Welcome to the Vandenack Weaver legal visionaries podcast brought to you by interactive legal here's your host Mary Vandenack

Welcome to today's episode of Vandenack Weaver, legal visionaries, a weekly podcast discussing updated legal news, evolving methods of providing legal service and law practice issues. My name is Mary Vandenack founder and managing partner at vandak Weaver, LLC. I'll be your host. As we talk to experts from around the country about closely held business tax trusts and estates, legal technology, law firm, leadership and wellbeing. Before we start today's episode, I want to thank our sponsor. Here's the message from interactive legal.

There's always a resistance to change, particularly with attorneys, attorneys like to look back at what's worked in the past, and that makes a lot of sense. But when you realize that with a good automated drafting system, you can do a better job for your clients. Deliver documents on a more timely fashion in a more consistent, in a more costly manner. If you're not a subscriber to interactive legal, I urge you to go to interactive legal.com and click on requested demo. And you'll be contacted about having a demonstration of interactive legal for you, which can be done right over the internet. Don't have to leave your office. No salesperson will call. We can arrange it at a time and convenient for you. So please go to interactive legal.com and click on request.

On today's episode, I have Laura Sass. Laura is an estate planning attorney in New York city serving high net worth clientele. The story I will always love to tell about Laura is that I was able to teach her out of quarantine when I visited New York for one of my first travels. And I was going to say at the end of the pandemic, but it's still going on. But when we thought it was close to an end, I was so excited to meet her. And we just had a, I thought it was a delightful experience. We both are passionate about our estate planning and practices. And so today we're going to talk about one of the tools that we use, which is dynasty trusts. Welcome Laura,

Mary, thank you so much for inviting me to participate on your podcast. I so enjoy listening to law visionaries and meeting all your articles regarding various legal topics and law for management. You are truly a leader in our trust and estates community, and it's an honor to collaborate with you

And we've had an opportunity to connect over the past. I just love hearing about your background. Can you share a little bit about your background with our audience? Sure.

I've been practicing law in trust and estates since I was a summer associate at a big firm in Manhattan following my second year at NYU law school. Many moons ago, I initially attended law school with the intention of eventually either going into business or becoming a family law attorney, but quickly change course when I fell in love with the trust and estates department at the firm I worked at, I really enjoy this practice area because of the very close relationship that you inevitably develop with clients because you're really dealing with their most intimate and confidential matters. And I love the complexities of tax planning. Let's just say that estate planning gives me the opportunity to use both my psychology and law degrees daily.

And today we decided to talk about dynasty trust, something we have had interesting conversations. Um, can you briefly explain for the audience what a dynasty trust is?

A dynasty trust is a long-term trust that can be used to pass wealth from generation to generation without the requirement of the trust terminating on a set date, this trust type can reduce a state gift and generation skipping transfer taxes, save income taxes and provide asset protection because of these benefits, dynasty trusts are probably one of the most effective tools of preserving family wealth over time.

So, a client that's considering a dynasty trust. We must talk to them a little bit about this silly rule that we have called the rule against per ma. It might not be silly, but I just find the name of it and kind of the concept a little bit amusing, but it's called the rule against perpetuities. Can you explain what that rule is and how it affects where you might want to create a dynasty trust?

So, this rule against perpetuities is a rule that was designed really to prevent wealthy individuals from perpetuating wealth and trust. As I had said, one of the fundamental characteristics of a dynasty trust is its duration. So, the duration of a dynasty trust is governed by the state's rule against perpetuities. The rule against perpetuities is derived from common law and in general controls, how long after the transfer of the property, it could be held in trust the rule originally required. Are you ready? That trusts be distributed within 20 years of the death of the last to die of lives and being at the time, the trust became the revokable, that's quite a mouthful. And you can probably see why it's been a rule that is frustrated lawyers and law students alike for generations.

We spent weeks on that in law school, right? Trying to figure that out. Yeah. I can't even remember which class it was like several, but so most states have repealed or modified the rule against perpetuities. What's driven that trend.

Generally the rule has been criticized as no longer applicable in today's system also because the internal revenue code permits trust to last, as long as permitted by state law for certain transfer tax purposes, a number of states have repealed their rule against perpetuities to compete for trust business in practice application of the rule has baffled practitioners over the years who have failed to truly master it.

So, we want to make it a little easier, right? So, then we're not like having malpractice suits because of some rule that talks about lives and being post 21 years. And it does allow long-term trust. I have to say that, you know, and I've done quite a few dynasty trust in recent years, but I did have another practitioner say to me recently, is, are you trying to say that you really think you can figure out what the world is going to be like in a hundred years? And he goes, if you think a hundred years back, like why do we really want to tie wealth up for that long? And I'm not really, I'm just saying it as a comment that was made. That was kind of, I thought it was kind of interesting and it at least worth the conversation with clients when we do that.

But I think a lot of the times there are really some good reasons and the clients are well considered when they decide to do it. But the, so the uniform statutory rules against perpetuities is now created a tool that essentially allows, you know, at least a 90-year trust, right? Some states have adopted this. Some states have not, some states have repealed the rule all together. So, what should a client consider in deciding where to create a dynasty trust? And the reason I'm asking that question is even sometimes in talking to practitioners, the assumption is that if they live in South Dakota, that will South Dakota is a good state. So, let me pick on a state that's less good. I don't think I don't know about Idaho, right? But so, they go to a state that still has the old fashion rule against perpetuities or wherever they live. They assume their trust must be created in that state, which isn't necessarily true. So that's the important point. So, what should they think about like when deciding what state, they want to go to?

