TRANSCRIPT

Mary: Welcome to today's episode of Vandenack Weaver Truhlsen Law Visionaries, a weekly podcast discussing updated legal news as well as evolving methods of providing legal service. My name is Mary Vandenack, founder, CEO, and managing partner at Vandenack Weaver, LLC. I will be your host as we talk to experts from around the country about closely held businesses, tax, trust and estates, legal technology, law firm leadership and wellbeing for lawyers.

Mary: On today's episode, I am joined by Mark Weber and Mike Weaver, as my guests both have joined me on a previous podcast on private foundations and talking about those. But in case you didn't listen to that episode, I'm going to share Mark Weber's bio. So, Mark had a 30 plus year in the financial services industry and both Mike and I will tell you, we are fortunate to work with Mark at times and he was always great to work with. He graduated from Creighton law school has a master's degree in Financial Services, and he holds a Chartered Advisor in Philanthropy Designation, Mike and I also hold a Chartered Advisor and Philanthropy Designation. Thanks to Mark bringing that program to Omaha. Mark is also the author of the Legacy Spectrum. The Legacy Spectrum is a book that I often share with clients. It talks about how to consider having responsible heirs and making contributions to the community. So Mark also started the CAP program in Omaha. It's a pretty strong program here. So thanks so much for being with us again today, Mark.

Mark: You're welcome. Fun to join you guys.

Mary: And Mike Weaver is my partner at Vandenack Weaver, and we both are fortunate to be involved in a lot of philanthropic and charitable projects. So, we really enjoy the topic in general. So, thanks Mike for being here again today.

Mike: Absolutely.

Mary: So Mark in the estate planning process and especially say when it gets into our hands, if you're saying, Hey, you're a lawyer, you know, and you're talking to clients about estate planning. When should the topic of charitable giving come up?

Mark: Well, I'm a little biased, but I think the earlier the better. I think, unfortunately it oftentimes gets put in as an afterthought in the process of most estate planning. A story resonated with me a number of years ago in this CAP program. And it was a writing by a Jewish rabbi and, and he said something to the effect that "we never stopped teaching our children." And I know you both have adult children as I do, and we're still teaching at times. And he's said, "if you think of your last will and Testament as your last lesson to your children, what do you want it to be?" And that framed it differently for me. It then suddenly became more than just the tax savings and protecting money from creditors: it took a bigger picture for me and that is what lessons do I want to use my estate plan to pass on to my children. So that's a long way to answer, but because I think it's more important. I would bring it up earlier in the discussions than rather at the very end of the conversation going through the input sheets for clients.

Mary: See we actually have that question in term, on our estate plan intake form. And we'll ask, do you have any interest in benefiting charities? And a lot of times that gets left blank, but then you might go through, you know, tax returns and see significant charity giving, or you might see none to be honest, right? Things like that. So, what type of things might lead you to say, well, this is, you know, it should be more than my intake form, right? And even if somebody leaves a blank on the intake form, I think you would tell me that at least ought to be part of the conversation, the estate planning?

Mark: I think so. And again, every client's a little bit different, you know, better than I do. I know you guys do a lot of estate plans for a lot of clients and some people just want to have documents done and move on, and other people are open to a bigger discussion. I mean, the studies certainly show that people want their advisors to talk to them more about the legacy they're going to leave their children and the legacy they're going to leave their communities. And so, I would probably ask if I could get a conversation going up front in the meetings. Can you tell me about some of the organizations and nonprofit organizations that you've given to during your lifetime or that you're currently given to, or that are important to you? Are there particular causes that you're passionate about?

Mark: If they would say, "well, yes, I give to this organization or this, or my daughter is diabetic and I give the Diabetic Association," whatever it might be. I might just say thank you for sharing. I hope to see if I can, might incorporate then your plotting later and bring it up to you later and then just go on with the process, but come back later, if there's a way that you might be able to incorporate some of the tools that are tax efficient in the planning process that maybe come back and round back to find out or give her suggestions or him suggestions is how you might incorporate that into the overall planning.

