

Beneficiary Deeds in Montana

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Beneficiary deeds allow owners of real property in Montana to transfer at death without probate their property to one or more beneficiaries.

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beneficiary deeds as a way for people to transfer at death their real property (located in Montana) to one or more beneficiaries without probate. Real property is land, including whatever is erected, growing on or affixed to it, such as homes, garages, or other buildings, fences, water systems (unless removable), mineral deposits and standing uncut timber.

This MontGuide answers questions about the new law (*Montana Code Annotated Section §72-6-121*) that applies to owners who have signed and recorded a beneficiary deed with the clerk and recorder in the Montana county where the real property is located and who pass away after October 1, 2007. Statutory language for a beneficiary deed and a beneficiary deed revocation are also provided in this MontGuide.

What is a beneficiary deed?

A *beneficiary deed* is one in which an owner conveys an interest in Montana real property to a *grantee beneficiary* effective upon the owner's death. In other words, real property is transferred from the deceased person to the person(s) listed on the deed. The deed must specifically state that it is effective only upon the death of the owner. The deed must also have a complete legal description of the Montana property that the owner wishes to convey at death. An owner should use the legal description for the real property from a previously recorded deed – not the description appearing on the property tax bill that is sent annually to the owner by the county treasurer.

A beneficiary deed must be recorded before the death of the owner (or, for joint tenancy property, before the death of the last surviving owner) with the clerk and recorder in the Montana county where the property is located. All beneficiary deeds must have the post office address of the grantee listed on it before the clerk and

recorder's office can record it. The owner must also prepare a Montana realty transfer certificate before the clerk and recorder will record a beneficiary deed. A Montana Realty Transfer Certificate is available at any Montana county clerk and recorder's office or online at www.revenue.mt.gov, search "Realty Transfer Certificate".

The recording fee for a beneficiary deed is \$7 per page. If a document does not meet the requirements it is referred to as "non-standard" and the cost is \$7 per page plus \$10. Details about the standard format are provided in the Montana Code Annotated, <http://leg.mt.gov/bills/mca/72/6/72-6-121.htm>. For example, the name and mailing address of the person to whom the document is to be returned is to be included in the margin in the upper left-hand corner of the first page of each document. The document is non-standard if no return address is included in the upper left hand corner. There are many more requirements regarding the margins, color of ink, and size of paper. An example of a standard beneficiary deed form is provided at www.montana.edu/estateplanning/beneficiarydeedform.pdf.

Who can be a grantee beneficiary?

The term *grantee beneficiary* means the party to whom an owner grants an interest in the Montana real property that is described on the beneficiary deed. *Grantee beneficiaries* may be a variety of parties, for example: spouse, children, relatives, friends, charitable organizations, trustee of a trust, or a corporation.

An owner is not required to have the signature, consent, or agreement of the *grantee beneficiary*. Nor is the owner required to give the *grantee beneficiary* notice that a beneficiary deed has been recorded. The *grantee beneficiary* also has no ownership rights in the Montana real property described on the beneficiary deed until the owner dies.

Can there be more than one grantee beneficiary?

An owner may designate more than one grantee beneficiary for his or her Montana real property. However, the owner should specify in the beneficiary deed whether the grantee beneficiaries will own the property (after the death of the owner) as tenants in common or as joint tenants with right of survivorship. For further information regarding these two forms of property ownership, read MSU Extension MontGuide, *Property Ownership (MT198907HR)*. Request a copy from your local Extension office.

Because the language for a beneficiary deed that is provided by the Montana statute does not specify the type of ownership when there is more than one grantee beneficiary, an owner should consult an attorney for advice about which form of ownership would be best to accomplish his or her estate planning goals.

What happens if a grantee beneficiary dies before the owner of the real property?

If an owner designates only one grantee beneficiary and is concerned about what happens to the property if the grantee beneficiary dies before the owner, he or she may designate one of the several alternatives listed below for the distribution of the property listed on the beneficiary deed.

1. The owner may specify that the beneficiary deed becomes void upon the death of the grantee beneficiary.
2. The owner may specify that the Montana real property becomes part of the estate of the deceased grantee beneficiary. Under this condition, when the owner(s) die, the real property is distributed according to the will of the deceased grantee beneficiary or, if the deceased grantee beneficiary had no will, to the heirs of the deceased grantee beneficiary under Montana intestate statutes. This alternative may present complications if several years lapse between the death of the grantee beneficiary and death of the owner(s). An attorney can provide information about potential consequences of using this alternative for your specific circumstances.
3. The owner may specify a *successor grantee beneficiary*, as discussed in more detail in the next section.

