



**Mme. Calment's Life Estate
and
Other Tales of Sales:**

The Sale of Partial Ownership Interests In Bankruptcy

**Leonard G. Leverson
Leverson & Metz S.C.**

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“Je n’ai jamais eu qu’une seule ride, et je suis assise dessus.”

-- Jeanne Calment

I. **Introduction.**

II. **The cautionary tale of Jeanne Calment.**

- A. Jeanne Calment (Feb. 21, 1875–Aug. 4, 1997) of Arles, France, lived the longest officially documented life of any person in history. Born in Arles, she lived there her whole life.
1. Calment came from a family of above-average longevity. Her father, Nicolas, lived to be 93; her mother lived to be 86; one brother lived to be 97. (Two other siblings, however, died in childhood.)
 2. She ate a varied diet that included a kilogram (2.2 pounds) of chocolate a week (a bonbon after every meal), large quantities of olive oil, and a glass or two of port with dinner; she enjoyed red wine as well.
 3. Calment also rode her bicycle regularly until she was 100, hunted (rabbits) with her husband while he was alive, hiked, exercised daily, and maintained a positive outlook on life and a good sense of humor until the end. *“Gardez toujours le sourire. C’est à lui que j’attribue ma longue vie.”* Asked on her birthday, “And perhaps until next year!,” she responded, “Why not? You don’t look so bad to me.” (*“Pourquoi pas? Vous n’avez par l’air en si mauvaise santé.”*)
 4. Calment smoked until she was 117, but only two cigarettes a day.
 5. At age 114, Calment appeared in the film “Vincent and Me” as herself. Calment claimed to have met Van Gogh as a young teenager in her future father-in-law’s fabric shop.
 6. At age 121, Calment released a hip-hop CD, Time’s Mistress (*“Le Maitresse du Temps”*).
- B. At age 90, in 1965, Jeanne Calment sold her four-room second-floor apartment on Rue Gambetta, above the former Calment family fabric store, to her 47-year-old lawyer, Andre-Francois Raffray, *“en viager,”* i.e. retaining a life estate. Raffray’s law office was adjacent. He planned to expand it.

1. Raffray agreed to pay her 2500 francs a month, or about \$500, for the rest of her life.
2. Calment continued to live in her apartment until she was 110. Every year she sent Raffray a letter in her unique style, recommending that he pay attention because she wasn't going to repeat herself. She began by apologizing for living so long, but wishing Raffray an equally long life.
3. By 1994 Raffray was himself in a nursing home. The following year he died of cancer on Christmas Day at age 77, having paid Mme. Calment approximately \$184,000, or twice what the apartment was worth. The day of Raffray's death, Calment dined on foie gras, duck thighs, cheese, and *buche de Noel* at her nursing home, the Maison du Lac, at a dinner hosted by the mayor of Arles. Raffray's widow continued making the payments on the apartment (which remained unoccupied during Calment's residency at the Maison du Lac) until Calment died in 1997.
4. Of the deal with Raffray, Calment remarked, on her 119th birthday, "In life, one sometimes makes bad deals."

III. Valuation of life estates and other fractional ownership interests.

- A. Approximately once a year for the last three or four years, someone has posted a question or comment on the State Bar of Wisconsin Bankruptcy, Insolvency, and Creditors' Rights ("BICR") Section listserv asking if it is obligatory to use the Medicaid eligibility life estate valuation table to value life estates for bankruptcy schedules purposes, or a similar question, such as where to find the table. This question invariably precipitates a comment from this presenter (typically echoed or presaged by the sagacious Dan Freund of Eau Claire) recounting the cautionary tale of Jeanne Calment (*supra*) and explaining why the Medicaid tables do not control valuation for bankruptcy schedules purposes. I will repeat myself now.
- B. The Medicaid eligibility life estate tables, for Wisconsin, as of December 7, 2010, are found at http://www.emhandbooks.wi.gov/meh-ebd/policy_files/39/MEH_39.1_Life_Estate_and_Remainder_Interest.htm (attached).
 1. The source of the Life Estate and Remainder Interest Table is 26 C.F.R. 20.2031 (49 Fed. Register, Vol. 49, No. 93, May 11, 1984). The use of the table is mandated for determining Medicaid eligibility.
 2. The Life Estate & Remainder Interest Table uses a simple algorithm to value life estates and remainder interests. It uses actuarial life expectancy as of various ages to determine an anticipated fixed duration of the life estate. It calculates the present value of the remainder interest by

discounting the current fair market value of the property over that assumed duration of the life estate, using the Internal Revenue Code § 7520 interest rate (used to value certain charitable interests in trusts). The value of the life estate is assumed to be the current fair market value, less the residual value of the remainder interest upon the life tenant's death.

