

for a public employee retirement system, local firefighter or police pension, life and health insurance; petitions for priority of appointment as a conservator, guardian, or personal representative; visitation rights in health care facilities; filing complaints on behalf of a nursing home patient; acting as a proxy decision-maker for medical and surgical treatment; receiving notice of withholding/ withdrawal of life-sustaining procedures; inheritance issues; workers' compensation; suing for wrongful death; anatomical gifts; and disposition of last remains.

Parties must still properly notify their employer or provider of retirement, insurance, and other benefits of the Designated Beneficiary's identity. Having a Designated Beneficiary Agreement does not automatically entitle your Designated Beneficiary to receive proceeds or coverage.

You may not add rights or protections to your Designated Beneficiary Agreement other than those enumerated in section 15-22-105(3) of the Colorado Revised Statutes.

What types of legal documents supersede a Designated Beneficiary Agreement?

Only valid and enforceable legal documents supersede a Designated Beneficiary Agreement.

The principal types of legal documents that can supersede a Designated Beneficiary Agreement include, but are not limited to:

- Wills, codicils, Powers of Attorney, Medical Durable Powers of Attorney, and trust instruments;
- Declarations pertaining to medical treatment or disposition of your last remains;
- Beneficiary designations in insurance or health care policies, in retirement or pension plans, and for deposit or savings accounts; and
- Generally, any type of contract where you specify "payable upon death to (a named party)."

A marriage license will disqualify the married party from being a Designated Beneficiary.

When exercising rights or protections of your Designated Beneficiary Agreement, you must affirm the validity of the agreement and disclose any knowledge of any superseding legal documents. For example, if the other party to your Designated Beneficiary Agreement dies and you know that the party had arranged for a bank account's contents to go to a son, you cannot interfere with that transfer to the son.

How can I revoke a Designated Beneficiary Agreement?

Either party can revoke the Designated Beneficiary Agreement by filing a notarized Revocation of Designated Beneficiary Agreement in the same County Clerk and Recorder office that recorded the Designated Beneficiary Agreement. The revocation must follow the format in section 15-22-111(4) of the Colorado Revised Statutes.

The revocation does not become effective until the date and time it is received by the County Clerk and Recorder. The County Clerk and Recorder will charge fees for recording the revocation and for providing certified copies to the filer and the non-filing party at the latter's last known address.

What happens if a Designated Beneficiary dies?

If a Designated Beneficiary dies, the Designated Beneficiary Agreement terminates. However, the surviving party may continue to exercise rights and powers received under the Designated Beneficiary Agreement. For example, the surviving party can simultaneously serve as the decedent's Personal Representative and enter into a new Designated Beneficiary Agreement.

This pamphlet is published as a public service by the Colorado Bar Association. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case.



Colorado's Designated Beneficiary Agreement Act



Sponsored by the Colorado Bar Association

Colorado's Designated Beneficiary Agreement Act

The Colorado Designated Beneficiary Agreement Act ("the Act") became effective on July 1, 2009. The Act allows two unmarried people to affirm in writing that they want each other to have legal rights, benefits, and protections to make certain decisions about each other's health care and estate administration as well as treatment in medical emergencies, during incapacity, and at death.

What is a Designated Beneficiary?

A Designated Beneficiary is a party who enters into a Designated Beneficiary Agreement. Only two parties can be named in or create a Designated Beneficiary Agreement.

A Designated Beneficiary Agreement is not like other legal documents (e.g., Will, trust instrument, Power of Attorney), where you name additional parties if your first choice is unable or unwilling to serve.

Who can be a Designated Beneficiary?

Both parties to a Designated Beneficiary Agreement must: 1) be at least 18 years of age; 2) be competent to enter into a contract; 3) be unmarried to anyone; 4) not be a party to another Designated Beneficiary Agreement; and 5) enter this Designated Beneficiary Agreement without force, fraud, or duress.

How do I obtain a Designated Beneficiary Agreement?

You may work with an attorney or draft your own Designated Beneficiary Agreement. Forms may be available in County Clerk and Recorder offices or on-line.

Why would I work with an Attorney?

An attorney, especially one who specializes in estate planning, can advise you as to whether you need a Designated Beneficiary Agreement. If you already have legal documents in place, such as a Will or Power of Attorney, it may be most efficient simply to amend them.

However, you may not have a Will or Powers of Attorney or there may be gaps in the coverage of your legal documents. For example, your Medical Durable Power of Attorney may be silent as to whether your Designated Beneficiary can visit you in the hospital. A Designated Beneficiary Agreement explicitly grants visitation rights to the Designated Beneficiary.

Remember:

- If there is any conflict between your legal documents and the Designated Beneficiary Agreement, the provisions in the legal documents control – even if they are executed after the Designated Beneficiary Agreement.
- You cannot use a Designated Beneficiary Agreement to alter, amend, change, or revoke all or part of any legal document.
- You cannot use a Designated Beneficiary Agreement to add, change, or delete a designated beneficiary in a legal document. For example, you cannot use a Designated Beneficiary Agreement to change the named beneficiary in a life insurance policy.

What must a Designated Beneficiary Agreement contain?

The Designated Beneficiary Agreement must contain:

- **A Disclaimer:** The Designated Beneficiary Agreement must include the disclaimer found in section 15-22-106(1) of the Colorado Revised Statutes. The essence of the disclaimer is that both parties confirm that they understand the limitations of the Designated Beneficiary Agreement.
- **Full Names and Addresses:** The two Designated Beneficiaries are referred to as "party A" and "party B" in the Designated Beneficiary Agreement. The Designated Beneficiary Agreement must clearly identify each party by the party's full name and address.
- **Designations:** The Designated Beneficiary Agreement must contain instructions for how

to grant or withhold rights or protections. Each party, A and B, must designate by initialing the appropriate lines which of the 16 rights and protections specified in the statute will be granted to or withheld from the other party. For example,

To grant a right or protection, initial: Party A Party B	The right to be designated by me as a beneficiary in a retirement or pension plan;	To withhold a right or protection, initial: Party A Party B
_____	_____	_____

- **An Effective Date:** The Designated Beneficiary Agreement must contain a statement regarding the effective date of the agreement.
- **Recording Instructions:** The Designated Beneficiary Agreement is not effective until it is received for recording by the County Clerk and Recorder of the county in which one of the designated beneficiaries resides. Designated Beneficiary Agreements and revocations of such agreements are open records.
- **Signatures:** Each party, A and B, must sign and date the Designated Beneficiary Agreement.
- **Acknowledgements for the Notary Public:** The Designated Beneficiary Agreement must be notarized before it can be recorded and take legal effect.

The Designated Beneficiary Agreement is not effective until the County Clerk and Recorder receives the notarized Agreement and records it. The County Clerk and Recorder shall assess fees for recording, issuing certified copies, and for other services provided.

What are the 16 rights or protections in a Designated Beneficiary Agreement?

The 16 rights or protections are listed in section 15-22-105(3) of the Colorado Revised Statutes. They pertain to: real and personal property; trusts; recognition as a beneficiary and dependent