

1

00:00:09,538 --> 00:00:12,380

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

2

00:00:12,390 --> 00:00:15,579

magazine. The topic for today's round table is top

3

00:00:15,589 --> 00:00:19,589

strategies for agreeing on financial matters with high asset divorce

4

00:00:19,600 --> 00:00:22,719

settlements. This is part three of a three part

5

00:00:22,728 --> 00:00:27,120

series hosted by divorce financial expert Sharon Klein, who

6

00:00:27,129 --> 00:00:30,309

began her career as a trusts and estates attorney and

7

00:00:30,318 --> 00:00:32,959

now has more than 25 years of experience in the

8

00:00:32,969 --> 00:00:38,060

wealth advisory arena. Our roundtable members are A AM

9

00:00:38,069 --> 00:00:42,798

L past presidents, Alton Abramowitz, Marlene Eskin Moses

10

00:00:42,810 --> 00:00:47,048

and John Slovacek. All three are diplomats of the

11

00:00:47,060 --> 00:00:50,240

American College of Family Trial Lawyers, which is a

12

00:00:50,250 --> 00:00:53,418

select group of 100 of the top family law trial

13

00:00:53,429 --> 00:00:56,918

lawyers from across the US and they have decades of

14

00:00:56,929 --> 00:01:00,418

knowledge to share with us today. Without further ado.

15

00:01:00,429 --> 00:01:04,620

Here's your host, Sharon Klein. Marlene. Let

16

00:01:04,629 --> 00:01:07,489

me now turn to you for our third topic and

17

00:01:07,500 --> 00:01:09,819

ask you what I think is a very important question

18

00:01:10,049 --> 00:01:12,540

which is in your view, what's the best way

19

00:01:12,549 --> 00:01:15,629

to come to an agreement on financial matters during a

20

00:01:15,638 --> 00:01:19,980

high asset divorce? The best way is to prepare

21

00:01:19,989 --> 00:01:23,099

immediately when your client walks the door and at the

22

00:01:23,109 --> 00:01:28,010

first step. So what's important to do is to

23

00:01:28,219 --> 00:01:32,409

ascertain what the assets and the liabilities are and to

24

00:01:32,418 --> 00:01:35,969

have some clear notion to the extent that you can

25

00:01:36,250 --> 00:01:40,359

about what will need to be done in the divorce

26

00:01:40,370 --> 00:01:42,609

case, to be able to find them, clearly

27

00:01:42,620 --> 00:01:48,650

value them clearly and communicate that information to the trial

28

00:01:48,659 --> 00:01:52,049

of fact or the mediator or the arbitrator or all

29

00:01:52,058 --> 00:01:56,168

of those. So, so what's important in my

30

00:01:56,180 --> 00:02:00,129

opinion is once you're gathering that information for the lawyer

31

00:02:00,138 --> 00:02:04,459

to determine what team do I need to assemble for

32

00:02:04,469 --> 00:02:09,080

this client to get the maximum result, that team

33

00:02:09,088 --> 00:02:12,179

needs to be uh a financial person. It could

34

00:02:12,189 --> 00:02:14,528

be a forensic accountant. It needs to be somebody

35

00:02:14,538 --> 00:02:20,240

who clearly understands the financial um asset and how they

36

00:02:20,710 --> 00:02:24,449

increase, decrease work and how they can be divided.

37

00:02:24,699 --> 00:02:28,129

You may very well need a business evaluator. It,

38

00:02:28,139 --> 00:02:31,669

the financial expert could be a business evaluator as well.

39

00:02:31,929 --> 00:02:37,569

The financial expert also needs to have tax um capabilities

40

00:02:37,580 --> 00:02:42,618

and, and understanding because businesses obviously are, are

41

00:02:42,750 --> 00:02:45,838

dealing with taxes, people are dealing with taxes.

42

00:02:45,849 --> 00:02:50,868

It's important to understand the consequences of the tax impact.