3. The Life Estate and Remainder Table prescribes, for example, a factor of .67970 for valuing a life estate where the life tenant is age 65, and a factor of .32030 for the value of the remainder interest. Thus a life estate in a \$100,000 home is worth \$67,970 for Medicaid eligibility purposes if the life tenant is age 65; and the remainder interest is worth \$32,030.
 4. These values are used in connection with Medicaid eligibility and especially in connection with divestment -- the process and rules under which a person may qualify for Medicaid notwithstanding having gifted property away during some prior period of time.
- C. Valuation for bankruptcy schedules purposes is guided by different policies. The issue is not how long do we make you wait after you divested a remainder interest in your home before you can go on Medicaid to pay for your spouse's nursing home care. Rather, it is, plain and simply, what's it worth? If you own a life estate in a house, what can the trustee sell it for? Accordingly Schedule A asks debtors to estimate the "current fair market value" of the assets scheduled.
- D. Principles of valuation recognize that the whole is often greater than the sum of its parts. A corollary of this is that the Medicaid eligibility life estate table is simply wrong in assuming that current market value equals the value of the life estate plus the value of the remainder interest. In the example given above, of a \$100,000 house occupied by a healthy 65-year-old, it is unlikely in the extreme that any buyer would pay as much as \$67,970 for the life estate or \$32,030 for the remainder interest. In all likelihood, both interests would be worth far less.
1. Appraisers recognize discounts in various settings for lack of control as well as lack of marketability.
 - a. Discount for lack of control. A majority ownership stake in a company is generally appraised at a significant premium to a minority ownership stake. *See, e.g., Theophilos v. Comm'r*, 85 F.3d 440, 449 (9th Cir. 1996); *Estate of Bright v. U.S.*, 658 F.2d 999, 1002-3 (5th Cir. 1981); *Estate of Chenoweth v. Comm'r*, 88 T.C. 1577, 1582 (1987); *cf. Estate of Godley v. Comm'r*, 286 F.3d 2010 (4th Cir. 2002). This same principle can be applied to real estate. The owner of a fee interest in real estate can inhabit the property, add onto it (within zoning restrictions), tear it down and rebuild -- whatever will put the property to its highest and best use,

as determined by the owner. The owner of a remainder interest, on the other hand, has little or no control over the property during the life estate. The house may be worth \$100,000 today; but it is unlikely to hold its value if the elderly life tenant has an incontinence problem and 14 cats. Certainly where the remainderman is an unrelated third party rather than an heir, the life tenant may behave more like a renter than an owner, and defer or avoid necessary maintenance. Conversely life tenants also lack the control over real estate held by the owners of a fee. A life tenant may be restricted from altering the property by the need to secure the remainderman's consent or else face potential litigation over allegations of waste.

- b. Discount for lack of marketability. In other words, if few people want something, it tends to be worth less. The fee interest in a house generally has numerous potential buyers. They can buy the property, live there, and sell when and if they choose. Far fewer people have any interest in buying a life estate or remainder interest.

Particular life estates and remainder interests may have some market, albeit small. A remainder interest in valuable lakefront property, though not sellable to a buyer looking for lakefront property to move into now, might be marketable to an institutional purchaser with a long-term time horizon, like a government agency looking ultimately to expand a park. Or a farmer with a use for rental acreage might be able to put a life estate in farmland to good use. In either case, however, the uncertainty of the duration of the life estate and of when the remainder interest will mature into a fee interest acts to deter buyers. In theory, one might be able to hedge some of these risks through some form of insurance; but it is not practical in smaller transactions.

- 2. Although the occasions for valuation of life estates and remainder interests in contested bankruptcy cases have been few, the court had occasion to do so in *Matter of Burns*, 73 B.R. 13 (Bankr. W.D. Mo. 1986). There the debtors had a life estate in 231 acres of farm land. The debtors were 52 and 53. The testimony was to the effect that the fee interest would be worth between \$69,300 and \$80,850. The trustee attempted to use a Missouri statutory method of calculating the value of the life estate. The court rejected this:

It is not the Missouri statute which governs the value of a life estate, however, for the purpose of determining the value of an exemption in bankruptcy proceedings. The governing case decisions uniformly hold that the value of exemptions is to be determined according to fair market value. On that issue, only the debtors have adduced evidence and it is unanimously to the effect that the fair market value of the life estate is less than the \$8,000 limit on a homestead exemption. This is the value which the court has no alternative but to accept in making this determination. If the trustee's theory as to the determination of value were to be indulged, the trustee would be able to command much more for the life estate than he could ever obtain for it on the open market and thereby would compel the debtors to purchase their own homestead at far more than market value. This is particularly so in this case, in which any reasonable potential purchaser of the property would be almost certain to observe that, because of the uncertain life expectancies of the life tenants and the current nonproductivity of the acreage in terms of profit, great risk would be involved in purchasing the life estate.

