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Eligibility Policy and Procedures Manual

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301.01 OWNERSHIP INTEREST

Since the type and form of ownership may affect the value of real or personal property and even its status as a resource, ownership interests are significant in determining resource eligibility.

301.01.01 SOLE OWNERSHIP

| Type of Ownership | What It Means |
|-----------------------|---|
| Sole Ownership | Only one person owns the property (real or personal) and may sell, transfer or dispose of the property. However, sole ownership may be subject to conditions imposed by others, such as sole ownership of a remainder interest in property. |

301.01.02 SHARED OWNERSHIP

| Type of Ownership | What It Means |
|--|--|
| Shared Ownership | Two or more people own the property (real or personal) together. The different types of shared ownership are discussed below. |
| <ul style="list-style-type: none">• Tenancy in Common | <ul style="list-style-type: none">• Two or more people have an undivided fractional interest in the whole property for the duration of the tenancy.<ul style="list-style-type: none">○ These interests are not necessarily equal, i.e., two joint tenants do not necessarily each own half of the property.• One owner may dispose of <u>his share</u> without permission of the other owner(s), but cannot take these actions with respect to the entire property.• When one owner dies, his interest passes to his heirs or estate.• There is no automatic right to survivorship for the surviving tenants-in-common. |

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Shared Ownership (Continued)

| Type of Ownership | What It Means |
|--|---|
| <ul style="list-style-type: none"> Tenancy in Common | <p>Example: Don, Charles and Fred Evans own property as tenants-in-common. Charles and Fred each own an undivided $\frac{1}{4}$ interest while Don owns the remaining $\frac{1}{2}$ interest. If Don Evans were to sell his $\frac{1}{2}$ interest to Stan Long, Mr. Long would be a tenant-in-common with Charles and Fred. If Mr. Long were then to die so that property passed to his 4 children, each of them would own $\frac{1}{8}$ interest as tenants-in-common with Charles and Fred, who would each continue to own $\frac{1}{4}$ interest.</p> |
| <ul style="list-style-type: none"> Joint Tenancy | <ul style="list-style-type: none"> Each person has an undivided ownership interest and possession of the whole property for the duration of the tenancy. In effect, each owns all of the property. Right to survivorship applies to the other owner(s). <ul style="list-style-type: none"> Upon the death of one of only two joint tenants, the survivor becomes the sole owner. On the death of one of three or more joint tenants, the survivors become joint tenants of the entire interest. |
| <ul style="list-style-type: none"> Tenancy by the Entirety | <ul style="list-style-type: none"> Exists only with married couples While married, the wife and husband own the property as a unit and the property can only be disposed of if both give consent If divorced, the former spouses become tenants-in-common and each can sell his/her share without the other's consent. Right to survivorship applies <ul style="list-style-type: none"> Upon the death of one tenant by the entirety, the survivor takes the whole. |

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Shared Ownership (Continued)

| Procedure |
|---|
| <p><u>Treatment of Shared Ownership under SSI and Liberalized Resource Policy</u></p> <ul style="list-style-type: none">• Assume each owner owns only his fractional interest unless there is evidence otherwise.• Divide the total value among the owners to match their percentage of ownership.<ul style="list-style-type: none">○ If each of two owners owns $\frac{1}{2}$ interest in real property, divide by two.<ul style="list-style-type: none">▪ Equity Value \$50,000 – each has a resource worth \$25,000○ If there are two owners and one owns $\frac{1}{3}$ and the other $\frac{2}{3}$.<ul style="list-style-type: none">▪ Equity Value $\\$90,000/3 = \\$30,000$ for the person with $\frac{1}{3}$ interest.▪ $\\$30,000 \times 2 = \\$60,000$ for the person with $\frac{2}{3}$ interest |
| Exception |
| <p><u>Treatment of Joint Bank Accounts or Time Deposits</u></p> <p>SSI and Liberalized Resource Policy</p> <ul style="list-style-type: none">• For joint bank accounts or time deposits, if one account holder is an applicant/recipient, the entire account is counted as his. However, all of the funds belong to the individual in equal shares if there is more than one Medicaid applicant/recipient. <p>This is discussed further later in this chapter.</p> |

