

Livestock Brands in Montana: An Important Component of an Estate Plan

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Misunderstandings can develop about what happens to a brand and livestock marked with the brand after the death of an owner. This MontGuide explains Montana brand ownership laws as they pertain to estate planning.

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The Rocking R brand has been in John's family for more than 50 years. In 2014, after his marriage to his second wife, Kathy, John decided to add her name as a co-owner of the Rocking R brand with the Montana Department of Livestock. On the "Assignment of Brand" form he checked the "joint tenancy" box and listed "John Jones, Kathy Jones" as owners.

Rob, John's child from his previous marriage, is actively engaged in the operation of the ranch. For this reason John wants the Rocking R brand to continue to be owned by Rob and his descendants. In 2015, John prepared a will in which he stated "I give the Rocking R brand to my son, Rob."

During the probate of John's estate, a dispute arose between Kathy and Rob. Kathy declared she is the owner of the brand and livestock bearing the brand because John indicated "joint tenancy" as the type of ownership when he added Kathy as a co-owner on the Assignment of Brand form. On the other hand, Rob believes he is the owner of the brand and the livestock bearing the brand because John's written will contained a provision specifically giving the brand to him.

What do you think? After John's death, is the Rocking R brand and livestock bearing the brand owned by Kathy, his wife? Or by Rob, his son?

Results on Page 7

History of Brands in Montana

While brands were first recorded in Montana in 1873, laws regulating brands were not passed until 1885. The Montana Department of Livestock is the agency responsible for recording over 53,000 brands in the state. The Brands Enforcement Division was established to assist with the enforcement of laws governing brands.

Recording a Brand in Montana

Under Montana law, a person may NOT brand his/her livestock unless the brand has been recorded with the Brands Enforcement Division. The recording process begins by obtaining an *Application for Brand*

Recording. A brand is issued if it passes the "conflict checking process." This process assures the brand is "distinguishable with reasonable certainty from all other marks or brands" and in an acceptable format.

After a brand is recorded, the Department of Livestock issues a *Certificate of Brand* to the owner(s). If your certificate has been lost, a replacement can be obtained by contacting the Brands Enforcement Division.

The owner(s) of a brand must file an *Application for Brand Recording* with the Montana Department of Livestock every 10 years to re-record his/her brand and pay the fee (\$200 in 2018). The next year for re-recording brands in Montana is 2021. If owners do not re-record a brand, others may apply for it.

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Upon an owner's death, who inherits the brand and who inherits the livestock bearing the brand is determined by:

- Information provided on the *Application for Brand Recording form*;
- Montana brand laws and regulations;
- Decisions issued by Montana Supreme Court interpreting and applying the brand laws/regulations, and
- The Montana Uniform Probate Code.

Montana Uniform Probate Code

The property of a Montana resident who dies without a valid will passes by intestacy statutes within the Montana Uniform Probate Code (Table 1). A deceased person's assets include a brand titled in sole ownership and all livestock bearing the brand, as well as a deceased's percentage interest in a brand owned as a tenant in common and in the livestock bearing the brand (See "Tenants in Common Recording of a Brand," page 4).

Types of ownership of a brand

Upon the death of a brand owner, a key factor in determining who receives the brand and the livestock bearing the brand depends upon how the brand is recorded:

- sole ownership;
- joint tenancy;
- tenants in common;
- in the name of a business entity; or
- in the name of an estate or trust.

Sole ownership recording of a brand

When a livestock brand is recorded in the name of one person, he/she is the sole owner. The person who receives a brand because of a provision in a written will also acquires ownership of all livestock bearing the brand, unless there is evidence proving otherwise.

As one example of evidence separating the transfer of the brand from transfer of the livestock bearing the brand, a sole owner of a brand could state in his will:

"I give my Cross Three brand to my daughter, Mary. I give all livestock bearing the Cross Three brand at the time of my death to my son, Jack."