43

00:02:50,879 --> 00:02:53,409

Even if an asset is not being sold, the

44

00:02:53,419 --> 00:02:56,830

businesses and the people are paying taxes yearly and you

45

00:02:56,838 --> 00:02:59,300

need to know what the status of, of those

46

00:02:59,308 --> 00:03:03,588

are. It's also important if, if there's planning

47

00:03:03,599 --> 00:03:07,189

to be done that you have an estate planner that

48

00:03:07,199 --> 00:03:12,240

can prepare for trust such as what you did was

49

00:03:12,250 --> 00:03:15,508

terrific in, in the divorce case and were involved

50

00:03:15,830 --> 00:03:20,088

or who can help analyze the trust that are in

51

00:03:20,099 --> 00:03:25,990

existence when the client comes to you and understand what

52

00:03:26,000 --> 00:03:28,389

the purpose of the trust is. Who is the

53

00:03:28,399 --> 00:03:32,149

trustee the beneficiary? How can you unravel it if

54

00:03:32,159 --> 00:03:35,038

you need to? Is it revocable? Is it

55

00:03:35,050 --> 00:03:38,710

irrevocable? What what do you need to do?

56

00:03:38,719 --> 00:03:40,800

Does the trust need to be divided? There could

57

00:03:40,808 --> 00:03:44,808

be foundations that need to be dealt with charitable vehicles

58

00:03:44,819 --> 00:03:47,808

that also need to, you need to understand how

59

00:03:47,819 --> 00:03:51,629

those can be dealt with. Um So, so

60

00:03:51,639 --> 00:03:56,088

it's critical to gather your t if it's involving Children,

61

00:03:56,099 --> 00:03:59,028

there may or may not need to be a mental

62

00:03:59,038 --> 00:04:04,110

health expert, a custody evaluator. And so those

63

00:04:04,118 --> 00:04:07,770

decisions need to be discussed and addressed on the front

64

00:04:07,778 --> 00:04:10,649

end. And the reason it's important is because the

65

00:04:10,659 --> 00:04:13,830

sooner you get these people in your team and as

66

00:04:13,838 --> 00:04:19,629

part of the um process, the stronger your case

67

00:04:19,639 --> 00:04:23,540

gets developed and the stronger your presentation will be to

68

00:04:23,548 --> 00:04:28,660

whomever you're, you're presenting it. And the these

69

00:04:28,670 --> 00:04:30,660

people need to be kept in the loop. You

70

00:04:30,670 --> 00:04:33,879

have to be careful about attorney client privilege because whatever

71

00:04:33,889 --> 00:04:36,319

you send to them may be subpoenaed. And that's

72

00:04:36,329 --> 00:04:39,329

tricky because you, you have to be careful about

73

00:04:39,338 --> 00:04:42,689

the information that you disclose to the folks and know

74

00:04:42,699 --> 00:04:45,660

that they could, it could be subpoenaed but,

75

00:04:45,670 --> 00:04:49,238

but working with them and, and give them information

76

00:04:49,250 --> 00:04:52,199

um and keep it updated and keep them giving you

77

00:04:52,209 --> 00:04:56,480

updated information so that when you present your case,

78

00:04:57,488 --> 00:05:00,829

you will have what you need and you'll be strong

79

00:05:00,899 --> 00:05:05,778

and it will not be able to be refuted because

80

00:05:05,790 --> 00:05:08,790

you've done your homework. So then the question is,

81

00:05:08,798 --> 00:05:11,548

you know, what's the best way to get a

82

00:05:11,559 --> 00:05:15,730

settlement? And that is to be so prepared and

83

00:05:15,738 --> 00:05:21,119

so strong in the work that you've done and,

84

00:05:21,129 --> 00:05:23,980

and have your experts so up to speed and,

85

00:05:23,988 --> 00:05:28,858

and clear about what their numbers are and why and

86

00:05:28,869 --> 00:05:33,079

then go and advocate for your client from a position

87

00:05:33,088 --> 00:05:35,720

of strength. So, so that's the best way

88

00:05:35,730 --> 00:05:38,088

to do it. Uh Another thing that's important to

89

00:05:38,100 --> 00:05:41,470

take into consideration is, is what the other side

90

00:05:41,480 --> 00:05:44,199

is doing and, and think about what they're doing,

91

00:05:44,720 --> 00:05:47,970

um what they want, what their needs are,

92

00:05:47,980 --> 00:05:51,600

you have wants and needs and think about as you're

93

00:05:51,608 --> 00:05:53,730

pitching it, how you can get the most for

94

00:05:53,738 --> 00:05:57,920

your client and then sell whatever it is that you

95

00:05:57,928 --> 00:06:00,829

want as an outcome so that it's reasonable for the

96

00:06:00,838 --> 00:06:05,319

other side um are more over the other side.