Id., 73 B.R. at 16 (footnote omitted). The debtors' appraiser, whose testimony the court credited, had valued the life estate at between \$3,000 and \$5,000. (The husband, although in his early 50's, evidently had some health issues.) *Id.* at 15.

3. Sometimes the fact that life estates have low values can hurt debtors. In *In re Hansen*, 95 B.R. 586 (Bankr. C.D. Ill. 1989), the debtors had conveyed a portion of their farm to their daughters, reserving a life estate, fourteen months before filing Chapter 7. The trustee sought to avoid the transfer as a fraudulent conveyance. The debtors alleged that they were solvent before and after conveying the farm land. The bankruptcy judge disagreed:

This Court cannot ignore the Debtors' ages and the uncertainties associated with their life expectancies which would adversely affect the price any reasonable purchaser would offer for the life estate interests in the 80 acre tract. Such a purchaser would recognize that actuarial valuations are based on estimated life expectancies, which may or may not be fulfilled. Any offer to purchase the life estate

interests would reflect the risk that with two people of advanced age, the life estate could terminate shortly after acquisition. If an offer were obtained, it would be extremely low.

Id., 95 B.R. at 589.

4. In *Syracuse Engineering Co. v. Haight*, 110 F.2d 468 (2d Cir. 1940), the court had occasion to value a remainder interest in the course of deciding whether or not the debtor was insolvent and therefore properly the subject of an involuntary bankruptcy. The debtor was 49; his brother was 51. They were the sole beneficiaries of a trust having a corpus of more than a million dollars. Each brother received half the income until he reached the age of 60. If either brother died before age 60, the entire principal would go to the other brother. Although the parties offered testimony showing a market for the purchase of vested and contingent remainders, the testimony also showed that no bank would extend credit on such speculative assets. The actuarial likelihood that a 49-year-old would live another decade was 84%. Despite this, the district court found that the *current fair market value of the debtor's remainder interest in the trust* was a "speculative or gambling value" of no more than \$50,000. 110 F.2d at 471. The Second Circuit affirmed.
- E. Honest appraisers will admit that it is more difficult to appraise unique properties. Life estates tend to be unique because, in addition to the features of the property, the right to occupy it is measured by a unique and generally unpredictable criterion -- the duration of the life of the life tenant. There are typically very few if any "comparable sales" to compare against. So, what's a life estate worth? Who knows? But probably not very much.

IV. **The sale of partial ownership interests.**

- A. Can the trustee sell the whole enchilada where the debtor only owns the cheese sauce?
 1. Code § 363(h) authorizes the sale of property of the estate, together with the interest of a co-owner, if the debtor held an individual interest in the property as a tenant in common, joint tenant, or tenant by the entirety, only if four conditions are met:
 - a. Partition in kind among the debtor and the co-owners must be impracticable (§ 363(h)(1));
 - b. The sale of the estate's interest, only, would realize significantly less for the estate than the sale of the estate's interest and the

interests of the co-owners (keep in mind that the co-owners get their share) ((§ 363(h)(2));

