

Chapter-7

Part-3

Direct Deposit

Direct deposit is a free service that sends your checks directly into your bank account. You can use direct deposit if you receive Social Security, Supplemental Security Income (SSI), Railroad Retirement, Veterans' benefits, or government retirement benefits, as well as for other income sources.

To sign up, take your next federal government check to your financial institution and fill out the proper form. Your payments should begin to go directly into your account within 60 to 90 days.

You often can arrange for similar direct deposits for payments from private sources. Contact the source of your payment to find out what you need to do to set up direct deposit.

You should check your bank statement each month to make sure the payments were deposited into your account.

Direct deposit has these advantages:

1. It ends worries about lost or stolen checks, or late mail;
2. It allows you to travel away from home without worrying about your checks sitting in an unprotected mailbox;
3. The money is immediately available to you; and
4. You begin earning interest earlier if you have an interest-bearing account.

You can change your direct deposit to a new or different account by filling out a new form. If you plan to close your old account, do not close it until payments actually have been deposited into your new account.

Multiple Person Accounts

Most financial institutions have several options allowing more than one person to control funds in a bank account. The most common multiple person account is a joint account. A joint account is an account that allows two or more people each to deposit and withdraw money from it. The people named on the account do not need permission from each other to use the account. On the death of a party to the account, the account passes automatically to the surviving party or parties to the account.

If the joint account is in the name of a husband and a wife, and one of the spouses dies, then the surviving spouse becomes the sole owner of the account.

If the joint account is in the name of a husband and a wife, and a third person such as an adult child also is named on the account, and one of the spouses dies, then the amount that the deceased spouse contributed to the account belongs solely to the surviving spouse.

If the joint account is in the name of two or more parties who are not spouses, and two or more parties survive the death of one of the account-holders, then the amount that the deceased account holder contributed to the account belongs to the surviving account-holders in equal shares.

Another type of multiple-person account is a multiple signature account. This account requires

more than one signature on a check. This is used either for a joint account or an account held by one person who chooses to have someone else also sign checks. The other signature(s) can prevent double payments and impulsive purchases. It also prevents one joint account holder from acting without the knowledge of the other joint holders.

A convenience account allows another person to sign checks for you, but does not give the person the right to any of the funds in the account. This type of account should be done with a limited Power of Attorney signed at the financial institution. Thus, you give another person the right to sign your checks to withdraw money from your account on your behalf. The other person does not have the right to withdraw any funds from your account for his or her own use. This account can be helpful if it is difficult for you to sign checks or if you are having another person shop for you.

A Payable On Death (POD) account is an account where the account-holder appoints a beneficiary. This beneficiary receives the funds in the account at the account-holder's death. The beneficiary has no right to the funds in the account during the lifetime of the account-holder. The account holder has the right to change the beneficiary at any time.

Part I of this chapter discusses the use of multiple-person accounts in estate planning. The main issue is whether or not you want the money in your multiple-person account to go to the other account-holders after your death. The main advantage of multiple-person accounts is convenience. The disadvantage is the risk that if the people who have a joint account with you are untrustworthy, they could empty your account without your knowledge or permission. Another risk is that a creditor of the joint owner can take the account.

Power of Attorney

A Power of Attorney gives another person the legal authority to manage some or all of your financial affairs. A Power of Attorney is created when a person (called the principal) gives someone else (called the Attorney-in-Fact or Agent) written permission to act on the principal's behalf.

The Attorney-in-Fact does not have to be a lawyer and may be a spouse, relative or friend.

A Power of Attorney can give the attorney-in-fact authority to manage most of the business that may require the principal's presence or signature. For example, if you are physically unable to go to the bank, you could give someone the power to deposit and withdraw money from your account. The principal also could create a Limited Power of Attorney. This grants permission to another person to perform only certain acts. In other situations, the principal could create a general Power of Attorney. This grants permission to another person to handle all financial affairs.

A Power of Attorney does not take away the principal's rights to make his or her own decisions about financial matters. The principal can end the Power of Attorney at any time by simply telling the Attorney-in-Fact in writing. The principal should send copies of the notice to anyone (such as the bank) with whom the Attorney-in-Fact did business. A Power of Attorney ends automatically when the principal dies.

The principal must be mentally competent to grant a Power of Attorney. The Power of Attorney must be in writing and signed. It also should be notarized, but it does not need to be witnessed. If a Power of Attorney is used to transfer real property, it must be recorded in the Clerk and Recorder's Office in the county where the property is located. ([See Part II](#) of this chapter for more information on the transfer of real property.)

In Colorado, the principal may state in the document that the Power of Attorney is durable. This means that it continues to be valid even if the principal becomes incapacitated. If no such statement is contained in the document, then the Power of Attorney stops being valid when the principal becomes incapacitated. If the principal has stated in the document when the power is to end, then the power will be effective only until the ending date. However, the principal may revoke the Power of Attorney at any time as long as he or she is not incapacitated. You should only give a Power of Attorney to someone you trust completely. ([See Chapter 6](#) for more information on the Medical Durable Power of Attorney.)

