



## Estate Planning Mistakes That Can Create Issues for High-Net-Worth Families [Ep. 3]

*Transcript*

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What's important is to think about these things obviously while you're alive because you can't later and what do you want to happen? Make it a conscious decision. Don't just default into doing something that later maybe instead of what you intended to be a blessing to your legacy ends up being a nightmare in terms of infighting and who inherits what.

(...)

(Music)

(...)

Today we're discussing estate planning, something that's near dear to me because as you know we get to live vicariously through our clients and over the 20 or so years I've redone my trust three times. You're also a hypochondriac. I am a bit of a hypochondriac, but I've learned from so many people there's successes and failures so I always when I'm looking at the future, I want to

know how to navigate and protect my family. So, if you wouldn't mind share with people what is a proper estate plan? What is the importance of estate planning and legacy planning?

(...)

That's pretty wide encompassing but I think everybody should have some type of living trust right and that's a trust set up that you and your spouse set up while you're alive. It's revocable so anytime you still have access to the funds typically it's added with a marital trust and that comes in a play when one of you pass away. So, let's say you and Lauren pass away assets go into marital trust and at that time typically on a portion of it can be irrevocable which is a good thing and the reason for that is it can be said if it's set up right it could be creditor protected. So, if something happens, they go after a spouse, it's creditor protected but even before that I think the main reason to do something like this is to avoid probate. You know if you don't have it properly set up let's say I pass away, and the assets go to my my spouse Gisela. Everything's in probate. Do you really want everybody to know your debts, your liabilities, everything going on? It's public information so I think it makes it a lot easier on your beneficiaries if you if you have a living trust and a marital set up.

(...)

Okay so let's use you for example okay because this is going to be fun for me. Okay you pass away next year right and Gisella, beautiful beautiful Gisella, gets married to a better more articulate individual right after that maybe a month or two later after you pass, she gets married but 50 of marriages don't work out right, so they don't work out. So, she gets married and eventually they get a divorce. Is there any benefit in having an irrevocable trust when she passes away to Gisella?

(...)

Absolutely. So, let's unpack that. So if I pass away Gisella inherits the assets, I mean obviously I've been with her since we were seven years old, so they're her assets she can do what she wants, but if she were to remarry and let's say it's not properly set up in trust and then she were to pass away potentially this gentleman, I'll use the word loosely, would be inheriting these assets right and then my my kids aren't and typically what people want is they want to set it up per stirpes, which is like per your bloodline, so if I want my assets if I'm gone to go to Gisella, if she's gone, to my children, not to some other fella right and you can look at that a few different angles, Robert. Let's say Gisella passes away and my kids inherit the assets 50 percent of people end up in divorce, as you mentioned. I would like to think like everybody that my kids, they'll marry and never get divorced, but let's say one did divorce and let's say my daughter has three or four children, divorces, and then that gentleman is gone. If it's not set up in a trust potentially they're getting part of the estate and I want it to again to stay in my lineage, so there's different ways that it's protected for that for that reason but you can also give them access to it doesn't preclude them from pulling out money from the portfolio. I want to talk about the the access they have to it, but I also want to back up. I know all trusts aren't created equal, they're not they're not the same, so all types you would set up for what the benefit are you trying to reduce your estate are you trying to credit a protection yeah. Let's use your example, Natalia, because many of our clients do have kids, and Natalia is wonderful right, so she gets married

and he's not such a great guy, he ends up leaving. Does every trust protect him from being able to have access to those to those funds?

(...)

Typically, it's going to be an irrevocable trust, so typically what's done is you set up an irrevocable trust to set up but then you have it set up with some type of provision for them to get assets and what that's called is a HEMS provision. And what's HEMS? Health, Education, Maintenance, Support. Okay, so which is pretty broad if you think about it but if she needed a vehicle, it doesn't mean 300k to get a Lamborghini depending on how the provisions are set up. She's way more responsible than that. I agree. It means maybe 30k or 20k depending on how it's set up.

(...)

So, health that's the first one, health, education, maintenance, support which is broad but it puts some guardrails on it so whoever is inheriting those assets just can't blow through it and then the other thing you want to keep in mind is who's the trustee right where who's deciding to make sure that the instructions left in trust are actually being implemented. You want it to be Lucas right, your son Lucas? That's who you want it to be.

(...)

Of course, so typically you don't want a family member is my opinion again somebody may give you a different answer to that. I don't think you want a family member, imagine if you put an uncle and you're like hey uncle I need 200k for that car out of dad's retirement account. That's perfect. Well I would disagree, you know, because especially if it's a trust account any type of account that that's in trust there could be tax ramifications in terms of income in terms of capital gains but the issue is that the uncle may be trying to do the right thing and say no you can't have that that chunk of money needs to be a lot smaller let's be responsible about this but after a while every week if you're calling that uncle they might cave in because they're getting beaten down and by the way that uncle later can get sued if he if he didn't follow the trust rules. So typically what we recommend is have a corporate trustee or you can have a co-trustee you could have a brother-in-law or something in addition to a corporate. Again, we custody at Raymond James so that's typically who we recommend for our clients, but the the corporate trustee is going to make sure everything is followed to the T based on the instructions left.

(...)

So you could still name Lucas or Natalia as the co-trustee probably Natalia as the co-trustee and is that just for checks and balances so that in your situation if Lucas wants that Ferrari or Lamborghini, Natalia doesn't have to be the bad guy and say no she can put it off on the corporate trustee.

(...)

That's exactly right, it just makes sure that the wishes that the survivors follow the wishes of the people that left the money behind that's right.