97

00:06:05,329 --> 00:06:07,238

I, I love the story of if you think

98

00:06:07,250 --> 00:06:11,048

of an orange and you're gonna divide it up,

99

00:06:11,108 --> 00:06:13,059

you can take an orange and you can cut it

100

00:06:13,069 --> 00:06:17,079

in half and that's what might typically happen. But



101

00:06:17,088 --> 00:06:21,209

in a situation where you get to be creative,

102

00:06:21,389 --> 00:06:24,588

it could be that one side wants the outside of

103

00:06:24,600 --> 00:06:27,588

the orange for potpourri and the other wants the inside

104

00:06:27,600 --> 00:06:31,220

of the orange to eat. And that's just an

105

00:06:31,230 --> 00:06:34,088

example of how you can enlarge the pie. So

106

00:06:34,100 --> 00:06:37,928

as you're getting into settlement conferences, it's important to

107

00:06:37,939 --> 00:06:41,629

understand and think through how you can enlarge the pie

108

00:06:41,639 --> 00:06:46,939

more likely that a settlement among the clients. I

109

00:06:46,949 --> 00:06:50,278

love that story too, Marlene. Um the the

110

00:06:50,290 --> 00:06:54,459

orange story cos each person ends up with 100% of

111

00:06:54,470 --> 00:06:56,660

what they wanted, right? So you really get

112

00:06:56,670 --> 00:07:00,899

200% instead of dividing something. Um I in half

113

00:07:00,910 --> 00:07:05,238

and so communication and understanding what what each person is

114

00:07:05,250 --> 00:07:08,040

asking for is, is so important and you know,

115

00:07:08,048 --> 00:07:10,358

it's it's also music to my ears when I I

116

00:07:10,369 --> 00:07:14,000

hear you underscore the importance of surrounding the client with

117

00:07:14,009 --> 00:07:17,678

the right multidisciplinary team from the outset, which is,

118

00:07:17,689 --> 00:07:19,358

which is you you mentioned, I mean, as

119

00:07:19,369 --> 00:07:22,350

obviously the family lawyer, a financial advisor, a

120

00:07:22,358 --> 00:07:25,119

trusted the state's lawyer, an accountant and maybe,

121

00:07:25,129 --> 00:07:28,160

you know, other professionals at every stage, actually

122

00:07:28,170 --> 00:07:30,670

starting from before the marriage, right, with a

123

00:07:30,678 --> 00:07:33,720

team working together to prepare asset statements. So every

124

00:07:33,798 --> 00:07:38,540

thing is clear and properly disclosed for prenuptial agreement purposes.

