

Designating Beneficiaries through Contractual Arrangements

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Learn about transferring your assets through contractual arrangements, such as those commonly found in insurance policies, IRAs, employee benefit plans, payable on death accounts and transfer on death accounts.

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WHEN PEOPLE PASS AWAY, THEIR PROPERTY

can be transferred to their beneficiaries by three methods:

- contractual arrangements,
- written wills*, or
- Montana intestate succession statutes* (*laws for those who did not have a written will*).

This MontGuide focuses on *contractual arrangements* in which owners designate a beneficiary to receive either all or a percentage of their property.

Contractual Arrangements

Contractual arrangements that specifically provide for the passing of property to a beneficiary are considered as transfers taking effect at death. The following types of assets provide for the naming of beneficiaries through contractual arrangements:

- life insurance and annuity policies;
- qualified and nonqualified deferred compensation plans [401(k), 403 (b), 457];
- individual retirement accounts* (IRAs);
- employee benefit plans [SEPs, SIMPLEs] and Keogh retirement accounts;
- revocable (living) and irrevocable trusts*;
- payable on death (POD) designations for checking and savings accounts, certificates of deposit, share certificates, United States savings bonds; and
- transfer on death (TOD) designations for stock, bond, and mutual fund accounts

Definitions

Throughout this MontGuide, the term *financial entity* refers to a financial institution, (e.g. bank, credit union, insurance company, pension plan, employee benefit plan and other entities that provide contractual arrangements). The terms *proceeds* and *assets* refer to real and personal property that pass from an owner to his or her designated beneficiaries by contractual arrangements with the *financial entity*. The term *beneficiary designator* refers to the person who designates the beneficiaries through the contractual arrangement.

Contracts and Probate

Probate*, a legal procedure that generally takes place to settle a deceased person's estate, is not required for assets controlled by contractual arrangements.

Although probate may be avoided with contractual arrangements, assets that pass to beneficiaries through contractual arrangements are still subject to federal estate taxes as well as creditors' claims against the decedent's estate. There is no federal estate tax on a decedent's assets that are valued at less than \$3.5 million in 2009.

The Montana Multiple Party Accounts Act* allows for payable on death designations on financial accounts at banks, savings banks, and credit unions. If there is more than one beneficiary on the account, the sum on deposit will pass to them in equal shares.

*Starred topics are further explained in other MSU Extension MontGuides. See the list on page 8 for details.

Contracts and Wills

Contractual arrangements take precedence over a person's written will.

Example 1: If a mother named her son as the beneficiary of her \$100,000 life insurance policy and later wrote a will leaving the same life insurance proceeds to her daughter, that part of the will would be considered ineffective. The contract has priority – her son receives the \$100,000 in life insurance proceeds because he was named primary beneficiary on the contract, not her daughter. If the mother wants her daughter to receive the \$100,000 she needs to request a change of beneficiary form from her insurance company. She must then list her daughter as primary beneficiary.

The personal representative (the person appointed to settle your estate) has no power or duty to administer contractual arrangements. The personal representative or a family member should notify the *financial entity* about the death of the insured, annuitant or owner of an account. The *financial entity* is responsible for distributing the proceeds or assets to the specific beneficiaries that are listed on the beneficiary designation form.

Most *financial entities* require a specific claim form and a certified death certificate to be submitted before the proceeds will be transferred to the beneficiaries.

Joint Tenancy Contracts

While a joint tenancy with right of survivorship title* on real (e.g. land, house) and personal property (e.g. checking and savings accounts) is not technically a beneficiary designation, if one joint tenant passes away, the surviving joint tenant(s) automatically receive all. Joint tenancy property does not have to go through a court administered probate process.

Joint tenants cannot leave their interests to someone other than the surviving joint tenant in a will unless the survivor lives beyond 120 hours (See page 6 for common disaster clause). Nor do their interests pass to their heirs by state intestate statutes because the joint tenancy contract has priority. The surviving joint tenant or tenants receive all. The decision to place property in joint tenancy with family members or others should be made only after serious consideration has been given to the consequences of such an arrangement.

