

## **What is a Beneficiary Deed Should You Have One?**

Legal View

Jeffrey R. Kelley, Esq.

Beneficiary deeds, also known as transfer-on-death deeds, are used to leave real property to someone (such as a son or daughter or both) upon your death. A beneficiary deed must be executed and recorded before the death of the owner. If not so recorded, the property will pass to the beneficiaries of the owner's probate estate. One of the advantages of a beneficiary deed is, for many people, the opportunity to avoid going through probate. Prior to this law, there was no procedure available in Colorado to pass clear title to real property at death, unlike Colorado's probate code that allowed for use of an "affidavit" to pass other assets without the need for a full probate procedure. This law also provides a clear advantage to a beneficiary who may have creditors as he or she receives no interest in the property until the owner dies. Therefore, no potential exists for exposure of the property to a joint tenant's creditors. This law provides specific guidelines for use of the beneficiary deed to pass marketable title to a "grantee-beneficiary" at death without the need for probate administration. There can be pitfalls, however, for the uninformed use of a beneficiary deed.

## **What Can Go Wrong?**

You can only transfer property by beneficiary deed that you own. In other words, you cannot transfer the interest of someone who co-owns the property with you. Additionally, if the property has a mortgage or lien or you have other debts, the beneficiary may have to find a way to pay or settle the debt before they can claim full interest in the property. Another potential and likely unintended problem may result when you leave your house to multiple children. A beneficiary deed will give each child equal rights to the house, and thus, leave multiple grantees tied to each other through ownership of the property. In this case, they will have to agree on whether to sell it, when to sell it, and how much to ask. In comparison to using a trust or a typical probate procedure, a personal representative or trustee would have the authority to make those decisions without requiring an agreement between your children.

## **Medicaid**

Another consideration is that you may not be able to qualify for Medicaid benefits if you have recorded a beneficiary deed. Fortunately, you can revoke the beneficiary deed at any time, but if you are disabled, then you will need a person with a power of attorney to do this for you.

To ensure that a revocation can be made to qualify for Medicaid assistance, any person executing a beneficiary deed should also execute a power of attorney authorizing such person to execute and record a revocation of any beneficiary deed.

With these possible complications and unintended results, executing a beneficiary deed should be a carefully considered decision. While there may be beneficiary deed forms available, hastily signing and recording such a document could have problematic consequences. Sometimes “avoiding probate” is not the best strategy.

Do you have a legal question? Send your inquiry to attorney Jeff Kelley ([Jeff@klfpc.com](mailto:Jeff@klfpc.com)). Appointments for in person legal counsel are available in both Black Hawk and Denver offices.

*Note: While every effort has been made to ensure the accuracy of this information, it is published for general information and not intended to provide specific legal advice as individual situations will differ and require full analysis by an attorney of the specific facts involved.*