Learning From The Mistakes of Others

In case you were wondering why we think detailed client intakes are essential…

1. A client listed his checking and savings accounts on his intake form. He wrote that his adult daughter was the pay-on-death ("POD") beneficiary of these accounts. Probate is avoided if the POD beneficiary is alive at the account owner's death. Unfortunately, the client declined to provide a copy of the most recent statements for his accounts. We ask for complete statements to have accurate account values and title as shown by the financial institution, insurance company, etc. When the client died, his adult daughter, much to her dissatisfaction, learned that her father's accounts listed her not as the POD beneficiary but as a power of attorney (POA). The authority of a POA ends at death. Therefore, probate was required for the bank accounts, costing thousands of dollars unnecessarily.

2. A client owned a life insurance policy on his life but did not list the policy on his intake form. After his death, his children found the life insurance policy among their father's belongings. They later learned that the policy was purchased by their father's parents when he was a child. Any guesses about who the life insurance beneficiary was? If you guessed our deceased client's parents, you're correct! Probate was required because the client's parents had been deceased for over twenty years when he passed away. If the policy had been disclosed and the beneficiaries listed, we would have instructed our client to make sure the policy was updated with the appropriate beneficiaries. This would have avoided the unnecessary expense of probate.

3. A client owned a MetLife insurance policy on her life which she did not list on her intake form. After her death, we learned of this MetLife insurance policy. The good news is that, unlike the previous example, this client had recently updated the primary and contingent beneficiaries on this insurance policy, which allowed the policy proceeds to pass to the named beneficiaries outside of probate. The bad news is that the client failed to realize that she had MetLife stock in addition to her life insurance policy. Unfortunately, we've seen this happen before with MetLife and Prudential policies. Both companies were originally a mutual insurance company but converted to a

publicly-traded company owned by shareholders in 2000. When this occurred, eligible policy owners were allocated MetLife, Inc./Prudential common stock shares. Had we known about the client's MetLife policy, we would have directed her to call Computershare/Prudential to check for stock ownership. The client could have sold the MetLife stock, retitled it to her trust, or named beneficiaries on the account. Any of these options would have avoided a probate of the stock. Instead, the stock required probate.

4. A man passed away, and probate was required. His Will was old and named more than ten beneficiaries. The first names of some of the beneficiaries were names such as "Pat," "Terry," "Suzy," and "Bill." Unfortunately, no contact information regarding the beneficiaries was found with the decedent's Will or among his belongings. For example, is Pat the beneficiary's legal name, or is it a nickname for Patrick or Patricia? What about Terry? Are we looking for a man or a woman? How do we know who the correct beneficiaries are? Investigating issues created by Wills and Trusts drafted in this manner, including those done by attorneys who do not ask for important information, can result in costly probate and trust administrations.

We recognize not every attorney has a detailed client intake form and that our client intake process takes some work on your part. However, we also believe this process is critical for a well-developed estate plan and successful distribution after death.

Legal Zoom, Do It Yourself Forms, etc.

1. Husband and wife were married for many years, but it was not the first marriage. The husband had children from his first marriage, but they were grown and living on their own when he and his wife were married. The couple had seen an attorney not long after they were married, and each had a Will and a Durable Power of Attorney prepared. Years later, the wife developed memory issues, and the husband worried he couldn't afford to pay for a nursing home if her care became too much for him to handle. He proceeded to remove his wife's name from every asset, including their homestead property, mistakenly believing this was a good idea for Medicaid

planning reasons. The husband died suddenly survived by his wife who was severely memory impaired. The husband's actions caused the assets in his name only to become probate property following his death. His Will left all assets to his wife, who needed 24-hour nursing home care by this time. As a result, Medicaid planning was required to help pay for her care. The wife's Durable Power of Attorney named no successor to the husband if he could not act. In addition to the probate for the husband, an incapacity and guardianship proceeding had to be filed for the wife to give someone authority to deal with her personal and financial issues. The wife later died, and assets that passed to her from her husband's probate estate then required probate at her death. This couple could have avoided numerous negative consequences if they had sought the advice of an elder law attorney and taken the time to supply all of the information requested.