Who can be a successor grantee beneficiary?

An owner of Montana real property can also designate a *successor grantee beneficiary* in case the grantee beneficiary dies before the owner. If an owner designates a *successor grantee beneficiary*, the beneficiary deed should state the condition under which the successor inherits.

Example: Mark owns real property in Montana. Mark recorded a beneficiary deed to be effective upon his death, naming his son, Evan, as his grantee beneficiary. Mark also designated his grandson, Luke, as the *successor grantee beneficiary* in case Evan dies before Mark. Mark's attorney recommended the following language in the beneficiary deed: "If Evan dies before me, I name Luke as the successor grantee beneficiary effective upon my death, should he survive Evan and me. If Luke does not survive Evan and me, this deed shall be void."

If an owner names more than one grantee beneficiary and specifies that they are to become owners as joint tenants with right of survivorship, the surviving joint grantee beneficiaries inherit the real property if one of the joint grantee beneficiaries dies before the owner. An owner should specify what he or she wants to happen to the property if all of the joint tenant grantee beneficiaries die before the owner.

Example: Patricia recorded a beneficiary deed for her Montana land to be effective upon her death, naming her sisters, Fay and Ellen, as grantee beneficiaries with the title to be held as joint tenants with right of survivorship. If Fay dies before Patricia, Ellen will become the sole grantee beneficiary. Patricia's beneficiary deed should specify what happens if neither Fay nor Ellen survive Patricia. Therefore, Patricia's attorney recommended the following language in the beneficiary deed: "If both Fay and Ellen predecease me, the Montana 4-H Foundation will become the successor grantee beneficiary effective upon my death."

If an owner names more than one grantee beneficiary and does not specify that they own the property as joint tenants with right of survivorship, the grantee beneficiaries inherit as tenants in common. The beneficiary deed should specify what happens to the interest of a deceased tenant in common grantee beneficiary if he or she fails to survive the owner.

Example: Edna owns real property in Montana and has recorded a beneficiary deed to be effective upon Edna's death. She named her two sisters, Wendy and Patsy, grantee beneficiaries with the title to be held as tenants in common. Edna's beneficiary deed should specify what happens to either Wendy or Patsy's interests if they do not survive Edna. Therefore Edna's attorney recommended the following language in the beneficiary deed: "In the event that either Wendy or Patsy does not survive me, her one-half interest in the real property shall be distributed to the Montana State University Foundation effective upon my death."

If Edna had named Wendy and Patsy grantee beneficiaries as joint tenants with right of survivorship, upon the death of either Wendy or Patsy, the survivor would inherit the entire property. However, Edna could name a successor grantee beneficiary if both Wendy and Patsy predecease her. To accomplish this goal Edna's attorney suggested the following statement: "I convey the property described below to the grantee beneficiaries, Wendy and Patsy, as joint tenants with right of survivorship, effective upon my death. If both Wendy and Patsy fail to survive me, the property shall be distributed to the University of Montana Foundation effective upon my death."

The advice of an attorney should be sought when drafting a beneficiary deed that lists more than one grantee beneficiary to assure that the owner has considered the forms of property ownership and decided what he or she wants to happen to the property if one of the beneficiaries dies before the owner.

What happens if more than one person owns the real property?

Whether a grantee beneficiary receives the property as the result of a beneficiary deed depends upon how the owners hold title to the real property. Do the owners have the property titled as joint tenants with right of survivorship or as tenants in common?

When the Montana real property is titled by the owners as *joint tenants with right of survivorship*, the right of the surviving joint tenant takes priority over the right of the grantee beneficiary.

Example: Doug and his wife, Laura, own real property in Montana as joint tenants with right of survivorship. Doug signed and recorded a beneficiary deed naming their two daughters as grantee beneficiaries to be effective upon his death. If Doug dies before Laura, their daughters will not inherit the property upon his death because the existing joint tenancy contract with his wife, Laura, takes priority. However, if Laura dies before Doug, and Doug dies six days later, the beneficiary deed signed by Doug naming their two daughters as grantee beneficiaries will be effective, and their two daughters will inherit the property upon Doug's death.

Ownership of Montana real property that is held as *joint tenancy with right of survivorship* is not affected by the recording of a beneficiary deed unless the deed is signed by all of the owners or signed by one owner, who is the last one to die.

