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00:00:09,500 --> 00:00:12,630

I'm Diana Shepherd, the editorial director of Family Lawyer

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00:00:12,640 --> 00:00:16,798

magazine. It's my absolute pleasure to introduce the participants

3

00:00:16,809 --> 00:00:21,000

in today's roundtable on how wealth shock generated by volatile

4

00:00:21,010 --> 00:00:24,958

stock and real estate markets can impact high asset divorce

5

00:00:24,969 --> 00:00:28,289

settlements. This is part one of a three part

6

00:00:28,298 --> 00:00:33,500

series and our host is Financial Expert Sharon Klein Sharon

7

00:00:33,509 --> 00:00:36,899

is an esteemed member of Family Lawyer magazine's advisory board

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00:00:37,069 --> 00:00:41,868

and she heads Wilmington Trust's National Matrimonial Advisory Practice.

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00:00:42,848 --> 00:00:47,250

The three experienced family lawyers participating in this round table,

10

00:00:47,259 --> 00:00:52,770

Alton Abramowitz, Marlene Eskin Moses and John Slovacek are

11

00:00:52,779 --> 00:00:57,149

all past presidents of the American Academy of Matrimonial lawyers

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00:00:57,289 --> 00:01:01,649

and diplomats of the American College of Family Trial Lawyers,

13

00:01:01,819 --> 00:01:04,049

which is a select group of 100 of the top

14

00:01:04,058 --> 00:01:07,638

family law trial lawyers from across the US. So

15

00:01:07,650 --> 00:01:10,269

let's get started. Take it away, Sharon.

16

00:01:10,819 --> 00:01:14,129

Thanks so much Diana for that very kind introduction.

17

00:01:14,379 --> 00:01:17,629

It's my pleasure to be here with my three esteemed

18

00:01:17,638 --> 00:01:20,510

guests and John, I'd like to start with you

19

00:01:20,519 --> 00:01:23,349

for my first question and ask you about the so

20

00:01:23,359 --> 00:01:27,040

called wealth shock, which is how the very volatile

21

00:01:27,049 --> 00:01:31,609

stock market and real estate market can impact property division

22

00:01:31,620 --> 00:01:35,219

in high asset divorces. For example, there was

23

00:01:35,230 --> 00:01:38,719

an article in Bloomberg recently that Evan Spiegel, the

24

00:01:38,730 --> 00:01:44,000

billionaire co-founder of Snapchat, the messaging app lost 30%

25

00:01:44,010 --> 00:01:47,459

of his fortune in one day. And Mark Zuckerberg

26

00:01:47,469 --> 00:01:53,000

of Meta at one point was reportedly down \$5.7 billion.

27

00:01:53,409 --> 00:01:55,930

And of course, these are very high profile and

28

00:01:55,939 --> 00:02:00,250

exaggerated examples of the swings that can occur in someone's

29

00:02:00,260 --> 00:02:03,599

net worth. But when you're trying to divide assets

30

00:02:03,609 --> 00:02:06,260

in a divorce, which can include securities accounts,

31

00:02:06,269 --> 00:02:10,080

retirement accounts, homes and other assets. How does

32

00:02:10,088 --> 00:02:14,409

this volatile environment, this wealth shock impact property division?

33

00:02:15,069 --> 00:02:18,808

When clients first come to see us, their first

34

00:02:18,819 --> 00:02:24,808

reaction is generally fear apprehension, uncertainty about the system

35

00:02:25,469 --> 00:02:28,169

and we talked to them about time and time commitments.