125

00:07:38,738 --> 00:07:42,629

And then when divorce is pending, that same multidisciplinary

126

00:07:42,639 --> 00:07:48,069

team can be working together to run sophisticated financial projections

127

00:07:48,079 --> 00:07:52,778

that backup your claims uh maneuver through complicated valuation,

128

00:07:52,790 --> 00:07:58,160

tax planning issues. Um perhaps explore creative financing options

129

00:07:58,269 --> 00:08:01,009

if one spouse has to buy out of an illiquid

130

00:08:01,019 --> 00:08:04,769

asset, like a business um updating estate planning documents

131

00:08:04,778 --> 00:08:08,040

which all typically need to be updated after a divorce,

132

00:08:08,048 --> 00:08:12,149

making sure tax filings are positioned properly and then post

133

00:08:12,160 --> 00:08:15,750

divorce. Um investing the settlement proceeds in a way

134

00:08:15,759 --> 00:08:18,699

that's gonna sustain a desired lifestyle. So, Marlene,

135

00:08:18,709 --> 00:08:21,600

I agree with you. It's all about the team,

136

00:08:21,608 --> 00:08:23,858

right? And there's one other proviso that I would

137

00:08:23,869 --> 00:08:27,720

like to add to the conversation in, in collecting

138

00:08:27,730 --> 00:08:30,619

these professionals. It may or may not be the

139

00:08:30,629 --> 00:08:34,739

same professionals that the couple has worked with prior to

140

00:08:34,750 --> 00:08:38,798

divorce because those people may have a conflict if they

141

00:08:38,808 --> 00:08:43,808

represented both parties. And it may be that you

142

00:08:43,820 --> 00:08:47,918

need to hire other experts to work with those experts

143

00:08:47,928 --> 00:08:53,000

that worked for both of them. So sometimes the

144

00:08:53,048 --> 00:08:57,029

experts, the the they're necessary and important, but

145

00:08:57,038 --> 00:09:00,029

they may be the advisor that you need for the

146

00:09:00,038 --> 00:09:03,820

divorce situation. Very good point. You may need

147

00:09:03,830 --> 00:09:05,609

to start af Freshh as is as is often the

148

00:09:05,619 --> 00:09:09,158

case in my experience as well. Uh John,

149

00:09:09,168 --> 00:09:10,678

let me, let me turn to you and see

150

00:09:10,690 --> 00:09:14,210

if you have any tips about what in your experience

151

00:09:14,219 --> 00:09:16,479

is the best way to come to an agreement on

152

00:09:16,489 --> 00:09:19,519

financial matters with the high net worth divorcing. Couple.

153

00:09:19,879 --> 00:09:23,158

All the things Marlene said are still accurate. Uh

154

00:09:23,210 --> 00:09:26,580

One of the the bigger problems sometimes occurs when people

155

00:09:26,590 --> 00:09:29,250

start cherry picking as to the assets they want to

156

00:09:29,259 --> 00:09:33,369

take because it shifts the whole focus at risk and

157

00:09:33,379 --> 00:09:37,759

reward and it's uh when she was talking about the

158

00:09:37,769 --> 00:09:43,000

percentage allocation that's really nice and it's clean. The

159

00:09:43,009 --> 00:09:46,879

um conflict between I want, I wanna keep the

160

00:09:46,889 --> 00:09:50,119

family home and I want to keep that for my

161

00:09:50,129 --> 00:09:52,690

property because I have an emotional attachment to it.

162

00:09:52,928 --> 00:09:55,058

Spouse. On the other hand, may have the

163

00:09:55,070 --> 00:09:57,719

same emotional attachment but is willing to move on.

164

00:09:58,479 --> 00:10:01,389

We have, we have to deal with transaction costs.