Example: Donna, Debbie and Kristi own real property in Montana as joint tenants with right of survivorship. Donna signed and recorded a beneficiary deed without obtaining the signatures of the other two joint owners, Debbie and Kristi. If Donna dies before Debbie and Kristi, the grantee beneficiary that Donna designated would not receive the Montana real property because all joint owners did not sign the beneficiary deed. However, if Donna was the last survivor, the grantee beneficiary she named would inherit the Montana real property upon Donna's death.

If all of the owners of real property titled as joint tenants with right of survivorship sign a beneficiary deed designating a grantee beneficiary, the transfer to the grantee beneficiary does not become effective until the death of the last surviving owner. However, the deed should specifically state that the transfer to the grantee beneficiary becomes effective upon the death of the last surviving owner.

Example: Phyllis and Bob own real property in Montana as joint tenants with right of survivorship. They both signed and recorded a beneficiary deed naming their son as the grantee beneficiary to be effective on the death of the last surviving owner. This means their son will not receive the Montana real property until after both Phyllis and Bob die.

If the last surviving joint owner of real property held as *joint tenancy with right of survivorship* had not signed the beneficiary deed, the deed becomes void.

Example: Lynn and Eric own real property in Montana as joint tenants with right of survivorship. Lynn signed and recorded a beneficiary deed naming her daughter from a prior marriage as the grantee beneficiary. Because Eric did not sign the beneficiary deed, it becomes void if Lynn dies before Eric. Lynn's daughter, the grantee beneficiary, would not receive the property upon Lynn's death. If Lynn and Eric want to assure that Lynn's daughter receives their Montana real property as a result of the beneficiary deed, Eric should also sign the beneficiary deed before it is recorded with the clerk and recorder in the county where the land is located.

If the owners have their real property titled as *tenants in common* rather than as joint tenants with right of survivorship, each owner may execute a beneficiary deed to distribute his or her interest in the property upon death. The beneficiary deed does not affect the interest that is held by the other tenant in common co-owner(s).

Example: Carol and Amy own real property in Montana as tenants in common. Carol recorded a beneficiary deed for her one-half interest in the real property, naming her daughter as the grantee beneficiary to be effective upon Carol's death. Amy did not execute a beneficiary deed for her one-half interest in the real property. Upon Carol's death, her one-half interest in the property as a tenant in common becomes owned by her daughter, her grantee beneficiary. Amy will continue to own the other one-half interest in the property. Upon Amy's death her one-half interest in the property will be distributed according to her will or Montana intestate statutes if she doesn't have a will.

What wording on a beneficiary deed makes it legal?

The wording that was included in the Montana statute for a beneficiary deed is provided in Figure 1. An online version of this form is at www.montana.edu/estateplanning/beneficiarydeedform.pdf.

How is a beneficiary deed revoked?

A beneficiary deed may be revoked at any time by the owner, or if there is more than one owner, by the owners who have signed the beneficiary deed. To be effective, the revocation must be signed and recorded before the death of the owner(s) in the office of the Montana clerk and recorder of the county in which the real property is located.

FIGURE 1: Statutory Language for a Beneficiary Deed (sample, non-standard form)

I (We) _____ (Owner) hereby convey to _____ (Grantee Beneficiary) effective on my (our) death the following described real property: _____
(Legal description from previously recorded deed)

If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary must either (choose one):

Become void.

Become part of the estate of the grantee beneficiary.

 (Date)

 [Signature of Grantor(s)]

State of Montana, County of _____

This instrument was acknowledged before me on _____ day of _____, 201____
(Date) (Month)

by _____
(Name of Owner)

 (Signature of Notarial Officer)

 (Printed or Typed Name of Notary)

Notary Public for the State of Montana

Residing at _____

My commission expires _____

(Notary Seal)

If the real property is owned as joint tenants with right of survivorship and the beneficiary deed was signed by all joint owners, a revocation is not effective unless it is signed by all of the joint owners, or signed by one owner, when that owner is last to die.

Example: Michael and Kris owned real property in Montana as joint tenants with right of survivorship. Both signed and recorded a beneficiary deed naming Michael's sister as the grantee beneficiary to be effective upon the death of both Michael and Kris. Several years later Michael signed and recorded a revocation. Michael died before Kris as a result of an automobile accident. The revocation was not effective because Kris had not signed the revocation. However, after Michael's death Kris, as the surviving joint owner, could record a revocation or record a new beneficiary deed naming the grantee beneficiary she prefers.

The filing and recording of a new beneficiary deed by the same owner for the same property will also revoke a previously filed and recorded beneficiary deed. The wording that was included in the Montana statute for the revocation of a beneficiary deed is provided in Figure 2. An online version of this form is at www.montana.edu/estateplanning/revocationofbeneficiarydeedsampleform.pdf.