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301.01.03 FEE SIMPLE OWNERSHIP

| Type of Ownership | What It Means |
|----------------------|---|
| Fee Simple Ownership | <ul style="list-style-type: none">• Relates only to real property• Means absolute and unqualified legal title to real property• Fee simple ownership is completely free of conditions imposed by others• The owner has the unconditional power of disposition during his lifetime.• Upon the owner's death, property held in fee simple can always pass to the owner's heirs.• May exist with respect to property owned jointly or solely. |

301.01.04 LESS THAN FEE SIMPLE OWNERSHIP

| Type of Ownership | What It Means |
|--|--|
| Equitable Ownership | <ul style="list-style-type: none">• Exists without legal title to property.• Legal title may belong to another or to no one.• Examples of equitable ownership include ownership in unprobated estates or trust property. |
| <ul style="list-style-type: none">• Unprobated Estate | <p>An individual may have an equitable ownership in an unprobated estate if he is an heir or relative of the deceased, receives income from the property or acquires rights through intestacy laws.</p> <p>Under liberalized resource policy, estates in process of probate are excluded. Under SSI resource policy an unprobated estate becomes a resource the month following the month it meets the definition of income.</p> |

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Less than Fee Simple Ownership (Continued)

| Type of Ownership | What It Means |
|---|--|
| <ul style="list-style-type: none">• Trust Property | A trust is a right of property, established by a trustor or grantor. A Trustee holds legal title and manages the property for the benefit of a beneficiary. The beneficiary does not have legal title, but does have an equitable ownership interest. Clearance procedures must be followed in determining how the trust affects eligibility |

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Less than Fee Simple Ownership (Continued)

| Type of Ownership | What It Means |
|---|--|
| <ul style="list-style-type: none">• Life Estate Interest | <ul style="list-style-type: none">• Individual has certain property rights during his life or someone else's life.• May be conditional See instructions below for handling a conditional life estate.• Legal document is required (such as will or deed).• Unless the legal document restricts rights, the life estate owner has the right to possess, use, and obtain profits from the property (such as rents).• Life estate interest can be sold.• Life estates do not descend to heirs. <p>Example: Mr. Heath, now deceased, willed his daughter a life estate in property which he owned fee simple. The will also designated Mr. Heath's two sons as remaindermen. The daughter has the right to live on the property until her death, at which time, under the terms of her father's will, the property will pass to her brothers as joint tenants.</p> <ul style="list-style-type: none">• If there are joint owners of a life estate, the CMV is divided by the number of owners to determine an individual's share.• When one joint owner of the life estate dies, the surviving owner(s) increases their interest.• If a couple has a life estate and one spouse dies, the remaining spouse is the sole owner of the life estate. When the remaining spouse dies, the person holding the remainder interest then has the right to possess and use the property.• It is possible to have a life estate interest in a structure (house) and not the surrounding land. The CMV of the structure or whatever the tenant has the right to use as established by the deed or a will would be determined. |

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Less than Fee Simple Ownership (Continued)

