

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

**FINAL**

**ORDER**

**DSSM: 20320 Ownership of Real Property by Institutionalized Individuals**

The following regulatory action is exempt from the Administrative Procedures Act in accordance with 29 **Delaware Code**, Ch 101, §10113(b)(4), which exempts from the procedural requirements of the Administrative Procedures Act (APA) regulations for nonsubstantive changes in existing regulations to alter style or form or to correct technical errors.

**Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10113 and its authority as prescribed by 31 **Delaware Code** Section 512.

**Nature of the Exempt Regulation**

**Citation**

29 **Del.C.** §10113, *Adoption of Regulations; Exemptions*

**Summary of Proposed Changes**

DSSM 20320, *Ownership of Real Property by Institutionalized Individuals*: For clarity and understanding, minor housekeeping change is being made to subject titles and policy text from **Lifetime Rights to Life Estate** under DSSM 20320.1, *Types of Ownership* at 20320.1.5 and under DSSM 20320.2, *Eligibility Factors of Types of Ownership* at 20320.2.2.

**Findings of Fact**

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

**THEREFORE, IT IS ORDERED**, that the proposed revision regarding housekeeping changes to the policies of the Long Term Care Program related to ownership of real property by institutionalized individuals be adopted informally as an exempt regulation and shall become effective April 10, 2009.

March 13, 2009

Rita M. Landgraf, Secretary, DHSS

**DMMA EXEMPT REGULATION #09-11**

## **REVISIONS:**

### **20320 Ownership of Real Property by Institutionalized Individuals**

Real property is land, including houses or immovable objects attached permanently to the land. The terms real estate, realty, and real property are used synonymously with one another and designate real property in which an individual has ownership rights and interests. When an applicant/recipient of Medicaid institutional services is the owner of real property, the following procedure and eligibility rules apply.

#### **20320.1 Types of Ownership**

20320.1.1 Fee Simple

20320.1.2 Tenancy in Common

20320.1.3 Tenancy in the Entirety

20320.1.4 Joint Tenancy

20320.1.5 ~~Lifetime Rights~~ Life Estate

##### **20320.1.1 Fee Simple**

In fee simple ownership, the owner is completely free of conditions imposed by others.

##### **20320.1.2 Tenancy in Common**

In tenancy in common ownership, each owner has a part interest in the property and each portion can be sold separately.

##### **20320.1.3 Tenancy in the Entirety**

Tenancy by the entirety only applies to married couples. If a husband and wife are sole owners of a property and the deed does not specify type of ownership, there is a precedent in Delaware law that allows the presumption that ownership is "tenancy by the entirety". These terms refer to property owned by a husband and wife where each member has ownership interest in the whole property which is indivisible. Ownership by the entirety can only be dissolved by death or divorce.

##### **20320.1.4 Joint Tenancy**

In the case of joint tenancy each owner has an equal interest in the whole property and each equal part can be sold with the agreement of the co-owners.

##### **20320.1.5 ~~Lifetime Rights~~ Life Estate**

In the case of lifetime rights the individual may live in or use the property during their lifetime, but has no ownership rights. The individual merely has the right to live in the property.

#### **20320.2 Eligibility Factors of Types of Ownership**

20320.2.1 Joint Owners

20320.2.2 ~~Lifetime Rights~~ Life Estate

##### **20320.2.1 Joint Owners**

20320.2.1.1 Tenancy by the Entirety

20320.2.1.2 Joint Tenancy

20320.2.1.3 Principal Place of Residence

###### **20320.2.1.1 Tenancy by the Entirety**

If ownership is a tenancy by the entirety and both spouses are still living the property will not be considered a resource. If the ownership is in fee simple or tenancy by the entirety with one spouse deceased, the entire equity value of the property is considered a resource according to sections 20320.3, 20320.4, and 20320.5.

#### **20320.2.1.2 Joint Tenancy**

In the case of joint tenancy where the co-owners do not agree to sell, the property will not be considered a resource. A statement from the co-owner(s) indicating refusal to sell must be placed in the case record. The refusal to sell creates a legal bar so the property is excluded as a resource. DSS/Medicaid does not require the individual to sue the co-owner to accomplish sale or access.

If ownership is joint tenancy (where the co-owners agree to sell) or tenancy in common, the applicant/recipient's share in the equity must be treated as a resource according to sections 20320.3, 20320.4, and 20320.5.

#### **20320.2.1.3 Principal Place of Residence**

If the property is the principal place of residence for the joint owner(s) and it would cause undue hardship (loss of housing) to sell the jointly owned property it can be disregarded.

#### **20320.2.2 Life Estates**

Life Estate is an ownership interest in real property. The right of ownership exists for the lifetime of an individual(s). Upon the death of the individual(s) the ownership passes to the "remainderman." A life estate may be sold or otherwise transferred. As per the Deficit Reduction Act of 2005 (DRA), effective 4/1/06, a life estate in a home property may be an excluded resource provided the purchaser resides in the home for a period of at least 1 year after the date of purchase and continues to live in the property.