How to transfer a brand held by the decedent. The personal representative of an estate is responsible for identifying the persons entitled to inherit the brand either under a will or, in the absence of a will, under Montana's intestacy statutes. This action occurs during probate in the district court in the county where the deceased was a resident.

TABLE 1. Property division in Montana when a person dies without a will.

Survivors	Division of Property
1. Spouse only	All to spouse
2. Spouse and descendants of both decedent* and surviving spouse only	All to spouse
3. Spouse and decedent's parents	Spouse receives first \$200,000, plus $\frac{3}{4}$ of balance. Parents receive $\frac{1}{4}$ of balance.
4. Spouse and descendants of both decedent and surviving spouse; and surviving spouse has one or more surviving descendants who are not descendants of the decedent.	Spouse receives first \$150,000 plus $\frac{1}{2}$ of the balance. Decedent's children receive $\frac{1}{2}$ of the balance. Stepchild does not inherit.
5. Spouse and descendants of decedent who are not descendants of spouse.	Spouse receives \$100,000 plus $\frac{1}{2}$ of any balance. Decedent's children receive $\frac{1}{2}$ of balance.
6. Descendants of decedent (children and grandchildren)	Divided equally. (If a child predeceases parent, the grandchildren divide equally the share their parent would have taken).
7. Father and mother	Share equally if both alive. If one survives – entire estate.
8. Brothers and sisters	Equally divided. (Sibling descendants take by representation).
9. Grandparents	$\frac{1}{2}$ to paternal grandparents. $\frac{1}{2}$ to maternal grandparents. (If not living, to their descendants by representation).
10. Other relatives	Varies according to degree of relationship
11. No relatives	Escheats (reverts) to the State of Montana

*decedent: a deceased person

If an owner of a brand and the livestock on which the brand appears *died without writing a will* and was survived by children who are entitled to inherit under the intestacy laws, they are treated equally regardless of age. If an owner made a provision in a *written will* leaving a brand and livestock equally to his/her children, age is not a factor. However, if all children agree, the distribution during the probate process could be different than “equal division of assets.”

Example A: Karen, a widow, recorded a brand *in her name only*. She wrote a will and left her estate, which includes a brand and livestock, equally to all five of her children. Rather than giving each child a one-fifth interest in each of her assets, the personal representative offered an alternative division. He proposed the two children operating the ranch receive the brand and livestock. He then suggested the three off-ranch children receive mutual funds and other assets from the estate of equal value.

The children thought this division was an ideal solution because the off-ranch children were not interested in operating the ranch. They signed a document allowing the personal representative to make the distribution accordingly.

After the persons entitled to receive the brand are determined, the personal representative lists the new owner(s) on the *Assignment of Brand* form. This form is found on the back of the original brand certificate. If the original *Brand Certificate* form cannot be found, a duplicate can be requested from the Brand Enforcement Division.

If there is more than one new owner, the personal representative would indicate the “tenants in common” form of ownership unless the new owners prefer joint tenancy. The personal representative signs the form and has his/her signature acknowledged by a notary public.

The personal representative submits the following items to the Montana Department of Livestock: 1) completed Assignment of Brand form, 2) original brand certificate; 3) a copy of the letters issued by the district court appointing the personal representative, and 4) the required fee (\$200 in 2018).

A transfer of the brand to the new brand owner(s) also transfers all livestock bearing the brand unless there is evidence otherwise. If you desire to transfer a brand without transferring ownership of the livestock bearing the brand, seek the advice of an attorney to achieve your desired results.

For small estates (\$50,000 or less in 2018) where no probate proceeding is required, the heirs submit a completed *Assignment of Brand* form with signatures of all living brand owners and all living heirs (spouse or children) of the deceased brand owner. The heirs must also each sign and submit an *Affidavit for Collection of Personal Property of the Decedent* form found online: www.montana.edu/estateplanning/documents/affidavitforcollectionofpersonalproperty.pdf.

Multiple ownership of a brand – joint tenants or tenants in common?

