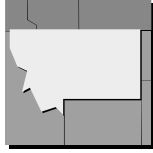


# Beneficiary Deeds in Montana



MT200707HR

December 2007

1

**Marsha Goetting**

Professor & Extension Family Economics Specialist  
MSU Dept. of Agricultural Economics & Economics

**Kristen Juras**

Professor  
School of Law, University of Montana-Missoula

**Keri Hayes**

PowerPoint Presentation  
MSU Publications Assistant

2

This slide is for the  
Presenter's Name and  
Title

MSU County Extension Agent

3

## Authorization



- 2007 Montana Legislature
  - MCA 72-6-121
  - Applies to those who pass away after:
    - October 1, 2007

4

## What is a Beneficiary Deed? (p. 1)



- A way to convey real property to one or more *grantee beneficiaries* upon death without the cost of probate

5

## What is probate?



- Process of settling the estate to be sure property is transferred to appropriate heirs & debts paid.

6

## Cost of probate Montana



- Statutory limits for personal representative
  - 2% of first \$40,000
  - 3% in excess of \$40,000

7

## Cost of probate Montana



- Statutory limits for *attorney*
  - 1 ½ times amount that was allowable to the personal representative

8

## Cost of probate \$2 million estate

- Personal representative
    - \$39,200
  - Attorney
    - \$59,250
- TOTAL = \$98,450



9

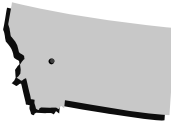
## Cost of probate \$200,000 estate

- Personal representative
    - \$4,400
  - Attorney
    - \$6,600
- TOTAL = \$11,000



10

## Filed & Recorded (p. 1)



- Before death of owner
  - Clerk and Recorder
  - Montana county where property is located

11

## County Clerk & Recorder

- Type in name of local clerk and recorder
- Phone number
- Office Location



12

## Realty Transfer Certificate (p. 1)



- Complete Form 488RTC:
  - Available:
    - County Clerk and Recorder's Office
    - Web site
      - page 1, right column

13

## Deed Filing Cost

(p. 1)



- Standard document
  - \$7.00/page
- Non-standard document
  - \$11.00/page

14

## Standard Documents April 28, 2007

- Black ink
- 10-pointed typeface
- White paper (not less than 20-lb weight)
- Margins 3" top page, 1" subsequent pages

15

## What is a Grantee Beneficiary? (p. 1)



- Party to whom an owner grants interest in Montana real property
- Effective only upon death of owner

16

## Who can be a grantee beneficiary? (p. 1)

- Spouse
- Children
- Relatives
- Friends
- Corporation
- Charitable Organizations
- Trustee of trust



17

## Grantee Beneficiary

- Owner *not required* to have grantee beneficiary's:
  1. Signature
  2. Consent
  3. Agreement
- No ownership rights until the owner dies



18

## What happens if grantee beneficiary dies before owner? (p. 2)



19

## Owner options if grantee beneficiary dies before owner? (p. 2)

1. Beneficiary deed *void* upon death of grantee beneficiary



20

## Owner Options (p. 2)

2. Property becomes part of estate of deceased grantee beneficiary



- Passes through to heirs of grantee beneficiary
  - Will
  - Montana Law Intestate Succession

21

## Owner options

3. Specify a *successor beneficiary*



22

## Summary: Owner options if grantee beneficiary dies before owner? (p. 2)

1. Void
2. Part of estate of grantee beneficiary
3. Successor beneficiary



23

## Owner Situation

- Mark, the father
  - Owner of property
- Evan, Mark's son
  - Grantee beneficiary
- Luke, Mark's grandson
  - Successor beneficiary



24

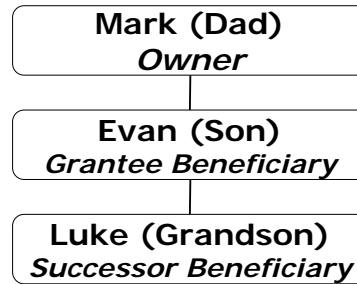
## Successor Beneficiary Statement (p. 2)

*If Evan dies before me, I name Luke as the successor beneficiary effective upon my death, should he survive Evan and me. If Luke does not survive Evan and me, this deed shall be void.*