165

00:10:01,399 --> 00:10:05,899

And when you're taking this cherry picking approach, the

166

00:10:05,908 --> 00:10:10,509

courts are generally not going to factor in transaction costs,

167

00:10:10,538 --> 00:10:13,668

either the cost of the same business or the real

168

00:10:13,678 --> 00:10:16,840

estate commissions unless the sale is eminent. So it

169

00:10:16,849 --> 00:10:20,830

can have huge tax implications when people are looking at

170

00:10:20,840 --> 00:10:24,759

value that we've established somewhere and then they don't realize

171

00:10:24,769 --> 00:10:27,979

the impact of the taxes on that value as they

172

00:10:27,989 --> 00:10:30,940

start cherry picking and filling up their bucket to get

173

00:10:30,950 --> 00:10:35,619

to their supposed 5050 split of the assets. The

174

00:10:35,629 --> 00:10:37,399

other thing I wanted to comment on it is what

175

00:10:37,408 --> 00:10:39,960

when Marlene was talking about getting the team together,

176

00:10:40,058 --> 00:10:43,119

it really is important and it really important to get

177

00:10:43,129 --> 00:10:47,739

really qualified people who are respected in the community and

178

00:10:47,750 --> 00:10:51,349

who respect other professionals. The last thing you wanna

179

00:10:51,359 --> 00:10:55,038

do is have a person on your team who looks

180

00:10:55,048 --> 00:10:59,639

at some of the work product of other professionals involved

181

00:10:59,649 --> 00:11:02,690

and they start picking it apart and pointing out problems

182

00:11:02,700 --> 00:11:06,609

or fables that are personal in nature, not necessarily

183

00:11:06,619 --> 00:11:09,580

professional in nature. And you want to get people

184

00:11:09,590 --> 00:11:14,759

who really understand the dynamics of working together to work

185

00:11:14,769 --> 00:11:18,460

for a solution for the parties, not just for

186

00:11:18,469 --> 00:11:23,450

themselves. And so often times, egos sometimes step

187

00:11:23,460 --> 00:11:26,538

into an into the equation that the lawyer has to

188

00:11:26,548 --> 00:11:29,460

be mindful of. So that when they set the

189

00:11:29,469 --> 00:11:32,558

team and pick the team, it's generally people they've

190

00:11:32,570 --> 00:11:34,450

worked with in the past and they're very careful in

191

00:11:34,460 --> 00:11:39,038

that regard and making sure that everyone is respectful of

192

00:11:39,048 --> 00:11:43,570

the other people on the team because everyone approaches the

193

00:11:43,580 --> 00:11:48,038

problem from their own professional background. And tax lawyer

194

00:11:48,048 --> 00:11:51,379

may have a different thought process and probate lawyer who

195

00:11:51,389 --> 00:11:56,168

may have a different thought process from the financial advisor

196

00:11:56,178 --> 00:11:58,649

who may be looking at different from the accountant who's

197

00:11:58,658 --> 00:12:00,759

done the books and you have to make sure you

198

00:12:00,769 --> 00:12:04,690

can blend all of them together and have people keeping

199

00:12:04,700 --> 00:12:08,210

track of where they are and what their function purpose.

200

00:12:09,489 --> 00:12:13,229

Yeah, it's such great advice, John. Um



201

00:12:13,239 --> 00:12:18,139

the team has to collaborate and communicate and work together

202

00:12:18,149 --> 00:12:21,859

in order for the the client to be positioned well.

203

00:12:22,070 --> 00:12:24,308

Um and, and so that what you say really

204

00:12:24,320 --> 00:12:28,460

resonates with me um in particular, for example,

205

00:12:28,599 --> 00:12:31,690

um I think you and Marlene both touched on the

206

00:12:31,700 --> 00:12:36,750

importance of, of understanding the taxes associated with different

207

00:12:36,759 --> 00:12:39,908

assets. And I just wanna add one thought to

208

00:12:39,918 --> 00:12:43,729

that surprising tax result that I mentioned earlier in that

209

00:12:43,739 --> 00:12:46,070

case, that I was dealing with where I referred

210

00:12:46,080 --> 00:12:49,129

to the fact that a trust creator can be liable

211

00:12:49,139 --> 00:12:54,065

to pay the taxes on distributions an ex-spouse forever.

212

00:12:54,224 --> 00:12:56,614

And I just want to sort of make clear that

213

00:12:56,625 --> 00:12:59,923

that doesn't just apply to trust that are created as

214

00:12:59,933 --> 00:13:03,375

part of the divorce negotiations. It can apply to

215

00:13:03,384 --> 00:13:06,673

every trust created during the course of a marriage no

216

00:13:06,683 --> 00:13:09,565

matter when that trust was created. So a trust

217

00:13:09,575 --> 00:13:11,644

could have been created five years ago, 10 years

218

00:13:11,654 --> 00:13:14,875

ago, 20 years before a divorce and if one

219

00:13:14,884 --> 00:13:18,114

spouse created it and the other spouse can benefit,

220

00:13:18,428 --> 00:13:20,798

um and those types of trusts are the staples of

221

00:13:20,808 --> 00:13:23,649

estate planning. If those parties get divorced, you

222

00:13:23,658 --> 00:13:27,080

can have that lingering tax liability that I described.

223

00:13:27,119 --> 00:13:31,029

So it's key during the divorce process to have professionals

224

00:13:31,038 --> 00:13:34,500

um on the team who could examine every trust created

225

00:13:34,509 --> 00:13:37,269

during the course of the marriage to figure out ways

226

00:13:37,279 --> 00:13:40,820

to reduce or man that surprising tax result. Um

227

00:13:40,830 --> 00:13:43,418

And to figure out a solution before the divorce is

228

00:13:43,428 --> 00:13:46,538

final because once the divorce is final, you're likely

229

00:13:46,548 --> 00:13:50,279

gonna be stuck with that result. Let me turn

230

00:13:50,288 --> 00:13:54,048

to you now and ask about your tips for facilitating

231

00:13:54,058 --> 00:13:58,259

an agreement on financial matters during a high asset divorce.