Several individuals can own a brand. The type of ownership (joint tenants or tenants in common) is determined by the form of ownership designated by the applicants on the Application for Brand Recording. Multiple owners should seek additional information to gain an understanding of the ownership consequences when a co-owner dies. See MSU Extension MontGuides *Dying Without a Will in Montana: Who Receives Your Property* (MT198908HR) and *Property Ownership* (MT198907HR).

Multiple owners must choose one of these two forms of ownership on the *Application for Brand Recording* by checking the box “joint tenancy” or “tenants in common.” Prior to 2014, there were different choices and instructions on the application which varied over time. Brand owners with certificates issued before February 2014 should call the Brand Enforcement Division if they have any questions about the form of multiple ownership under which their brand is registered.

According to the 2014 Department of Livestock regulations, when a brand certificate is issued, the names of each multiple owner will be stated, using either an “or” or an “and” between the names.

- A brand recorded in "x or y" designates joint tenancy with right of survivorship.
- A brand recorded in "x and y" designates tenants in common.

The Department of Livestock does not determine or indicate the percentage of ownership for each tenant in common in its records or on the brand certificate. The presumption under Montana law is each owner owns an equal percentage in the brand.

If each tenant in common does not own an equal percentage in the brand or the livestock, he/she should prepare and retain a separate document establishing

each owner's percentage of ownership. Seek the advice of a Montana attorney before applying for a brand if you intend to have unequal interests between multiple owners.

Joint ownership with right of survivorship recording of a brand

Joint ownership with right of survivorship (referred to as "joint tenancy" or "joint tenancy with right of survivorship") is a form of co-ownership in which two or more persons own the same property. Only one owner of a brand held as joint tenants with right of survivorship (or his/her agent) has to sign a bill of sale.

At the death of one of the owners, the deceased's share passes to the surviving joint owner(s). The remaining joint tenant(s) continue as joint owner(s) of the brand and livestock bearing the brand. The last surviving joint tenant owns the brand and all the livestock on which the brand appears.

Example B: The Smith siblings recorded a brand in their three names: "Amy Smith, Bill Smith, Carl Smith" and indicated "joint tenants" on the Application for Brand Recording. If Amy dies, her ownership in the brand (and livestock bearing the brand) ceases upon her death. Amy's ownership passes to the surviving joint tenants, her two brothers Bill and Carl. Each brother then owns a 50 percent interest in the brand and livestock bearing the brand.

As a result of the brand being held in joint tenancy with right of survivorship with her brothers, Amy's ownership in the brand and in the livestock bearing the brand DOES NOT pass to her children. Even if Amy wrote a will leaving her ownership in the joint tenancy brand and livestock to her two sons, the will does not take priority over the joint tenancy designation on the application.

Because Amy's brothers, Bill and Carl, are the surviving joint tenants, they continue as the owners of the brand and livestock. If Bill dies, his brother Carl becomes the sole owner of the brand and livestock because he would be the only surviving joint tenant. Upon Carl's death the brand is distributed according to his written will. Or, if Carl dies without a written will, the brand is distributed according to Montana's intestacy statutes (Table 1, page 2).

How to transfer a brand held in joint tenancy with right of survivorship at death of a joint owner.

Assets held by a deceased person as a joint tenancy with right of survivorship are NOT subject to probate or to distribution under the deceased's will or Montana's intestacy statutes. The surviving joint tenant(s) automatically becomes the owner(s) of the brand and the livestock on which the brand appears.

To remove the name of a deceased joint tenant from the brand, the surviving joint tenant(s) completes the *Assignment of Brand* form on the back of the original brand certificate and submits it to the Brand Enforcement Division. The "joint tenancy" form of ownership would be indicated UNLESS the surviving owners decide to change their form of ownership from a joint tenancy to tenants in common.

The signatures of all surviving joint tenant brand owners are required on the form and they must be acknowledged by a notary public. A copy of the death certificate of the deceased joint tenant and the required fee (\$200 in 2018) should also be enclosed.