25

## Example: What the “legalese” means



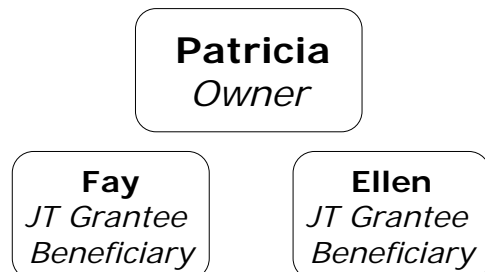
26

## Can there be more than one grantee beneficiary?

- Yes, owner should: **3...2...1...0**
  - Specify form of ownership after death:
    - Joint tenants with right of survivorship
    - Tenants in common

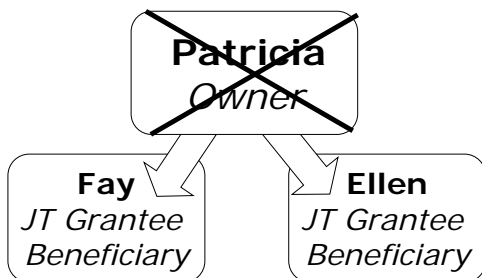
27

## Example: 3 sisters



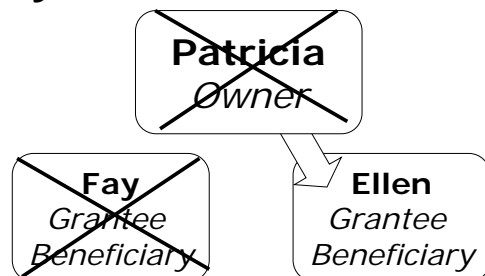
28

Title to be held by beneficiary grantees as *Joint Tenants with Right of Survivorship*



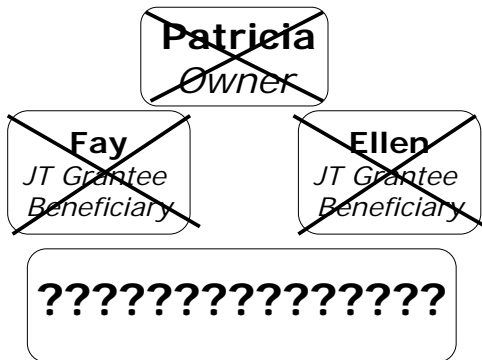
29

## Fay dies before Patricia



30

**Fay & Ellen die before Patricia**



31

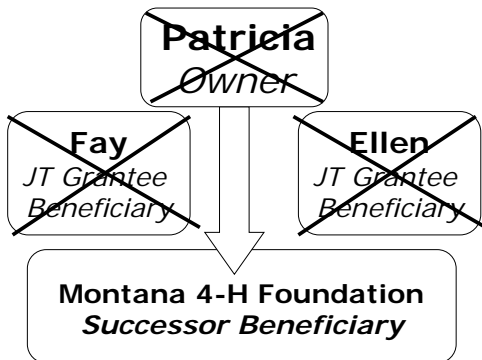
**Successor Beneficiary Statement (p. 2)**



*"If both Fay and Ellen predecease me, the Montana 4-H Foundation will become the successor grantee beneficiary effective upon my death."*