Creditors Claims

Beneficiaries named in contracts should be aware that the deceased person's assets are subject to creditors' claims and taxes. For example, if a person dies owing money to a hospital, the hospital is a creditor. If there are enough assets in the probate estate to cover the hospital bills, then a certificate of deposit with a payable on death designation for example, would not be used to cover the decedent's hospital expenses. However, if there are not enough assets in the probate estate to pay creditor's bills, then the certificate of deposit with a payable on death designation would be subject to the hospital's claim.

Example 2 : Betty died owing the hospital \$40,000 for expenses that were incurred during her last illness. Betty had an automobile, a house, and other assets with a fair market value of \$100,000. She also had a \$20,000 certificate of deposit that was payable on death to her daughter. The automobile and house could be sold by the personal representative to provide money for payment of the hospital bill of \$40,000. The amount remaining (\$60,000) would be distributed to Betty's beneficiaries. The certificate of deposit for \$20,000 would not be needed in this case. The certificate of deposit money would pass as Betty designated to her daughter.

If Betty's estate consisted of an automobile valued at \$15,000 and a \$20,000 certificate of deposit that was payable on death to her daughter, however, then the certificate of deposit would be subject to the hospital's claim of \$40,000. In this case, Betty's daughter would not receive any money from Betty's estate.

Medicaid* has similar rules. All funds that are in Betty's name and payable on death to her daughter are considered as recoverable assets under Medicaid estate recovery rules. The payable on death designation does not exclude Betty's assets from creditors' claims. Medicaid is considered as a creditor and estate recovery can be made from the certificate of deposit that was payable on death to Betty's daughter.

Forms of Common Beneficiary Designations

The wording of beneficiary designations on contractual arrangements such as an insurance policy, an annuity policy, a retirement plan and so on, is very important. An improperly completed beneficiary designation form could have unintended results. People could receive assets that the *beneficiary designator* did not want to pass to them. Contact an attorney to assure that the wording of your beneficiary designations achieves your specific estate planning objectives.

Typically a beneficiary designation form requests the following information about the beneficiary: first name, middle initial or name, and last name; relationship to the *beneficiary designator*; date of birth; full address; and Social Security number.

One beneficiary. On the beneficiary designation form list the name of the beneficiary followed by the relationship. Thus, a son who designates his mother as a beneficiary would write:

Amanda J. Smith, mother.

If a spouse is being named as a beneficiary, use the spouse's name, and not his or her social title. The husband should not write Mrs. John Smith, wife. Instead a husband designating his wife as a beneficiary would write:

Mary Ann Smith, wife.

Two beneficiaries. If two beneficiaries are named, the order in which they are to receive the proceeds and the part each is to receive should be clearly stated. The word "or" should not be used between the names of the two beneficiaries as it creates confusion. If the proceeds are to be divided equally between two beneficiaries the term "equally" should be used.

If one of the beneficiaries predeceases the person designating the beneficiaries or dies in the same accident and the designator wants the surviving beneficiary to receive all the assets, then additional wording is added to clarify this goal. Thus, a woman designating her husband and son as beneficiaries could write:

John R. Smith, husband, and Derry A. Smith, son – equally. If either of these named beneficiaries is not living at my death, then the survivor of them shall take all.

Full names and relationships should be listed. The following designation could be used in such cases:

John R. Smith, husband, if living; otherwise, Derry A. Smith, my son.

Some financial entities provide a section on the form for the *beneficiary designator* to list primary beneficiaries and another section for listing contingent beneficiaries.

Three or more beneficiaries. If the designator wants the proceeds to be divided equally to the named survivor beneficiaries, full names and relationships with the term "equally" is listed. Thus, a mother designating her three sons as beneficiaries would write:

Jerry B. Smith, Robert P. Smith, and William A. Smith, sons – equally. If any of these named beneficiaries is not living at my death, then his or her share shall be divided equally by the remaining named beneficiaries who survive me.

One primary beneficiary and one contingent beneficiary. Many persons decide to name a contingent or secondary beneficiary in case the primary beneficiary predeceases them or dies in the same accident. In families with children from a prior marriage the naming of secondary beneficiaries can assure that the intended children receive the assets.