- c. The benefit to the estate outweighs the detriment to the co-owners ((§ 363(h)(3)); and
 - d. The property is not used in the production, transmission, or distribution, for sale, of electric energy or natural or synthetic gas for heat, light, or power (§ 363(h)(4)).
2. Is § 363(h) constitutional? Maybe not. *See In re Persky*, 134 B.R. 81, 94-105 (Bankr. E.D.N.Y. 1991) (finding § 363(h) to exceed Congress's power under the Bankruptcy Clause). *Contra, In re Bernier*, 176 B.R. 976 (Bankr. D. Conn. 1995); *In re Calumet Farm, Inc.*, 150 B.R. 664, 675 (Bankr. E.D. Ky. 1992).
 3. Authority to conduct a sale under Code § 363(h) must be determined by adversary proceeding. Fed. R. Bankr. P. 7001(3).
 4. Note that § 363(h) does *not* authorize the sale of the fee interest in property where the debtor only owns either a life estate or a remainder interest. *See In re Ziegler*, 396 B.R. 1 (Bankr. N.D. Ohio 2008) (authorizing sale of entire remainder interest pursuant to § 363(h) where debtor owned a 1/6 remainder interest, but not allowing sale of life estate owned by nondebtor); *In re Hajjar*, 385 B.R. 482 (Bankr. D. Mass. 2008) (authorizing sale of one-third remainder interest only); *In re Sargent*, 337 B.R. 661 (Bankr. N.D. Ohio 2006) (authorizing sale of entire remainder where debtor owned a 1/2 remainder interest); *Matter of Burns*, 73 B.R. 13, 15 (Bankr. W.D. Mo. 1986) ("It is plain . . . that life tenants and remaindermen are not co-owners having undivided interests who are intended to be the subjects of section 363(h), *supra*. Consequently, the trustee's patently unlawful prayer for relief in this regard [requesting to sell the fee where the debtors only owned a life estate] must be denied"). Or, for that matter, where the debtor holds title subject to a resulting trust, *In re Stewart*, 325 Fed. Appx. 82 (3rd Cir. 2009). *But cf. In re Risler*, 2010 WL 4924752 (Bankr. W.D. Wis. Dec. 2, 2010) (Utschig, J.) (creditors entitled to rely on the 'face of the deed,' notwithstanding that the debtor's son had paid the entire purchase price for property they held as joint tenants), *citing Dubis v. Zarins*, 128 F.3d 469, 472 (7th Cir. 1997) (similar case rejecting constructive trust claim)).
 5. How do courts weigh the benefit to the estate -- the near certainty that more money will be raised for creditors if the property is sold as a whole -- against the detriment to the co-owners?

- a. Courts have been reluctant to uproot a resident non-debtor co-owner, especially where the debtor was non-resident, where the non-debtor would face difficulties financing an alternative home, and where the non-debtor owner had been a long-time occupant. *See, e.g., In re Nelson*, 129 B.R. 427 (Bankr. W.D. Pa. 1991); *In re Griffin*, 123 B.R. 933 (Bankr. S.D. Fla. 1991); *In re McCoy*, 92 B.R. 750 (Bankr. N.D. Ohio 1988).
- b. On the other hand, where the property was not the co-owner's homestead, *see e.g., In re Leonard*, 418 B.R. 477 (Bankr. S.D. Fla. 2009), or could easily finance alternative housing, courts have been less reluctant to order a sale including the co-owner's interest. *See, e.g., In re Addario*, 53 B.R. 335 (Bankr. D. Mass. 1985); *In re Ivey*, 10 B.R. 230 (Bankr. N.D. Ga. 1981).

B. Contingent remainder interests.

1. Be aware that whether or not contingent remainder interests (*i.e.*, remainder interests that are not currently vested but depend on some future event, such as whether or not the heir survives the life tenant) become property of the bankruptcy estate appears to depend on whether they are alienable under state law. *Compare In re Hicks*, 22 B.R. 243 (Bankr. N.D. Ga. 1982) (contingent remainder interest did not become part of bankruptcy estate because not alienable under Georgia law) *and In re Arney*, 35 B.R. 668 (Bankr. N.D. Ill. 1983) (contingent remainder interest not part of bankruptcy estate where it was subject to valid spendthrift provision in testamentary trust) *with In re Hoblit*, 89 B.R. 756, (Bankr. C.D. Ill. 1986) *and In re Reynolds*, 50 B.R. 20 (Bankr. C.D. Ill. 1985); *see also In re Landis*, 41 F.2d 700 (7th Cir.), *cert. denied*, 282 U.S. 872 (1930) (contingent remainder interests alienable under Illinois law and therefore property of the bankruptcy estate). Future interests, including contingent future interests, are alienable by statute in Wisconsin, § 700.07, Wis. Stats., unless subject to a valid restraint on alienation (such as a spendthrift provision in a trust). *See also First Wisconsin Trust Co. v. Taylor*, 242 Wis. 127, 7 N.W.2d 707 (1943); *Meyer v. Reif*, 217 Wis. 11, 258 N.W. 391 (1935).
2. But I digress. To quote the great legal historian Frederic Maitland: "For who shall interest us in contingent remainders or the Statute of Uses, while Chinese metaphysics remain unexplored?" Frederic W. Maitland, 1 *Collected Papers* 190 (Fisher ed. 1911), *quoted in In re Deuel*, 594 F.3d 1073 (9th Cir. 2010) (Kleinfeld, J).