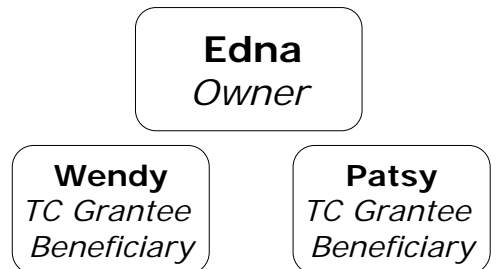
32

**Fay & Ellen die before Patricia**



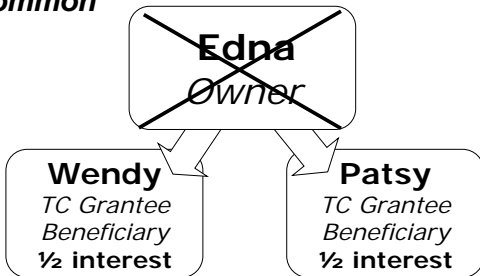
33

**Example: 3 other sisters**



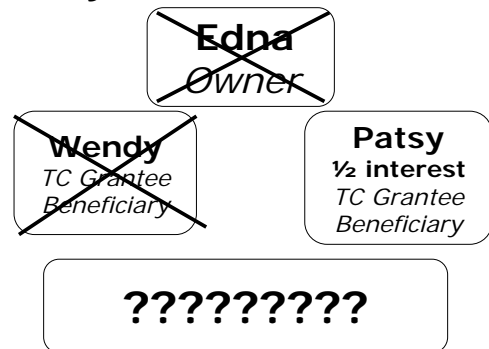
34

**Edna specifies title to be held by grantee beneficiaries as *Tenants in Common***



35

**Wendy dies before Edna**



36

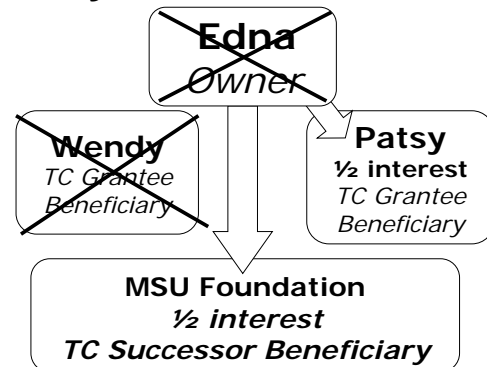
## Successor Beneficiary Statement (p. 3)

*"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."*



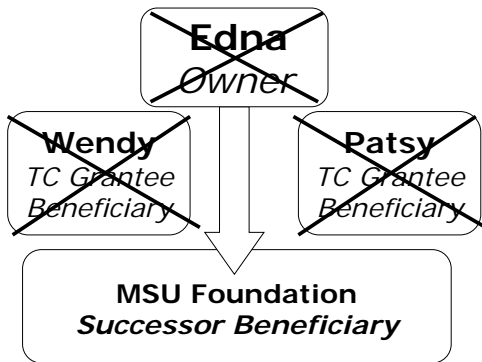
37

## Wendy dies before Edna



38

## Patsy & Wendy die before Edna



39

## How Grantee & Successor beneficiaries receive property (p. 3)

- Depends on how *owners convey title*:
  - Joint tenants with right of survivorship
  - Tenants in common



40

## What if real property is held by more than one owner?

- Joint tenants with right of survivorship
- Tenants in common



41

## Joint Tenants with Right of Survivorship

- Right of surviving joint tenant takes priority over right of *grantee beneficiary*



42

### Example: Married Couple

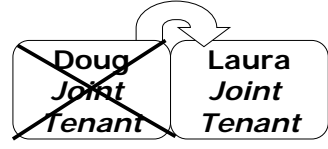
**Doug & Laura**  
*Joint Tenants with  
 right of survivorship*

**Daughter 1**  
*Grantee  
 Beneficiary*

**Daughter 2**  
*Grantee  
 Beneficiary*

43

### Doug dies

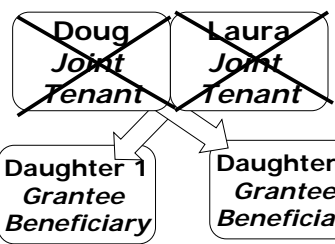


**Daughter 1**  
*Grantee  
 Beneficiary*  
 0

**Daughter 2**  
*Grantee  
 Beneficiary*  
 0

44

### Laura & Doug die in common accident—Both signed deed

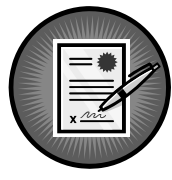


**Daughter 1**  
*Grantee  
 Beneficiary*

**Daughter 2**  
*Grantee  
 Beneficiary*

45

### Signature requirements for property owned as Joint Tenants with right of Survivorship



- Beneficiary deed should be signed by:
  - All owners
  - Owner who is last one to die

46

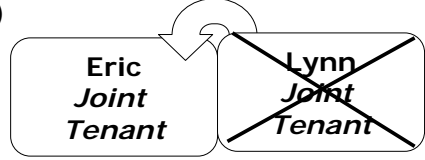
### Example: Married couple, Lynn files & records beneficiary deed naming daughter as grantee beneficiary (p. 3)

**Eric & Lynn**  
*Joint Tenants with  
 Right of Survivorship*

**Lynn's Daughter**  
*Grantee  
 Beneficiary*

47

### Lynn dies before Eric Eric did not sign beneficiary deed (p. 3)



**Lynn's Daughter**  
*Grantee  
 Beneficiary*  
 0

48

## Question?



- Will Eric honor Lynn's wishes?
- Will Eric file & record beneficiary deed naming:
  - Another relative?
  - Future "partner"?

