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## Still A Little More Work To Do After The Divorce Is Finalized

By [Mary Alice Smolarek](#)

No one will ever tell you that going through a divorce is not difficult physically, emotionally and financially. For most people, however, the Court Order granting the final divorce is not the last step of the necessary paperwork. It is critical for former spouses to review and update their estate plans. Maryland law provides an automatic change to a last will and testament and a revocable trust executed *during* marriage. After final divorce (much like the attitude of some of the divorce litigants), Maryland law treats the former spouse as if he or she had predeceased the decedent. **This rule does not apply to beneficiary designations on retirement accounts or life insurance policies or any assets which the parties had titled in joint names.**

The Supreme Court recently upheld the application of a Minnesota law which applied the same rule to life insurance policies treating a former spouse named as beneficiary as predeceased thereby distributing the death benefit to the decedent's children as contingent beneficiaries in *Sveen v. Melin*. While it is possible that Maryland will adopt a similar law, it currently has not and individuals still need to update their beneficiary designations after divorce. It is also imperative to update the rest of the estate plan including powers of attorney, guardianship provisions, heirs and advance medical directives.

Although the hard part is done once the divorce is finalized, there is still legwork which needs to be done to make sure surprises don't occur when it is too late to fix. Just let us know and we are happy to assist.

## Ensuring Against the Cyber Inevitability

By [Don Walsh](#)

Prime Day was a wonderful marketing idea but also a good reminder of the hazards of operating online for retailers. At this time, no one is suggesting that the unavailability to millions of potential customers was due to anything other than an overloaded system. But what if it was due to a cyber-attack or malware? Amazon could have lost millions because of malicious interference. It raises the question most of us need to confront in determining what can a business do to protect itself and mitigate its losses. Beyond good security practices, this is a good opportunity to provide a primer on cyber insurance policies.

Most commercial property and general liability policies do not cover cyber risks, and cyber insurance policies are highly customized for clients in a new and quickly growing market. Like other forms of insurance, cybersecurity insurance products can be unique but most policies



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have several basic coverages and issues. Typical types of insurance coverage distinguishes between the type of harm, how it occurred and whether there are first party or third-party liability and costs. Areas of interest to examine include:

- Data breach and privacy management coverage covering costs associated with managing and recovery from data breaches (forensic investigation, notification of victims of stolen data, credit monitoring for the victims, and associated legal fees).
- Multimedia liability coverage, which covers defacement of websites, media and intellectual property rights
- Extortion liability coverage
- Network security liability coverage, which covers incidents like third party theft and DDoS attacks
- Protection from third-party claims alleging failure to protect or maintain security.
- Business interruption coverage
- Data recovery responsibilities
- "Failure to maintain" exclusion clause which penalizes policyholders who fail to execute or maintain minimum security practices.

Importantly, cybersecurity insurance doesn't prevent security incidents. Insurers incentivize, recommend and often require policyholders to take steps to mitigate their exposure. Insurers insist on use of certain security measures. Make no mistake-- cyber insurance is not a substitute for ensuring you have made smart investments in cyber security. After performing a careful assessment of your internal practices and vulnerabilities, a consultation should be had with your insurance broker and your attorney to understand where coverage and exposure may be needed.

## Implied Duties in Your Contract

By [Michael Stover](#)

Every contract includes an implied duty that each party will cooperate with one another by not hindering or impeding the performance of the other party's contractual duties. One court stated "[T]he law will imply an obligation to act in good faith and to deal fairly with the other party when necessary to the performance of a condition." It may be possible to argue in a given case that a breach of these implied duties is a material breach of the contract which may excuse performance or permit a party to recover damages caused by the failure to adhere to the implied duties.



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The defense of hindrance and/or interference is perhaps best illustrated by the case of *Blake Constr. Co., Inc. v. C.J. Coakley Co., Inc.* Blake Construction was the general contractor for the construction of the Walter Reed Hospital and engaged Coakley as its subcontractor for the performance of fireproofing work on structural steel. The subcontract contained a “no damages for delay” clause and a changes clause and expressly provided that Coakley had to prosecute its work in accordance with the project schedule provided by Blake. Delays in the delivery of structural steel at the outset of the project led to the disruption of the critical path. Coakley repeatedly advised Blake that its workers were being impeded by the conditions on the job and that it was incurring costs in excess of those anticipated as a result. Ultimately, as a result of these and other breaches on the part of Blake, Coakley walked off the job.

The Court found that Blake hindered and prevented Coakley's performance because the schedule established an unreasonable sequence; the job site was not in suitable condition for Coakley to perform its work; and Blake did not cooperate with Coakley when necessary to assure Coakley's performance. The court refused to enforce the no damages for delay clause on the grounds that the damages were not contemplated by the parties and the damages resulted from the active interference of Blake.

This is a valuable lesson that even though the contract may not see anything prohibiting a particular course of conduct in a contract, every contract still has an implied duty of good faith and fair dealing to fill in the gaps and ensure all parties “play nicely in the sandbox.”

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