Example 3: John and Mary each had two children from a prior marriage. Each had a life insurance policy of \$100,000 naming the other spouse as the primary beneficiary. Neither parent listed a secondary beneficiary. John and Mary died as a result of an automobile accident. John died first and Mary seven days later. Mary's children received \$200,000 from the life insurance policies because John's estate passed to her and she survived beyond 120 hours. If John had named his children as secondary beneficiaries they would have received the \$100,000 from their father's life insurance policy instead of Mary's children.

Children as beneficiaries*. The wording of beneficiary designations for children often depends upon whether the children are adults or minors (under age 18 in Montana).

*Starred topics are further explained in other MSU Extension MontGuides. See the list on page 8 for details.

Adult children are often designated by their full names. Thus, a father who wants all three of his adult married daughters to share equally could write:

Donna Kaye Chamberlain, Debbie Raylene Buczinski, Marsha Diane Anderson, my children, equally. If any of these named beneficiaries is not living, then her share shall be divided equally by the remaining named beneficiaries who survive me.

Under Montana law minor children lack legal capacity to exercise policy rights, enter into contracts or sign for the receipt of proceeds. If *minor children* (under age 18) are designated as beneficiaries there are four possible alternatives for passing assets to them.

1. Montana law requires that a *conservator* be appointed if a minor child inherits more than \$5,000. Proceeds could be transferred to a conservator after he or she has been appointed by the district court. The conservator has the responsibility of managing money and property left to minor children until they reach the age of 18.
2. Another possibility is that the *financial entity* holding the asset (i.e. life insurance) could manage the proceeds until the beneficiary reaches the age of majority...in Montana, 18 years. Some financial entities indicate an age of 21 on their beneficiary designation forms.
3. Still another alternative is that a *trust* could be named as the beneficiary. The trust document states who the trustee is, who the successor trustee is, how the money is to be spent, and when the trust terminates so assets pass to the child. This option allows the trustor and/or trustee to determine at what age he or she believes the "child" is capable of managing the funds. While financial savvy is not determined by age alone, some parents believe adult children should not receive large sums of money until they reach an age between 25 to 40.
4. Another option is that assets could be transferred directly by a written will to a Montana Uniform Transfers to Minors Act custodial account or a trust. A designated adult custodian is appointed in a will or trust to manage the assets. Although the assets placed in the custodial account belong to the child, control over them is not transferred to the child until he or she reaches the age of 21.

If a parent names specific children on a beneficiary designation form, later-born children may be left out unless the beneficiary designation is changed. If a parent anticipates that children will be born or adopted after the beneficiary designation is signed, the following types of generic designations would be used:

- the children of John R. Jones.
- the children born during marriage with Sara A. Jones.
- the children born of or legally adopted during marriage with Sara A. Jones.

Typically the words "children," "issue," "grandchildren" and "children of a deceased child" include adopted children, adopted issue, adopted grandchildren and adopted children of a deceased child unless otherwise specified in the contract.

Children of a deceased beneficiary. A person may want a beneficiary's children to receive that beneficiary's share if the beneficiary predeceases him or her. For example, Harold may want his grandsons to receive the proceeds of his life insurance if his sons predecease him. Harold could accomplish his goal with the following language:

To my children, Steven Ray and Alan Ray, equally. However, if either one predeceases me, that beneficiary's children living at my death shall take equally the share that their deceased parent would have taken if he survived me.

Another way to assure that the beneficiaries' children receive shares is to use the terms *per stirpes* or *by representation*. *Per stirpes* is a term that was used more commonly years ago to express the concept of right of representation, that is, the principle of generational division of shares among surviving descendants of different generations. Today, each term has a precise meaning under Montana law, although the result of using one or the other is the same in many cases.

When the term *per stirpes* is used as a part of the beneficiary designation, this means that if the named beneficiary predeceases the designator, the assets will pass to that beneficiary's children in equal shares. In other words, the beneficiary's children split the share their parent would have received if he or she had survived the deceased person. Thus, a man who wants his grandchildren to receive the share their parent would have received if that parent dies in the same accident or predeceases him would write:

Donna Kaye Chamberlain, Debbie Raylene Buczinski, Marsha Diane Anderson, my children, equally or per stirpes if any of my children predecease me.

