

Colorado's Designated Beneficiary Agreement Act

Designated Beneficiary Agreements

Designated Beneficiary Agreements became law effective July 1, 2009. Designated Beneficiary Agreements 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?

Both parties to a Designated Beneficiary Agreement must meet the following criteria:

1. At least 18 years of age;
2. Competent to enter into a contract;
3. Unmarried
4. Not a party to another Designated Beneficiary Agreement; and
5. Voluntarily entered agreement without force, fraud, or duress.

You may work with an attorney or draft your own Designated Beneficiary Agreement. Forms may be available in County Clerk and Recorder offices or by searching online.

Benefits with working 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 or easier 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. documents control.
- 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 le-

gal document. For example, you cannot use a Designated Beneficiary Agreement to change the named beneficiary in a life insurance policy.

What to include in a Designated Beneficiary Agreement

The Designated Beneficiary Agreement must include the following:

- **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 Designated Beneficiary Agreements executed on, or after July 1, 2010, the courts presume that each party grants all rights and protections to the other party unless a party withholds specific rights or protections by initialing in the appropriate spaces on the form.
- **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.

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 and they pertain to the following issues:

1. Real and personal property;
2. Trusts;
3. Recognition as a beneficiary and dependent in a retirement or pension plan
4. Life insurance;
5. Health insurance;
6. Petitions for priority of appointment as a conservator, guardian, or personal representative;
7. Visitation rights in health care facilities;
8. Filing complaints on behalf of a nursing home patient;
9. Acting as a proxy decision-maker for medical and surgical treatment;
10. Receiving notice of withholding/withdrawal of life-sustaining procedures;
11. Challenge the validity of a declaration as to medial or surgical treatment;
12. Inheritance issues;
13. Workers' compensation;
14. Suing for wrongful death;
15. Anatomical gifts; and
16. Disposition of last remains.

Both parties must 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 insurance 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.

Types of legal documents that 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)."

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 to 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 of 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.

In addition, a Designated Beneficiary Agreement shall be deemed revoked upon the marriage of either party. In the case of a common law marriage, a Designated Beneficiary Agreement shall be deemed revoked as of the date the court determines that a valid common law marriage exists.

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.

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