You're exactly right. A trust Citus and governing law is not limited by the residents of the grand tour of the trust or its beneficiaries. As a result, a dynasty trust can be established in a state, which has set aside the rule against perpetuities, regardless of where the trust property is located, the state residents of the grand tour or where the beneficiaries reside. So, the best state for any type of trust will depend on a variety of factors. The most important is always, of course, the client's objectives. However, to the extent that the client seeks to achieve the perpetuation of a trust for the longest period possible, the client should look to a state that has repealed this rule. If that's a possibility, it's also important to note that there are other factors that do affect where trust should be established,

Right? And there's a lot of factors that should be in, can go into consideration. And for example, one of is some states say, Hey, when that trust becomes irrevocable, you're still going to be subject to income tax in our state. Even if it's a non-grantor trust and you haven't lived here for 10 years now, the constitutionality of that is questionable, but that's the statute that exists in some states right now. So, we are going to take a brief break from our episode for a word from one of our sponsors, Carson, private client

Wealth planning focuses on liquidity management and charges you a fee based on a percentage of your assets. But entrepreneurs typically invest in their business resulting in light liquidity. That requires a unique strategy at Carson private client. We provide a proactive and holistic strategy for building and protecting your wealth. Our mission is to alleviate the stresses and the burdens of coordinating all those financial strategies. Carson, private client will work with your current team of advisors to customize a strategy that manages all aspects of your life and wealth, giving you back the time to focus on what matters most complex needs require sophisticated solutions. Reach out to our office at 4 0 2 7 7 9 8 9 8 9. To schedule your consultation. Investment advisory services offered through CWM LLC, and sec, registered investment advisor. Okay.

Let's continue our episode. You feel free not to answer this connects question as it might not be totally fair. Do you have a favorite state for dynasty trust? Wow,

That's tough. I mean, I happen to like Delaware and Nevada are my two favorites.

You haven't been about South Dakota yet.

I have not done South Dakota yet, but I know it's a hot one. So

The first ones I did were all South Dakota because you know, I'm in the middle of the country recently. I've added Nevada and Delaware as well, but I would say those three states and then working with South Dakota, I would tell you that they're extremely progressive and stay up. So I always have a contact there because they changed the rules constantly to make sure that they're on top of the game, which is what I think you see is a competition among the states that are offering favorable trust laws. And as you mentioned, though, their exact right state really depends on a variety of factors. So, you know, if there's connections to the state, if we're seeking asset protection, if there's beneficiaries where they live, all those things really do need to be considered. Exactly what other reasons that clients do use a dynasty trust is to reduce estate taxes overall. How can using a dynasty trust, reduce federal estate tax exposure for our client?

The client can establish an irrevocable dynasty trust. And today under today's laws transfer as much as $11.7 million to that trust that 11.7 million we'll use the client's lifetime exemption from estate taxes. The actual benefit of the gift will be that any income and appreciation on the value of the assets transferred from the date of the gift will escape the state taxes.

So, if they put 11.7 million in today, and then they died tomorrow and it's only worth 11.7 million and we didn't really accomplish much, right.

You're always looking to transfer assets that you expect to appreciate significantly over time.

So, some of the stocks that we've seen appreciate, so like apple stock would have been a good one to put in early on or Tesla had that at some point. Right? Okay. So, there's also this thing called the generation skipping tax. Does the dynasty trust have any advantages with respect to the generation? Skip? Can you explain that?

So, let me explain what generation skipping means. So, the generation skipping transfer tax applies when assets are passed from one person to another person who is two or more generations below the transfer, or the typical purpose of a dynasty trust would be to benefit multiple generations. If the client who transfers $11.7 million to the dynasty trust, as we had talked about also uses their generation skipping transfer tax exemption. There are additional estate tax benefits to doing that. And again, the benefits come from the appreciation of those assets more than from the immediate gift itself.

And so, a good example, let's say you have a senior family member, who's got two kids who have both done well and have their own Federalist state tax issues. The senior family member might want to pass those directly to grandchildren and doing so we can, we have at least that similar exemption where you can basically skip one generation of tax. Exactly. But we have a limit on that. So just who should use the dynasty trust.

So certainly, individuals with taxable estates who desire to benefit multiple generations are good candidates. In my experience, family business owners also often use dynasty trust planning.

And is there any benefit to the beneficiaries of those trusts when we create a dynasty trust?

Absolutely. So, a key benefit of a properly designed dynasty trust is that the trust will provide the trust beneficiaries with asset protection benefits as well as potential income tax benefits, depending on the trust jurisdiction.

And I say, one of the things that I know I started doing a lot more asset protection type planning in conjunction with almost all the trusts that I do. It was when I had a very successful 50 some year-old guy in my office who came in and said, will you please tell my mother she needs to leave these assets? And the trust is going to give me asset protection. And at the time, you know, it was a couple of days ago in my practice. I was like, thinking, well, you're this successful guy. And he goes, and that's exactly why I need asset protection. And so, for beneficiaries’ asset protection, isn't necessarily just for the beneficiaries who have some challenges. It might be, it's a good thing for those who have done well and protects them from a whole lot of different potential challenges in life. Right. So, Lara, do you have any last thoughts on dynasty trust?

So, I, I just want to add that there are many considerations that go into determining whether to create a dynasty trust and the choice of an appropriate trust Situs. It's important that an individual's objectives, as I said earlier, are assessed and considered when formulating the plan as my belief is, I tell clients all the time is that the tax tail shouldn't always wag the dog. Finally, Mary, I just want to thank you again for having me on today's podcast. It's been a pleasure

And thank you for being here. As we reached the end of our episode, I want to thank our sponsors, interactive, legal, and Carson, private client. That's all for now. Thanks for listening to today's episode and stay tuned for our weekly releases,

Hurrdat media production.