

For the reasons set forth in the preamble, the Department proposes to amend 25 CFR 179 as follows:

1. Revise part 179 of title 25 of the Code of Federal Regulations to read as follows:

## **PART 179—LIFE ESTATES AND FUTURE INTERESTS**

Sec.

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Authority: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201-11; PL 108-374 (American Indian Probate Reform Act of 2004).

Cross Reference: For regulations pertaining to income, rents, profits, bonuses and principal from Indian lands and the recording of title documents pertaining thereto, see parts 15, Probate; 150, Land Records and Title Documents; 152, Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands; 162, Leasing and Permitting; 163, General Forest Regulations; 166, General Grazing Regulations; 169, Rights-of-Way over Indian Lands; 170, Roads of the BIA of Indian Affairs; 212, Leasing of Allotted Lands for Mining; 213, Leasing of Restricted Lands of Members of the Five Civilized Tribes, Oklahoma, for Mining; 215, Lead and Zinc Mining Operations and Leases, Quapaw Agency; 26 CFR 20.2031-7 Gross Estates, Valuation of Annuities; 43 CFR Part 4 Subpart D, Rules Applicable in Indian Affairs Hearings and Appeals.

Source: [INSERT LATEST FEDERAL REGISTER NOTICE], unless otherwise noted.

§ 179.1 What is the purpose and scope of this section?

These regulations set forth the authorities, policy and procedures governing the administration of life estates and future interests in Indian lands by the Secretary. These regulations do not apply to any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members.

§ 179.2 What terms do I need to know?

BIA means the Bureau of Indian Affairs.

Contract bonus means cash consideration paid or agreed to be paid as incentive for execution of the contract.

Future interests means a present interest in real property, with only a future right to possession and enjoyment of the real property, such as a remainder and reversionary interests.

Income means the rents and profits of real property and the interest on invested principal.

Indian land means all land held in trust by the United States for individual Indians or tribes; or all land, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance.

Life estate means an estate in real property for the life of a living person.

Following the life estate, the interest then reverts to the grantor or passes to a third party (e.g. remaindermen).

Open mine doctrine means the doctrine which allows the life tenant to continue mineral development without the consent of the remaindermen if the property was under contract or used for mining operations before the life estate vested.

Principal means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

Remainder means a present interest with only a future right to possession and enjoyment of the land.

Secretary/we/us means the Secretary of the Interior or authorized representative.

'Without regard to waste' means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

You/I means the reader of this regulation.

#### § 179.3 What law applies?

We will apply federal law or federally-approved tribal law. Where no federal or tribal law applies, we will look to state law for guidance.

#### § 179.4 What may a life tenant do with the property?

(a) For life estates created before June 20, 2006 the life tenant may, subject to specific provisions in the conveying order or document, or other agreement between the life tenant and the remaindermen, possess and use estate assets, receive the profits, rents and income produced by the estate; and sell or mortgage the life estate described in the conveying order or document. The life tenant will receive:

(1) all rents and profits as income,

(2) one-half of any contract bonus,

(3) in the case of mineral contracts, and where the open mine doctrine does not apply, the interest income from the investment of principal except when the administrative cost of investment is disproportionately high. When administrative costs are disproportionately high, we will distribute the principal according to the formula in this part. Where the open mine doctrine does apply, all of the income is paid to the life tenant.

(b) For life estates created before June 20, 2006, and absent specific language to the contrary in the document creating the life estate, the life tenant can take no action that diminishes the remaindermen's estate, for example, contract for the removal of a depletable resource such as minerals or timber without the consent of the remaindermen.

(c) For life estates created on or after June 20, 2006, and absent specific language to the contrary in the document creating the life estate, the life tenant will receive all income, principal and contract bonuses and royalties until the life estate terminates and may possess and use estate assets, and sell or mortgage the life estate described in the conveying order or document.

§ 179.5 How will the value of a life estate and remainder be determined?

(a) We will allocate income from an estate and determine the value of a life estate and remainder using the four (4) year average Single Life Factor published by the U.S. Internal Revenue Service in Table S of the 7520 rate schedule.

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(b) The value of a life estate shall be determined by the formula: Value of Life Estate =P x L, where P =Value of principal, and L =Life estate factor for the age of the life tenant, as shown in Column 2 on tables A(1) and A(2).