| Procedure |
|---|
| <p><u>Treatment of Life Estates under Liberalized Resource Policy</u></p> <p>Under liberalized policy a life estate is an excluded resource. The exclusion is not limited to property located in Mississippi. In addition, if the individual has a life estate interest in more than one piece of property, all are excluded. However, there are some exceptions to excluding a life estate:</p> <ul style="list-style-type: none">• If a life estate is transferred or sold, eligibility for vendor payment or HCBS waiver services may be affected.<ul style="list-style-type: none">○ A transfer of a life estate is sanctionable. <p>Calculating the Value of a Life Estate on a Transfer</p> <p>When the value of a life estate interest needs to be determined for a potential transfer, follow the procedures below, using the age of the individual as of their last birthday at the time of the transfer.</p> <ul style="list-style-type: none">• Verify the Current Market Value (CMV) of the property.• Use the Unisex Life Estate and Remainder Interest Table for the following steps:<ol style="list-style-type: none">1. Find the age of <u>life estate owner</u> as of their last birthday at the time of the transfer.2. Locate the factor in the Life Estate column that corresponds to the age.3. Multiply the CMV of the property by the life estate factor to obtain the value of the life estate.<p>(CMV of the property X Life Estate Factor = CMV of the life estate)</p> <p>Transfer Example:</p> <p>Jane Ayers took a life estate in her home in 1988. Now at age 97, she is applying for nursing home care. It is discovered she transferred her life estate interest to her son two years ago. Her age as of her last birthday at the time of the transfer was 95 and at that time the property had a CMV of \$250,000. The uncompensated value is determined as follows:</p> <p>$\\$250,000 \text{ (CMV)} \times .22887 \text{ (Life Estate Factor for Age 95)} = \\$57,217.50 \text{ (Uncompensated Value)}$</p> |

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Less than Fee Simple Ownership (Continued)

| Procedure |
|--|
| <p><u>Treatment of Life Estates under Liberalized Resource Policy</u></p> <p>Conditional Life Estate</p> <p>A conditional clause establishes limitations on the life estate. For example, the grantor may reserve a life estate for as long as the grantor lives and maintains a home on the property.</p> <ul style="list-style-type: none">• For deeds dated on or after February 8, 2006, consider the entire property transferred if the deed contains a conditional life estate clause. The transfer date will be the date of the deed. <p>The life estate can be corrected if a revised deed is prepared removing the conditional clause with the grantor reserving a life estate without limitations. However, the transfer of the remainder interest, if it occurred within the 5-year look back period, must be considered if the grantor enters long term care. Therefore, removing the conditional life estate clause may only shorten the transfer period.</p> <p>Life Estate Provisions Under the DRA</p> <p>Under the DRA the purchase of a life estate in another individual's home on or after February 8, 2006, is a transfer of assets unless the purchaser resides in the home for at least 12 consecutive months after the date of purchase.</p> <ul style="list-style-type: none">• Do not deduct vacations, overnight visits, and hospital stays from the one-year period as long as the home continued to be the individual's legal residence.• Count the entire purchase price as an uncompensated transfer if the purchaser resides in the home for any period less than one year. <p>Also the DRA provides that even if the life estate purchaser lives in the home for 12 consecutive months, the purchaser must not pay more than CMV for the life estate. Any amount paid above CMV is considered a transfer and should be penalized according to the transfer policy. Verify the purchase price and calculate the CMV of the life estate. Any amount paid over the CMV of the life estate is considered a transfer</p> |

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Less than Fee Simple Ownership (Continued)

| Procedure |
|---|
| <u>Treatment of Life Estates Under SSI Resource Policy</u> |
| <p>Under strict SSI policy, the value of a life estate is a countable resource <u>unless</u> an exclusion exists.</p> <ul style="list-style-type: none">• Verify the Current Market Value (CMV) of the property.• Use the Unisex Life Estate and Remainder Interest Table for the following steps:<ol style="list-style-type: none">1. Find the age of <u>life estate owner</u> as of their last birthday.2. Locate the factor in the Life Estate column that corresponds to the age.3. Multiply the CMV of the property by the life estate factor to obtain the value of the life estate. <p>(CMV of the property X Life Estate Factor = CMV of the life estate)</p> <p>NOTE: If there is joint ownership of a life estate, first determine the CMV of the entire property. Divide the CMV by the number of joint owners to determine the individual's share and then calculate the individual's life estate value as described above.</p> <p>Example: 75 year-old Harry Thomas has a life estate in non-homestead property with a current market value of \$80,000. An exclusion for the property cannot be developed. Using the table, his life estate interest is valued as follows:</p> <p>\$80,000 (CMV) x .52149 (factor for age 75) = \$41,719.20 (value of the life estate)</p> <p>Example: 75 year- old Max Berry is living with his daughter due to illness, but states he intends to return home when health permits. Ten years ago, he transferred his home to his children retaining a life estate interest. An exclusion can be developed for the home property since his desire is to be able to return home.</p> |