What is required to retitle the property into the name of the grantee beneficiary upon the owner's death?

To retitle the real property in the name of the grantee beneficiary upon the owner's death, proof must be provided that the owner has died. A notarized affidavit certifying the death of the owner signed by the grantee beneficiary or beneficiaries is an acceptable document. Sample wording for an affidavit of death

FIGURE 2: Statutory Language for a Revocation of Beneficiary Deed (sample, non-standard form)

The undersigned hereby revokes the beneficiary deed recorded on _____, _____, _____ in docket or book _____,
 (Month) (Date) (Year)

at page _____, or instrument number _____, records of _____ County, Montana, concerning the
 following described real property: _____
 (Legal description from previously recorded deed)

_____, _____
 (Month) (Date) (Year)

 [Signature of Grantor(s)]

State of Montana, County of _____

This instrument was acknowledged before me on _____ day of _____, 201____
 (Date) (Month)

by _____
 (Name of Owner)

 (Signature of Notarial Officer)

 (Printed or Typed Name of Notary)

Notary Public for the State of Montana

Residing at _____

My commission expires _____
 (Notary Seal)

is provided in Figure 3. An online version of this form is available at www.montana.edu/estateplanning/affidavitofdeathdampleform.pdf. A grantee beneficiary should consult an attorney if he or she has any questions about verifying the death of the owner(s) of Montana real property.

The grantee beneficiaries can take title to the real property with a beneficiary deed without going through the probate process by recording the affidavit with the county clerk and recorder where the real property is located. If there is more than one grantee beneficiary, they will take title as tenants in common, unless the beneficiary deed has specified that the grantee beneficiaries are to become owners as joint tenants with right of survivorship.

FIGURE 3: Affidavit of Death (sample)

I, _____, being first duly sworn, upon oath, depose and say the following:
 (Name of Beneficiary)

1. _____ signed and recorded a beneficiary deed with the intent to convey the following
 (Name of Grantor)
 property located in _____, Montana described as follows:
 (Name of County)

2. The beneficiary deed was recorded in _____ County on _____, _____,
 (Month) (Day) (Year)
 Book _____, Page _____, Instrument Number _____.

3. The grantor died on _____, _____, _____. At the time of death, the grantor had not revoked the above
 (Month) (Day) (Year)
 described beneficiary deed.

4. The following person(s) is/are the person(s) named as the grantee beneficiary(ies) under the beneficiary deed described above,
 and are entitled to succeed to the grantor's interest in the real property described above as a result of the grantor's death:
 (Grantee Beneficiary Name): _____
 Mailing address: _____

Dated this _____ day of _____, 201____.
 (Date) (Month)

 (Signature of Affiant)

State of Montana County of _____

This instrument was acknowledged before me on _____ day of _____, 201____.
 (Date) (Month)

by _____.
 (Name of affiant)

 (Signature of Notarial Officer)

 (Printed or Typed Name of Notary)

Notary Public for the State of Montana
 Residing at _____
 My commission expires _____
 (Notary Seal)

What if the real property listed on the beneficiary deed has an encumbrance against it?

Montana real property that is conveyed in a beneficiary deed to a grantee beneficiary is subject to any *encumbrances* arising against the property during the owner's lifetime. *Encumbrances* against real property include for example: mortgages; deeds of trust; liens for unpaid taxes or failure to pay for labor, materials, equipment or services on the property; contracts; assignments; and any other legal conveyance document recognized by the state of Montana. This would include a marriage dissolution settlement or order.

Any Medicaid payments to an owner may also become an *encumbrance* against the Montana real property in certain situations. If the owner was a recipient of Medicaid and had conveyed an interest in Montana real property by means of a beneficiary deed, the Montana Department of Public Health and Human Services may assert a claim against the real property. The claim typically would be for the dollar amount of Medicaid payments that were provided to the owner before his or her death, up to the value of the Montana real property. For further information about Medicaid read MSU Extension MontGuide, *Medicaid and Long-Term Care Costs* (MT199511HR). Request a copy from your local Extension office.

If there are insufficient assets in the owner's estate to pay valid creditors' claims, the creditors may seek payment from the value of the Montana real property that was conveyed by a beneficiary deed. The personal representative is in charge of making sure that all valid creditors' claims are paid, if necessary, from the beneficiary deed real property.

What is the effect of a will on a beneficiary deed?