36

00:02:28,860 --> 00:02:33,679

The normal divorce in most communities takes approximately a year

37

00:02:33,689 --> 00:02:36,479

or a year plus. So not only are they

38

00:02:36,490 --> 00:02:39,229

dealing with the valuation issues at the time of the

39

00:02:39,240 --> 00:02:42,979

divorce when it's filed or when it's instituted, but

40

00:02:42,990 --> 00:02:44,879

they also have to deal with it on the back

41

00:02:44,889 --> 00:02:47,118

end. When evidence is presented to the court,

42

00:02:48,058 --> 00:02:51,979

the real estate market is sometimes the most volatile in

43

00:02:51,990 --> 00:02:55,129

the beginning because oftentimes someone has to move. And

44

00:02:55,139 --> 00:02:59,159

in today's market, we're finding people having difficulty with

45

00:02:59,169 --> 00:03:03,379

rent and someone moving out of the family home into

46

00:03:03,389 --> 00:03:06,679

another property. If they're going to purchase, they

47

00:03:06,689 --> 00:03:09,229

don't have the equity portion that they may have had

48

00:03:09,240 --> 00:03:11,469

in the past to buy a new home. If

49

00:03:11,479 --> 00:03:14,000

they're looking at renting, they're looking at a loss

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00:03:14,008 --> 00:03:17,860

of inventory in many communities and they're finding problems just

51

00:03:17,868 --> 00:03:21,550

with the costs. So the shock to them originally,

52

00:03:21,558 --> 00:03:24,919

when it comes to the whole process, I would

53

00:03:24,929 --> 00:03:28,000

say deals with the family home first, who's going

54

00:03:28,008 --> 00:03:29,618

to be there and how are they going to say,

55

00:03:29,629 --> 00:03:33,659

stay, then they start looking at their assets and

56

00:03:33,669 --> 00:03:36,849

they look at the business valuations that come into play

57

00:03:37,000 --> 00:03:41,270

and how we have to value the properties. Historically,

58

00:03:41,278 --> 00:03:44,449

the business valuation, people will look at a history

59

00:03:44,460 --> 00:03:47,770

of the finances and the income for the company.

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00:03:48,159 --> 00:03:51,550

But within the context of these spikes that are occurring

61

00:03:51,558 --> 00:03:54,710

today, it does throw things out of whack for

62

00:03:54,719 --> 00:03:57,479

the people who are trying to do the business valuations.

63

00:03:58,118 --> 00:04:01,129

I would say that high wealth, people have a

64

00:04:01,139 --> 00:04:05,338

little bit better understanding or comfort level when it comes

65

00:04:05,349 --> 00:04:09,679

to their cash and their stock portfolio because they're used

66

00:04:09,689 --> 00:04:12,399

to riding out the storms a little bit more so

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00:04:12,409 --> 00:04:15,580

than people with lesser wealth. But the people with

68

00:04:15,588 --> 00:04:21,139

higher wealth are more troubled by the real fundamental issues

69

00:04:21,149 --> 00:04:23,720

of what's going to happen. How am I gonna

70

00:04:23,730 --> 00:04:25,619

pay for this? Am I gonna be paying with

71

00:04:25,629 --> 00:04:30,619

today's dollars or tomorrow's dollars as lawyers? Our responsibility

72

00:04:30,629 --> 00:04:34,519

is to try to first determine what constitutes the marital

73

00:04:34,528 --> 00:04:38,699

estate, we then value the marital estate and then

74

00:04:38,709 --> 00:04:41,858

divide the marital estate. If it was a simple

75

00:04:41,869 --> 00:04:45,379

process that everything was divided in kind, then the

76

00:04:45,389 --> 00:04:48,738

risk is the same for everyone. But unfortunately,

77

00:04:48,750 --> 00:04:52,238

towards the end, people start cherry picking assets and

78

00:04:52,250 --> 00:04:55,420

will take high value or low value assets and trying

79

00:04:55,428 --> 00:04:58,139

to flip the other to the other party. So

80

00:04:58,149 --> 00:05:00,480

on the, in the very beginning when people come

81

00:05:00,488 --> 00:05:04,230

to us, our responsibility is to really manage their

82

00:05:04,238 --> 00:05:08,338

expectations, try to explain to them the difficulties they're

83

00:05:08,350 --> 00:05:13,088

going to encounter during the process and make them realize

84

00:05:13,100 --> 00:05:16,639

that there's very little control we have as lawyers in

85

00:05:16,649 --> 00:05:18,879

large part, the courts want us to try to

86

00:05:18,889 --> 00:05:22,170

value assets as close to the trial date as possible.

