a life estate does not have title to the property or the right to sell the property.

b. Remainder Interest

A life estate instrument often conveys property to one person for life (life estate owner) and to one or more (remaindermen) upon the expiration of the life estate. A remainderman has an ownership interest in the physical property but without the right to possess and use the property until termination of the life estate.

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. In such cases, the market value of the remainder interest is likely to be reduced since such a sale is subject to the life estate interest.

c. Ownership By Will or Descent

An individual may have ownership interest in an unprobated estate acquired through a will or through the death of a relative who died intestate (without a will). The heir(s) may be sole owner or joint or common owners, etc.

(1) Heirs by will have ownership and control of the property or their joint or common share; however, if the will has not been filed with the proper court nor probated there is a question as to whether the will is legally binding. Legally, wills are required to be filed for probate; however, there is no time limit placed on filing. Absent evidence to the contrary, assume the client owns the property in proportion whereby one has the right to the will's directives.

(2) Heirs by descent (intestate estates) acquire ownership interest in property by virtue of the heirs' relationship to the deceased.

- Interstate property of a deceased person with a spouse and children is shared equally by the surviving spouse and children. Grandchildren become involved in ownership interest in intestate property only when their parent, who was a child of the original owner, is deceased. The grandchildren's interest is only in the share that their deceased parent held in interest.

- Intestate property of an individual who had no spouse or children at the time of death descends equally to his parents and brothers and sisters. If the deceased's parents are also deceased, the property descends to his brothers or sisters. Nieces and nephews become involved only if their parent, who was brother or sister to the deceased, is deceased. Their ownership interest is only in the share that their deceased parent held an interest.

Absent evidence to the contrary, assume an heir inherited property based on their laws of descent.

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d. Other Rights to the Use of Real Property

(1) Homestead Rights

Under State law a surviving spouse (widow or widower) is entitled to the homestead on the real property used as the home at the time of the death of the spouse and to receive income from it for his lifetime. This is not a life estate interest in the property, but is quite similar. This situation occurs when spouses jointly or commonly own property without a right of survivorship clause in the property. The surviving spouse has homestead rights to the portion of the property which belonged to the deceased spouse. The surviving spouse would also own his/her own interest in the property. A homestead right does not have value and cannot be sold.

(2) Mineral Rights, Timber Rights, Easements, Leaseholds

- Mineral Rights - A mineral right is an ownership interest in certain natural resources such as coal, sulphur, petroleum, sand, natural gas, etc., which are usually obtained from the ground.

- Timber Rights - Timber rights permit an individual to cut and remove freestanding trees from property owned by another as designated by contract with the person holding title to the land on which the timber stands.

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- Easements - An easement is a property right whereby one has the right to use of land of another person for a special purpose.

- Leasehold - A leasehold does not designate rights of ownership, but conveys to an individual the control of property for a definite period or duration, at the owner's will and usually for an agreed rent.

Note: Mineral rights, timber rights, easements, and leaseholds may all be countable resources if they have a cash value available to the individual upon disposition. In some cases, none of the above are saleable and therefore would not be a countable resource. For example, an individual may own an easement to pass through another's property to get to his own property. There would be little or no market for the sale of this property right. Also, a timber right to land that has been stripped of its trees would have little market value.

(3) 16th Section Land

16th section land or land acquired in lieu of 16th section land is land controlled by the State Board of Education under the general supervision of the State Land Commissioner. Generally each county Board of Supervisors has the authority to approve or re-new leases on the land.

An individual who leases such land does not own the property and has limited rights. The value of the lease decreases as the expiration date nears. Lease rights to 16th section or lieu lands are negotiable. These rights may be sold to another person provided the governing authority which approves such leases is agreeable to such a sale.

3. Evidence of Real Property Ownership

Property ownership must be verified for the case record. The following official records are utilized in establishing real property ownership:

- Current deed. If the client does not have a copy of the current deed, a copy must be obtained from records in the Chancery Clerk's Office in the county where the property is located.

  Note: Any discrepancies which exist between a deed and a tax receipt must be resolved in order to determine the true ownership situation. Deeds must be recorded in the appropriate county office to be considered a true deed documenting ownership.

- Tax Assessment notice or most recent tax receipt. Tax records and receipts describe the property. Phrases such as "Et al" or "Et ux" beside the name on a tax receipt indicates joint or common ownership of some form.

- Current mortgage statement. Mortgages are recorded in the Chancery Clerk's Office; however, the name of the mortgage holder must be known.

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- Report of title search.

- Wills, court records, or relationship documents which show rights of an heir to the property after death of the former owner.

Obtain a copy of the official record used to verify ownership for the case record. When ownership or ownership interest is verified, proceed with determining the current market value of the client's ownership interest.

4. Determining Current Market Value (CMV) of Real Property

Real property which cannot be excluded must have its Current Market Value (CMV) determined. The CMV is the amount for which the property can be expected to sell on the open market in the geographic area involved and under existing economic conditions. The CMV is established based upon either the most recent property tax assessment, or if the tax assessment method is not applicable as outlined below, upon an estimate of probable market value obtained from a knowledgeable source.