After a beneficiary deed has been signed and recorded with the Montana clerk and recorder in the county where the real property is located, the deed cannot be revoked by a provision in the owner's will. A beneficiary deed may only be revoked by recording a revocation in the manner described previously or by recording a new beneficiary deed.

Example: Gary signed and recorded a beneficiary deed naming his daughter as grantee beneficiary of real property he owned in Montana to be effective upon his death. Gary later wrote a will leaving the same Montana real property to his son. Upon Gary's death, the provision in the will leaving the real property to his son is not valid. The real property would pass to Gary's daughter under the terms of the beneficiary deed.

What is the effect of a trust on a beneficiary deed?

If an owner's real property has not been re-titled in the name of the owner's revocable living trust, a beneficiary deed may be executed naming the trustee of the revocable trust as the grantee beneficiary. The terms of the trust document control how the property will be distributed upon the death of the person who established the trust.

What rights do the surviving spouse and minor children have in the real property if they were not named as grantee beneficiaries on a beneficiary deed?

Montana law provides certain allowances for the surviving spouse and minor or dependent children of a deceased property owner. If assets of the estate are insufficient to provide for the Montana statutory allowances for the spouse's elective share (which increases in percentage from three to 50 percent based on the length of the marriage); exempt property (\$10,000); family allowance (\$18,000); homestead allowance (\$20,000); the Montana real property listed in a beneficiary deed can be claimed for the statutory amounts. The personal representative for the estate is in charge of making sure the statutory allowance claims are paid to the spouse and minor or dependent children.

For further information about rights of the surviving spouse and minor or dependent children read MSU Extension MontGuide, *Probate* (MT199006HR). Request a copy from your local Extension office.

The \$20,000 *homestead allowance* is different from the Montana *homestead declaration* that protects up to \$250,000 in the value of the home while the owner is living against most creditors' claims.

What if there are water rights on the real property?

If there are water rights associated with the Montana real property that is subject to the beneficiary deed, the owner should prepare and sign a DNRC Water Right Ownership (Form 608). Store the form in a safe place with your beneficiary deed. The form should be filed after the death of the owner by the grantee beneficiary with the Department of Natural Resources. The certificate is available online at <http://dnrc.mt.gov/divisions/water/water-rights/docs/forms/608.pdf>.

What if more than one beneficiary deed is recorded?

Beneficiary deeds can be revoked at any time by the owner, so the latest recorded beneficiary deed is the controlling document. In other words, if owners change their minds about who they want to receive the real property after they die, one recorded beneficiary deed can be replaced with a later recorded document naming different beneficiaries. The recording of a new beneficiary deed revokes any beneficiary deed dated earlier.

Can a beneficiary deed be used to transfer personal property after death?

No. A beneficiary deed is designed to transfer real property not personal property. However, certain *personal properties* of a Montana resident can also be transferred at death by other methods without probate by designating beneficiaries on contracts. For example, a person can list one or more beneficiaries on a life insurance policy; make a payable on death (POD) beneficiary designation on accounts at financial institutions, or sign a transfer on death (TOD) beneficiary registration for stocks, bonds, and mutual funds. For further information about PODs and TODs read MSU Extension MontGuide, *Non-Probate Transfers (MT199509HR)*. Request a copy from your local Extension office.

Summary

After October 1, 2007 a person can transfer his or her Montana real property at death to one or more parties by signing and recording a beneficiary deed with the clerk and recorder in the county where the real property is located. The beneficiary deed must contain a complete legal description of the Montana real property. All beneficiary deeds must have the post office address of the

grantee listed on it before the clerk and recorder's office can record it. The owner also must prepare a Montana Realty Transfer Certificate. After recording, the beneficiary deed should be stored in a safe place such as a safe deposit box or a secure place in the grantor's home.

References

- 2013 Montana Codes Annotated Section §72 - 6 - 121;
<http://leg.mt.gov/bills/mca/72/6/72-6-121.htm>
- 2007 Montana Estate Planning Legislative Update;
Kristen Juras, University of Montana School of Law,
September 1, 2007.

Disclaimer

This MontGuide is not a substitute for legal advice. Rather it is designed to inform persons about the provisions of the Montana beneficiary deed statute. Future changes this law cannot be predicted and statements in the MontGuide are based solely on the statutes in force on the date of publication.

Acknowledgement

Representatives from the following reviewed this MontGuide and recommend its reading by all Montanans who are in the process of estate planning:

- Business, Estates, Trusts, Tax and Real Property Section
– State Bar of Montana
- Montana Credit Union Network
- Clerk and Recorders and Supervisory Staff in Gallatin, Hill, Lewis and Clark, and Park Counties.



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