461-135-0832 **Effective 2-24-21 – Minor Correction**
Estate Administration; Definitions

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 410.075, 411.620, 411.630, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's *spouse* (see OAR 461-001-0000); by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

(2) "Assign" means a *person* who acquires an interest in *real* or *personal property* or an *asset* pursuant to a written or oral assignment of such *real* or *personal property* or *asset* from a *person* with the legal right to assign it.

(3) "Assistance" means general assistance and public assistance as defined in ORS 411.010 and medical assistance as defined in ORS 414.025.

(4) "Bona fide purchaser for value" means any *person* who provides consideration, including money or property, to a seller or transferor of *real property* or *personal property* equal to the fair market value of the *real* or *personal property* sold or transferred.

(5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(6) "Child with a disability" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(7) "Child with a visual impairment" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

(a) Vision of 20/200 or less in the better eye with a corrective lens;

(b) A limitation in vision field to an angle of 20 degrees or less; or

(c) Meeting any other SSI criteria for blindness.

(8) "Consideration furnished test" means the method by which the ownership of *real* or *personal property* is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed $2,500 and the other $7,500 to the purchase price of a $10,000 property in 1960; in 1995, the property is appraised at $50,000. The co-owner who contributed $2,500 is considered to own 25% of the property in 1995.

(9) "Convincing evidence" includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(10) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(11) "Department" means the Department of Human Services, the Oregon Health Authority, or both.

(12) "Estate" means with respect to the collection of payments made for *medical assistance* provided on or after July 18, 1995 all *real property*, *personal property*, or other *assets*, wherever located, in which a recipient had any *legal title* or ownership or beneficial interest at the *time of death*, including *real property*, *personal property*, or other *assets* conveyed by the recipient to, subsequently acquired by, or traceable to, a *person,* including the recipient's *spouse* and any successor-in-interest to the recipient's *spouse*, through:

(a) Tenancy by the entirety;

(b) *Joint tenancy*;

(c) *Tenancy in common*;

(d) Not as tenants in common, but with the right of *survivorship*;

(e) *Life estate*;

(f) *Transfer on death deed*;

(g) *Living trust*;

(h) Annuity purchased on or after April 1, 2001; or

(i) Other similar arrangement.

(13) “General Assistance” means “general assistance” as defined in ORS 411.010.

(14) "Heir" means any individual, including the surviving *spouse*, who is entitled under *intestate succession* to the *real property*, *personal property*, and *assets* of a decedent who died wholly or partially *intestate*.

(15) "Interest" means any form of legal, beneficial, equitable or ownership interest.

(16) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one *spouse* to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(17) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(18) "Intestate succession" means succession to *real property*, *personal property* or *assets* of a decedent who dies *intestate* or partially *intestate*.

(19) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(20) "Legal title" means legal ownership by a *person*.

(21) "Life estate" means an *interest* in *real* or *personal property* that terminates upon the death of a measuring life.

(22) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(23) "Medical Assistance" (MA) is defined in ORS 414.025 and incorporated by this reference.

(24) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. "Medical institution" does not apply to *home and community-based care* (see OAR 461-001-0030), in-home services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(25) "Medicare cost sharing" means *medical assistance* funds used to pay Medicare premiums, coinsurance, copayments and deductibles.

(26) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale, or other similar documents evidencing ownership or *legal title* held by a *person*.

(27) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution, for 180 days or more.

(28) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(29) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(30) "Probate estate" means all *real property*, *personal property*, or other *assets* included in a decedent's estate as it is defined by applicable state probate law.

(31) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. "Real property" includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving *spouse* and any successor-in-interest to the individual's surviving *spouse*, if the "real property" may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

(32) "Recipient of property" means:

(a) Any *survivor, heir, assign*, devisee under a will, beneficiary of a trust, transferee or other *person* to whom *real property*, *personal property* or other *assets* pass upon the death of the decedent either by law, *intestate succession*, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such *real property*, *personal property*, or *asset*, or proceeds from the sale thereof, through any form of conveyance, that is not a *bona fide purchaser for value*.

(33) "Registered Domestic Partner" means an individual joined in a domestic partnership as defined in ORS 106.310.

(34) "Survivor" means any *person* who, as a co-tenant, is automatically entitled to an expanded share of *real* or *personal property* upon the death of a fellow co-tenant.

(35) "Survivorship" means an interest in *real* or *personal property* that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(36) "Tenancy in common" means ownership of *real* or *personal property* by an individual together with one or more other persons which ownership *interest* shall not pass by *survivorship* upon the death of the individual.

(37) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall *time of death* be construed to mean a time after which an *interest* in *real* or *personal property* or other *assets* may:

(a) Pass by *survivorship* or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(38) "Transfer on death deed" has the meaning set out in ORS 93.949.

(39) "Value" means the fair market value. Fair market value is the price at which *real* or *personal property* would change hands between a willing buyer and a willing seller. In the event the *real* or *personal property* was not reported to the Department by the deceased Medicaid recipient, the "value" would be established based on its fair market value at the time of discovery.

Statutory/Other Authority: ORS 410.075, 411.060, 411.070, 413.042, 416.340, 416.350, 2013 Or Laws 14 Section 10
Statutes/Other Implemented: ORS 93.969, 410.070, 410.075, 411.010, 411.060, 411.708, 411.795, 416.310, 416.340, 416.350, 2013 Or Laws 14 Section 10

Previous Rules

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