

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 Fineberg, and

Herb Fineburg: Charles Max McCauley. 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.

Max McCauley: Episode one, how to preserve trust funds for couples.

Danielle Friedman: Today, we're going to be talking about a case where mom and dad established an irrevocable trust for their son in order to make annual gifts. The trust currently holds around \$450,000 in assets and was first established when the son was a minor. Son is now married with two children and wishes to purchase a home for him and his family. Herb, can you walk us through what we would do to preserve the value of the son's trust?

Herb Fineburg: There are a couple of options for the trustee of the trust in handling this situation. The best is for the trust to buy the house. The son can live there rent free and permit the wife and children to live there as well.

Danielle Friedman: If I'm wife, I'm not loving that option because I am permitted to live there by my husband. I'm not on the deed. It doesn't make me feel like it's my home. So I'm gonna say to my husband, hey. You have this trust. Let's just take the money out and buy a house together. Can't you do that?

Herb Fineburg: Yes, you can do that. We can have the trust lend the couple the money to buy the house or to fund the down payment on the house.

Danielle Friedman: And why would you do a loan versus, you know, our house in this example costs \$450,000. Why can't they just make a distribution to the son and son buys the house in joint names with his wife? Why are we why are we doing a loan?

Herb Fineburg: Once you make a distribution from the trust to the couple, the trust is depleted and the house becomes marital property. So you've defeated the whole purpose of establishing the trust or the legacy for the son, for the son's children and other heirs. The trust is set up such that all the assets in the trust will not be subject to

death taxes as people pay us on.

Danielle Friedman: So if I'm borrowing money from the trust or son rather is borrowing money from the trust with his wife, they're both signing a note, a promissory note to the trust and it's secured by the house, almost like a mortgage. And then if something were to happen to the marriage and then the house is sold, it can be used to repay the note.

Herb Fineburg: Right. And that's a very good plan to have both parties of the couple sign the note so that in the event of a divorce, it is an obligation of the marital estate and will diminish how much is going to be split up between the ex husband and the ex wife.

Danielle Friedman: All right. I guess we're doing a note.

Herb Fineburg: Yes. I think that's the best option. The purpose of the trust is to address not only a situation of divorce, but it could include creditors. It could be, for example, that the son or his wife get into a business and the business goes under. We now know that 90% of businesses fail. So, is an asset protection trust, which protects the couple from creditors, such that if they even filed for bankruptcy, they would all still have their house.

Danielle Friedman: Whereas if they took the money out of the trust, bought the house in their own names, they're not going to have that similar protection. Creditors are going to take the property.

Herb Fineburg: In most cases, there are issues related to jointly owned property in certain states, but in most cases, when a loan is obtained, the bank is going to ask the spouse to sign as a guarantor on the loan, so they'll both be responsible for that. What are some other comments, Max, that we might make on this here?

Max McCauley: I think for creditor protection planning, not only would you sign a note, you would also sign a mortgage and record the mortgage so that the debt is evidenced in the public record.

Herb Fineburg: Excellent. Max, interesting question for you. If the house is bought in the name of the trust and the couple is divorced, who will be able to reside in the house when they are separated?

Max McCauley: The beneficiaries under the terms of the trust.

Herb Fineburg: And in our situation, who would that be?

Max McCauley: The son.

Herb Fineburg: Isn't that unusual that the court would give possession of the house to the son as opposed to the wife?

Max McCauley: No, the court will follow the terms of the trust.

Herb Fineburg: But absent the trust, it would be normally that the wife would be given possession of the house and the husband would have to find an apartment or another property to live in.

Max McCauley: Yes, herb. Potentially, that could be the outcome.

Danielle Friedman: And husband could presumably keep the children with him. That's their home as well, and he would allow them to live with him in the home, even though technically he is the sole trust beneficiary.

Herb Fineburg: Very interesting result by using the trust beyond gifting.

Max McCauley: Well, thank you all for joining us. This podcast opens the door to future discussions regarding trust account, minor accounts, gifts to minor, HOTMA account, gifts less than or equal to the annual gift tax exclusion, gifts in excess annual exclusion, step up in basis on date and death and prenuptial agreements. Please join us for episode two. Episode two deals with passing your wealth to children and descendants, how to ensure your descendants benefit from your hard work.

Danielle Friedman: Thanks, guys. That was fun.