After the paperwork is filed, a new brand certificate is issued in the name(s) of the surviving joint tenant(s). If the surviving joint tenants designated a "joint tenancy" form of ownership, the word "or" would appear between each owner's name. Currently, the Brands Enforcement Division does not use the terminology "joint tenancy" or "joint tenants with rights of survivorship" on the brand certificate itself, but relies upon its regulation interpreting the use of "or" between names as joint tenancy ownership.

Tenants in common recording of a brand

Tenants in common is another form of co-ownership recognized in Montana. To select this option, multiple owners check the "tenants in common" box on the *Application for Brand Recording* form. All owners of a brand recorded as tenants in common (or their designated agents) must sign each bill of sale for livestock.

If two or more persons own a brand as tenants in common, there is no automatic right of survivorship for the remaining tenant(s) in common to receive the deceased's interest. Instead, each co-tenant may give away his/her undivided interest while living or as an inheritance under a written will to another party.

Example C: The Smith siblings recorded a brand in their three names: "Amy Smith, Bill Smith, Carl Smith" and indicated "tenants in common"

on the *Application for Brand Recording*. In her will Amy left her one-third interest in the brand and livestock to her two sons. After the probate of Amy's estate, her sons would split Amy's one-third interest. Each son would own a one-sixth interest. Amy's two brothers, Bill and Carl, each own a one-third interest in the brand and livestock bearing the brand.

Montana law assumes each tenant in common owns an equal interest in the brand and the livestock on which it appears. However, the concept of "equal shares" can change if another tenant in common presents evidence there was unequal contribution by the co-tenants.

Example D: Amy, a widow with two children, died without a will. Amy and her two brothers, Bill and Carl, had recorded a brand as tenants in common. There is a presumption each of them owned a one-third interest in the brand and the livestock bearing the brand.

However, during the probate of Amy's estate, her brother, Bill, provided proof of his contribution of 50 percent of the purchase price of the cattle bearing the brand. He further proved Amy and Carl had only contributed 25 percent apiece. The district judge ruled Bill's interest was 50 percent, Amy's interest was 25 percent, and Carl's interest was 25 percent. Thus, Amy's two children, Donnie and Ronnie, split Amy's 25 percent interest. Each child inherited a 12.5 percent interest in the brand and livestock.

How to transfer a brand at the death of a tenant in common.

If a brand is recorded by several persons as tenants in common, the personal representative of the estate of a deceased co-owner first identifies the amount of interest the deceased had in the brand (for example: one-fourth, one-third, one-half, three-fourths). Next, the personal representative identifies persons entitled to receive the deceased's interest in the brand under a written will or, if there is no will, under Montana's intestacy statutes.

After the persons entitled to receive the brand are determined, the personal representative completes the *Assignment of Brand* form, which can be found on the back of the original brand certificate. Unless all of the co-tenants decide to change their form of ownership, the personal representative would designate "tenants in common." The other co-tenants who survived the

decedent must also sign the form. All signatures must be acknowledged by a notary public.

The brand certificate and completed Assignment of Brand form is submitted to the Department of Livestock along with a copy of the personal representative's letters of appointment issued by the district court and the required fee (\$200 in 2018).

After the paperwork is filed with the Department of Livestock, a new brand certificate is issued in the names of the new owners and the other co-tenants with "and" between each owner's names. The Department of Livestock does not keep track of ownership percentages. If ownership is not equal after the transfer of a deceased co-tenant's interest, co-owners should prepare and retain a separate document (signed by each owner) indicating each owner's percentage interest in the brand and livestock.

Business entity recording of a brand

An entity, including a corporation, limited liability company, limited partnership, limited liability partnership, and limited liability limited partnership, association, or trust, may apply for a brand.

However, corporations, limited liability companies, limited partnerships, limited liability partnerships, and limited liability limited partnerships must be registered with the Montana Secretary of State before applying for a brand. A trust or general partnership must file an assumed business name with the Montana Secretary of State before applying for a brand.

