



## Beneficiary Deeds

July 2004

During the 2004 legislative session, the Colorado Legislature enacted House Bill No. 04-1048, also known as the “beneficiary deed legislation.” The new law establishes Part Four to Article 15 of Title 15 of the Colorado Revised Statutes to include Sections 15-15-401 through 15-15-415.

A copy of the new law is accessible on the Internet at <http://www.leg.state.co.us/> under House bills.

### Beneficiary Deed summary

The purpose of the new law, which becomes effective August 4, 2004, is to provide a mechanism for a non-probate transfer of real property that enables an owner of real property to convey by deed to a grantee an interest in real property that will become effective upon the death of the owner.

The new law, in part, reads as follows: “Vesting of ownership in Grantee-Beneficiary: (1) Title to the interest in real property transferred by a beneficiary deed shall vest in the designated Grantee-Beneficiary only on the death of the owner. (2) A Grantee-Beneficiary of a beneficiary deed takes title to the owner’s interest in the real property conveyed by the beneficiary deed at the death of the owner, subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests affecting title to the property, whether created before or after the recording of the beneficiary deed...” [C.R.S. §15-15-407].

During the lifetime of the owner(s), the Grantee-Beneficiary has no right, title, or interest in or to the property, and the

owner(s) retain the full power and authority with respect to the property without the joinder, signature, consent, or agreement of, or notice to the Grantee-Beneficiary for any purpose.

The new law provides that the form of the Beneficiary Deed should contain the words “conveys on death” or “transfers on death” or otherwise indicates the transfer is to be effective on the death of the owner(s).

### Revocation of Beneficiary Deed

The new law also provides that a Grantee-Beneficiary interest may be terminated by the owner(s) with an instrument that revokes the beneficiary deed prior to the death of the owner, or by the execution and recording of a new beneficiary deed prior to the death of the owner(s). The joinder, signature, consent, or agreement of, or notice to either the original Grantee-Beneficiary or the new Grantee-Beneficiary is not required for the change or revocation to be effective.

As to a revocation instrument, the statute provides that a form of “Revocation of Beneficiary Deed” may be used [C.R.S. §15-15-405].

For title insurance purposes, the statute also provides that a conveyance or a transfer by an owner to a third party purchaser for value will be viewed as a revocation of a beneficiary deed [C.R.S. §15-15-407].

By statute, the most recently executed beneficiary deed or revocation of all beneficiary deeds or revocations that have been recorded prior to the owner’s death will be considered the controlling deed, regardless of the order of recording [C.R.S. §15-15-405(3)].

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The Grantee-Beneficiary also may disclaim or refuse to accept the real property upon the death of the original owner(s)/grantors.

### Multiple owners

The term “multiple owners” means grantors that hold the property as joint tenants with the right of survivorship. In the case of multiple owners, the beneficiary deed does not take effect until the death of the last surviving owner /grantor. Additionally, the beneficiary deed is only valid if the last surviving owner is one of the parties who executed the deed.

### Multiple grantees

One or more persons or entities capable of holding title to real property may be designated as Grantee-Beneficiaries in the beneficiary deed to receive an interest in the real property upon the death of the owner.

### Successor interest

A successor Grantee-Beneficiary is a person, persons, or entity designated in a beneficiary deed to receive an interest in the real property if the primary Grantee-Beneficiary does not survive the owner(s).

### Conveyance from Grantee-Beneficiary

Subject to prior rights or interests of others in the land before the owner died, a bona fide purchaser for value or a bona fide lender for value in its dealings with a Grantee-Beneficiary will take 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 [C.R.S. §15-15-407(2)].

Any recorded instrument evidencing a transfer to a purchaser from, or lender to, a Grantee-Beneficiary on which a state documentary fee is noted under the provisions of C.R.S. §39-13-103 shall be prima facie evidence that the transfer was made for value [C.R.S. §15-15-410(2)].

Any such sale or loan by the Grantee-Beneficiary does not relieve the Grantee-Beneficiary from obligations to other creditors and claimants under the estate of the decedent owner.

### Rights of creditors and others:

If other assets of the estate of the deceased owner are insufficient to pay all claims against the estate, then a transfer of real property resulting from a beneficiary designation is not effective against the estate of the deceased owner to the extent needed to pay all claims against the estate. A proceeding to assert liability against a Grantee-Beneficiary may be initiated under the provisions of CRS §15-15-409.

Further, under the provisions of Section 15-15-403, the interest of the grantee-beneficiary shall be subject to any claims of the Department of Health Care Policy and Financing as a “countable resource” for recovery of medical assistance payments pursuant to Section 26-4-403 or 26-4-403.3 and may be enforced in accordance with Section 15-15-409 [C.R.S. §15-15-407].

Rights of Creditors provided under C.R.S. §15-15-409 do not affect the protection provided by Section 15-15-410 to bona fide purchasers or lenders for value, with respect to claims of the personal representative or estate of a deceased owner against a Grantee-Beneficiary.

### Underwriting standards

Each title insurance underwriter will set particular guidelines for requirements and exceptions on title insurance commitments and policies where there is a beneficiary deed conveyance. Please contact your closer or Land Title sales representative with questions regarding specific transactions.

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