49

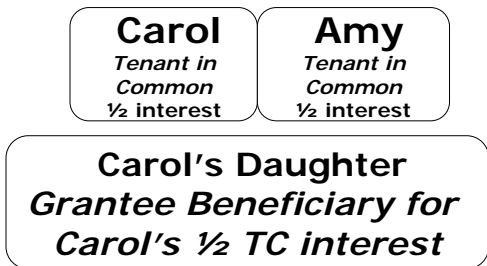
## Tenants in Common

- Each owner may execute a beneficiary deed for his/her interest
- Does not affect the interest held by other owner



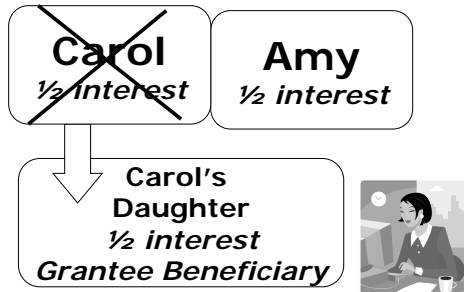
50

## Example: 2 sisters



51

## Title held by owners as Tenants in Common (p. 4)



52

## Whether Grantee & Successor beneficiaries receive property depends on (p. 3)

- How the property is *owned* by present owners:
  - Joint tenants with right of survivorship
  - Tenants in common



53

## Whether Grantee & Successor beneficiaries receive property depends on (p. 3)

- How owners *convey* the property:
  - Joint tenants with right of survivorship
  - Tenants in common



54

## Statutory Language Beneficiary Deed

- MontGuide
  - Page 4



55

## How to revoke a beneficiary deed (p. 5)

- File *new* beneficiary deed
- File *revocation*
  - Must be signed & recorded by all joint tenancy owners



56

## Statutory Language for Revocation of Beneficiary Deed

- MontGuide
  - Page 5



57

## Retitling the Property (p. 5)

- Notarized affidavit certifying death of the owner:
  - Signed by the grantee beneficiary or beneficiaries



58

## Example (p. 6)

- Affidavit of Death:
  - Notarized
  - Signed by the grantee beneficiary or beneficiaries



59

## What if land listed in beneficiary deed has encumbrances? (p. 7)



60

## What are encumbrances? (p. 7)

- Mortgages
- Deeds of trust
- Liens against property
  - unpaid taxes
  - failure to pay labor, materials, equipment, services



61

## Examples of Encumbrances, cont'd.

- Contracts or assignments
- Marriage dissolution/ settlement orders
- Medicaid payments



62

## What if beneficiary deed has encumbrances? (p. 7)

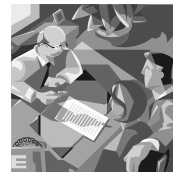
- Creditors may seek payment from value of Montana property conveyed by beneficiary deed



63

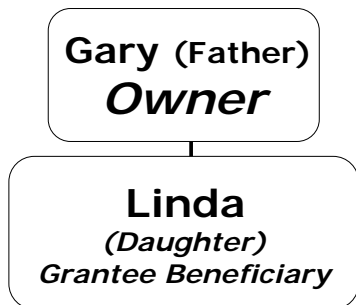
## Effect of a Will (p. 7)

- Beneficiary deed *cannot* be revoked by an owner's will



64

### Example: Father & Daughter



65

### Gary later wrote a will leaving property to his son (p. 7)

~~Gary (Father)  
Owner~~

**Matt (Son)**  
*Named in will*

**Linda**  
(Daughter)  
*Grantee Beneficiary*



66

## Who gets the property?



- Linda?
- Grantee Beneficiary
- Matt?
- Devisee of will

67

Grantee Beneficiary receives property (p. 7)

~~Gary (Father)  
Owner~~

Matt (son)

0

Linda  
(Daughter)  
Grantee  
Beneficiary



68

## Effect of Trust



- Owner can name *trustee* of revocable living trust as *grantee beneficiary*

69

## Effect of Trust, con't.

- Trust document
- controls distribution of real property



70

Protection for surviving spouse & minor children if not named in beneficiary deed (p. 7)



### • Spouse's Right to Elective Share

- 3% to 50%--depends length of marriage

71

Protection for surviving spouse & minor children if not named in beneficiary deed (p. 7)



- Exempt Property = \$10,000
- Family Allowance = \$18,000
- Homestead Allowance = \$20,000

72

## What if there are Water Rights on the property?

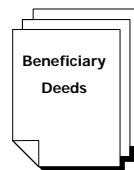
- DNRC Water Right Ownership Update (Form 608)

- Web site
- Page 7, Right column



73

## Subsequent Deeds (p. 8)



- If more than one beneficiary deed on same property recorded
  - Latest one
    - Controlling document

74

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

- No!!
- Designed to transfer only *real property*



75

## Transfer tools for Personal Property in financial institutions



- POD designation
  - *Payable on Death*
    - *CDs, checking & savings accounts, US Savings Bonds*