The preceding designation would result in the following divisions. If Donna predeceases her father, her two children receive $\frac{1}{6}$ each because they split the $\frac{1}{3}$ that would have passed to Donna if she had survived her father. The remaining $\frac{2}{3}$ is equally split between the living sisters Marsha and Debbie ($\frac{1}{3}$ to each).

If Debbie dies before her father, her three children would each receive $\frac{1}{9}$ because they split the $\frac{1}{3}$ that would have passed to Debbie if she survived her father.

If a designated beneficiary passes away without leaving children, that beneficiary's share of the proceeds will be distributed among the remaining designated beneficiaries in equal shares. If Marsha, who does not have children, predeceases her father, her share ($\frac{1}{3}$) is equally split between her sisters two Donna and Debbie. Thus, Donna would receive $\frac{1}{2}$ and Debbie would receive the other $\frac{1}{2}$ of their father's estate.

Currently in Montana the term *by representation* is used more often than *per stirpes*. If the term *by representation* had been used in the previous example, the distributions described would have been the same as *per stirpes*. However, if Marsha, Donna, and Debbie all die before their father, under *per stirpes* Donna's two children split the half Donna would have received ($\frac{1}{4}$ each), and Debbie's three children split the other half or receive $\frac{1}{6}$ each.

Under Montana's *by representation* statute, the estate is divided into *per capita* shares at the first generation where there is a survivor. If anyone in that generation is deceased and there are living descendants these descendants take their deceased parent's share. Under *representation*, Donna's and Debbie's children would each receive equal shares. Because there are five grandchildren, each receives $\frac{1}{5}$. Thus, a father who wants his grandchildren to receive equal shares if their parents die in the same accident or predecease him could write:

Donna Kaye Chamberlain, Debbie Raylene Buczinski, Marsha Diane Anderson, my children, equally or their descendants by representation if any of my children predecease me.

Estate as the beneficiary. Generally, the estate is a beneficiary of last resort, as most people prefer to name family, friends or charities as beneficiaries. Also, probate can be avoided if the estate is not named as beneficiary. However, a person may wish to name his or her estate if all other beneficiaries do not survive.

If the proceeds are to be a part of the estate to be distributed either by a written will or under Montana intestate (without a will) statutes, then the following phrase would be used:

My Estate.

Partnership. If a partnership is designated as a beneficiary, the full name of the partnership, mailing address and an indication that it is a partnership should be listed.

*Miller, Bryan, and Wilson,
135 B Westridge, Bozeman, Montana, 59715,
a Partnership.*

Corporation. If a corporation is designated as a beneficiary, the full name of the corporation, mailing address, and the state of incorporation should be listed.

*ABC Enterprises,
498 N. 7th Street, Helena, Montana, 59601,
a Montana corporation.*

Charitable beneficiaries. To name a charity as a beneficiary, contact the organization and ask for the official legal title and the address of the organization. Determine whether it has been designated as a 501(c)(3) charitable organization. Include all pertinent information, including the federal taxpayer identification number of the charity. This will help the *financial entity* identify the correct charity at the time of the claim. Thus, a person desiring to leave a bequest to the Montana 4-H Foundation would write:

*The Montana 4-H Foundation,
P. O. Box 173580, Montana State University,
Bozeman, MT 59717-3580,
Federal Taxpayer Identification Number 23-7051460*

Trusts. A trust is a legal arrangement by which a person transfers property from personal ownership into the legal ownership of a trust. Two general types of trusts are living trusts and testamentary trusts. A *revocable living trust* is just what the name implies – one that is created during a person's life, but that can be changed or terminated at any time up until his or her death.

To name the trustee of a living trust as beneficiary, use the full name of the trustee. If a bank or trust company is the named trustee, use the full correct name, as well as the address. Thus, a beneficiary designation for the John F. Smith Family Trust would read:

John F. Smith, trustee, of the John F. Smith Family Trust, his successor or successors in trust, under a trust agreement executed by John F. Smith on September 20, 2006, as amended, 205 Cutting, Bozeman, Montana 59715.