232

00:13:58,619 --> 00:14:02,200

Ok. So first off, I think um both

233

00:14:02,210 --> 00:14:06,158

Marlene and John and you all really hit the nail

234

00:14:06,168 --> 00:14:10,580

on the head uh from different perspectives. The most

235

00:14:10,590 --> 00:14:14,759

important thing that a lawyer can do when a new

236

00:14:14,769 --> 00:14:18,210

client comes into their office in a high net worth

237

00:14:18,219 --> 00:14:23,190

case or in the regular middle class, uh family

238

00:14:23,200 --> 00:14:28,259

case is to treat the case as if you're preparing

239

00:14:28,269 --> 00:14:32,308

for trial from day one and look at it in

240

00:14:32,320 --> 00:14:36,038

terms of the ultimate goal of trying to get the

241

00:14:36,048 --> 00:14:40,379

case settled. So it's again, marshaling all the

242

00:14:40,389 --> 00:14:45,489

assets and liabilities, expenses, etcetera, looking at

243

00:14:45,500 --> 00:14:51,019

tax consequences if an asset is sold. Um and

244

00:14:51,029 --> 00:14:57,750

how do you structure the division of assets and liabilities

245

00:14:57,759 --> 00:15:00,798

in a way that you get the most out of

246

00:15:00,808 --> 00:15:04,379

it? At the same time, people have to

247

00:15:04,389 --> 00:15:07,960

do a cost benefit analysis. How much are you

248

00:15:07,969 --> 00:15:13,969

going to spend on attorneys and experts in order to

249

00:15:13,979 --> 00:15:19,808

reach a fair, an equitable re result? Um

250

00:15:19,989 --> 00:15:22,609

In order to do that, you, you have

251

00:15:22,619 --> 00:15:25,538

to look at all the facts that are involved in

252

00:15:25,548 --> 00:15:28,389

the marriage. Is it a sh short term marriage?

253

00:15:28,399 --> 00:15:31,149

Is it a childless marriage? Is it a long

254

00:15:31,158 --> 00:15:37,450

term marriage with kids ranging in age from elementary school

255

00:15:37,460 --> 00:15:41,460

up to college? Um Are there other people who

256

00:15:41,469 --> 00:15:47,629

are dependent on the two spouses involved like parents or

257

00:15:47,639 --> 00:15:53,038

disabled siblings or disabled adult Children? Um So all

258

00:15:53,048 --> 00:15:57,840

of these things go into one's thinking on the short

259

00:15:57,849 --> 00:16:02,168

and long term consequences of making a deal. And

260

00:16:02,178 --> 00:16:06,599

how do you structure it in a way to accommodate

261

00:16:06,820 --> 00:16:10,279

the needs of both spouses to get on with their

262

00:16:10,288 --> 00:16:14,750

lives in an independent fashion? Um But at the

263

00:16:14,759 --> 00:16:17,820

same time, uh to bury as much of the

264

00:16:17,830 --> 00:16:23,250

resentment and hostilities as the lawyer is capable of doing.