Exhibits

Rue Gambetta, Arles

Jeanne Calment quotes

Medicaid eligibility handbook, life estate and remainder table



JEANNE CALMENT QUOTES

All babies are beautiful.

Always keep your smile. That's how I explain my long life.

Death doesn't frighten me; now I can think peacefully of ending a long life.

Every age has its happiness and troubles.

Excuse me if I'm clinging on to life, but my parents wove from tight thread.

He who hugs too much, hugs badly.

I didn't like mundane life.

I have legs of iron, but to tell you the truth, they're starting to rust and buckle a bit.

I never wear mascara; I laugh until I cry too often.

I see badly, I hear badly, and I feel bad, but everything's fine.

I think I will die laughing.

I took pleasure when I could. I acted clearly and morally and without regret. I'm very lucky.

I wait for death and journalists.

I'd like to go to the Moon.

I'm interested in everything but passionate about nothing.

I'm not afraid of anything.

I've been forgotten by our Good Lord.

I've only got one wrinkle, and I'm sitting on it.

In life, people sometimes make rotten deals.

Not having children is one less worry. Children are a worry!

There are so many good authors; there's no shortage of them.

Wit doesn't make girls pretty.

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State of Wisconsin
Department of Health Services
Medicaid Eligibility Handbook
 Release 10-04 December 7, 2010

[View History](#)**39.1 LIFE ESTATE AND REMAINDER INTEREST**

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
0	.97188	.02812	42	.90457	.09543
1	.98988	.01012	43	.89855	.10145
2	.99017	.00983	44	.89221	.10779
3	.99008	.00992	45	.88558	.11442
4	.98981	.01019	46	.87863	.12137
5	.98938	.01062	47	.87137	.12863
6	.98884	.01116	48	.86374	.13626
7	.98822	.01178	49	.85578	.14422
8	.98748	.01252	50	.84743	.15257
9	.98663	.01337	51	.83674	.16126
10	.98565	.01435	52	.82969	.17031
11	.98453	.01547	53	.82028	.17972
12	.98329	.01671	54	.81054	.18946
13	.98198	.01802	55	.80046	.19954
14	.98066	.01934	56	.79006	.20994
15	.97937	.02063	57	.77931	.22068
16	.97815	.02185	58	.76822	.23178
17	.97700	.02300	59	.75675	.24325
18	.97590	.02410	60	.74491	.25509
19	.97480	.02520	61	.73267	.26733
20	.97365	.02635	62	.72002	.27998
21	.97245	.02755	63	.70696	.29304
22	.97120	.02880	64	.69352	.30648

23	.96986	.03014	65	.67970	.32030
24	.96841	.03159	66	.66551	.33449
25	.96678	.03322	67	.65098	.34902
26	.96495	.03505	68	.63610	.36390
27	.96290	.03710	69	.62086	.37914
28	.96062	.03938	70	.60522	.39478
29	.95813	.04187	71	.58914	.41086
30	.95543	.04457	72	.57261	.42739
31	.95254	.04746	73	.55571	.44429
32	.94942	.05058	74	.53862	.46138
33	.94608	.05392	75	.52149	.47851
34	.94250	.05750	76	.50441	.49559
35	.93868	.06132	77	.48742	.51258
36	.93460	.06540	78	.47049	.52951
37	.93026	.06974	79	.45357	.54643
38	.92567	.07433	80	.43659	.56341
39	.92083	.07917	81	.41967	.58033
40	.91571	.08429	82	.40295	.59705
41	.91030	.08970	83	.38642	.61358

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
84	.36998	.63002	99	.20486	.79514
85	.35359	.64641	100	.19975	.80025
86	.33764	.66236	101	.19532	.80468
87	.32262	.67738	102	.19054	.80946
88	.30859	.69141	103	.18437	.81563
89	.29526	.70474	104	.17856	.82144
90	.28221	.71779	105	.16962	.83038
91	.26955	.73045	106	.15488	.84512
92	.25771	.74229	107	.13409	.86591
93	.24692	.75308	108	.10068	.89932
94	.23728	.76272	109	.04545	.95455
95	.22887	.77113			
96	.22181	.77819			

97	.21550	.78450		
98	.21000	.79000		

The source of the Life Estate & Remainder Interest Table is 26 CFR 20.2031 (49 Federal Register, Vol. 49, No. 93, May 11, 1984). The version of the table published here is from the Social Security Administration's Policy & Operations Manual Series (POMS), Section 01140.120.

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