A *testamentary* trust is one created by a person's written will or under the provisions of a living trust. It does not become effective until the person who created it dies and the will is probated. The following language could be used as a beneficiary designation in a testamentary trust:

Gayle Y. Smith, trustee of the testamentary trust created by my will, her successor or successors in trust. If the financial entity receives satisfactory evidence that no trustee can qualify or if the financial entity has not been furnished with satisfactory evidence that a trustee has qualified, then to my estate.

Unequal Shares. A person may request that proceeds be paid in unequal shares to several beneficiaries. Because the value of assets at the time of death may differ from the amount when the beneficiary designation is made, the proceeds could be divided into fractions or percentages rather than dollar amounts.

Example 4: Bruce Smith has a universal life insurance policy with a value of \$100,000. If he passed away today he wants \$75,000 to pass to his wife and the remaining \$25,000 to pass to his daughter. Bruce should decide how he wants the proceeds to be split, if the value of the policy would grow, for example, to \$120,000 by the time of his passing. Instead of using dollar amounts Bruce could use percentages in his beneficiary designation:

75 percent to Carol A. Smith, my wife, and 25 percent to Jennifer L. Smith, my daughter. If either beneficiary predeceases me, that beneficiary's share shall be paid to the surviving beneficiary. If both beneficiaries predecease me, the proceeds shall be paid to the Montana 4-H Foundation. P. O. Box 173580, Montana State University, Bozeman, MT 59717-3580, Federal Taxpayer Identification Number 23-7051460.

Common Disaster Clause. A person who is concerned about the possibility that he or she and the beneficiary may die simultaneously or as a result of a common accident, may want to include a common disaster clause in the contract. In reality a common accident clause is not required. If there is a common disaster clause it will become applicable if an individual and his or her beneficiary die within a time period specified in the clause, regardless of the cause of death.

Montana law imposes a survival requirement of 120 hours (5 days). If a beneficiary common disaster clause has no indication about the survival time and a beneficiary dies within 120 hours of the decedent, he or she will be presumed to have predeceased the decedent.

1. *Regular common disaster clause.* This clause keeps the proceeds (e.g., life insurance policy) from being subject to federal estate taxation in two estates, first in the insured's and then in the beneficiary's when both die as a result of a common accident:

If any beneficiary dies simultaneously with the insured, or within (any number of days, typically 180) days thereafter, but before due proof of the insured's death is received at the financial entities' home office, the proceeds shall be paid as though that beneficiary had predeceased the insured.

2. *Reverse common disaster clause.* This clause is often used on life insurance beneficiary designations. It reverses the presumption, created by Montana statute that the insured survived the beneficiary if their deaths were, in fact, simultaneous. Its purpose is to preserve federal estate tax* savings by keeping the proceeds in the beneficiary's estate rather than in the insured's estate when the life insurance policy owner is not the person insured.

The reverse common disaster clause is often used when the insured and the beneficiary are married and only if the insured's estate is in a federal estate tax bracket (\$3.5 million in 2009). To save on federal estate taxes the insured cannot be the owner of the life insurance policy. For example, a wife could be the owner of an insurance policy on her husband's life. She can also be the beneficiary. The husband is the insured. Typical wording in a reverse common disaster clause would be:

If the beneficiary and the insured die and there is no sufficient evidence that they died other than simultaneously or if they die within 120 hours of one another, then it shall be presumed that the beneficiary survived the insured and the proceeds shall be payable as if the beneficiary has survived the insured, but died before receiving payment.

Married Couples. The Employee Retirement Income Security Act (ERISA) has special rules for beneficiary designations on pension plans for married couples. However, these rules do not apply to Individual Retirement Accounts (IRAs) or to Montana Medical Savings Accounts.*

A surviving spouse is automatically presumed to be the beneficiary on a worker's pension plan if the worker dies before receiving benefits. If the worker wishes to select a beneficiary other than a spouse, the spouse must consent in writing and have the signature witnessed by a notary or plan representative.

Divorced Couples. The Montana legislature passed a law (Mont. Code Ann. §72-2-814) providing that a marriage dissolution (divorce) revokes any revocable disposition to a former spouse in a *governing instrument* that was executed before the divorce. Examples of governing instruments included in the law are: life insurance policies, annuity policies, and IRAs. (Additional examples are listed in the definition of contractual arrangements on page 1).

