Danielle Friedman: Welcome to Trust Us Estate Planning Wisdom, the podcast where we unravel the complexities of estates and trusts to empower you with the knowledge needed for effective estate planning.

Max McCauley: This podcast is hosted by seasoned estates and trust attorneys, Danielle Friedman, Herb Feinberg, and Charles Max McCauley.

Herb Fineburg: This podcast is your guide to the intricate landscapes of estate planning, including wills, trusts, and probate.

Danielle Friedman: Thank you for joining us, and we hope you find the discussion informative. But remember, when it comes to legal matters, always consult with a qualified attorney regarding your specific case. Today's episode is episode two, passing your wealth to your children, how to ensure your children benefit from your hard work. Herb, can you give us the facts for today's talk?

Herb Fineburg: We have a client, a 65 year old married man, who called our office about his concerns regarding his father's estate plan. A client's father is 88 years old, happily married to his second wife for forty one years. He had divorced the mother of our client long ago. The father and stepmother had no children together and the stepmother had no children. The father was a very successful entrepreneur and was now retired with a material estate worth $24,000,000.

Our client had asked his father if he had a trust as part of his estate plan. The father, an independent businessman, said he had a will which left his entire estate to a second wife but no trust. The father confidently noted that he would likely predecease and his attorney had prepared a will for his wife, the stepmother that left everything to the three children. The son suggested that his father use a trust for his stepmother with her as a beneficiary for her lifetime with the balance for his three children. The father said the trusts were too complex and messy and his attorney agreed.

Well, as things would have it, our client's father died about a year later, and the stepmother died shortly after him. When the stepmother fell ill before her death, we were told her sister's two children, her nephews, visited her every day. After the stepmother died, it was discovered the stepmother's will had been changed to leave virtually everything of the 24,000,000 to her two nephews.

Danielle Friedman: So herb, who do you think was at fault in this result, which effectively left the father's children, the the stepchildren without any assets after dad and stepmom passed away?

Herb Fineburg: Well, I can tell you that the client, the son, was very angry with his stepmother, But I'm not sure it was her fault. I think more of the responsibility for having a proper estate plan should have been with the father who had the $24,000,000 in assets to make sure all his heirs got his assets. What do you think, Max?

Max McCauley: Well, I I agree, Herb. What would you have recommended to avoid this unintended result?

Herb Fineburg: Well, I think it

would have been prudent for him to use a trust for his second wife, make sure she was taken care of during her lifetime. I think it would be worth discussing what the terms of that trust would be.

Danielle Friedman: Yeah. So, typically, when we set up these trusts for our clients, when one spouse dies and you have a trust for the benefit of the surviving spouse, usually, the surviving spouse can have distributions of income and principal made by the trustee at the trustee's discretion, but you can modify those terms and have mandatory distributions of income if desired or mandatory distributions of principal based on certain thresholds and certain amounts. When you prepare these types of trusts for your clients, how do you assure them that they're not administratively burdensome and that they're not messy, contrary to what the father, in our fact pattern, believed?

Herb Fineburg: Well, know, these kind of trusts are not new. The use of these marital trusts first came into existence during Ronald Reagan's presidency. Ronald Reagan was married to Nancy, and that was his second wife. A law was passed that said you could set up a trust for your second wife, and required that only she receive only the income from the trust.

Danielle Friedman: Yeah. QTIP trust, qualified terminal interest and property trust.

Herb Fineburg: Yes. So I would have used that long outstanding straightforward trust document for the stepmother, and she would have been the beneficiary for her whole life, would have gotten the marital deduction, no tax when dad died, and the children would have inherited everything.

Danielle Friedman: And who typically serves as the trustee of that trust? Does she have to, you know, go ask a third party for money when she needs it? Because that sometimes becomes uncomfortable. You don't want your spouse to have to go answer to a third party trustee.

Herb Fineburg: Well, you can just have the surviving spouse be the trustee of the trust because her authority would be pretty straightforward as to what she would be entitled to. Under the Ronald Reagan type trust, you would be entitled to the income.

Max McCauley: Would a revocable living trust been appropriate here?

Danielle Friedman: For the father's estate plan? Absolutely. So rather than a will, he should have had what we refer to as a pour over will coupled with a living trust. So his will would have been very short. It would have said that everything flows into his living trust, and then his living trust would contain the substance of his estate plan.

Now, of course, he could have set up a trust for his wife under his will, but we prefer the living trust structure because it adds some more privacy, and it's easier to change in the future by the client creating the trust. And there are other numerous benefits to having a living trust. So, generally, a revocable living trust would have been advised had the father been our client. The beauty of the trust is that it locks in father's estate plan. No matter who visits stepmom on her deathbed, she cannot change who the beneficiaries are of the trust when she dies.

Max McCauley: So the father could have changed the terms of his revocable living trust while he was alive, but his wife would never be able to change those terms

Danielle Friedman: That's right.

Max McCauley: Whether he's alive or dead.

Danielle Friedman: Absolutely right.

Max McCauley: Once the trust would have been drafted, is there any additional cost going forward to that structure?

Danielle Friedman: Not really. And as far as the actual planning of it, whether you're drafting a will or a living trust, the work is the same when you're preparing the documents. So if father was concerned about legal fees in the preparation of his estate plan, that was misguided because if your living trust is essentially a will substitute, the amount of work to prepare a living trust is akin to the amount of work to prepare a will. After dad dies, I don't think there's really much added cost or expense with administering a living trust, ensuring that your assets ultimately end up where you want them.

Herb Fineburg: You could only imagine the shock that the father would have if he learned that his entire lifetime of earnings went to two nephews who he had potentially no relationship with. This is the core of estate planning, is to make sure that your assets don't end up in the hands of third parties, to make sure that your children are taken care of, and often to many clients, to make sure that your grandchildren get the benefit of it.

Danielle Friedman: Right. With 24,000,000, that could have benefited generations of his family, not just his kids. These are the types of conversations that his attorney should have had with him. Because oftentimes, I'm asked, well, what's the difference between you and me just going on LegalZoom or another website and creating a will online? And this type of analysis and this type of planning and understanding family dynamics and really ensuring that your client's desires are met is, I think, what distinguishes a good estate planning attorney from a client just going online or going elsewhere and saying, oh, I'm just gonna leave everything to my surviving spouse.

Max McCauley: So to recap, was this result avoidable?

Herb Fineburg: Yes. And would it have

Max McCauley: been cumbersome and costly to do so?

Danielle Friedman: No. I don't think so. I think that the alternative ended up being a lot more costly.

Max McCauley: $24,000,000.

Herb Fineburg: Yeah. 24 out of 24,000,000.

Max McCauley: 1 hundred percent lost.

Herb Fineburg: Yeah.

Danielle Friedman: Herb, thanks for bringing this topic up today. I think it's really interesting and, again, delves into all sorts of issues that come up on a regular basis in estate planning, whether it's trusts or fees associated with planning and trusts, all the way to, you know, selecting who's the right trustee for your trust and ensuring ultimately that your estate plan is followed and that your wishes are met when you pass away.