

# ESTATE PLANNING



## ESTATE PLANNING

Who will get my assets when I die? How will these assets be distributed? Do I have any control over how these assets are distributed? What issues and concerns must I think about prior to contacting an attorney in preparation for preparing my will? These are common and important questions that all Montanans have in their estate planning process. This section of the manual is intended to assist you through this process.

Two planning forms are included in this guide. They are entitled "Checklist for Estate Planning" and "Estate Planning Data Sheet". They are intended to assist you with estate planning. The checklists are common questions that will be asked by your attorney. They will be very helpful if you have completed them prior to meeting with your attorney. You will have the benefit of time and consideration in making some of these decisions.

Estate planning is a complicated and a personal process. It should not be delayed. It is also very important that you consult with a licensed attorney. Estate law and will preparation requires professional training. Your attorney will explain several options available to you in your estate planning.

You will see the term "personal representative." A personal representative is the administrator of your estate (previously known as an executor or executrix of the estate). They do not have any power until you have passed away. A personal representative position requires appointment by the court.

Also included is a "Sample Will." This is only a sample and should be used as a reference for your estate planning needs. **We do not recommend you draft your own will.**

Will preparation is relatively inexpensive for the typical middle-income Montanan. Feel free to call or visit several attorneys and request information on their fee charges for will preparation. The general rule of thumb is, the more complex your family situation and the more assets you have to distribute when you die, the greater the cost in the preparation of the will.

Montana recognizes holographic wills, which are written documents, prepared in your own handwriting and signed and dated by you. You have the ability to declare your intent through the use of a holographic will.

Finally, we have provided a copy of the Montana "Declaration of Homestead Exemption". Montana law allows you to protect part of the equity in the home you live in. You must reside in the home. A detailed explanation of the instructions and recording of a Homestead Exemption Declaration is found on the reverse side of the declaration form.

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# BENEFICIARY DEEDS IN MONTANA

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By  
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**THE 2007 MONTANA LEGISLATURE AUTHORIZED** beneficiary deeds as a way for people to transfer at death their real property (located in Montana) to one or more beneficiaries without probate. Real property is land, including whatever is erected, growing on or affixed to it, such as homes, garages, or other buildings, fences, water systems (unless removable), mineral deposits and standing uncut timber.

This MontGuide answers questions about the new law (*Montana Code Annotated Section 72-6-121*) that applies to owners who have signed and recorded a beneficiary deed with the clerk and recorder in the Montana county where the real property is located and who pass away after October 1, 2007. Statutory language for a beneficiary deed and a beneficiary deed revocation are also provided in this MontGuide.

## **What is a beneficiary deed?**

A *beneficiary deed* is one in which an owner conveys an interest in Montana real property to a *grantee beneficiary* effective upon the owner's death. In other words, real property is transferred from the deceased person to the person(s) listed on the deed. The deed must specifically state that it is effective only upon the death of the owner. The deed must also have a complete legal description of the Montana property that the owner wishes to convey at death. An owner should use the legal description for the real property from a previously recorded deed--*not* the description appearing on the property tax bill that is sent annually to the owner by the county treasurer.

A beneficiary deed must be recorded before the death of the owner (or, for joint tenancy property, before the death of the last surviving owner) with the clerk and recorder in the Montana county where the property is located. All beneficiary deeds must have the post office address of the grantee listed on it before the clerk and

recorder's office can record it. The owner must also prepare a Montana realty transfer certificate before the clerk and recorder will record a beneficiary deed. A Montana Realty Transfer Certificate is available at any Montana county clerk and recorder's office.

The cost of filing a beneficiary deed is \$7 per page if a standard document form is used. There are certain requirements for a form to be considered "standard" in Montana. If these specific requirements are not met, the document is considered as "non-standard" and the filing fee is \$11 per page for the first five (5) pages--\$7 for each page thereafter. The requirements for a standard document are listed in the Montana Codes Annotated: <http://leg.mt.gov/bills/mca/15/7/15-7-305.htm> or contact your local clerk and recorder for a copy of the requirements.

### **Who can be a grantee beneficiary?**

The term *grantee beneficiary* means the party to whom an owner grants an interest in the Montana real property that is described on the beneficiary deed. *Grantee beneficiaries* may be a variety of parties, for example: spouse, children, relatives, friends, charitable organizations, trustee of a trust, or a corporation.

An owner is not required to have the signature, consent, or agreement of the *grantee beneficiary*. Nor is the owner required to give the *grantee beneficiary* notice that a beneficiary deed has been recorded. The *grantee beneficiary* also has no ownership rights in the Montana real property described on the beneficiary deed until the owner dies.

### **Can there be more than one grantee beneficiary?**

An owner may designate more than one grantee beneficiary for his or her Montana real property. However, the owner should specify in the beneficiary deed whether the grantee beneficiaries will own the property (after the death of the owner) as tenants in common or as joint tenants with right of survivorship. For further information regarding these two forms of property ownership, read Montana State University (MSU) Extension MontGuide *Property Ownership* ([MT198907HR](#)). Request a copy from your local Extension office.

Because the language for a beneficiary deed provided by the Montana statute does not specify the type of ownership when there is more than one grantee beneficiary, an owner should consult an attorney for advice about which form of ownership would be best to accomplish his or her estate planning goals.

## **What happens if a grantee beneficiary dies before the owner of the real property?**

If an owner designates only one grantee beneficiary and is concerned about what happens to the property if the grantee beneficiary dies before the owner, he or she may designate one of the several alternatives listed below for the distribution of the property listed on the beneficiary deed.

