

What is a beneficiary deed?

Simply explained, a beneficiary deed provides an alternative to a will to convey real property to a beneficiary effective on the death of the owner when the beneficiary will become the vested owner. The use of a beneficiary deed bypasses the need for probate, at least for this particular asset, and provided that the strict requirements of the statute (to be found at CRS 15-15-401 et seq.) are followed.

What are the requirements for a beneficiary deed?

The owner may transfer an interest in real property effective on the death of the owner by executing a beneficiary deed that contains the words “conveys on death” or “transfers on death” or otherwise indicates the transfer is to be effective on the death of the owner.

The deed must be recorded prior to the death of the owner in the office of the clerk and recorder in the county where the real property is located.

A beneficiary deed may be substantially in the form set out in CRS §15-15-404 – see example A.

What is the effect of a beneficiary deed on the death of the owner?

The owner retains the full rights of ownership during his/her lifetime.

On the death of the owner, title to the interest in real property vests in the designated grantee, who takes title subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests, affecting the title to the real property, whether created before or after the recording of the beneficiary

deed, or to which the owner was subject during the owner’s lifetime.

Some examples of such interests may include any executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust, or other lien.

The grantee-beneficiary also takes title subject to any interest in the real property of which the grantee has either actual or constructive notice.

Are there special provisions to protect the interests of third parties?

Yes, in a number of ways.

First, as stated above, title is conveyed subject to all conveyances, encumbrances and the other matters listed above.

Second, any person who may have an interest in the real property, but which is not recorded at the time of death of the owner, may record evidence or notice of the interest not later than four months after the death of the owner. The notice must name the person asserting

BENEFICIARY DEED

(§§ 15-15-401 et seq., Colorado Revised Statutes)

CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN ORDER TO BE EFFECTIVE.

_____ as grantor, (Name of grantor-owner) designates _____ as (Name of grantee-beneficiary) grantee-beneficiary whose address is _____ (Note to Assessor and Treasurer: This address is for identification purposes only, all notices and tax statements should continue to be sent to grantor.)

(Optional) or if grantee-beneficiary fails to survive grantor, grantor designates _____ as (Name of successor grantee-beneficiary) successor grantee-beneficiary whose address is _____ and grantor transfers, sells, and conveys on grantor's death to the grantee-beneficiary, the following described real property located in the County of _____, State of Colorado: (insert legal description here) Known and numbered as _____

THIS BENEFICIARY DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE GRANTOR. IT REVOKES ALL PRIOR BENEFICIARY DEEDS BY THIS GRANTOR FOR THIS REAL PROPERTY EVEN IF THIS BENEFICIARY DEED FAILS TO CONVEY ALL OF THE GRANTOR'S INTEREST IN THIS REAL PROPERTY.

WARNING: EXECUTION OF THIS BENEFICIARY DEED MAY DISQUALIFY THE GRANTOR FROM BEING DETERMINED ELIGIBLE FOR, OR FROM RECEIVING, MEDICAID UNDER TITLE 26, COLORADO REVISED STATUTES.

WARNING: EXECUTION OF THIS BENEFICIARY DEED MAY NOT AVOID PROBATE.

Executed this _____ (Date)

_____ (Grantor)

(NB. Insert appropriate acknowledgment)

Example A

the interest and describe the real property and the nature of the interest asserted.

Third, subject to the rights of third parties described above, a bona fide purchaser, who acquires the real property from a grantee, takes title free of the rights of an interested person in the deceased owner's estate and shall not incur personal liability to the estate or to any interested person.

Fourth, there are certain time limits which bar a claimant from recovering from a grantee who is liable to pay the claim, and the right of an heir or devisee or of a personal



Liza Boetticher Account Manager
Mobile: 970-270-9621 • liza@ltgc.com

Grand Junction Office 2454 Patterson Road, Suite 100 Grand Junction CO 81505

Visit www.LTGC.com for more information and a full list of our office locations.



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representative acting on behalf of an heir or devisee, to recover property from a grantee or the value thereof from a grantee (See CRS §15-15-411).

Finally, the interest of the grantee is subject to any claim of the Department of Health Care Policy and Financing for recovery of medical assistance payments pursuant to section 25.5-4-301 or 25.5-4-302, C.R.S., which will be enforced in accordance with section 15-15-103 CRS.

Can the owner revoke the beneficiary deed at any time?

An owner may revoke a beneficiary deed by executing an instrument that (1) describes the real property affected, (2) revokes the deed, and (3) is recorded prior to the death of the owner in the office of the clerk and recorder in the county where the real property is located.

The joinder, signature, consent, agreement of, or notice to, the grantee is not required for the revocation to be effective. A revocation may be in substantially the following form set out in CRS §15-15-405 – see example B.

How does a beneficiary deed affect a real property interest held in joint tenancy?

Any one or more of owners in joint tenancy may execute and record a beneficiary deed.

But the recording of a beneficiary deed will not sever a joint tenancy.

Title to the interest vests in the designated grantee only if the joint tenant-grantor is the last to die of all of the joint tenants of such interest.

If a joint tenant-grantor is not the last joint tenant to die, the beneficiary deed is not effective, and the beneficiary deed will not make the grantee an owner in joint tenancy with the surviving joint tenant or tenants.

Does the grantee have to accept the real property interest conveyed in a beneficiary deed?

No. A grantee may refuse to accept all or any part of the real property interest described in a beneficiary deed

A grantee may disclaim all or any part of the real property interest described in a beneficiary deed by any method provided by law.

If a grantee refuses to accept or disclaims any real property interest, the grantee shall have no liability by reason of being designated as a grantee.

Caveat - Medicaid eligibility exclusion

No person who is an applicant for or recipient of medical assistance for which it would be permissible for the Department of Health Care

REVOCATION OF BENEFICIARY DEED
(§§ 15-15-401 et seq., Colorado Revised Statutes)

CAUTION: THIS REVOCATION MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN ORDER TO BE EFFECTIVE.

_____, as grantor, hereby (Name of grantor)

REVOKES all beneficiary deeds concerning the following described real property located in the County of _____, State of Colorado:
(insert legal description here) Known and numbered as _____

Executed this _____ (Date)

(NB. Insert appropriate acknowledgment) (Grantor)

Example B

Policy and Financing to assert a claim pursuant to section 25.5-4-301 or 25.5-4-302, C.R.S., shall be entitled to such medical assistance if the person has in effect a beneficiary deed. Notwithstanding the provisions of section 15-15-402(1), the execution of a beneficiary deed by an applicant for or recipient of medical assistance as described in this section shall cause the property to be considered a countable resource in accordance with section 25.5-4-302(6), C.R.S., and applicable rules.

Topic of the Month - December 2014

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