Representative Payee

Some government programs allow benefits that are payable to one person (beneficiary) to be paid to another person called a representative payee. A representative payee can be used in Social Security, Railroad Retirement, and sometimes Veterans Administration benefit programs. The benefits are to be used for the person entitled to the money.

You can appoint a representative payee if you cannot manage the benefits you receive. You or someone on your behalf must apply to the agency paying the benefits. A Power of Attorney may not work to endorse or cash federal checks.

You do not have to be legally incapacitated or incompetent to qualify for a representative payee. Getting a representative payee does not require court action or a lawyer. However, you can ask the agency to change its decision if you no longer want a representative payee or wish to have another person serve as your representative payee. The agency must review its decision to see whether you need a payee.

A representative payee must account for the funds used and saved. Therefore, it is very important that the representative payee be trustworthy. If a representative payee is not using funds properly, someone must inform the agency immediately to protect the beneficiary. If the representative payee purposely misuses funds, he or she may be prosecuted for the misuse of funds. If the agency does not stop paying the funds to the representative payee after the misuse is reported, and the misuse continues, the agency may have to repay the beneficiary.

To get information about representative payees, contact the paying agency. Social Security, Railroad Retirement and the Veterans Administration have pamphlets that fully explain the duties of a representative payee. ([See Resources at the end of chapter.](#))

Conservatorship

A conservatorship is a legal proceeding that gives a person (called the conservator) power over the property and finances of an incapacitated person (called the protected person). A conservatorship may be established for a person who cannot manage his or her property and affairs effectively. The person can object to the appointment of a conservator. Only a court can grant a conservatorship. The protected person may ask the court to name a conservator. The protected person has a right to be represented by a lawyer.

A conservator must follow these basic rules:

1. The conservator must manage the protected person's property and income;
2. Each year, the conservator must tell the court how he or she managed the money and property; and
3. The conservator does not have the power to handle the personal or medical affairs of the protected person.

The protected person can always ask the court to end the conservatorship. The court may end the conservatorship after finding that the protected person no longer has a disability. If a conservator misuses the protected person's property, then the conservator may be ordered by the court to repay the protected person for the misuse of the funds.

The advantages of a conservatorship are that the conservator may be bonded, and the conservator is accountable for all funds and property. The disadvantages of a conservatorship are that it is expensive, the records are public and it can be difficult to end.

Guardianship

Under certain circumstances, a guardian may be granted limited financial powers. [See Chapter 6](#) for additional information about a guardianship.

Funeral Issues

Your specific wishes for your own funeral arrangements are best done in writing. To avoid any problems, you should communicate your wishes to your family or loved ones in advance. If you leave the original of this writing in your safety deposit box, then you also should have a copy outside of the box and known to your family or loved ones. This is because the safety deposit box is very often not opened until after the funeral has been held.

Colorado law now provides that you may execute a "Declaration Instrument" that gives your specific instructions for disposition of your last remains and your funeral arrangements. That declaration instrument needs to be in writing, dated and signed by you. It can be in your Last Will and Testament, or it can simply be any separate writing making your declaration. The declaration also can be made within a prepaid funeral, burial or cremation contract with the mortuary or crematorium. In that declaration you may specifically direct the arrangements for disposition of your remains and any ceremonial arrangements to be performed after your death. Or you can direct that the person you name in that declaration has the authority to make all those arrangements.

If you wish to provide for cremation, be sure your wishes are communicated to all of your family, and that your wishes are properly documented in your Will or Declaration. If not, and any family member objects, the funeral home will not allow cremation.

As a preplanning option, you may wish to make arrangements directly with a funeral home. However, it is very important to let a loved one know that you have purchased a funeral and burial plan from a specific funeral home. This allows the loved one to carry out your wishes.

Generally, you may purchase a revocable (can be changed) or irrevocable (cannot be changed) funeral and burial plan. An advantage to an irrevocable funeral and burial plan is that it is an exempt asset if you are attempting to qualify for Medicaid.

If you decided to exercise a pre-planning option, be sure to read all of the documents carefully to confirm that you are getting exactly what you paid for. It is very important to check for competitive rates. It also is very important to be sure that there won't be any additional charges to your estate. The main reason for obtaining a prepaid funeral and burial plan is to pay all of the costs in advance.

If you are receiving state public assistance (financial aid payments) or medical assistance (Medicaid), you may be eligible to receive a limited contribution of state funds to assist with the expenses of the funeral, burial or cremation.