The registration process with the Secretary of State must be completed before a brand can be recorded in the entity's name with the Department of Livestock. When submitting the *Application for Brand Recording*, a list of all persons authorized to sign bills of sale on behalf of the entity when selling livestock must be provided.

How to transfer a brand owned by a business entity or trust.

If a brand is owned by a corporation, limited liability company, limited partnership, or limited liability limited partnership, the death of an owner of the business entity does not affect the ownership of the brand. The entity continues to own the brand and presumptively, the livestock bearing the brand. The brand does not need to be transferred.

The deceased's interest in the entity (such as shares of stock in a corporation or a membership interest in a limited liability company) is distributed under his/her

will to the named individual(s), who acquire an interest in the entity (and not in the brand itself). If the deceased did not have a will, the interest passes to his/her heirs under Montana's intestacy statutes (Table 1, page 2).

If a partner of a general partnership or limited liability partnership who owns a brand dies, what happens to the brand depends upon the terms of the partnership agreement (or, in the absence of a partnership agreement, by the provisions of the Montana Uniform Partnership Act). In some instances, the partnership may dissolve, which would require a brand transfer. In other instances, the partnership remains intact and the brand continues to be owned by the general partnership or limited liability partnership.

If the deceased was named in the business entity's ***Application for Brand Recording*** as an authorized signer for the entity, the business entity should notify the Montana Department of Livestock about the death. The business entity should provide the full names and addresses of any new persons who are authorized to sign a bill of sale.

Upon the death of a trustee or a beneficiary of a trust that owns a brand, the transfer to others will be determined by directions contained in the trust document. For this reason the advice of an attorney should be sought to determine the steps to be taken.

Changes to Over-the-Counter Service

Beginning March 1st, 2018, new brands and brand transfers will not be processed over-the-counter. Historically, customers have been able to walk into the Helena Brand Office and obtain a brand in-person. Due to a legislative audit, MDOL is now required to process all applications in the order in which they are received, meaning that walk-ins cannot be processed ahead of mailed applications or transfers. Customers may still drop off an application or transfer paperwork at the Helena Brand Office, but will no longer be able to walk out of the office with their new certificate.

What about you?

As an owner of a brand, be sure you know the answers to these questions:

1. Who are the owners of your brands? You may want to review your brand certificate(s) to be sure the brand is recorded like you want.
2. If your brand is owned by more than one person, are the co-owners joint tenants with right of survivorship or tenants in common?

If an "or" separates the names of owners on the brand certificate, the brand generally is owned as joint tenants with rights of survivorship unless otherwise expressly indicated.

If an "and" separates the names of owners on the brand certificate, the brand generally is owned as tenants in common unless otherwise expressly indicated, with a presumption each co-owner owns an equal interest.

If your brand certificate is an old one using "and/or," the advice of an attorney may clarify ownership.

3. Whom do you want to own the brand(s) upon your death?
4. When you transfer a brand by gift or will, do you want to distinguish between ownership of the brand and ownership of the livestock bearing the brand? If so, you will need to make your intent clear, and should seek the advice of an attorney.

Determine whether the current ownership of your brand is consistent with your estate planning objectives. If not, correct the inconsistency between the current recording of the brand and your long-term goals by recording the brand appropriately. Also, seek legal advice about the appropriate legal documents needed for your specific estate planning situation.

Summary

The focus of this MontGuide was to examine brand ownership from an estate planning perspective. What happens to a brand upon death of an owner depends on information provided on the Application for Brand Recording form; Montana brand laws; the Montana Uniform Probate Code; and precedent cases established by the Montana Supreme Court.

Brand owners are encouraged to be sure they know exactly how their brand is recorded with the Department of Livestock. An attorney can advise and assist a person in drafting a will to assure the brand and the livestock on which it appears pass to the persons he/she wants upon death.

Read on page 7.

Who receives the brand and cattle at John's death – Kathy, his wife, or Rob, his son?

Who receives the brand and cattle at John's death – Kathy, his wife, or Rob, his son?