1. The owner may specify that the beneficiary deed becomes void upon the death of the grantee beneficiary.
2. The owner may specify that the Montana real property becomes part of the estate of the deceased grantee beneficiary. Under this condition, when the owner(s) die, the real property is distributed according to the will of the deceased grantee beneficiary or, if the deceased grantee beneficiary had no will, to the heirs of the deceased grantee beneficiary under Montana intestate statutes. This alternative may present complications if several years lapse between the death of the grantee beneficiary and death of the owner(s). An attorney can provide information about potential consequences of using this alternative for your specific circumstances.
3. The owner may specify a *successor grantee beneficiary*, as discussed in more detail in the next section.

## **Who can be a successor grantee beneficiary?**

An owner of Montana real property can also designate a *successor grantee beneficiary* in case the grantee beneficiary dies before the owner. If an owner designates a *successor grantee beneficiary*, the beneficiary deed should state the condition under which the successor inherits.

**Example:** Mark owns real property in Montana. Mark recorded a beneficiary deed to be effective upon his death, naming his son, Evan, as his grantee beneficiary. Mark also designated his grandson, Luke, as the *successor grantee beneficiary* in case Evan dies before Mark. Mark's attorney recommended the following language in the beneficiary deed: "If Evan dies before me, I name Luke as the successor grantee beneficiary effective upon my death, should he survive Evan and me. If Luke does not survive Evan and me, this deed shall be void."

If an owner names more than one grantee beneficiary and specifies that they are to

become owners as joint tenants with right of survivorship, the surviving joint grantee beneficiaries inherit the real property if one of the joint grantee beneficiaries dies before the owner. An owner should specify what he or she wants to happen to the property if all of the joint tenant grantee beneficiaries die before the owner.

**Example:** Patricia recorded a beneficiary deed for her Montana land to be effective upon her death, naming her sisters, Fay and Ellen, as grantee beneficiaries with the title to be held as joint tenants with right of survivorship. If Fay dies before Patricia, Ellen will become the sole grantee beneficiary. Patricia's beneficiary deed should specify what happens if neither Fay nor Ellen survive Patricia. Therefore, Patricia's attorney recommended the following language in the beneficiary deed: "If both Fay and Ellen predecease me, the Montana 4-H Foundation will become the successor grantee beneficiary effective upon my death."

If an owner names more than one grantee beneficiary and does not specify that they own the property as joint tenants with right of survivorship, the grantee beneficiaries inherit as tenants in common. The beneficiary deed should specify what happens to the interest of a deceased tenant in common grantee beneficiary if he or she fails to survive the owner.

**Example:** Edna owns real property in Montana and has recorded a beneficiary deed to be effective upon Edna's death. She named her two sisters, Wendy and Patsy, grantee beneficiaries with the title to be held as tenants in common. Edna's beneficiary deed should specify what happens to either Wendy or Patsy's interests if they do not survive Edna. Therefore Edna's attorney recommended the following language in the beneficiary deed: "In the event that either Wendy or Patsy does not survive me, her one-half interest in the real property shall be distributed to the Montana State University Foundation effective upon my death."

If Edna had named Wendy and Patsy grantee beneficiaries as joint tenants with right of survivorship, upon the death of either Wendy or Patsy, the survivor would inherit the entire property. However, Edna could name a successor grantee beneficiary if both Wendy and Patsy predecease her. To accomplish this goal

Edna's attorney suggested the following statement: "I convey the property

described below to the grantee beneficiaries, Wendy and Patsy, as joint tenants with right of survivorship, effective upon my death. If both Wendy and Patsy fail to survive me, the property shall be distributed to the University of Montana Foundation effective upon my death.”

The advice of an attorney should be sought when drafting a beneficiary deed that lists more than one grantee beneficiary to assure that the owner has considered the forms of property ownership and decided what he or she wants to happen to the property if one of the beneficiaries dies before the owner.

### **What happens if more than one person owns the real property?**

Whether a grantee beneficiary receives the property as the result of a beneficiary deed depends upon how the owners hold title to the real property. Do the owners have the property titled as joint tenants with right of survivorship or as tenants in common?

When the Montana real property is titled by the owners as *joint tenants with right of survivorship*, the right of the surviving joint tenant takes priority over the right of the grantee beneficiary.

**Example:** Doug and his wife, Laura, own real property in Montana as joint tenants with right of survivorship. Doug signed and recorded a beneficiary deed naming their two daughters as grantee beneficiaries to be effective upon his death. If Doug dies before Laura, their daughters will not inherit the property upon his death because the existing joint tenancy contract with his wife, Laura, takes priority. However, if Laura dies before Doug, and Doug dies six days later, the beneficiary deed signed by Doug naming their two daughters as grantee beneficiaries will be effective, and their two daughters will inherit the property upon Doug’s death.

Ownership of Montana real property that is held as *joint tenancy with right of survivorship* is not affected by the recording of a beneficiary deed unless the deed is signed by all of the owners or signed by one owner, who is the last one to die.

**Example:** Donna, Debbie and Kristi own real property in Montana as joint tenants with right of survivorship. Donna signed and recorded a beneficiary



deed without obtaining the signatures of the other two joint owners, Debbie and Kristi. If Donna dies before Debbie and Kristi, the grantee beneficiary that Donna designated would not receive the Montana real property because all joint owners did not sign the beneficiary deed. However, if Donna was the last survivor, the grantee beneficiary she named would inherit the Montana real property upon Donna's death.

