

Nonprobate Transfers (Contractual Arrangements, Multiple- party Accounts, POD Designations, TOD Registrations)

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Describes the various forms of ownership that allow the deceased's property to bypass probate and transfer directly to beneficiaries. Includes uniform single- or multiple-part account form.

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WHEN AN INDIVIDUAL DIES, MONTANA LAWS

provide for the distribution of his or her property to appropriate individuals. One factor that determines whether the property goes through probate is how it is titled. Title also affects how property is distributed among the decedent's beneficiaries.

Other factors that may influence who receives the property are provisions of the decedent's will (see MontGuide [198906HR](#), *Wills*) or if there is no will, the Montana intestacy statutes. These statutes include provisions for nonprobate transfers such as multiple-party accounts, pay on death (POD) designations and transfer on death (TOD) registrations.

While property can pass according to a contractual agreement, the property is still considered part of the decedent's taxable estate for federal estate tax purposes.

This MontGuide describes some of the common contractual forms of nonprobate transfers of property. It also discusses other nonprobate transfers, such as multiple-person and payable on death (POD) accounts that can be offered by financial institutions (banks, savings banks and credit unions). Finally, the MontGuide explains the transfer on death (TOD) registration that may be used with securities and securities accounts. Securities with TOD registrations do not go through probate.

Contractual Nonprobate Transfers

There are various contractual arrangements that Montana law recognizes as transfers taking effect at death if the specific arrangement provides for the passage of the property to a certain beneficiary. Examples of contractual arrangements (see MontGuide [199901HR](#), *Designating Beneficiaries Through Contractual Arrangements*) include but are not limited to: insurance policy, employment contract, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement account, employee benefit plan, marital property agreement and living trusts (see MontGuide [199612HR](#), *Revocable Living Trusts*). What an individual has

written in a will regarding the distribution of assets covered in these contracts does not apply, because the contract takes priority over the will.

Probate is not required for contractual property to be transferred to the beneficiaries. The court-appointed personal representative has no power or duty to administer nonprobate property. In other words, the contractual arrangement determines priority for distribution of the property.

As an example, those designated as beneficiaries in an insurance policy receive the proceeds upon the death of the insured regardless of any provisions in the will regarding the distribution of those proceeds. The only circumstance when a will determines the distribution of life insurance proceeds is in situations when the estate is named as the beneficiary. The proceeds would then be included as a part of the estate and distributed according to the provisions in the decedent's will.

Example: Joe has named his wife as the beneficiary of his \$100,000 life insurance policy. Joe later names his son as the beneficiary in his will. Joe's son will not receive the life insurance proceeds because the contractual agreement has precedence. Joe needs to change the beneficiary designation from his wife to his son to achieve his estate planning goal of passing the \$100,000 life insurance proceeds to his son.

Definitions

To clarify the Montana multiple-party law, several terms need to be defined. The term **multiple-party account** is used to include any account having more than one owner with a present interest in the account. A **party** is one who has a present right to payment (withdrawal, check-writing authority). A party has the usual rights of an owner of the account.

A **beneficiary** is one to whom account funds are payable after death of all parties. A beneficiary has no present rights associated with ownership of an account.

Pay on death (POD) designation is the naming of a beneficiary to receive an account balance on a party's death.

An **agent** is a person authorized to make account transactions for a party. An agent has no beneficiary rights to money in the account. This means that if the owner of the account dies, the agent does not receive the funds remaining in the account. An agent also does not have the rights of a party (owner) during the owner's lifetime.

Multiple-Party Accounts

Multiple-party accounts can be paid on request to one or more of two or more parties regardless of whether right of survivorship is mentioned. The law also authorizes a payable on death (POD) designation and an agency designation for both single-party and multiple-party accounts. With multiple-party accounts, one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account.

Either single- or multiple-party accounts may have an agency or POD designation. However, a POD designation in a multiple-party account without survivorship is ineffective. If there is no right of survivorship, the amount that a party is entitled immediately before death passes as part of the decedent's estate.

The contributions by the parties is key to their rights in multiple-party accounts. During lifetime, the parties own an account in proportion to their net contributions. The contributions of spouses are presumed equal. If unequal proportions are desired, the account owners should be prepared to prove their contributions by clear and convincing evidence.