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Less than Fee Simple Ownership (Continued)

| Type of Ownership | What It Means |
|---|---|
| <ul style="list-style-type: none">• Remainder Interest | <ul style="list-style-type: none">• The remainderman inherits property upon the death of the life estate holder.• The remainderman has no right to physical possession or use of the property until the life estate terminates.• The remainderman interest can be sold before the termination of the life estate unless the document establishing it restricts this right.<ul style="list-style-type: none">○ If the remainder interest is sold, the market value of it is likely to be reduced since such a sale is subject to the life estate interest. |

| Procedure |
|--|
| <p><u>Treatment of Remainder Interests Under Liberalized Resource Policy</u></p> <p>When the life estate holder dies, the remainder attains ownership of the resource, which must then be evaluated under the appropriate resource policy.</p> <ul style="list-style-type: none">• Under liberalized policy, the remainder interest is excluded.• However, in instances where a remainder interest is sold or transferred, eligibility for vendor payment or HCBS waiver services may be affected. The Unisex Life Estate and Remainder Interest Table is used to determine the value of the remainder interest. <p>NOTE: When determining the amount of a transfer under liberalized policy, equity in the property must also be considered. If there is a loan against the property that is assumed by the remainderman as part of the agreement, the amount of the loan is compensation received by the life estate holder and would be deducted in determining the uncompensated value of the remainder interest. If the life estate owner retains the loan obligation, the full value of the remainder interest is the amount transferred.</p> |

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Less than Fee Simple Ownership (Continued)

Procedure

Treatment of Remainder Interest Under Liberalized Resource Policy

Calculating Remainder Interest on a Transfer

Use the procedures below to determine the value of the remainder interest on a possible transfer. Use the age of the life estate owner as of their birthday at the time of the transfer date.

1. Find the age of the life estate owner as of their last birthday at the time of the transfer.
2. Locate the factor in the Remainder column that corresponds to the life estate owner's age in the Unisex Life Estate and Remainder Interest Table.
3. Multiply the CMV of the property by the remainder factor to obtain the value of the remainder interest.

CMV of the property x Remainder Factor = CMV of the Remainder Interest

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Less than Fee Simple Ownership (Continued)

Procedure

Treatment of Remainder Interest under SSI Resource Policy

The value of a remainder interest is countable unless a specific exclusion exists. The value of a remainder interest is determined in the same manner as a life estate.

Determine the CMV of the property and use the Unisex Life Estate and Remainder Interest Table as follows:

1. Find the age of the life estate owner as of their last birthday,
2. Locate the factor in the Remainder column that corresponds to the age.
3. Multiply the CMV of the property by the remainder factor to obtain the value of the remainder interest.

(CMV of the property x Remainder Factor = CMV of the Remainder Interest)

Example (SSI Resource Policy):

Applicant, Paul Jones, holds a remainder interest in property with a current market value of \$80,000. The life estate owner is his father who was 75-years old as of his last birthday. The value of Paul Jones' remainder interest is calculated from the table as follows:

(CMV) \$80,000 x .47851 (Remainder factor for age 75) = \$38,280.80 (CMV of Remainder).