If all of the owners of real property titled as joint tenants with right of survivorship sign a beneficiary deed designating a grantee beneficiary, the transfer to the grantee beneficiary does not become effective until the death of the last surviving owner. However, the deed should specifically state that the transfer to the grantee beneficiary becomes effective upon the death of the last surviving owner.

**Example:** Phyllis and Bob own real property in Montana as joint tenants with right of survivorship. They both signed and recorded a beneficiary deed naming their son as the grantee beneficiary to be effective on the death of the last surviving owner. This means their son will not receive the Montana real property until after both Phyllis and Bob die.

If the last surviving joint owner of real property held as *joint tenancy with right of survivorship* had not signed the beneficiary deed, the deed becomes void.

**Example:** Lynn and Eric own real property in Montana as joint tenants with right of survivorship. Lynn signed and recorded a beneficiary deed naming her daughter from a prior marriage as the grantee beneficiary. Because Eric did not sign the beneficiary deed, it becomes void if Lynn dies before Eric. Lynn's daughter, the grantee beneficiary, would not receive the property upon Lynn's death. If Lynn and Eric want to assure that Lynn's daughter receives their Montana real property as a result of the beneficiary deed, Eric should also sign the beneficiary deed before it is recorded with the clerk and recorder in the county where the land is located.

If the owners have their real property titled as *tenants in common* rather than as joint tenants with right of survivorship, each owner may execute a beneficiary deed to distribute his or her interest in the property upon death. The beneficiary deed does not affect the interest that is held by the other tenant in common co-owner(s).

**Example:** Carol and Amy own real property in Montana as tenants in common. Carol recorded a beneficiary deed for her one-half interest in the real property, naming her daughter as the grantee beneficiary to be effective upon Carol's death. Amy did not execute a beneficiary deed for her one-half interest in the real property. Upon Carol's death, her one-half interest in the property as a tenant in common becomes owned by her daughter, her grantee beneficiary. Amy will continue to own the other one-half interest in the property. Upon Amy's death her one-half interest in the property will be distributed according to her will or Montana intestate statutes if she doesn't have a will

### **What wording on a beneficiary deed makes it legal?**

The wording that was included in the Montana statute for a beneficiary deed is provided on Chapter II – 1-2.

### **How is a beneficiary deed revoked?**

A beneficiary deed may be revoked at any time by the owner, or if there is more than one owner, by the owners who have signed the beneficiary deed. To be effective, the revocation must be signed and recorded before the death of the owner(s) in the office of the Montana clerk and recorder of the county in which the real property is located. The cost of filing a revocation ranges from \$7 to \$11 per page.

If the real property is owned as joint tenants with right of survivorship and the beneficiary deed was signed by all joint owners, a revocation is not effective unless it is signed by all of the joint owners, or signed by one owner, when that owner is last to die.

**Example:** Michael and Kris owned real property in Montana as joint tenants with right of survivorship. Both signed and recorded a beneficiary deed naming Michael's sister as the grantee beneficiary to be effective upon the death of both Michael and Kris. Several years later Michael signed and recorded a revocation. Michael died before Kris as a result of an automobile accident. The revocation was not effective because Kris had not signed the revocation. However, after Michael's death Kris, as the surviving joint owner, could record a revocation or record a new beneficiary deed naming the grantee beneficiary she prefers.

The filing and recording of a new beneficiary deed by the same owner for the same property will also revoke a previously filed and recorded beneficiary deed. The wording that was included in the Montana statute for the revocation of a beneficiary deed is provided on Chapter II 1-2.

### **What is required to re-title the property into the name of the grantee beneficiary upon the owner's death?**

To re-title the real property in the name of the grantee beneficiary upon the owner's death, proof must be provided that the owner has died. A notarized affidavit certifying the death of the owner signed by the grantee beneficiary or beneficiaries is an acceptable document. Sample wording for an affidavit of death is provided on Chapter II - 16. A grantee beneficiary should consult an attorney if he or she has any questions about verifying the death of the owner(s) of Montana real property.

The grantee beneficiaries can take title to the real property with a beneficiary deed without going through the probate process by recording the affidavit with the county clerk and recorder where the real property is located. If there is more than one grantee beneficiary, they will take title as tenants in common, unless the beneficiary deed has specified that the grantee beneficiaries are to become owners as joint tenants with right of survivorship.

### **What if the real property listed on the beneficiary deed has an encumbrance against it?**

Montana real property that is conveyed in a beneficiary deed to a grantee beneficiary is subject to any *encumbrances* arising against the property during the owner's lifetime. *Encumbrances* against real property include for example: mortgages; deeds of trust; liens for unpaid taxes or failure to pay for labor, materials, equipment or services on the property; contracts; assignments; and any other legal conveyance document recognized by the state of Montana. This would include a marriage dissolution settlement or order.

Any Medicaid payments to an owner may also become an *encumbrance* against the Montana real property in certain situations. If the owner was a recipient of Medicaid and had conveyed an interest in Montana real property by means of a beneficiary deed, the Montana Department of Public Health and Human Services may assert a claim against the real property. The claim typically would be for the

dollar amount of Medicaid payments that were provided to the owner before his or her death, up to the value of the Montana real property. For further information about Medicaid read MSU Extension MontGuide *Medicaid and Long-Term Care Costs* ([MT199511HR](#)). Request a copy from your local Extension office.