Mary: And I know that, so I always like talk about there's some things like I look at the tax returns and say, do I see a pattern of charitable giving things like that, but I will tell you that I had a client come in. I sort of like the collaborative we've where I've done a couple podcasts on collaborative planning. We like to bring other advisors into the planning process. If I've, you know, worked with a client for 20 plus years, I probably have a good idea of where they're at. But every once in a while, we have somebody come in that we haven't worked with before and their other advisors know them better. Or, you know, there's just people tell different advisors different things. So, I had a client in like last week, and if you looked at all the typical things, the blank was left on the intake warm, and there weren't any charitable donations, but another advisor came into the meeting and said, “oh, client Z has significant charitable intentions.”

Mary: And I might have like, and I usually do raise the issue, particularly after going through the CAP program at some point, that was very helpful because he's saying, “well, we're talking about doing,” you know, the word significant was really significant in terms of what she was thinking about doing. And part of that is because she had worked all her life, but she had just finally come into some money and receiving an inheritance from her mom, which put her in a different financial position and then allowed her to do some things that were going to be charitable in nature. But if I hadn't had that other advisor kind of clue me in that I might not have asked the same question. So, you know, Mike, if a client has a high-income tax bracket or a state tax exposure that usually lends itself to at least talking about a charitable strategy for tax planning purposes, what might be some simple approaches to charitable giving during life?

Mike: Well, during life, the simplest is just, you know, a direct cash gift where, you know, that's, you're just giving that amount to a charitable organization, and you're going to get a tax reduction for the amount of the cash that you donated. So that's probably one of the simplest things that you can do. Another simple one is donating appreciated stock.

Mary: So let's say I bought Apple before the pandemic, right? That's a really good example where I could donate some appreciated stock, right? And what's the benefit of that to me?

Mike: Well, the benefit of that to you is if you were to take your Apple stock, that it appreciated and you were to sell it, you would pay capital gains on that. And then if you wanted to donate it after donate the cash afterwards, it would basically be at a tax cost, because you would've paid the capital gains on it. Then whatever cash is left, you would donate it. If you make a direct gift of that stock, you don't pay any capital gains on it, but your deduction is based on the fair market value of it. That appreciated value.

Mary: So what you're saying is if I sell my stock for 20 grand and then I give 20,000, I have a $20,000 charitable donation, but if I, but I have capital gain to report on, right? And so I'm still paying some tax, but if I give the stock itself, instead, I don't have to pay that capital gain, report that on my return and I still get a $20,000 deduction? So that sounds like a pretty good deal.

Mike: It's a pretty good deal. And again, that's a fairly simple, most of your charities are, you know, that's not an uncommon thing for them to have happen and there you to get an appreciated stock as a donation.

Mary: And what about those with significant accumulations in qualified retirement accounts or IRAs?

Mike: Yeah, if you are at the point where you are taking your required minimum distribution from your retirement account, instead of taking that distribution, paying tax on it and making it a charitable contribution with whatever cash is left, you can direct, that's your Required Minimum Distribution, your RMD, you can direct that to go to the charity and you will get a deduction for that, for the amount that goes to the charity. Plus, you will have avoided paying any income tax on it.

Mary: Okay, let's continue our episode. So I think there's this like what the thing is when I give this a hundred thousand dollars to charity directly, that there's limitations on itemized deductions. And so, I might give a charitable donation, but I might not get the benefit of all of that. Is that right? There's some kind of limitation on, you know, like I think you can have 24,000 as a couple. So the first, you know, depending on how much I'm giving and the other thing is aren't there certain things Mike that are, you know, from a tax perspective, calculated based on adjusted gross income. And what I do when I make that direct gift of the RMD is I avoid, I keep my adjusted gross income down. So for purposes of different tax calculations, I might reduce that. So that's become a fairly popular strategy is to actually do Required Minimum Distributions.