This MontGuide began with a scenario about who owns John's Rocking R brand and livestock bearing the brand at his death, Kathy, his wife; or Rob, his son? Kathy and Rob each believed they were the "rightful" owners and hired attorneys to defend their positions during the probate proceeding in the district court.

Based on the Application for Brand Recording form on which John designated "joint tenancy" as the form of ownership between himself and Kathy, the judge ruled Kathy owned the brand and the livestock on which it appears. John's decision to add his spouse as a joint tenant had unintended consequences resulting in a significant and costly family disagreement between his wife and his son.

Other motives, such as treating children equally by naming all of them as co-owners of a brand may have similar unintended consequences depending on whether the brand is owned as a joint tenancy with right of survivorship or as tenants in common.

Preventative measures

If John "could start over," there are four possible preventative measures he could have taken to avoid an expensive court battle between his wife and his son.

1. Consider a premarital agreement.

Before John remarried, he and Kathy could have explored whether a premarital agreement was appropriate in their situation. This legal document could have provided them with a discussion opportunity to help them resolve the challenging issues of money and property ownership, as well as prior and future financial commitments. This discussion could have been particularly important since John had an adult child from a prior marriage whom he wanted to inherit the brand and livestock. See the MSU Extension MontGuide *Premarital Agreement Contracts in Montana: Financial and Legal Aspects* ([MT201212HR](#)).

2. Confer with professional estate planning advisors.

After marrying Kathy, John could have consulted with his professional estate planning advisors. He could have shared his estate planning goals and sought legal advice about tools for distributing his estate while providing for both his wife and son.

Of particular importance to John were the brand that had been in his family for over 50 years and the livestock bearing the brand. His advisors could have helped John take steps to assure his son would receive the brand and livestock.

3. Consider recording the brand in joint tenancy with his son, Rob.

Either before or after marrying Kathy, John could have re-recorded the brand in joint tenancy with his son, Rob. Although this action would have assured Rob receives 100 percent of the brand and the livestock on which it appeared at John's death, it also gives Rob an immediate 50 percent interest in the brand and livestock (and their sales proceeds).

Other concerns would include gift and income tax issues. John should also realize the potential consequences if Rob would seek a divorce. Rob would have to report to the court the value of half of the brand and livestock during the proceedings.

Also, Rob's creditors could place a lien on John's brand and cattle. Adding Rob as a joint tenant during John's lifetime would only be an appropriate choice if John is ready to make Rob a co-owner of the livestock and has considered the potential consequences to his business.

4. Kept brand in sole ownership.

After his marriage to Kathy, John could have kept the brand in his name only. He could have prepared a will in which he gave the brand and livestock to his son, Rob. John could have provided for Kathy out of other assets in the estate such as life insurance and investments.

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- Montana State University Extension
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Further Information

- Montana Department of Livestock:
Brands Enforcement Division
P.O. Box 202001
Helena, MT 59620
Email: brands@mt.gov
(406) 444-2045
<http://liv.mt.gov/Brands-Enforcement>

- Montana Department of Livestock Forms:
Application for a Brand Recording:
http://liv.mt.gov/Portals/146/be/forms/BE-3_New_Brand_App_09-01-2017.pdf
Available brands:
<http://liv.mt.gov/Brands-Enforcement/Available-Brands>
Changing form of ownership Instruction:
<http://liv.mt.gov/Brands-Enforcement/Livestock-Brands#transfer>
- Secretary of State:
<http://sos.mt.gov/business/forms/index>
- Montana State University Extension:
41 MontGuides explore a variety of estate planning issues. www.montana.edu/estateplanning/eppublications.html
- An interactive website illustrating distribution of a deceased person's property in Montana if there is no written will can be found at the Montana State University Extension website: www.montana.edu/dyingwithoutawill

Montanans with “slow or no” internet service may order a CD containing the same information:

Extension Economics
P.O. Box 172800
Bozeman, Montana 59717
Email: goetting@montana.edu



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