If there are insufficient assets in the owner's estate to pay valid creditors' claims, the creditors may seek payment from the value of the Montana real property that was conveyed by a beneficiary deed. The personal representative is in charge of making sure that all valid creditors' claims are paid, if necessary, from the beneficiary deed real property.

### **What is the effect of a will on a beneficiary deed?**

After a beneficiary deed has been signed and recorded with the Montana clerk and recorder in the county where the real property is located, the deed cannot be revoked by a provision in the owner's will. A beneficiary deed may only be revoked by recording a revocation in the manner described previously or by recording a new beneficiary deed.

**Example:** Gary signed and recorded a beneficiary deed naming his daughter as grantee beneficiary of real property he owned in Montana to be effective upon his death. Gary later wrote a will leaving the same Montana real property to his son. Upon Gary's death, the provision in the will leaving the real property to his son is not valid. The real property would pass to Gary's daughter under the terms of the beneficiary deed.

### **What is the effect of a trust on a beneficiary deed?**

If an owner's real property has not been re-titled in the name of the owner's revocable living trust, a beneficiary deed may be executed naming the trustee of the revocable trust as the grantee beneficiary. The terms of the trust document control how the property will be distributed upon the death of the person who established the trust.

### **What rights do the surviving spouse and minor children have in the real property if they were not named as grantee beneficiaries on a beneficiary deed?**

Montana law provides certain allowances for the surviving spouse and minor or dependent children of a deceased property owner. If assets of the estate are insufficient to provide for the Montana statutory allowances for the spouse's

elective share (which increases in percentage from three to 50 percent based on the length of the marriage); exempt property (\$10,000); family allowance (\$18,000); homestead allowance (\$20,000); the Montana real property listed in a beneficiary deed can be claimed for the statutory amounts. For further information about rights of the surviving spouse and minor or dependent children read MSU Extension MontGuide *Probate* ([MT199006HR](#)). Request a copy from your local Extension office.

The \$20,000 *homestead allowance* is different from the Montana *homestead declaration* that protects up to \$250,000 in the value of the home while the owner is living against most creditors' claims. The personal representative for the estate is in charge of making sure the statutory allowance claims are paid to the spouse and minor or dependent children.

### **What if there are water rights on the real property?**

If there are water rights associated with the Montana real property that is subject to the beneficiary deed, the owner should prepare and sign a DNRC Water Right Ownership (Form 608). Store the form in a safe place with your beneficiary deed. The form should be filed after the death of the owner by the grantee beneficiary with the Department of Natural Resources. The certificate is available at: [www.mt.gov/revenue/formsandresources/forms/488RTC.pdf](http://www.mt.gov/revenue/formsandresources/forms/488RTC.pdf) . Scroll down to form 608.

### **What if more than one beneficiary deed is recorded?**

Beneficiary deeds can be revoked at any time by the owner, so the latest recorded beneficiary deed is the controlling document. In other words, if owners change their minds about whom they want to receive the real property after they die, one recorded beneficiary deed can be replaced with a later recorded document naming different beneficiaries. The recording of a new beneficiary deed revokes any beneficiary deed dated earlier.

### **Can a beneficiary deed be used to transfer personal property after death?**

No. A beneficiary deed is designed to transfer real property not personal property. However, certain *personal properties* of a Montana resident can also be transferred at death by other methods without probate by designating beneficiaries on contracts.

For example, a person can list one or more beneficiaries on a life insurance policy; make a payable on death (POD) beneficiary designation on accounts at financial institutions, or sign a transfer on death (TOD) beneficiary registration for stocks, bonds, and mutual funds. For further information about PODs and TODs read MSU Extension MontGuide *Non-Probate Transfers* ([MT199509HR](#)). Request a copy from your local Extension office.

## **Summary**

After October 1, 2007 a person can transfer his or her Montana real property at death to one or more parties by signing and recording a beneficiary deed with the clerk and recorder in the county where the real property is located. The beneficiary deed must contain a complete legal description of the Montana real property. All beneficiary deeds must have the post office address of the grantee listed on it before the clerk and recorder's office can record it. The owner also must prepare a Montana Realty Transfer Certificate. After recording, the beneficiary deed should be stored in a safe place such as a safe deposit box or a secure place in the grantor's home.

## **References**

2007 Montana Codes Annotated Section 72 - 6 - 121;

<http://leg.mt.gov/bills/mca/72/6/72-6-121.htm>

2007 Montana Estate Planning Legislative Update; Kristen Juras, University of Montana School of Law, September 1, 2007.

## **Disclaimer**

This MontGuide is not a substitute for legal advice. Rather it is designed to inform persons about the provisions of the Montana beneficiary deed statute. Future changes this law cannot be predicted and statements in the MontGuide are based solely on the statutes in force on the date of publication.