Mary: And I think at death, right, isn't that a pretty positive strategy if somebody wants to make a bequest? So let's say somebody has cash of a million dollars sitting in an account and they have a million dollars in a IRA. The IRA, both of those will be included in their estate for estate tax purposes. Right. But if the beneficiary takes the IRA out, they're going to pay income tax on it. So it's kind of the double taxation, correct whammy, right? And so that's where if somebody has a charitable inclination, will they usually be better off from an estate tax perspective? And I suppose from an income tax perspective to use the IRA as the beneficiary for the bene charitable beneficiary?

Mike: Right. While retirement accounts, IRAs are wonderful tools during life from an estate tax standpoint, they're not so good because, A, they're included in your estate if you have a taxable estate, they're going to be included in your estate and, B, whoever the beneficiary is when they start taking the money out of that, that now inherited IRA, they're going to pay tax on it as well. They're going to pay income tax on it. So, it's a double, like you said, it's a double tax whammy. So to the extent that you can name a charity as the beneficiary of the, that IRA, not only will your estate get a charitable deduction for the amount that, of that IRA, but there won't be any income tax then that is going to be due when it goes to the charity, there's no further income tax on it.

Mary: So it's conceptually similar to donating appreciated stock in that I have a bigger overall if I calculated that out as the exact benefit that you get from this charitable and that's basis of some of the other charitable strategies as well. So, what are some of those other strategies that are a little more involved during life?

Mike: Well, we spent a previous podcast talking about the donor advised funds and the private foundations. And just a briefly, you know, the donor advised fund is sort of your charitable investment account where, or you put money into a fund either with Omaha Community Foundation or Fidelity, Schwab, Vanguard, and you basically get a deduction for what you're putting into it at the time you put it in, and then you have some input on how that money is dispersed through the sponsor of the fund and with the private foundation, that is an you're creating a corporation or a trust that's a nonprofit entity for state purposes, and it's also a you're, you're going to qualify it as a tax exempt, 501C3 for federal income tax purposes. So it won't pay any income tax and there's differences in how they operate what's deductible. But, those are two types of things that are fairly common to use donor advised funds and private foundations.

Mary: And then we get into our acronyms and we talked in one of our business exit planning, podcasts about the CRT and this CLT and all the variations, including those acronyms. But so rather than going into all of those acronyms today, can you just give us a brief description of the C R T and the CLT as charitable tools? Sure.

Mike: C R T is charitable remainder trust, and the CLT is a charitable lead trust. With the C RT with the charitable remainder trust, what the creator of the trust is doing is they're creating what we call a grantor trust. And they're putting something into it, whether it's cash or appreciated stock or whatever it might be. And during the term of the trust, the income of the trust is going, or, or some payment is going to be going out of the trust to individuals or whoever the grantor might want. So usually it's family members or something like that at so, and at the end of the trust term, whatever is left is going to go to the charity. So that hence the name remainder. So the remainder is going to go to the charity and, but during the term of the trust income and, and whatever is going to be going out to children or other family members.

Mike: So when you set up the C R T, you are going to get a charitable deduction based on the value, the IRS tables, and you compute the value of what that remainder interest that's going to charity is, and you're going to get a deduction for that. So that's the benefit of doing it, or one of the benefits of doing it. The charitable lead trust is really basically the concept is the same, except the charitable interest is going to be during the term of the trust. And then whatever's left at the remainder that's what's going to go to the kids. So it's sort of flipped.

Mary: And so we talked a little bit about how using a retirement account at death. What about just a specific bequest or a direct bequest to charity? If I want to give a hundred thousand bucks, can I do that in my will or trust?

Mike: Yeah, absolutely. I mean, that's just a, if you've got a particular charity and it's a, and you want to do a cash donation, then you can do that through your estate plan and your estate will get a deduction for that.

Mary: And one of the trends we're seeing is because of the really high estate tax exemption for some clients, or even for this, you know, ultra-high net worth client, the income tax rates have been pretty high. So we have been seeing some people decide I'm going to give so much of the trust income at out of the trust for a while, rather than I could give half a million to charity at death, or I could give a hundred thousand per year out of the income and reduce the trust income. Why is that advantageous to give trust income away?