87

00:05:22,329 --> 00:05:26,500

So that will lead us up to a year between

88

00:05:26,509 --> 00:05:28,869

the time we first visit, our client, ultimately

89

00:05:28,879 --> 00:05:34,149

presenting evidence to either the court or settlement negotiations that

90

00:05:34,160 --> 00:05:38,608

all comes back to uh building expectations or managing expectations

91

00:05:38,619 --> 00:05:42,778

for the client and discussing the individual assets. Because

92

00:05:42,790 --> 00:05:47,160

what we do in the beginning doesn't necessarily bear fruit

93

00:05:47,170 --> 00:05:48,819

as to what we're gonna do at the back end

94

00:05:48,829 --> 00:05:51,278

of the divorce because of the changes that can take

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00:05:51,290 --> 00:05:55,829

place in the market. Yeah, I think that's

96

00:05:55,838 --> 00:05:58,540

what you've said is, is so interesting, John

97

00:05:58,819 --> 00:06:02,709

and it really underscores to me how important it is

98

00:06:02,720 --> 00:06:07,230

to run financial projections and being at a financial advisory

99

00:06:07,238 --> 00:06:10,350

organization. This is something that I see in action

100

00:06:10,358 --> 00:06:14,428

every day helping clients how to project different scenarios.

101

00:06:14,439 --> 00:06:17,389

How are things gonna play out in the future including

102

00:06:17,399 --> 00:06:20,778

with cash flow projections and risk assessments, which is

103

00:06:20,790 --> 00:06:23,459

so important for two reasons. One is to give

104

00:06:23,470 --> 00:06:27,869

family lawyers ammunition at the negotiating table. And secondly,

105

00:06:27,879 --> 00:06:30,850

after the divorce is final to be able to invest

106

00:06:30,858 --> 00:06:33,920

the assets in a way that's gonna sustain a desired

107

00:06:33,928 --> 00:06:36,850

lifestyle. And the wealth shock that you were talking

108

00:06:36,858 --> 00:06:40,259

about John, I think makes those analytics even more

109

00:06:40,269 --> 00:06:44,350

important because you could build in additional layers of risk

110

00:06:44,358 --> 00:06:47,730

to stress test outcomes and see how they stack up

111

00:06:47,738 --> 00:06:50,608

to those shocks. What would happen if the assets

112

00:06:50,619 --> 00:06:54,699

that have decline to recover or not modeling cash flows

113

00:06:54,709 --> 00:06:58,059

of of assets like privately held businesses that might have

114

00:06:58,069 --> 00:07:00,939

been affected by the wealth shock and generally taking into

115

00:07:00,949 --> 00:07:05,230

account different scenarios so clients can make informed decisions.

116

00:07:05,540 --> 00:07:09,100

Um And I know in our discussions um in preparing

117

00:07:09,108 --> 00:07:12,809

for this round table, you also mentioned that typically

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00:07:12,819 --> 00:07:15,829

the court will not take into account the after tax

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00:07:15,838 --> 00:07:18,980

value of assets unless the sale is potentially imminent,

120

00:07:19,269 --> 00:07:22,970

but after tax dollars is what clients are gonna be

121

00:07:22,980 --> 00:07:25,759

left with. So it's really key to model that

122

00:07:25,769 --> 00:07:27,858

out. And if you have an asset like a

123

00:07:27,869 --> 00:07:31,000

business or a home that's gonna be sold at some

124

00:07:31,009 --> 00:07:34,189

point, you probably wanna build into your modeling,

125

00:07:34,199 --> 00:07:37,850

the impact of capital gains taxes and sales costs.