A CMV is assigned to real property using one of the methods listed below in order to obtain a "base" CMV. If property is disposed of for less than the CMV assigned to it, a possible transfer of resources exists. If property is sold on the open market for more than the "base" CMV, the CMV equals the sale price and not the "base" CMV.

a. Tax Assessment Notice

Obtain from the individual a copy of the most recently issued tax assessment notice for the property. Base the CMV on this assessment notice unless:

- the notice is more than a year old based on its date of issue (unless it specifies that it covers more than one year and it is no older than the number of years it covers);
- the notice pertains to a special purpose assessment (unless it also provides a fair market value assessment, which can be used);
- the assessment is under appeal;
- the assessment uses a fixed rate per acre method based on land usage, such as agricultural or industrial. (This does not refer to assessments where conditions dictate similar taxes for similar types of land, such as desert, swamp, landfills, etc.); or
- the notice provides either no assessment ratio or only a range, e.g., between 25 and 50 percent (unless the individual would be ineligible using even the top of the range).

A tax assessed value divided by the county tax assessment ratio is the CMV based on the assessment. For example, if the tax assessed value is $500 and the assessment ratio is 15%, the CMV is $3333 based on the assessment.

Note: Property in Mississippi is assessed at 10% for home property and 15% for non-home property. Class 1 property, as reflected on the tax receipt, is home property assessed at 10%. Class 2 property is non-home property assessed at 15%. (Note: Class 2 property may adjoin home property and therefore be included in the definition of home property.)

b. Knowledgeable Source Estimate

If the tax assessment method cannot be used, have the client obtain an estimate of the property's CMV from a knowledgeable source. Knowledgeable sources include, but are not limited to:

- real estate brokers;
- the local office of the Farmer's Home Administration (for rural land);
- the local office of the Agricultural Stabilization and Conservation Service (for rural land);
- banks, savings and loan associations, mortgage companies, and similar lending institutions;
- an official of the local property tax jurisdiction (be sure to obtain the individual's estimate rather than the office's assessment);
- the County Agricultural Extension Service; and
- the Bureau of Land Management, the U. S. Geological Survey or any mining company that holds leases (such as for mineral rights CMV).

The estimate must show, in addition to the estimate itself:

- the name of the person providing the estimate;
- the name, address and telephone number of the business or agency for whom the person providing the estimate works;
- the basis for the estimate, to include such things as a description of the property and its condition and, where appropriate, the value of similar property in the same area; and
- the period to which the estimate applies (which should correspond to the period for which it is being requested).

If the client is incapable of obtaining an estimate, lend assistance. If obtaining an estimate by phone, be sure to record all pertinent facts in file.

If the validity of an estimate furnished by the individual is in doubt, obtain an estimate from an additional knowledgeable source.

c. CMV Rebuttals

If the individual disagrees with CMV evidence that he or she submits or that the worker obtains, and the difference is material to eligibility, prepare a rebuttal determination. The determination must take into account:

- **all the evidence previously in file** (the individual;'s original allegation, any tax assessment notices, and any estimates from knowledgeable sources);

- any **additional** evidence the individual wishes to submit, including evidence that the individual's ownership interest in the property is worth less than the total value of the property divided by the number of owners; and
- any other facts the Regional Office has about the property or about market conditions where it is located.

The rebuttal determination must be supported by a preponderance of the evidence (which may require one or more additional estimates from knowledgeable sources).

5. Determining CMV of Life Estates & Remainder Interests

Determine the value of life estate interests as follows:

Determine Current Market Value as described in Determining Current Market Value of Real Property" for the property as a whole.

Note: It is possible to own a life estate in a structure (house) only and not the surrounding land. If this is the case, determine CMV for only the structure or for whatever the life estate tenant has the right to use as established in a deed or will.

Effective 2-8-07, the purchase of a life estate in another individual's home is a countable transfer unless the purchaser resides in the home for at least one year from date of the purchase.

- Determine the individual's age as of his/her last birthday and find the age on the Life Estate and Remainder Interest Table located in the Appendix.
- Multiply the figure in the Life Estate column for the individual's age by the CMV of the property to determine the value of the life estate.

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If there is a joint ownership of a life estate, first determine the CMV in the entire property. Divide the CMV of the entire piece of property by the number of joint owners to determine the individual's share. Determine the individual's life estate value as outlined above.

When one joint owner of a life estate dies, the surviving owners increase their interest. Life estates do not descend. For example, if a couple owns a life estate and one spouse dies, the remaining spouse is the sole owner of the life estate.

Determine the value of a remainder interest in the same manner used to compute a life estate interest except refer to the "Remainder" column of the Life Estate and Remainder Interest Table located in the Appendix to obtain the figure to use for multiplying by the CMV. Use the life estate tenants age when referring to the "Remainder" column.

6. **Determining CMV of Other Types of Ownership**

For other types of property ownership, such as mineral rights or timber rights, determine the CMV through a knowledgeable source. If the property right is under production, it is necessary to obtain a copy of the land lease to determine if the lease is transferable in order to determine if the property right is a countable resource.

7. **Treatment of Real Property As A Resource**

Absent evidence to the contrary, real property is presumed to be disposable at the CMV established. The portion of the resource that is "countable" as a resource is determined by:

- Establishing client's ownership interest, then
- Obtaining CMV, then
- Determine the client's Equity Value (EV).

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The client's EV in real property is the amount "countable" as a resource unless:

- The property is excluded under Real Property Exclusion; and/or
- The property is excluded under "liberalized" resource policy.

8. Liberalized Real Property Exclusions

Under "liberalized" resource policy applicable to:

- LTC coverage groups,
- LTC "At-Home" coverage groups (Hospice & HCBS Handicapped Groups),
- PLAD, SLMB and QMB coverage groups, the following types of real property ownerships are excluded regardless of value:
  - Life Estate and Remainder interests in any property or properties.
  - Undivided Heir interests in any property
  - 16th Section Land Leases
  - Mineral Rights, Timber Rights or Leaseholds that are not under production. If these types of ownerships are income-producing, test the net annual return against the 6% income-producing property rule.