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### REVOCATION OF BENEFICIARY DEED

The undersigned hereby revokes the beneficiary deed recorded on \_\_\_\_\_, \_\_\_\_\_ in book \_\_\_\_\_, page \_\_\_\_\_, or instrument number \_\_\_\_\_, records of \_\_\_\_\_ County, Montana, concerning the following described real Property: (Legal description from previously recorded deed)

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

STATE OF MONTANA            )  
  : ss  
COUNTY OF \_\_\_\_\_        )

THIS instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary)

(NOTARY SEAL)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA

\_\_\_\_\_  
Residing at:

\_\_\_\_\_  
My Commission Expires:

\_\_\_\_\_



Return to:

**AFFIDAVIT OF DEATH**

I \_\_\_\_\_, being first duly sworn, upon oath, depose and say the following:

1. \_\_\_\_\_ signed and recorded a beneficiary deed with the intent to convey the following property located in \_\_\_\_\_ county, Montana described as follows:
  
2. The beneficiary deed was recorded in \_\_\_\_\_ County on \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_. Book \_\_\_\_\_, Page \_\_\_\_\_, Instrument Number\_\_\_\_\_.
3. The grantor died on the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_. At the time of death, the grantor had not revoked the above described beneficiary deed.
4. The following person(s) is/are the person(s) named as the grantee beneficiary(ies) under the beneficiary deed described above, and are entitled to succeed to the grantor's interest in the real property described above as a result of the grantor's death:

Grantee Beneficiary Name:\_\_\_\_\_

Mailing Address:\_\_\_\_\_

Dated this \_\_\_\_ date of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Affiant

STATE OF MONTANA )

:ss.

County of \_\_\_\_\_ )

THIS instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Printed Name)

NOTARY PUBLIC FOR THE STATE OF MONTANA

Residing at:

My Commission Expires:

# CHECKLIST FOR ESTATE PLANNING

## FORM ONE

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Home Telephone: \_\_\_\_\_ Work Telephone: \_\_\_\_\_

### Information Necessary in the Preparation of a Last Will And Testament

1. Full Legal Name
2. Date of Birth
3. Place of Residence, Address, City, State
4. Social Security Number
5. Present Marital Status
6. Previous Marriage(s)

A. Divorced: Yes \_\_\_\_ No \_\_\_\_

7. Children: Full Legal Names, Date of Birth, Current Residence

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Children of Previous Marriage:

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Children born out of wedlock:

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Adopted Children:

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8. Grandchildren: Full Legal Names, Date of Birth, Current Residence

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9. Spouse: Full Legal Name, Date of Birth, Current Residence

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10. Married or common law: \_\_\_\_\_

11. Do you now have a will? \_\_\_\_\_ Where is it kept? \_\_\_\_\_

Do you have a codicil (addendum/modification) to the will? \_\_\_\_\_

12. Real Property: Describe in general. \_\_\_\_\_

Is the property in Joint Tenancy or Tenancy in common? \_\_\_\_\_

13. Savings Account: \_\_\_\_\_ Location: \_\_\_\_\_

Certificate of Deposits: \_\_\_\_\_ Location: \_\_\_\_\_

Stocks: \_\_\_\_\_

Bonds: \_\_\_\_\_

IRA's: \_\_\_\_\_

Other Assets: \_\_\_\_\_

14. Is the total value of the estate \$500,000 to \$600,000? Yes \_\_\_\_\_ No \_\_\_\_\_

15. Present health of testator (person signing the will)?

\_\_\_\_\_  
\_\_\_\_\_

16. Present health of testator's spouse? \_\_\_\_\_

\_\_\_\_\_

17. Is this a potential nursing home client who may have Medicaid eligibility issues? \_\_\_\_\_

Transfers of Assets in the last five (5) years? Yes \_\_\_\_\_ No \_\_\_\_\_ Explain.

18. Distribution of Assets: \_\_\_\_\_

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**Beneficiaries:**

If your primary beneficiary does not survive you, who are the alternative beneficiaries? \_\_\_\_\_

How are the assets divided? \_\_\_\_\_

19. Is there any person you want to exclude from receiving a devise from the estate? \_\_\_\_\_

Why? \_\_\_\_\_

20. If minors are involved:

Guardian: \_\_\_\_\_

Alternative Guardian: \_\_\_\_\_

Power of Attorney: \_\_\_\_\_

21. Trust creation

Reason for minor trust includes Health Education Maintenance and Support

Do you want the income and principal to be distributed equally or within discretion of trustee? \_\_\_\_\_

22. Do you want a spendthrift clause? \_\_\_\_\_

23. Name of Trustee: \_\_\_\_\_

24. Alternative Trustee: \_\_\_\_\_

25. Do you want your trustee to be bonded (insured)? \_\_\_\_\_

26. Personal Representative (Administrator of Will) \_\_\_\_\_

If not the spouse why not? \_\_\_\_\_

Alternative Personal Representative: \_\_\_\_\_

27. Do you want the personal representative or alternative Personal Representative bonded?

28. Any property located outside of state of Montana? \_\_\_\_\_

\_\_\_\_\_

29. Do you want a special provision for distribution of personal property? This is a separate sheet of paper testator can change periodically without having to update the Last Will and Testament.

30. Special Instruction: \_\_\_\_\_

\_\_\_\_\_

31. Special Instruction: \_\_\_\_\_

\_\_\_\_\_

32. Special Instruction: \_\_\_\_\_

\_\_\_\_\_

33. Do you have a safe deposit box? \_\_\_\_\_

34. Do you want a living will? \_\_\_\_\_

35. Do you want to designate a person to make a decision on your continued health care if you are unable to do so? \_\_\_\_\_

36. Is this case a possible Power of Attorney client?

Examine the alternatives.

A) Statutory Power of Attorney

B) Durable Power of Attorney

C) Specific Power of Attorney

D) Springing Power of Attorney

E) Durable Power of Attorney for Health Care

37. Any physical or mental disability? \_\_\_\_\_

\_\_\_\_\_

38. Other: \_\_\_\_\_

\_\_\_\_\_

# ESTATE PLANNING SHEET

## FORM TWO

The following is an outline which may be used at an initial estate planning conference with clients. Some of the areas covered will not be applicable in every situation. In some cases, more questions will have to be asked.