To apply for assistance with funeral, burial or cremation expenses, and to determine whether you are eligible for such assistance after your death, your family should contact the county Department of Social Services which was handling your case during your lifetime. [See the Chapter 1 Resource List](#) for the contact information of social services offices.

Glossary Part Two and Three

Attorney-in-Fact

The person who acts as an agent for another person, called the principal, who created a Power of Attorney.

Bargain and Sale Deed

A type of deed that transfers whatever title or interest you may have at the time of the transfer or later acquire, but does not guarantee the title is good.

Capital Gains Tax

A tax on the amount that is the difference between the original price of property and the selling price (assuming you sold it for more than you paid).

Conservatorship

A legal proceeding giving a person (the conservator) power to manage the property and finances of a minor or protected person.

Consideration

What was given or paid in return for property.

Constructive Delivery

Delivery in which the person receiving a gift is given the means of receiving a gift, for example, the person receives the keys to a safety deposit box or to a car.

Convenience Account

An account that allows another person to sign on your account. This does not allow another person any right to the funds in the account.

Deed

A document used to transfer your interest in real property.

Donor

The person who makes a gift.

Durable Power of Attorney

Power of Attorney that is valid even if the principal becomes incapacitated.

General Power of Attorney

The principal gives legal authority, in writing, to another person to handle all the financial affairs for the person creating the Power of Attorney. Such a Power of Attorney may also be durable.

General Warranty Deed

A type of deed that tells the person to whom the property is being sold or transferred that you guarantee the title except for any conditions specifically listed in the deed, and make other guarantees about the property.

Gift

A voluntary transfer of real or personal property for nothing in return.

Joint Tenancy

A type of ownership in which you own property with another with a right of survivorship, which gives each owner the right to receive the property at the death of the co-owner.

Life Estate

A type of ownership that protects a person's right to live on property and receive any income generated by the property during that person's lifetime. After the person's death, it passes to another.

Limited Power of Attorney

Legal authority, in writing, to perform a specific act or acts on behalf of another (for example, the power to cash another person's check). Such a Power of Attorney also may be durable.

Multiple Signature

A bank account that requires more than one signature on a check.

Quit Claim Deed

A type of deed that only transfers whatever title you may have at the time of the transfer; no representation is made about the validity of the title.

Real Property

Land, as well as whatever is erected or growing upon or affixed to that land.

Remainderman's Interest

A type of ownership interest in which your rights arise after someone else's rights end. (See Life Estate.)

Representative Payee

A person who receives and uses a benefit payment solely for the person entitled to receive the benefits. This arrangement is most often used by a government agency.

Right of Survivorship

The right a person has to receive property when a co-owner dies.

Sole Ownership

A type of ownership in which you own property solely in your name, giving you all rights to that property.

Special Power of Attorney

Also called Limited Power of Attorney. Legal authority to perform a specific act for another. ([See Chapter 6.](#))

Special Warranty Deed

A deed usually used in fulfillment of a land sale contract and similar to a General Warranty Deed.

Symbolic Delivery

A way to deliver a very large gift by giving something that represents the gift.

Tenancy in Common

A type of ownership in which you own a percentage of the property with another person. If one owner dies, the property does not automatically transfer to the co-owner(s).

Resources

- Colorado Bar Association Pamphlets
<http://www.cobar.org>
(303) 860-1112.

Pamphlet Titles:

- What To Do When Someone Dies
- So Now You Are A Personal Representative
- So Now You Are A Conservator
- So Now You Are A Guardian
- So Now You Are A Trustee
- Wills In Colorado
- Probate In Colorado
- Living Trusts
- Estate Planning
- Joint Tenancy

- Metro Volunteer Lawyers

(303) 837-1313

An organization of the Denver metro-area bar associations where lawyers volunteer to take certain categories of civil cases for indigent people. Intake for the cases is done by Colorado Legal Services.

- Colorado Legal Services

1905 Sherman St. #400

Denver, CO 80203

For Denver, Adams, Jefferson, Douglas and Arapahoe Counties, call (303) 837-1313. This will be answered by voice mail; please stay on the line for information. ([See Chapter 1 Resource List](#) for other Legal Aid Offices.)

- Metropolitan Lawyer Referral Service

(303) 831-8000

- Colorado Department of Revenue

1375 Sherman St.

Denver, CO 80203-2246

<http://www.revenue.state.co.us>

- Denver Public Schools

Office of Volunteer Services

2409 Arapahoe St.

Denver, CO 80205

(303) 424-8245

- Colorado Veterans Affairs

Accredited Representatives

155 Van Gordon

Lakewood, CO 80228

(800) 827-1000

- United States Railroad Retirement Board

District Office

721 19th St., Room 177
P.O. Box 8869
Denver, CO 80201-8869
(303) 844-4311 or
(800) 808-0772

- Douglas County Senior
Outreach Services
101 3rd St.
Castle Rock, CO 80104
(303) 688-4825