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Less than Fee Simple Ownership (Continued)

| Type of Ownership | What It Means |
|---|--|
| Ownership by Will or Descent | An individual may have ownership interest in an unprobated estate acquired through a will or through the death of a relative who died intestate (without a will). The heir(s) may be the sole owner or joint or common owners, etc. |
| <ul style="list-style-type: none">• Heirs by Will | <ul style="list-style-type: none">• Have ownership or control of the property or their joint or common share.• If the will has not been filed with the proper court and has not been probated, there is question of whether the will is legally binding. Legally, wills are supposed to be filed for probate; however, there is no time limit. Absent evidence to the contrary, assume the client owns the property in proportion, whereby he has the right to the will's directives. |
| <ul style="list-style-type: none">• Heirs by Descent | <ul style="list-style-type: none">• Acquire ownership interest to property by virtue of the heir's relationship to the deceased.• Intestate property of a deceased person with a spouse and children is shared equally by the surviving spouse and children. Grandchildren become involved in ownership interest only when their parent, who was a child of the original owner, is deceased. The grandchildren's interest is only in the share that their deceased parent held in interest. |

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Less than Fee Simple Ownership (Continued)

| Type of Ownership | What It Means |
|---|--|
| <ul style="list-style-type: none">• Heirs by Descent | <ul style="list-style-type: none">• Intestate property of an individual with no spouse or children at the time of death descends equally to his parents and brothers and sisters. If the deceased's parents are also deceased, the property descends to his brothers and sisters.• Nieces and nephews become involved only if their parent who was a brother or sister to the deceased is also deceased. Their ownership interest is only in the share that their deceased parent held an interest in. <p>Absent evidence to the contrary assume an heir inherited property based on their laws of descent where the property is located.</p> |

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301.01.05 PROPERTY RIGHTS WITH NO OWNERSHIP

| Type of Ownership | What It Means |
|---|---|
| Leasehold | Does not designate rights of ownership, but conveys an individual control of the property so that he has use and possession for a specific period of time and usually for a specified rent, such as 16 th section land leases. |
| <ul style="list-style-type: none">• 16th Section Land | <p>16th section land or land acquired in lieu of 16th section land is land controlled by the State Board of Education under the general supervision of the State Land Commissioner. Generally each county Board of Supervisors has the authority to approve or renew leases on the land.</p> <p>An individual who leases such land does not own the property and has limited rights. The value of the lease decreases as the expiration date nears.</p> <p>Lease rights to 16th section or lieu lands are negotiable. These rights may be sold to another person provided the governing authority which approves such leases is agreeable to such a sale.</p> |
| Incorporeal Interests | <ul style="list-style-type: none">• No ownership of the physical property• The owner has certain rights to use the property without the right to dispose of property.• Applies to mineral rights, timber rights and easements, which may be sold by the owner. |
| <ul style="list-style-type: none">• Mineral Rights | Ownership in natural resources, usually obtained from the ground, such as coal, oil, sulphur, sand or natural gas, etc., coming from the property. |

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Property Rights with No Ownership (Continued)

| Type of Ownership | What It Means |
|--|--|
| <ul style="list-style-type: none">• Timber Rights | These rights permit one party to cut and remove trees from property owned by another, as designated by a contract with the owner of the land on which the timber stands. |
| <ul style="list-style-type: none">• Easements | Property right whereby one has the right to use the land of another person for a special purpose. |

Valuation

Leaseholds and incorporeal interests may be countable resources under both SSI and liberalized resource policy if they have a cash value available to the individual upon disposition. However, in some cases these property rights are not saleable and would not be a countable resource. For example, an individual may own an easement to pass through another person's property to get to his own property. There would be little or no market for the sale of this property right. Timber rights to land which has been stripped of its trees or mineral rights to land with no viable natural resources would have little or no market value.

To verify the value of property ownerships such as mineral rights or timber rights, determine the CMV from a knowledgeable source. If the property right is under production, it is necessary to obtain a copy of the land lease to determine if the lease is transferrable in order to determine if the property right is a countable resource.

Exclusion under Liberalized Policy

Under liberalized policy, 16th Section land leases and mineral rights, timber rights and leaseholds that are not under production are excluded in the resource determination regardless of value. If one of these types of ownership is income-producing, test for net annual return against the 6% income-producing rule when applicable.