CLIENT: \_\_\_\_\_

Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Business Phone: \_\_\_\_\_

### I. FAMILY BACKGROUND

#### A. Client and Spouse

	<u>CLIENT</u>	<u>SPOUSE</u>
1. Name:	_____	_____
a/k/a:	_____	_____
2. Date of Birth	_____	_____
3. Occupation	_____	_____
4. Employer of Firm	_____	_____
5. How long employed	_____	_____
6. Prior employment	_____	_____
7. Education	_____	_____
8. Money management and investment experience	_____	_____
9. Condition of Health	_____	_____
10. Nuptial agreements (Secure copy)	_____	_____
11. Social Security No.	_____	_____
12. Prior marriage	_____	_____
a. Date:	_____	_____
b. Number of children of prior marriage	_____	_____
c. Financial obligations	_____	_____



13. Have any children from prior marriage(s) been adopted by client or spouse?

If so, list children:

- a. Name \_\_\_\_\_  
a/k/a \_\_\_\_\_
- b. Date of birth \_\_\_\_\_
- c. Natural or adopted child \_\_\_\_\_
- d. Address \_\_\_\_\_
- e. Occupation \_\_\_\_\_
- f. Education \_\_\_\_\_
- g. Financial Status \_\_\_\_\_
- h. Money management/  
investment experience \_\_\_\_\_
- i. Condition of health \_\_\_\_\_
- j. Marital status \_\_\_\_\_
- k. Spouse's name \_\_\_\_\_
- l. How long married \_\_\_\_\_
- m. Names and ages of  
children \_\_\_\_\_
  
- n. Discuss relationship between client and each child (and child's spouse, if  
child is married)
  
- o. Are any of client's children deceased and if so are there any living issue of  
deceased child? If so, secure name and ages.

B. OTHER INFORMATION REGARDING FAMILY:

C. OTHER DEPENDENTS:

D. FINANCIAL AND OTHER ADVISORS:

- 1. Accountants
- 2. Life Insurance Agent

## II. ASSET OWNERSHIP AND FAIR MARKET VALUE

Description & location	Client	Spouse	Joint (H&W)	Tenants In Common (H&W)
A. Real Property (Check deeds)	\$_____	\$_____	\$_____	\$_____
B. Mineral interests (Note whether in production)	_____	_____	_____	_____
C. a. Savings account	_____	_____	_____	_____
b. Checking account	_____	_____	_____	_____
c. Certificates of deposit	_____	_____	_____	_____
D. Securities (other than closely held stock and US treasury bonds)	_____	_____	_____	_____
E. US Treasury Bonds "Flower Bonds"	_____	_____	_____	_____
F. Closely held stock	_____	_____	_____	_____
G. Leases	_____	_____	_____	_____
H. Outstanding Contracts/notes	_____	_____	_____	_____
I. Motor vehicles (Excluding those used in trade or business)	_____	_____	_____	_____
J. Motor vehicles (used in trade or business)	_____	_____	_____	_____
K. Other machinery/equipment (used in business)	_____	_____	_____	_____

Description & location	Client	Spouse	Joint (H&W)	Tenants In Common (H&W)
L. Household furnishings	\$_____	\$_____	\$_____	\$_____
M. Office furnishings	_____	_____	_____	_____
N. Collections	_____	_____	_____	_____
O. Jewelry or other personal effects of substantial intrinsic value	_____	_____	_____	_____
P. Livestock	_____	_____	_____	_____
Q. Brands	_____	_____	_____	_____
R. Grains	_____	_____	_____	_____
S. Life Insurance				
1. Face value of insurance on self policy owned by self	_____	_____	_____	_____
2. Cash value of policies on life of others	_____	_____	_____	_____
3. Face amount of policies on life of others	_____	_____	_____	_____
T. Employee/other death benefits	_____	_____	_____	_____
U. Deferred compensation	_____	_____	_____	_____
V. Powers of Appointment (obtain documents)	_____	_____	_____	_____
W. Annuities	_____	_____	_____	_____
<b>TOTALS:</b>	<b>\$_____</b>	<b>\$_____</b>	<b>\$_____</b>	<b>\$_____</b>

### III. DEBT

	Client	Spouse	Joint (H&W)	Tenants In Common (H&W)
A. Mortgages	\$ _____	\$ _____	\$ _____	\$ _____
B. Outstanding contracts/notes	_____	_____	_____	_____
C. Other	_____	_____	_____	_____
<b>TOTALS:</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>

### IV. BUSINESS INTERESTS

- A. Name
- B. Location
- C. Business structure (sole proprietorship, partnership, corporation, or other)

If incorporated:

1. Sub-charter S ( ) or Conventional ( )
  2. Classes of stock (describe each class)
  3. Stock, Ownership
  4. History of dividends declared and paid
- D. If other than corporation, specify ownership arrangement.
  - E. Business agreements (buy-sell, etc., obtain copies)
  - F. Assets owned by business - when acquired

- G. Estimate of fair market value of business
- H. Estimate of basis
- I. Gross income (prior year) \_\_\_\_\_ (estimate current) \_\_\_\_\_  
Net income (prior year) \_\_\_\_\_ (estimate current) \_\_\_\_\_
- J. Key employees
- K. Salaries
- L. Pension and profit sharing plans
- M. Insurance programs
- N. Future plans - desires insofar as family concerned