Couples should examine their beneficiary designations on contractual arrangements during and after the divorce to assure that the individuals they want to receive the assets are designated as beneficiaries.

A person can expressly provide for the former spouse to receive the assets if noted in a contract or beneficiary designation signed and dated after the marriage dissolution decree.

Example 5: Montana residents Donna and Ron were divorced on April 1, 2008. In January 2009, Ron still has Donna listed as the beneficiary on his life insurance policy. If Ron were to die, the proceeds would pass as though Donna had disclaimed the proceeds. In other words, the treatment would be the same as if Donna had predeceased Ron and the life insurance proceeds would then pass to his heirs – Ron and Donna's two children. If Ron's preference is for his former wife, Donna, to receive the life insurance proceeds, then he must complete a new beneficiary designation form that is dated and signed after the marriage dissolution decree which in his case was April 1, 2008.

Summary

A person should review his or her beneficiary designations upon marriage, upon divorce, upon death of a spouse or beneficiary, or when a beneficiary's name changes. When a person dies, a beneficiary living at that time has a right to the assets covered by the contractual arrangement. For example, a grandson named as a payable on death on his grandmother's certificate of deposit cannot cash it in while she is still living. The grandson receives the money only upon his grandmother's passing.

A person who wants to change beneficiary designation must make a request to the *financial entity*. Most financial entities have a special beneficiary designation change form that should be signed, dated, and returned for the change to be effective. Most forms indicate that the change revokes any beneficiary designations made previously under that contract.

Persons can choose the wording for their beneficiary designations for most contractual arrangements. Tax planning for qualified pension and profit sharing plans is complicated and advice from qualified professionals, such as an insurance agent, a certified public accountant, a certified financial planner, or an attorney, may be useful.

*Starred topics are further explained in other MSU Extension MontGuides. See the list on page 8 for details.

MSU Extension MontGuides for More Information

Ask your local county Extension office for MontGuides or download at: www.montana.edu/extensionecon/financialpublications.html

Beneficiary Deeds in Montana, [MT200707HR](#)

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

Dying Without a Will, [MT198908HR](#)

Includes legal terms and detailed examples of possible scenarios for distribution of property should a person die before writing a will.

Estate Planning for Families with Minor and/or Special Needs Children, [MT199117HR](#)

How to provide for minor children's physical and financial care in case of a parent's death. Includes special instructions concerning special needs and stepchildren.

Estate Planning: Wills, [MT198906HR](#)

Outlines why and how to construct a will, including costs, restrictions and changes after its completion.

Federal Estate Tax, [MT199104HR](#)

Analyzes how federal tax laws affect individual estates, including changes resulting from the Economic Growth and Tax Relief Reconciliation Act of 2001.

Individual Retirement Accounts, [MT199807HR](#)

Explains traditional IRAs (deductible and nondeductible) and Roth IRAs, and discusses who can contribute to an IRA, how to set one up, and how much can be contributed.

Investing in Certificates, [MT199801HR](#)

Outlines typical interest rates and maturity dates for CDs, and offers tips for comparison shopping for a CD.

Medicaid & Long Term Care Costs, [MT199511HR](#)

Describes major changes that have been made regarding Medicaid eligibility in light of the Deficit Reduction Act of 2005 that became effective February 8, 2006.

Montana Medical Care Savings Accounts, [MT199817HR](#)

Describes how Montanans can save money on taxes through the use of an MSA.

Nonprobate Transfers, [MT199509HR](#)

Describes how to pass property without probate using contractual arrangements such as beneficiary designations (PODs, TODs).

Probate in Montana, [MT199006HR](#)

Guidelines and costs for the process of settling the estate of a person.

Property Ownership: Estate Planning, [MT198907HR](#)

Describes the three main forms of property ownership, plus real-life examples of estate settlement for each.

Revocable Living Trusts, [MT199612HR](#)

Defines and explains the benefits, shortfalls, costs and tax consequences of living trusts, including how it may affect nursing home care costs.

Acknowledgments

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- Montana State Auditor's Office – Insurance Department;
- State Bar of Montana – Business, Estates, Trusts, Tax, and Real Property Section;
- Montana Credit Union Network.

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