126

00:07:37,858 --> 00:07:40,559

So you could see what your client is actually gonna

127

00:07:40,569 --> 00:07:42,850

receive at the end of the day. And you

128

00:07:42,858 --> 00:07:47,629

just can't do that analysis without sophisticated analytics. Very

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00:07:47,639 --> 00:07:51,639

very difficult to show these kinds of complex calculations with

130

00:07:51,649 --> 00:07:53,699

an Excel spreadsheet, for example, which I do

131

00:07:53,709 --> 00:07:57,298

see some family lawyers use because an Excel spreadsheet is

132

00:07:57,309 --> 00:08:01,350

static and it doesn't take into account different market environments

133

00:08:01,358 --> 00:08:04,269

or tax rates or potential changes in the tax law.

134

00:08:04,309 --> 00:08:06,540

So to my mind, it's really key for family

135

00:08:06,548 --> 00:08:10,230

lawyers and their clients to be working with financial professionals

136

00:08:10,238 --> 00:08:13,730

who could provide that kind of analytical data. That's

137

00:08:13,738 --> 00:08:16,238

and really the important, it's really important that you

138

00:08:16,250 --> 00:08:18,119

set the stage on the very first day when you

139

00:08:18,129 --> 00:08:21,639

start meeting with your client because you don't want them

140

00:08:21,649 --> 00:08:25,678

to be under a false impression as to how it's

141

00:08:25,689 --> 00:08:28,420

gonna play out with numbers if they don't, if

142

00:08:28,428 --> 00:08:31,079

they can't work it throughout the year's time to get

143

00:08:31,088 --> 00:08:36,969

comfortable with what is ultimately gonna exactly so important.

144

00:08:36,979 --> 00:08:39,908

Um I agree with you 100% on that. Um

145

00:08:39,918 --> 00:08:41,538

Alton, let me, let me turn to you

146

00:08:41,548 --> 00:08:43,500

now and ask, do you have any comments on

147

00:08:43,509 --> 00:08:46,158

the effect of this wealth shock that we're talking about

148

00:08:46,190 --> 00:08:49,548

on asset division in high net worth divorces? Yes,

149

00:08:49,558 --> 00:08:53,009

I think it has, has had a big impact

150

00:08:53,320 --> 00:08:57,190

in the sense that the economy right now is very

151

00:08:57,200 --> 00:09:02,519

uncertain. Uh inflation has um hit all of us

152

00:09:02,678 --> 00:09:07,769

and our clients uh in different ways and the markets

153

00:09:07,779 --> 00:09:10,899

are very, very uncertain. Uh So, for

154

00:09:10,908 --> 00:09:15,719

instance, uh someone who a year ago had significant

155

00:09:15,729 --> 00:09:21,330

wealth in the form of Cryptocurrency today may have lost

156

00:09:21,399 --> 00:09:25,308

a substantial portion of that uh wealth. I was

157

00:09:25,320 --> 00:09:30,570

sitting in a um uh bankruptcy creditors hearing this week

158

00:09:30,580 --> 00:09:34,788

um where our former client, the husband in a

159

00:09:34,798 --> 00:09:41,129

case lost \$35 million in Cryptocurrency. And that's uh

160

00:09:41,139 --> 00:09:45,229

you know, really significant and an impact his ability

161

00:09:45,440 --> 00:09:49,080

to comply with the settlement that he worked out with

162

00:09:49,090 --> 00:09:54,960

his ex-wife. Uh Similarly um real estate in the

163

00:09:54,969 --> 00:10:00,229

New York metropolitan area where I practice is very uncertain.

164

00:10:00,479 --> 00:10:06,320

Uh residential real estate has bounced back and is increasing

165

00:10:06,330 --> 00:10:10,168

in value. Uh retail real estate. On the

166

00:10:10,178 --> 00:10:14,590

other hand, is very um difficult to value uh

167

00:10:14,599 --> 00:10:19,619

because of um of what I call the uh impact

168

00:10:19,629 --> 00:10:24,308

of both um uh Amazon uh which has hurt the

169

00:10:24,320 --> 00:10:30,080

retail industry terrifically and the fact that um not as

170

00:10:30,090 --> 00:10:33,678

many people are working in their offices in New York

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00:10:33,690 --> 00:10:37,769