## **V. JOINT PROPERTIES**

- A. Description
- B. When joint tenancy created
- C. How acquired (purchase, inheritance, gift, etc.)
- D. Gift tax return filed
- E. If real property, was election under IRC 1954, S2515(C) made?
- F. What basis, if any, is there for establishing contribution by spouse?
- G. Basis in property
- H. Fair market value (estimate)

## VI. LIFE INSURANCE

Insured	Type of Policy	Owner	Beneficiary	Face Value	Loan	Cash Value

## VII. GIFT HISTORY

- A. Gifts over \$13,000 in any one year to single person. (Specify person, relationship, date, nature, and amount of gifts).
- B. Gift tax returns filed: (Obtain copies)
- C. Use of specific exemption.
- D. Taxable gifts made.
- E. Does client have a regular gifting program which is expected to be continued?
- F. Amount of inter-spousal gifts made after December 31, 1976, marital deduction utilized (amount).

## VIII. INCOME DATA

(Obtain copies of most recent federal and state income tax returns).

	<u>Client</u>	<u>Spouse</u>	<u>Joint</u>
A Wages, salaries	\$ _____	\$ _____	\$ _____
B. Dividends	_____	_____	_____
C. Interest	_____	_____	_____

	<u>Client</u>	<u>Spouse</u>	<u>Joint</u>
D. Net rents, royalties	\$ _____	\$ _____	\$ _____
E. Partnership	_____	_____	_____
F. Sub-Chapter S	_____	_____	_____
G. Annuities	_____	_____	_____
H. Pensions	_____	_____	_____
I. Trust and Estates	_____	_____	_____
J. Other	_____	_____	_____
<b>TOTALS:</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>
Number of Exemptions claimed:	_____	_____	_____
Top federal income tax bracket:	_____%	_____%	_____%
Federal income taxes paid:	\$ _____	\$ _____	\$ _____
State income taxes paid:	\$ _____	\$ _____	\$ _____

## IX. ESTIMATED FAMILY INCOME NEEDS AND SOURCES

A. Sources of Income	After Client's Death	After Client & Spouse's Death
Wages, salaries	\$ _____	\$ _____
Dividends	_____	_____
Interest	_____	_____

A. Sources of Income	After Client's Death	After Client & Spouse's Death
Net rents, royalties'	_____	_____
Trust and estate	_____	_____
Insurance proceeds Other death benefits	_____	_____
Pension	_____	_____
Social Security	_____	_____
Other	_____	_____
<b>TOTALS:</b>	<b>\$</b> _____	<b>\$</b> _____

B. Income Needs

Taxes (property & income)	\$ _____	\$ _____
Food, clothing	_____	_____
Housing	_____	_____
Medical	_____	_____
Insurance	_____	_____
Education	_____	_____
Entertainment	_____	_____
<b>TOTALS:</b>	<b>\$</b> _____	<b>\$</b> _____



## **X. WILLS**

- A. Date of Will
- B. Dispositive provisions
- C. Tax Liability (federal estate and state inheritance) using current estate values and distributing in accordance with wills, if any, or otherwise by intestate succession statute.

## **XI. NEW WILLS**

- A. Dispositive desires of Client and Spouse
  - 1. Family
  - 2. Charitable Organizations
  - 3. Other
- B. Personal Representative
  - 1. Name:
  - 2. Address:
  - 3. Relationship:Successor Personal Representative
  - 1. Name:
  - 2. Address:
  - 3. Relationship:
- C. Guardian(s):
  - 1. Name:
  - 2. Address:
  - 3. Relationship:Successor Guardian
  - 1. Name:
  - 2. Address:
  - 3. Relationship:
- D. Trustee(s)
  - 1. Name:
  - 2. Address:
  - 3. Relationship:

E. Special Requirements:

1. Exercise of Power of Appointment
2. Orphan's exclusion
3. Disposition of certain personal items by means of separate writing.

**WILL OF  
JOHN DAMIEN WHITE**

**I. INTRODUCTION**

I, John Damien White, also known as J.D. White, domiciled and residing in Missoula, Missoula County, Montana, declare this to be my will, revoking all prior wills and codicils.

**II. FAMILY INFORMATION**

I am married to Mary Helen White. All references of "my wife" are to her. I have two (2) children, namely, David Baxter White and Cynthia Baxter White. All references to "my children" refer to the two children named in this paragraph and any other children hereafter born to or adopted by me and my wife.

**III. DEBTS & EXPENSES**

I direct that all of my legally enforceable debts, funeral expenses and expenses in connection with the administration of my estate be paid as soon as practicable after my death.

**IV. PRE-RESIDUARY GIFTS**

**A. Gifts of Special Items:**

If my sister, Mary Vivian Jones, 115 Main Street, Prairie City, Utah, survives me, I give her (and not her descendants) the Steinway grand piano which was given to me by my mother. If for any reason I do not own that Steinway grand piano at my death, the devise to my sister is canceled.

**B. Tangible Personal Property List:**

If my wife survives me, I give her all of (the rest of) my tangible personal property.

If my wife fails to survive me, I might leave a written statement of list disposing of items of tangible personal property. If I do and if my written statement of list is found and is identified as such by my personal representative no later than 30 days after, the statement of list is to be given effect to the extent authorized by law. Any

Page 1 of 5

Dated: \_\_\_\_\_

tangible personal property not effectively disposed of by such a statement or list shall be distributed to my surviving children (and not to their descendants) as they may agree. If my surviving children fail to reach agreement within 90 days after the probate of this will, such tangible personal property shall be divided among my surviving children as my personal representative determines appropriate, in shares of substantially equal value.