Mike: So the first thing to recognize is that when you have a trust and it's a particular one to say that you've created at death and it's going on after your death, that trust is a tax paying entity that pays taxes like everybody else. The difference with everybody else is the trust rates are very compressed. So, they hit the highest tax rates at a very low dollar amount. So, to the extent that you can make share to the extent that trust can make charitable contributions and get a deduction for that and reduce its income, that's a good thing because it's reducing the impact of those compressed rates.

Mary: And one of the things we're seeing, because we have a current really highest tax exemption, which some sunsets in a few years, and then people thought that the Biden Administration was going to change, that it doesn't look like that's going to get through the final bill, but at the end of the day, it's been like, I feel bipolar with the estate tax exemption in the last many years of practice. Right? And so, one of the trends we're seen in designing trust is to allow kind of in either or to be elected maybe by a trust protector or something like that.

Mike: Correct. Yeah. Just having that flexibility.

Mary: Creating a flexibility. So it can be a bequest. We can use a formula type of thing, which has been approved in recent cases. So, Mark, can you talk a little bit about what clients consider when they are leaving? You refer word legacy, really, what are they thinking about, or what do you suggest that they think about?

Mark: Well, none of us like to talk about death and many of us avoid it at all costs but we'd all like to believe that when we were on this earth, we left some footsteps in the beach, that we made a difference, want to have some little sense of immortality if you will. And so, much of what we leave behind will be judged. I mean, you don't read in the obituary this morning on people. “he died with paying no state tax.” I mean, we, none of us want to pay taxes, but what we want to do is leave children, if we have children, that are good citizens that are good husbands and wives and fathers and mothers and give back to our communities. So we want to leave that we also would like to be known who's somebody who is generous, and so when people, when I say leave a legacy, it is how are we going to be remembered when we're gone.

Mark: And so part of that is raising children who will be good stewards of the money that we leave them. Another part is giving back to our community. And I think the too often, what people do is you may draft a very well-crafted estate plan, but when the children get the money, whether it comes out of a trust or outright, they're like, “gee, thanks, mom and dad, I can do whatever I want.” And as a result, I think I read recently the average inheritance is spent with the than like 24 to 30 months and so you think of that somebody's life assets now being dispersed within a couple years. And part of the reason is we don't tell our children what we want them to do. So, I'm a big believer in communicating with their children can be verbally.

Mark: I really like when people write letters and I encourage people to write letters, not ever to supplant this, the legal documents and I don't want that language really in the documents. I'd like to have the documents separate so you can do what you guys do. But I do like having parents write letters to their children that tells them they love them, how proud they are of them, of here's why they left you an inheritance for them and what you hope they do with it. I strongly suspect the children aren't going to pick up an estate plan and read it every other year for the rest of their lives, but I'll almost encourage you if there's a, or promise you, if there is a personal letter or two for mom and dad about how much they love them, how proud that they're always going to keep that letter. And so, I guess to answer your question: what's legacy? It's trying to leave something that lasts beyond you, besides just money.

Mary: And I've long supported the concept of letters outside the documents, because what happens is with families that I've worked with for a long time, what they say is sometimes there's a letter they write that they decide to rip up and it probably should have been ripped up. And like, if we put it in the document, you can't rip it up. Righ?. And I, and I also do tell clients that what you say in those, like the, really the last gift you maybe don't want to leave a kid, even though you had challenges with is a bad boy or bad girl letter, but at least, you know, the, the letters, but as a, firm a legal perspective, those letters also create what we call testamentary intent. So for our perspective, that helps prevent some of the litigation. We're seeing a great rise, sadly in litigation, post estates.

