

New York Life Estates

You can transfer your home to your children with a life estate deed which gives you the right to live there for the rest of your life. During your lifetime, you will continue to be considered the owner of the home for most purposes.

For example, you will still be responsible for the payment of all taxes, insurance and maintenance of the home. To determine whether the life estate deed will affect eligibility for Medicaid, the following must be considered:

1. **Look-back period.** The New York look-back period is 60-months for all transfers of assets.
2. **Value.** The transfer is not considered to be for the full value of the house but the "remainder interest" in the house. The remainder interest is the right that your children or remaindermen have to receive the home automatically upon your death. The value of the remainder interest is calculated using IRS actuarial tables based on your life expectancy.
3. **Penalty Period.** The number of months of ineligibility or penalty period is calculated by dividing the value of the gift by the average monthly cost of nursing home care. This 2010 "regional rate" for Western New York is \$7694.

Social Services cannot require you to liquidate the life estate or to rent the life estate interest property. However, if you rent out the property, any net rental income you receive is counted in determining eligibility for Medicaid.

Also, if you sell the property, part of the proceeds or fair market value are a countable resource for determining Medicaid eligibility.

The life estate deed has many advantages over an outright gift, including:

- 1) the property will still qualify for any property tax exemptions such as veterans and senior citizens exemptions that were available prior to the transfer as long as you continue to reside in your home;
- 2) your children can't make you move out;
- 3) your children's creditors can't take possession of the home;
- 4) capital gains when your children sell the home will be calculated on a stepped-up basis which is the value at the date of your death rather than your original cost basis;
- 5) since the value of the remainder interest is lower than the full value of the house, it will result in a shorter Medicaid penalty period than an outright transfer. You can also purchase a life estate in another's home or a new home without penalty if you live there for one continuous year.