If any child of mine is a minor at the time of such division, my personal representative may distribute the child's share to the child or for the child's use to the child's guardian or to any person with whom the child is residing, without further responsibility, and the distributive's receipt shall be a sufficient discharge to my personal representative.

#### **IV. RESIDUARY CLAUSE**

If my wife survives me, I give her the residue of my estate. If she fails to survive me, I give the residue of my estate to my descendants who survive me by representation.

#### **V. METHODS OF DISTRIBUTION TO CERTAIN BENEFICIARIES**

If under this will any property is distributable to a minor or to a person under twenty-one (21) years of age, my personal representative in my personal representative's absolute discretion, may distribute such property in any manner permitted by law and additionally in any one or more of the following ways:

- (A) If the person is a minor, directly to the minor or on behalf of the minor for the minor's exclusive benefit;
- (B) If the person is a minor, to a guardian or conservator for the minor; or
- (C) If the person is under twenty-one (21) years of age, to any person (including my personal representative) selected as a custodian by my personal representative under the applicable Uniform Transfers to Minors Act of any state.

Page 2 of 5 Pages

Dated \_\_\_\_\_

## **VI. APPOINTMENT OF PERSONAL REPRESENTATIVE**

I appoint my wife as personal representative of my estate. In the event she shall die, be adjudicated incompetent, or resign, I hereby name as successor personal representative to fill such vacancy or any vacancy that may thereafter occur, the first in the order named who is then willing and able to serve:

- (A) Steve Johnson
- (B) Arvid Thompson
- (C) Norwest Capital Management & Trust Co., Montana

## **VII. POWERS OF PERSONAL REPRESENTATIVE**

In addition to the powers given to my personal representative by law effective at death, my personal representative shall have all powers authorized by the Montana Uniform Probate Code, as that Code exists on the date of this will.

## **VIII. MONTANA LAW**

This instrument shall be construed under the laws of the State of Montana.

## **IX. REPRESENTATION**

The persons who take under this will as "descendants by right of representation" shall take in accordance with the rules of S72-2116 MCA as that section exists on this date of this will.

## **X. CAPTIONS**

The captions set forth in this Will at the beginning of various provisions are for convenience of reference only, and shall not be deemed to define or limit the provisions of this Will, or to affect in any way its construction or application.

Page 3 of 5 Pages

Dated \_\_\_\_\_

**XI. CONCLUSION AND ATTESTATION**

I, John Damien White, the testator sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
JOHN DAMIEN WHITE

We, witnesses, sign our names to this instrument, consisting of four pages, being first duly sworn, do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's last will and that the testator signs it willingly (or willingly directs another to sign for the testator), that each of us, in the presence and hearing of the testator, hereby signs the will as a witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
WITNESS  
Residing at \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
WITNESS  
Residing at \_\_\_\_\_

\_\_\_\_\_

Page 4 of 5 Pages  
Dated \_\_\_\_\_

STATE OF MONTANA ):ss  
County of Missoula )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by John  
Damien White, the testator, and subscribed and sworn to before me by the above-  
named witnesses, this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

(Notarial Seal)

\_\_\_\_\_  
(Signature of Notarial Officer)  
(Printed Name): \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

Page 5 of 5 Pages

Dated: \_\_\_\_\_

WRITTEN LIST OF TANGIBLE PERSONAL PROPERTY

This written list of bequests of tangible property shall be placed with and made a part of the Last Will and Testament of \_\_\_\_\_.

1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(name of testator)

1 of 1

\_\_\_\_\_  
Initial

\_\_\_\_\_  
Witness



# **INSTRUCTIONS FOR RECORDING HOMESTEAD EXEMPTION DECLARATIONS**

## **I. PURPOSE OF HOMESTEAD EXEMPTION DECLARATION**

If you complete this form and record it in the Clerk and Recorder's Office in the county in which you live and have your home, it protects your home from creditors' claims except for mortgages, construction liens, and Medicaid liens.

## **II. MEANING OF HOMESTEAD**

The exemption protects the home you live in. You must actually reside on the property for it to be apply. Homestead includes the dwelling house, or mobile home, and the land and improvements legally defined as appurtenances to the land. This may include a mobile home where the mobile home owner does not own the land the mobile home is situated on.

## **III. LIMIT ON VALUE EXEMPT**

The maximum value of the protection is two hundred fifty thousand dollars (\$250,000). If the value of the property exceeds this amount, the creditors may partition the land, selling part of it or may sell all the property. If they sell all the property you get the first two hundred fifty thousand dollars (\$250,000) of the proceeds and this money is protected from creditors for 18 months.

## **IV. WHO SHOULD SIGN**

If married, both spouses should sign the declaration. If one does not sign, his or her interest in the property is not protected. Both must sign in front of a notary.

NOTE: Under Montana property law, a spouse may acquire an interest in property due to the marriage, even though the spouse is not listed on the deed or other documents of title, and even though the spouse has not directly contributed money to pay for the property. Therefore, every effort should be made to have both spouses sign the declaration.

## **V. RECORDING DECLARATION**

After the Homestead Exemption Declaration form on Chapter II - 40 is completed, signed, and notarized, record the form in the Office of the County Clerk and Recorder for the county in which the land (or mobile home) is located. The recording fee for a one page document is between \$7 and \$12 and this fee must be paid when the document is delivered to the Clerk and Recorder for recording.