265

00:16:23,440 --> 00:16:27,229

And that's really a very difficult balancing act. Uh,

266

00:16:27,239 --> 00:16:35,058

but treating high net worth individuals is something that's really

267

00:16:35,070 --> 00:16:38,548

unique in a lot of ways. Um, one

268

00:16:38,558 --> 00:16:43,298

of my richest clients several years ago as we were

269

00:16:43,538 --> 00:16:48,649

going over her assets and preparing for trial and talking

270

00:16:48,658 --> 00:16:53,450

about the millions of dollars that she had spent furnishing

271

00:16:53,460 --> 00:16:57,109

her home in the Hamptons turned to us and with

272

00:16:57,119 --> 00:17:00,918

a twinkle in her eye smiled and said, you

273

00:17:00,928 --> 00:17:04,029

know, the rich are different and they are,

274

00:17:04,400 --> 00:17:07,348

they really are and, and lawyers have to be

275

00:17:07,358 --> 00:17:10,578

aware of that, you know, because the reality

276

00:17:10,588 --> 00:17:14,509

is a lot of our clients in our end of

277

00:17:14,519 --> 00:17:19,430

the practice where we represent people with significant wealth have

278

00:17:19,439 --> 00:17:24,009

much more uh at stake than we do in terms

279

00:17:24,019 --> 00:17:28,000

of our own economics. And you have to look

280

00:17:28,009 --> 00:17:32,509

at their lifestyles and where they're going to be afterwards

281

00:17:32,809 --> 00:17:37,420

uh in trying to set them up um to get

282

00:17:37,430 --> 00:17:40,969

on with their lives and um live the best life

283

00:17:40,979 --> 00:17:46,650

possible after the divorce. Yeah. Um great advice

284

00:17:46,660 --> 00:17:49,670

as always alter. Um And I just want to

285

00:17:49,680 --> 00:17:52,108

pick up on something that I've heard you say many

286

00:17:52,118 --> 00:17:54,189

times before Alton and, and Marlene said in our

287

00:17:54,199 --> 00:17:57,920

discussion today, which is the importance in high net

288

00:17:57,930 --> 00:17:59,818

worth people often have trust, right? So the

289

00:17:59,828 --> 00:18:04,118

importance of factoring in the, the trust analysis and

290

00:18:04,529 --> 00:18:09,328

a big issue um that I've encountered is whether trust

291

00:18:09,338 --> 00:18:13,608

assets in an irrevocable trust are reachable in divorce and

292

00:18:13,618 --> 00:18:17,154

an answer that question, courts look at factors like

293

00:18:17,213 --> 00:18:19,795

who created the trust? Um, was it one

294

00:18:19,805 --> 00:18:21,525

of the parties to the marriage? Who now says

295

00:18:21,535 --> 00:18:24,285

those assets are off the marital balance sheet? A

296

00:18:24,295 --> 00:18:26,094

little bit more suspicious, right? Than if a

297

00:18:26,104 --> 00:18:29,805

parent or grandparent had created a trust for legitimate estate

298

00:18:29,814 --> 00:18:33,684

planning purposes. Um, the courts look at factors,

299

00:18:33,693 --> 00:18:36,505

other factors like who is the trustee? Is it

300

00:18:36,515 --> 00:18:40,259

independent trustee or is it someone's buddy? Under?



301

00:18:40,269 --> 00:18:44,479

What circumstances can trustees make distributions? Who has control

302

00:18:44,489 --> 00:18:48,009

powers, like the ability to remove and replace trustees

303

00:18:48,059 --> 00:18:51,568

or make distributions? And what actually happened? Right.

304

00:18:51,578 --> 00:18:54,489

What was the distribution history? Cos courts are gonna

305

00:18:54,500 --> 00:18:57,729

look at patterns and see did the couple rely on

306

00:18:57,739 --> 00:19:00,818

trust assets to support their lifestyle? If so,

307

00:19:00,900 --> 00:19:04,170

maybe the trust assets are vulnerable in divorce if the

308

00:19:04,180 --> 00:19:08,358

distributions have been irregular and uneven, maybe less vulnerable

309

00:19:08,368 --> 00:19:11,769

in divorce. And so reading the cases and being

310

00:19:11,779 --> 00:19:14,078

involved in a lot of cases, I think the

311

00:19:14,088 --> 00:19:20,000

moral is that legitimate estate planning including transfers to irrevocable

312

00:19:20,009 --> 00:19:23,039

trusts can depending on your state laws, of course,

313

00:19:23,049 --> 00:19:27,799

successfully remove assets from the marital balance sheet, but

314

00:19:27,809 --> 00:19:31,199

that's not necessarily bulletproof because at the end of the

315

00:19:31,209 --> 00:19:33,680

day, the family court is a court of equity

316

00:19:33,689 --> 00:19:37,029

and family lawyers. You guys can try to poke

317

00:19:37,039 --> 00:19:41,009

holes in the planning to tell a story to convince

318

00:19:41,019 --> 00:19:44,578

the court of equity, why trust assets should be

319

00:19:44,588 --> 00:19:48,068

considered. But the analysis really has to start with

320

00:19:48,078 --> 00:19:51,108

a review of the trust documents because when all else

321

00:19:51,118 --> 00:19:53,180

fails, read the instructions, right? And the

322

00:19:53,189 --> 00:19:56,108

trust document is the instruction. So you really need

323

00:19:56,118 --> 00:19:58,789

to start with that. So I thought I would

324

00:19:58,799 --> 00:20:01,309

add in my thoughts there because in my experience,

325

00:20:01,318 --> 00:20:05,170

trusts are typically included in these high net worth divorces.

326

00:20:06,309 --> 00:20:08,640

So I think that that takes us to the end

327

00:20:08,650 --> 00:20:11,269

of our time. I would like to thank all

328

00:20:11,279 --> 00:20:14,400

three of my wonderful guests for a very engaging and

329

00:20:14,410 --> 00:20:17,559

spirited discussion. Thank you. Thanks for having us.

330

00:20:17,568 --> 00:20:20,150

We really appreciate it. Thank you very much.

331

00:20:20,160 --> 00:20:22,150

It was a pleasure to have this discussion.