Mary: And I think part of that's what you're saying that you know, we don’t always say, what do we want to have happen? But I'm going to just ask you another question. That's just slightly off topic and slightly connected, but partly we are also planning a high net worth planning series for our podcast. And in talking to some advisors about the most important topics is one of them that comes up is how much money will ruin my children? And that's at least a conversation. I think you talk about that in your book, that it's a conversation that somebody who is accumulated significant wealth ought to have. So how do, how do advisors participate it in that conversation? How do you bring that up? Or do you let the client bring that up? Or what are your thoughts on that? Generally, I know it's a tough subject.

Mark: That's a really good question. And, and I think from what I know about you, Mary, you have a little different relationship with your clients than many people do: it's not just a transaction relationship. But I get asked that question, basically asking how much should I leave my kids, inherent that question is if I leave them too much, I'm gonna ruin then. So if I just, they want a short answer or I want to be cute, I just say, well, “how much have you prepared them to receive?” And then it's usually this dead silence. “What do you mean?” Well, you know, what happens is the clients I have enjoyed working the most with over the years have been the entrepreneurs who have built their own businesses and are willing to put the chips on the table and lose it all again and build it again.

Mark: And to them, they're not so attached their money, but they made it on their own. And if you ask them the keys to their success, they'll almost always come tell you about some forks in the road where they almost lost everything. And if I didn't just stay with it, I would've lost everything or somebody helped me out or whatever, but those hardships are what forged them and to be the success as they are. But what do we do in our estate plans? We bypass all those hardships and give people, kids aren't enough money that they don't have any hardships. And so we do the opposite of what we did to get where we're at. And I'm not saying not give our children money. I'm saying take the time to prepare our children to receive the money. And that can be none of different ways that can be done through family meetings.

Mark: I talk quite a bit about those in book about how to hold effective family meetings. It can be through letters of communication. It can be through setting up private foundations and having family meetings around giving money away. It's basically communicating with our kids. There's a study, my favorite one, it basically said it something 70% of estates fail within one generation. Fail, meaning the children have lost control of the assets due to incompetence, fighting, spending and, and what's happened? They just weren't prepared for it. So how can the advisors be involved? I think you play an integral role. I think you can first bring it to the client's attention that what are you doing? We're going to help you pass some money we're going to do as good a plan as you can do it, do it efficiently.

Mark: But now what happens when they get it. And for many parents, they never thought about it. And so, first of all, face the issue there's responsibilities of having wealth and one of the responsibilities help prepare your children for it. So, the antidote for that is build communication skills and trust between your children and yourselves. And that comes with time and effort. And some sometimes don't want to do that. They just want to have a document and put it away and be gone, but many people do care about their children a lot. And so I think you can remind them of it and you can give them options of how to write letters, how to hold family meetings effectively. So I think there's a number of things you can do. And I think you should be involved in those, frankly, if the clients will allow you to do it. And when they ask me about, well, “is that going to be expensive?” I tell them it's going to be a lot more expensive not to include them and these children oftentimes end up in litigation, and it's ugly, and that's not the legacy anyone wants to leave.

Mary: Right. And I will tell you that I have gone to the, the thing that does get the attention is like you shared the statistics on how much inheritance get spent. And so I used to do a lot of specialized work with IRA accounts in terms of the stretch IRA. And it's kind of become a joke at some of the advisor meetings across the country, because it's like we do all this work to have these stretches. And then I think it's like 80%, like pull those out and spend it within a year. because it's just like a little bonus. So I've actually gone to sharing the statistics about the spend with clients. And then a lot of times that alone gets them to think about it differently. Well, Mike, do you have any last comments today?

Mike: No. I just very insightful comments from everybody today and it just brings to the forefront. I think it is a process and it's for a lot of clients, it is just come in and I want my documents and I want to be out the door, but, there really is a lot more involved.

Mark: I really think there's responsibility for wealth. You created it. And you should help that pass effectively. And then, I mean, some people aren't willing to accept that, but I think they should.

Mary: Well, thanks to both of you for joining me today. That's all for now. Thanks to our listeners for being tuned into today's episode and stay tuned for our weekly releases.