The law provides a uniform single- or multiple-party account form that financial institutions may use although it is not required. The form provides a convenient checklist of features that allow the depositor to choose among the type of accounts.

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

Parties (Name One or More Parties): _____

Ownership (Select one and initial):

_____ SINGLE-PARTY ACCOUNT _____ MULTIPLE-PARTY ACCOUNT
Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent. However, any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account.

Changing terms of account (Select one and each party initial)

_____ MULTIPLE-PARTY ACCOUNT'S TERMS MAY BE CHANGED BY A SINGLE PARTY
_____ MULTIPLE-PARTY ACCOUNT'S TERMS MAY BE CHANGED ONLY BY AGREEMENT OF ALL

Rights at Death (Select one and initial):

_____ SINGLE-PARTY ACCOUNT
At death of party, ownership passes as part of party's estate.
_____ SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION
(Name one or more beneficiaries): _____

At death of party, ownership passes to POD beneficiaries.

_____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
At death of party, ownership passes to surviving parties.

_____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION.

(Name one or more beneficiaries): _____

At death of last surviving party, ownership passes to POD beneficiaries.

_____ MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

Agency (Power of Attorney) Designation

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

(To add agency designation to account, name one or more agents):

(Select one and initial) _____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES
_____ AGENCY DESIGNATION TERMINATES ON DISABILITY OF PARTIES

The consequences of various choices are summarized on the form. An example of the account form with the choices provided under Montana law is on page 2.

The decedent's net contribution in a multiple-party account without survivorship before death passes through the decedent's estate (probate).

The funds in multiple-party accounts may have to be used to pay a decedent's creditors if other estate assets are insufficient. The claims that may have to be paid out of the multiple-party account also include the homestead allowance for the surviving spouse (\$20,000), family allowances (up to a maximum of \$18,000 per year) and exempt property (\$10,000).

Proceedings to claim liability against a POD beneficiary or survivor cannot begin until the personal representative has received a written demand from the creditor, spouse or children. Claims are cut off after one year.

Multiple-party accounts are not available to the following: partnership, joint venture or other business organizations; accounts controlled by an agent or trustee for a corporation, association or charitable or civic organization; fiduciary or trust accounts (for example, custodian accounts under the Uniform Transfers to Minors Act).

Payable on Death (POD)

The pay on death (POD) designation is a more direct means of achieving the same purpose as a Totten trust account. Typically, a Totten trust reads, for example, John Jones in trust for Mary Jones. John controls the account as long as he is alive. Mary receives the funds only at the death of John. She cannot change the account designation – only John has that authority. Montana law treats any existing Totten trust accounts as POD designations.

POD beneficiaries or agents have no rights to funds on deposit during the lifetime of the parties. When a party dies, the account belongs to the surviving parties if the right of survivorship option is selected. The decedent's share is divided equally and augments the survivors' net contributions. A POD beneficiary receives funds in the account only upon death of the last surviving party.

If no POD beneficiary survives, the account passes as part of the last surviving party's estate. A POD designation cannot be made in a multiple-party account without survivorship.

Example: John, Susan, Vince and Laura have a multiple-party account that is payable on death to Doug. If John dies, his share is divided equally among Susan, Vince and Laura. Doug would not receive any of the account funds at the death of John. Doug would receive the funds only if all four parties (John, Susan, Vince, and Laura) died. John or any of the other owners (Susan, Vince and Laura) could withdraw all the funds in the account and place in his or her name only.

Transfers on Death (TOD) Registration

The Uniform Transfers on Death Security Registration Act allows the owner of securities to register the title in transfer on death (TOD) form. Mutual fund shares and accounts maintained by brokers and others to reflect a customer's holdings of securities (street accounts) are also covered. The legislation enables an issuer, transfer agent, broker or other such intermediary to transfer the securities directly to the designated transferee on the owner's death. Thus, TOD registration achieves for securities what the pay on death (POD) designation does for funds deposited at banks, savings banks and credit unions.

