

PUBLICATION

Wills & Estates Update: Asking for a Mulligan in the Game of Life

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A “mulligan” is a term used in golf. When a player hits a bad shot and wants to try again, the player asks his playing partners for a mulligan and if allowed, tees the ball up again for another go. As lawyers dealing with many deceased estates, we often see files where the deceased might want a mulligan if they could tee things up again. What are we seeing a lot of these days?

1. People still die without wills. This doesn't mean that their estate goes to the government. It means there is no executor so there is no one with authority to handle estate matters until an administrator is appointed by the court. This makes things more difficult as banks, investment companies, insurance companies, etc. will not disclose information until there is someone with legal authority. Further, if there is no will, the estate is distributed according to the intestacy provisions of the *Wills and Succession Act*. This could have unintended consequences, such as a failure to leave adequate support for a spouse, partner, and/or dependent child.
2. People self-help complicated things. I know, lawyers and accountants can be costly. But if you don't properly and formally divorce a spouse, there will be problems in your estate. If you don't properly divorce yourself from a business partner, there could be problems in your estate. It's like that old oil filter commercial: you can pay me now or you can pay me later. Leaving things undone or unfinished creates expensive problems and significant aggravation for your personal representatives.
3. People are dying with enormous debt loads without life insurance or loan insurance to help pay debts and taxes. Today's modern lifestyles often seem to involve a lot of borrowing for immediate consumption. Lines of credit, credit cards, car loans, boat loans...the list goes on. We are seeing a significant increase in the number of insolvent or barely solvent estates. Dying with a huge amount of debt simply sends the wolves to someone else's door. How will your debts be paid off if there is no equity in any property and there is no life insurance or loan insurance?
4. People don't change beneficiary designations in RSPs and life insurance. Banks and insurance companies have forms for beneficiary designations. Circumstances change over time, such as divorce, remarriage, or new relationships outside of marriage, and these changes should at least cause a person to reflect on previously made beneficiary designations. Unchanged designations after changed circumstances continue

to create much anguish and hardship. Designations do not change automatically - you must take steps. If unable or unwilling to seek legal advice, perhaps at least taking a lunch hour to sign a form at the bank or insurance brokerage would be an hour well spent.

It is advisable to consult with a qualified legal professional before acting as an Executor, Trustee or Attorney. The advisor will prepare you for what your role and obligations involve and give you a good understanding of what is required of you. What you don't know can hurt you.