City as before. So if you drive up Madison

172

00:10:37,779 --> 00:10:42,440

Avenue, where my offices are located, almost every

173

00:10:42,450 --> 00:10:47,889

block has vacant storefronts and that impacts the value of

174

00:10:47,899 --> 00:10:51,798

that real estate in a very negative fashion. On

175

00:10:51,808 --> 00:10:57,538

the other hand, uh rental uh real estate res

176

00:10:57,658 --> 00:11:02,460

rental residential real estate has come back very strong and

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00:11:02,469 --> 00:11:08,469

we're seeing clients who are faced with lease renewals of

178

00:11:08,479 --> 00:11:13,580

40% or more in terms of increases in the demands

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00:11:13,590 --> 00:11:16,788

their landlords are making. Uh So that has to

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00:11:16,798 --> 00:11:21,168

be factored in um when we start a um uh

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00:11:21,178 --> 00:11:25,440

matrimonial case in New York, uh we have to

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00:11:25,750 --> 00:11:30,200

as John indicated, identify all of the assets and

183

00:11:30,210 --> 00:11:34,469

liabilities. We do that on a court form of

184

00:11:34,479 --> 00:11:39,899

net worth statement which contains a um balance sheet assets

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00:11:39,908 --> 00:11:44,418

and liabilities as well as um a profit and loss

186

00:11:44,428 --> 00:11:48,580

statement, which is really uh income and expenses.

187

00:11:48,889 --> 00:11:51,869

And we have to look at that and work with

188

00:11:51,879 --> 00:11:58,570

financial professionals uh like yourself to try and um predict

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00:11:58,678 --> 00:12:03,239

uh different scenarios uh depending on what the markets are

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00:12:03,250 --> 00:12:06,139

going to do. Not only now, but 10

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00:12:06,149 --> 00:12:09,149

years from now. Um So all of this is

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00:12:09,158 --> 00:12:14,200

really important for our clients, right? Yes,

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00:12:14,210 --> 00:12:16,719

II I agree with, with all your comments,

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00:12:16,729 --> 00:12:19,119

it's, it's tricky business, but when you're,

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00:12:19,129 --> 00:12:21,279

you're armed with the data, it makes it a

196

00:12:21,288 --> 00:12:25,399

little bit more understandable and, and concrete. Um

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00:12:25,408 --> 00:12:27,440

Marlene, how about you? Is there anything you

198

00:12:27,450 --> 00:12:29,399

would like to add on, on the wealth shock

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00:12:29,408 --> 00:12:32,359

topic? Yes, it's important. It's, it's

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00:12:32,369 --> 00:12:37,408

critical to make sure that with your financial experts that

201

00:12:37,418 --> 00:12:40,840

you're getting the most up to date valuations at every

202

00:12:40,849 --> 00:12:45,139

important juncture because it may be if financial disclosures are

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00:12:45,149 --> 00:12:47,340

required, which they are not in Tennessee where I

204

00:12:47,349 --> 00:12:49,279

practice on the front end, but they are in

205

00:12:49,288 --> 00:12:51,899

some states. So you may have a financial disclosure

206

00:12:52,000 --> 00:12:56,788

that disclosure valuing assets and liabilities at, at one

207

00:12:56,798 --> 00:12:59,729

set of numbers and then it maybe you get to

208

00:12:59,739 --> 00:13:02,690

mediation and you have a completely different set of numbers

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00:13:02,700 --> 00:13:05,690

and it's important for the practicing lawyers to know that

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00:13:05,700 --> 00:13:09,769

these values are fluid and particularly in days and times

211

00:13:09,779 --> 00:13:13,609

that some businesses increase in value, some decrease some

212

00:13:13,619 --> 00:13:16,489

go out of business. And it's important then for

213

00:13:16,500 --> 00:13:20,168

the lawyers to be prepared and be flexible to work

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00:13:20,178 --> 00:13:24,418