(c) The value of a remainder shall be determined by the formula: Value of Remainder =P x R, where P =Value of principal, and R =Remainder factor for the age of the life tenant, as shown in Column 3 on tables A(1) and A(2).

Table A(1)--Single Life Factors at 4.6 Percent, Showing the Present Worth of a Life Estate Interest, and of a Remainder Interest

Age	Life Estate	Remainder	Age	Life Estate	Remainder
0	.94414	.05586	55	.62981	.37019
1	.95068	.04932	56	.61773	.38227
2	.94912	.05088	57	.60545	.39455
3	.94725	.05275	58	.59301	.40699
4	.94518	.05482	59	.58044	.41956
5	.94295	.05705	60	.56776	.43224
6	.94059	.05941	61	.55495	.44505
7	.93809	.06191	62	.54198	.45802
8	.93547	.06453	63	.52885	.47115
9	.93269	.06731	64	.51558	.48442
10	.92976	.07024	65	.50218	.49782
11	.92669	.07331	66	.48863	.51137
12	.92347	.07653	67	.47489	.52511
13	.92015	.07985	68	.46101	.53899
14	.91678	.08322	69	.44701	.55299
15	.91339	.08661	70	.43297	.56703
16	.90999	.09001	71	.41894	.58106
17	.90656	.09344	72	.40496	.59504
18	.90309	.09691	73	.39105	.60895
19	.89953	.10047	74	.37718	.62282
20	.89583	.10417	75	.36329	.63671
21	.89199	.10801	76	.34937	.65063
22	.88801	.11199	77	.33541	.66459
23	.88388	.11612	78	.32144	.67856
24	.87957	.12043	79	.30754	.69246

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25	.87507	.12493	80	.29382	.70618
26	.87037	.12963	81	.28038	.71962
27	.86546	.13454	82	.26726	.73274
28	.86035	.13965	83	.25447	.74553
29	.85503	.14497	84	.24191	.75809
30	.84952	.15048	85	.22953	.77047
31	.84382	.15618	86	.21742	.78258
32	.83790	.16210	87	.20573	.79427
33	.83176	.16824	88	.19448	.80552
34	.82540	.17460	89	.18364	.81636
35	.81879	.18121	90	.17324	.82676
36	.81195	.18805	91	.16342	.83658
37	.80486	.19514	92	.15437	.84563
38	.79749	.20251	93	.14604	.85396
39	.78987	.21013	94	.13830	.86170
40	.78195	.21805	95	.13098	.86902
41	.77374	.22626	96	.12413	.87587
42	.76522	.23478	97	.11779	.88221
43	.75640	.24360	98	.11185	.88815
44	.74727	.25273	99	.10607	.89393
45	.73788	.26212	100	.10047	.89953
46	.72821	.27179	101	.09496	.90504
47	.71829	.28171	102	.08955	.91045
48	.70810	.29190	103	.08421	.91579
49	.69766	.30234	104	.07852	.92148
50	.68694	.31306	105	.07296	.92704
51	.67596	.32404	106	.06585	.93415
52	.66475	.33525	107	.05729	.94271
53	.65332	.34668	108	.04415	.95585
54	.64167	.35833	109	.02199	.97801

(c) This factor and associated estate distribution tables will be updated once every two (2) years.

§ 179.6 How does a life estate terminate?

The life estate terminates upon the death of the life tenant or when the life tenant conveys his interest to the remaindermen.

§ 179.7 What if I do not want a life estate?

(a) At any time you may assign your interest to any person or other entity for your lifetime.

(b) At any time you may convey your life estate interest to the remaindermen.

(c) If you receive a life estate on a small fractional interest in land through 25 USC § 2206(a)(2)(D)(ii), you may renounce your interest, in favor of the remaindermen.

§ 179.8 Do I need to notify the BIA about the death of a life tenant?

Notify the BIA of the death of the life tenant to ensure that our records properly reflect the current owners of the Indian land.

§ 179.9 How are remaindermen to be determined if there is an open class or contingency stated in the document or order?

Absent specific language in the conveying document, only those persons alive at the time of the approval of the document or issuance of an order, or in the case of probate, at the date of death, will receive an interest in land. In those instances where there are no persons living at the time of the approval of the document or issuance of an order, or in the case of probate, at the date of death, the interest that would have vested in such remaindermen shall revert to the grantor or to the estate of the grantor.