The transfer on death (TOD) registration, like the POD designation, gives the owner of securities who wishes to arrange for a nonprobate transfer at death an alternative to the joint tenancy form of title. Because joint tenancy registration of securities normally involves a sharing of lifetime entitlement and control, such ownership works satisfactorily only as long as the co-owners cooperate. Difficulties can arise when co-owners have disagreements or when one becomes incapacitated, is involved with a marriage dissolution or becomes insolvent.

The TOD registration has no effect on the registered owner's full control of the security during his or her lifetime. However, one party to a joint securities account cannot change the account. Transfers of securities held in more than one name require action by all owners. A TOD designation and any beneficiary interest arising under the designation ends whenever the registered asset is transferred or whenever the owner otherwise complies with the issuer's conditions for changing the title form of the investments.

Co-owners with right of survivorship, rather than as tenants in common, may be registered as owners together with a TOD beneficiary designation. With the tenancy in common method of ownership, two or more persons hold undivided interests in the same property with no right of survivorship for the surviving tenant in common. "Undivided interest" means they each own a part of the total value. Each tenant in common has the right to transfer his or her proportional share by selling it, giving it away, or by transferring it to persons of his choice at his death by a written will.

A tenancy in common is generally created by the words "to A and B" and nothing more need be added. Upon the death of tenants in common, their interest passes to their heirs by the Montana law of intestate succession or to their beneficiaries by a written will. (For further information on property title, request MontGuide [198908HR](#), *Dying Without a Will in Montana: Who Receives Your Property*, from your county Extension office.)

If the registration remains unchanged until the beneficiary survives the joint owners, the survivor of the joint owners has full control of the asset and may change the registration form as he or she deems necessary after the other's death.

Example forms of transfer on death (TOD) registration.

Sole owner, sole beneficiary: Marsha Anderson TOD
Budd Anderson

Sole owner, multiple beneficiaries: Marsha Anderson
TOD Sara and Budd Anderson

Multiple owners, sole beneficiary: Marsha Anderson and
Debbie Anderson JTWRORS, TOD Sara Anderson

Multiple owners, multiple beneficiaries: Marsha
Anderson and Debbie Anderson, JTWRORS, TOD Sara
and Budd Anderson

The letters JTWRORS mean joint tenancy with right of survivorship.

Registration with TOD beneficiary has no effect on owners' rights during lifetime. The TOD beneficiary has no rights until death of the last surviving owner and none if the owner changes the TOD registration. When the owner or owners die, their securities are re-registered in the name of the TOD beneficiary.

Ownership on death of owner

On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of the death of all owners and compliance with any applicable requirements of the registering entity, a security registered in TOD or POD form may be re-registered in the name of the beneficiary or beneficiaries who survived the death of all owners.

Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

Montana law does not require a registering entity (broker, firm, transfer agent or other person acting on behalf of the issuer) to offer or accept the TOD registration. However, many investment firms operating in the state provide this option.

Summary

This MontGuide has described some of the nonprobate transfers that are permitted under Montana law. Multiple-person and pay on death (POD) accounts that can be offered by financial institutions (banks, savings banks and credit unions) were explored.

The transfer on death (TOD) registration to be used with securities and securities accounts was highlighted. For further information about other forms of property ownership such as joint tenancy with right of survivorship and tenancy in common ask for MSU Extension MontGuide [198907HR](#), *Property Ownership*, from your county Extension office.

References

Eck, E. E. (1993). Other 1993 legislation affecting wills, estates and powers of attorney. *Tax for the General Practitioner*, Helena, MT: State Bar of Montana.

McLean, D. N. (1993). Revisions affecting intestacy and new article VI, *Tax for the General Practitioner*, Helena, MT: State Bar of Montana.

Montana Codes Annotated 72-6-111 through 72-6-311.

Acknowledgment

The Business, Estates, Trusts, Tax and Real Property Section of the State Bar of Montana has approved this MontGuide and recommends it for all Montanans.

Disclaimer

This MontGuide is not intended to serve as a complete guide for all non-probate transfers – all details could not possibly be included. Neither is the publication intended to be a substitute for legal advice. Rather, it is designed to help Montanans become better acquainted with some of the devices used in nonprobate transfers and to create an awareness of the need for estate planning. Future changes in state and federal laws cannot be predicted. Statements are based solely on those laws.



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