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FAQs: Colorado's Designated Beneficiaries Law

What is the Designated Beneficiaries Law?

In July 2009, Governor Ritter signed the legislation which was designed (1) to overcome shortcomings in the Colorado Probate Code and allow certain persons to have "default" provisions that would apply in the event there is no will; (2) to facilitate people's ability to care for each other and promote their ability to choose who will assist in their care; and (3) to allow for individuals to confer certain rights, benefits and protections on others via a Designated Beneficiaries Agreement or DBA. See Colo. Rev. Stat. § 15-22-102 (2009).

The DBA confers on the two persons signing it the designation of the other as their beneficiary for the purpose of ensuring that the beneficiary has certain rights and can assume certain roles. It allows unmarried persons (who meet requirements set forth in §104 of the statute) rights which were previously only available through estate planning documents, along with other rights found only in the new law. A list of those rights is set forth in § 105.

If I Have a DBA With Another Person, Do I Still Need a Will or Other Documents?

You might be interested in taking a more comprehensive approach. The DBA may provide only some rights, where estate planning documents may be much broader or more narrowly tailored and will also provide for disposition of the beneficiaries' property in the event both die simultaneously, and after the surviving beneficiary dies. The statute (at §106) provides a suggested standard form for the DBA, and individuals can select how many of the rights and roles to give to their designated beneficiary as they choose. An important consideration is that it is not yet known whether the DBA is valid outside Colorado, while documents like a Medical Power of Attorney are portable and they can also name successor agents to serve.

What If My Will or Other Estate Planning Document Conflicts With the DBA?

The statute specifically provides that a DBA does not override any valid estate planning documents, whether they were written before or after the effective date of the DBA. To the extent there is conflict, the estate planning documents (defined as "superseding legal documents" in §103 of the statute)

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control. These documents also include nonprobate matters like trust instruments and bank accounts, along with insurance policy and retirement plan beneficiary designations.

What Else Is Unique About the DBA Statute?

Yes, it is the only way that two important rights can be conferred on a beneficiary. These are the right of the surviving beneficiary to seek workers' compensation if one of them dies at work, and the right of the survivor to sue for wrongful death in the event of the death of the other beneficiary. In addition, the DBA can be used by a couple to demonstrate they are not in a common law marriage. The DBA statute is an important and very useful asset for unmarried couples' estate planning. *For more information about DBAs, go to www.designatedbeneficiaries.com or to www.cobar.org to download the Colorado Bar Association's flyer about the DBA Act.*

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