(...)

One more follow-up question then, so we talked about what happens if you pass away and assets go to Gisella or if you and Gisella pass away, and assets go to your kids, Lucas and Natalia. What happens if now let's say Natalia, she has a few kids as you mentioned, and she passes away, now it's not a divorce, does her husband at that time get the assets? It depends on how it's set up, there's different ways to set up the trust, it depends how it's set up again typically it's like per stirpes, so if they're married at the time, yeah they could potentially have access to the funds, but it depends on how it's set up and what the wishes were.

But if he gets remarried then it's not set up right could your grandkids potentially be cut out? Potentially, so that's why again as you know we're not attorneys what we're going to do is we work with the trustees if they use Raymond James as a trustee and we manage the portfolio when they set up on a revocable or irrevocable trust, we manage the assets we're not attorneys it's going to depend on case by case so I'm trying not to be too biased and say what I would do but I think it's going to depend on what's important. As you know sometimes we meet with people and they say, hey once I'm gone I don't care what what's done with the money so, I just think what's important is to think about these things obviously while you're alive because you can't later and what do you want to happen. And not only while you're alive, sometimes our clients as they get older, sometimes unfortunately they're not thinking the same they did 10 years ago so while you're thinking clearly, sit down with your family and your attorney and your financial advisor and figure out okay what do we want to happen with our legacy once we're gone, do we want to hold the purse strings or do we not. And there's really no wrong answer as long as you contemplated what the answers are once you know what the options are it's your money you've worked your tail off to earn it you have a right to do whatever you want but don't do it blindly right make it make it a conscious decision don't just default into doing something that later maybe instead of what you intended to be a blessing to your legacy ends up being a nightmare in terms of infighting and who inherits what.

(...)

Great. One of my last questions is, we talked to many people who have talked to other advisors or attorneys about whether or not they should have a trust or some sort of estate plan, is there a right time or is there a right dollar amount or time in life that makes sense for everyone to get a trust or how would you say that? I think it makes sense pretty much for anybody especially have children, with the living trust you can you can avoid probate. I think pretty much anyone, in my opinion, needs some type of trust. That's the short answer I'll give you, I don't want to recommend a particular type because there's so many variables.

(...)

Okay, so I know trusts are complex and there's so many different types out there and thank you for the the insight on your family and how you have a trust, it's definitely great. If you were sitting with a new client and there was one takeaway from everything we've said today what would that takeaway be? I think it's to decide what would you want to happen with your legacy if you were to pass away tomorrow and how can you make the life easier of your spouse of your children again in terms of probate. We've had clients that pass away and it takes them years to

consolidate everything and these are people who are professionals who have a large net worth who, if on the exterior to think oh my gosh they have it all together and they didn't have a proper trust set up, and now we're years down the road not only can it be expensive but it's emotionally taxing at a time a loved one just passed away and you know they're there at this point making irrational decisions with the estate and they're making assumptions on what dad or mom would have wanted and that's a problem. So, don't put that burden on your loved ones when you're gone. Figure out what you want and I would do it with your family right make sure they're on the same page.

(...)

Yeah. You did make me think of one more question. I know that even talking about trust can be... and sitting down with your family, I mean you're dealing with mortality and nobody, it's like getting life insurance you don't want to think about death you just want to push it off or kick that can down the road. With that said, do you think that is the answer to my next question, or what do you think is the answer to why most people don't do a trust?

(...)

I think that they just don't think about it. Oftentimes, as you know, we'll sit down with people and go do you have a part of our plan when you sit down with a potential new client go over their investments. Hey, do you have a will? Do you have a trust? No, the most common answer I get if they don't have it, is oh I've been thinking about doing that for three years. Right, so I think our job as a financial adviser is to be the quarterback of that. Not only to show people where their gaps in their planning, but hold them accountable and I think people appreciate that. Not to be annoyed, but follow up when we do our follow-ups. Hey, last time we met we talked about rolling this account over we talked about getting together with the trust attorney. We recommended or you said you had a great one, did you do that? If not, why? And I think people, to a certain extent, like that accountability. I think life gets busy, you know, people move on with their life and don't prioritize it. So, I think, yeah, does that answer your question?

It's wonderful, and I know there's a ton to unpack, so thank you for all of that. But before we're done today, we've got another mail bag question. Okay let's do it.

(...)

Let's say, this actually doesn't have anything to do with trusts, so you're off the hook on that one. Is it smart. Glen, to take a loan against your 401k in a down market to purchase a home?

(...)

Man, that that's a tough question to answer. In general, I don't like people borrowing from the 401k, again that's leverage. I could see scenarios where perhaps it makes sense, but in general, you know me, I'm not a big debt guy. If I'm having to give a general rule and I can't dissect it or know the specific situation of that person, their age, what other assets they have, I'm going to go with no. If it's my child, I'm telling them don't get a loan on your 401k.

(...)

It wouldn't matter if the market's up or down, you're just saying don't do it?

(...)

Exactly. The marketing being up or down doesn't matter. I mean, if you leave the employer you're restricted to have to pay it off at a certain point or you can't roll it out. You know, you following me?

(...)

That's a great point because if you leave, you may leave on your own accord, but sometimes you could get fired and you still have to pay it off.

(...)

Exactly. Out of inopportune time and then you might have to pay it, let's say you have to pay it off at a certain time, you might have to pay taxes and potentially a penalty on what you have to distribute to pay that loan back, depending on the age.

(...)

Yeah, that's right that's right. Perfect, well thanks again. I certainly enjoyed it and yeah, next time.

(...)

Thank you.

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