76

## Transfer tool for Personal Property with Brokerage firms

- TOD designation
  - *Transfers on Death*
    - *Stocks, bonds, mutual funds*



77


## Does the beneficiary deed exclude the land from federal estate taxes?



- No, is includible
- \$2 Million exemption during 2008

78

## Dying Without a Will in Montana

- Web site: 
  - [www.montana.edu/dyingwithoutawill](http://www.montana.edu/dyingwithoutawill)
- Free CD, contact: 
  - Marsha Goetting
  - e-mail: [goetting@montana.edu](mailto:goetting@montana.edu)

79

## Summary



- File & record beneficiary deed
- Clerk & Recorder in county where property located

80

## Funding



The Western Center for  
Risk Management Education  
Washington State University Extension  
322 North Havana  
Spokane, Washington 99202  
509-477-2168  
<http://westtime.wsu.edu>



81

## Review Questions



82

## What is a beneficiary deed?



83

## What is a Beneficiary Deed? (p. 1)

- A way to convey real property to one or more *grantee beneficiaries* upon death without probate



84

# What is a grantee beneficiary?



85

# What is a Grantee Beneficiary? (p. 1)



- Party to whom an owner grants interest in Montana real property
- Effective only upon death of owner

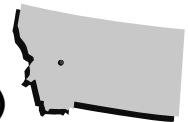
86

# Where must a beneficiary deed be filed?



87

# Filed & Recorded (p. 1)



- Before death of owner
  - Clerk and Recorder
  - Montana county where property is located

88

# When is a beneficiary deed effective?



89

# Beneficiary Deed

- Effective only upon death of owner



90

# Who can be a grantee beneficiary?



91

# Who can be a grantee beneficiary? (p. 1)

- Spouse
- Children
- Relatives
- Friends
- Corporation
- Charitable Organizations
- Trustee of trust



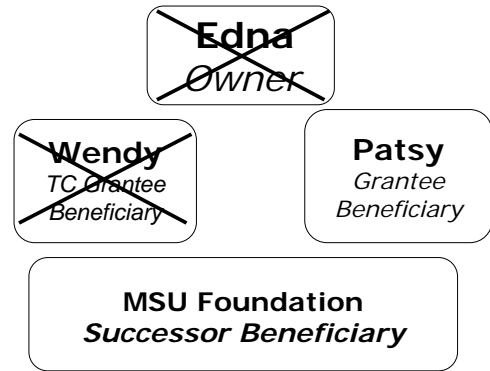
92

In this example who receives property when owner wants title to be held as tenancy in common?



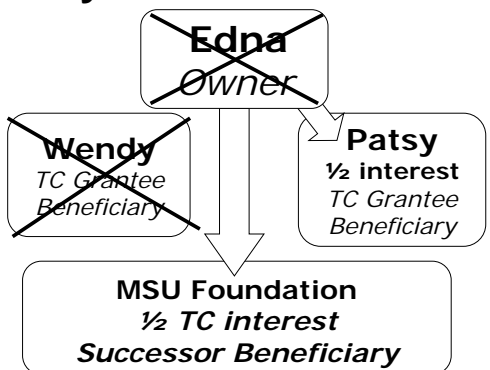
93

# Wendy dies before Edna



94

# Wendy dies before Edna



95

What is the share to each daughter in this case?



96

## Jeff dies

~~Jeff  
Joint  
Tenant~~

Susie  
Joint  
Tenant



Daughter 1  
Grantee  
Beneficiary

Daughter 2  
Grantee  
Beneficiary

97

## Jeff dies

~~Jeff  
Joint  
Tenant~~

Susie  
Joint  
Tenant



Daughter 1  
Grantee  
Beneficiary  
0

Daughter 2  
Grantee  
Beneficiary  
0

98

## How do you revoke a beneficiary deed?



99

## Revoking a beneficiary deed (p. 5)

- File *new* beneficiary deed
- File *revocation*
  - Must be signed & recorded by all joint tenancy owners



100

## Can a will override a beneficiary deed?



**NO !!!!!**

101

## Which beneficiary deed is valid?



1. Filed on December 15, 2007
2. Filed on March 30, 2009
3. Filed on April 2, 2010

102

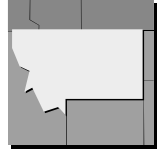
## Which beneficiary deed is valid?



1. Filed on December 15, 2007
2. Filed on March 30, 2009
3. Filed on April 2, 2010

103

## Beneficiary Deeds in Montana



MT200707HR

December 2007

104