with their financial advice at every juncture. So if

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00:13:24,428 --> 00:13:29,259

it's mediation or arbitration or a settlement conference or trial

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00:13:29,269 --> 00:13:32,558

at each and every juncture, update the numbers and,

217

00:13:32,570 --> 00:13:38,219

and make certain that you have the the underlying documentation

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00:13:38,229 --> 00:13:43,440

necessary to be able to substantiate the differences. Because

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00:13:43,469 --> 00:13:47,288

due to the fact that that divorces can extend over

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00:13:47,298 --> 00:13:52,969

periods of time and our markets are are variable and

221

00:13:52,979 --> 00:13:57,649

flexible and dynamic. It's important then to make sure

222

00:13:57,889 --> 00:14:02,058

that our clients are well represented with the most current

223

00:14:02,070 --> 00:14:05,369

information possible at the time that we come together to

224

00:14:05,379 --> 00:14:10,000

do business. Another important tip is even when there's

225

00:14:10,009 --> 00:14:14,239

a final resolution, either in a settlement situation or

226

00:14:14,250 --> 00:14:18,609

in a trial where a judge is pronouncing a judgment.

227

00:14:19,038 --> 00:14:22,529

Um It could be that there's a varying and it

228

00:14:22,538 --> 00:14:27,038

could be long period of time between when the trial

229

00:14:27,048 --> 00:14:30,859

occurs and when the judgment comes down or, or

230

00:14:30,869 --> 00:14:34,178

even in a settlement, um when the assets are

231

00:14:34,190 --> 00:14:38,418

divided and with retirement accounts, especially because it takes

232

00:14:38,428 --> 00:14:43,259

work to do it. So a practice tip would

233

00:14:43,269 --> 00:14:46,969

be to use percentages of accounts, for example,

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00:14:46,979 --> 00:14:50,729

as opposed to using fixed numbers because they're gonna vary

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00:14:50,739 --> 00:14:54,349

from day to day and the percentages will give you

236

00:14:54,359 --> 00:14:58,259

a more true realistic picture of how the asset should

237

00:14:58,269 --> 00:15:00,950

be divided. And and we as practitioners can ask

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00:15:00,960 --> 00:15:05,690

our court to even divide by percentages as opposed to

239

00:15:05,700 --> 00:15:09,529

numbers that that is helpful, particularly with this wealth

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00:15:09,538 --> 00:15:13,649

shock problem that face, I think that's great advice

241

00:15:13,658 --> 00:15:16,899

Marlene and that's often times what's done in estate planning

242

00:15:16,908 --> 00:15:19,190

documents, right? You don't give someone a fixed

243

00:15:19,200 --> 00:15:22,538

number, um you give someone a percentage of the

244

00:15:22,548 --> 00:15:26,869

assets so it could take into account fluctuations and something

245

00:15:26,879 --> 00:15:30,229

you said reminded me also that as we were preparing

246

00:15:30,239 --> 00:15:32,849

for this round table, I think all of you

247

00:15:32,859 --> 00:15:34,408

said that, you know, once you try a

248

00:15:34,418 --> 00:15:37,058

case and you submit to it, you submit it

249

00:15:37,070 --> 00:15:38,820

to a judge, you're kind of stuck with the

250

00:15:38,830 --> 00:15:41,109

numbers at trial. You typically can't go back and

251

00:15:41,119 --> 00:15:45,719

revisit major swings and sometimes that causes people to settle,

252

00:15:46,009 --> 00:15:48,849

right? Because they could come to an arrangement themselves

253

00:15:48,859 --> 00:15:51,219

and they won't be, they won't be subject and

254

00:15:51,229 --> 00:15:54,250

stuck with those fixed values. So I thought that

255

00:15:54,259 --> 00:15:56,739

was also really interesting and sort of underscores your,

256

00:15:56,750 --> 00:15:59,048

your point, Marlene to be current with your numbers

257

00:15:59,058 --> 00:16:01,899

and the valuations um as to what's going on.