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301.01.06 OTHER RIGHTS TO USE OF REAL PROPERTY

| Type of Ownership | What It Means |
|-------------------------|--|
| Homestead Rights | <ul style="list-style-type: none">• Under state law a surviving spouse (widow or widower) is entitled to the homestead on the real property used as the home at the time of the death of the spouse and to receive income from it for his lifetime.• This is not a life estate interest in the property, but is quite similar.• This situation occurs when spouses jointly or commonly own property without the right of survivorship clause in the property.• The surviving spouse has homestead rights to the portion of the property that belonged to the deceased spouse.• The surviving spouse would also own his/her own interest in the property.• A homestead right does not have value and cannot be sold. |

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301.01.07 **EVIDENCE OF REAL PROPERTY OWNERSHIP**

Property ownership must be verified. Obtain a copy of the official document used to verify ownership and file it in the case record. The following official records may be used to establish real property ownership:

- **Current Deed** – If the client does not have a copy of the current deed, a copy may be obtained from records in the Chancery Clerk's office in the county where the property is located. A deed must be recorded in the appropriate county office to be considered a true deed documenting ownership
- **Tax Assessment Notice or Most Recent Tax Receipt** – Tax records and receipts describe the property. Phrases such as "Et al" and "Et ux" beside the name on a tax receipt indicate joint or common ownership in some form.
- **Current Mortgage Statement** – Mortgages are recorded in the Chancery Clerk's office; however, the name of the mortgage holder must be known.
- **Report of Title Search**
- **Wills, Court Records or Relationship Documents** – Which show rights of an heir to the property after death of the former owner.

301.01.08 **VERIFYING CURRENT MARKET VALUE (CMV)**

Once ownership or ownership interest of property has been verified, determine the current market value of the client's ownership interest.

To establish CMV, obtain a knowledgeable source estimate.

Knowledgeable sources include, but are not limited to, the following:

- Real estate brokers;
- Local office of the Farmer's Home Administration (for rural land);
- Local office of the Agricultural Stabilization and Conservation Service (for rural land);
- Banks, savings and loan associations, mortgage companies, and similar lending institutions;

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VERIFYING CURRENT MARKET VALUE (CMV) (Continued)

- An official of the local property tax jurisdiction (be sure to obtain the individual's estimate rather than the office's assessment)
- County Agricultural Extension Service; and
- Bureau of Land Management, the US Geological Survey or any mining company that holds leases (such as for CMV of mineral rights)

Information to be Included in the Estimate

The knowledgeable source estimate must provide the following information:

- The estimated value;
- The name of the person providing the estimate;
- The name, address and telephone number of the business or agency for whom the person providing the estimate works;
- The basis for the estimate, to include such things as a description of the property and its condition and, where appropriate, the value of similar property in the same area); and
- The period to which the estimate applies (which corresponds to the period for which it is being requested).

Telephone Documentation

Assistance must be provided if the client is incapable of obtaining the estimate. If the estimate is obtained by telephone, the specialist must record the required information in the case record. If the validity of an estimate provided by the client is questionable, an additional estimate must be obtained from another knowledgeable source.

301.01.08A CMV REBUTTAL

If the individual disagrees with the CMV evidence he has submitted or the specialist has obtained, and the difference impacts eligibility, prepare a rebuttal determination.

The determination must take into account:

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CMV REBUTTAL (Continued)

1. All the evidence previously in the file (the individual's original allegation and any estimates from knowledgeable sources).
2. Any additional evidence the individual wishes to submit, including evidence that the individual's ownership interest in the property is worth less than the total value of the property divided by the number of owners.
3. Any other facts the RO has about the property or about market conditions where it is located. The rebuttal must be supported by a preponderance of the evidence (which may require one or more additional estimates from knowledgeable sources).

301.01.08B DEVELOP EQUITY VALUE

The allegation of an encumbrance on the property (any legal debt, such as a mortgage, lien, loan, purchase contract, etc.) must be supported with evidence of:

- The original amount owed;
- The outstanding principal balance; and
- The schedule and amount of payments due on the principal balance.

A copy of the note or agreement establishing the encumbrance must be provided or obtained as verification of equity value.