Speaker 1 (00:03):

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 Vandenack 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 is a word from our sponsor, interactive legal.

Speaker 2 (00:51):

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Speaker 1 (01:41):

On today's episode, I have Mark Weber and Mike Weaver as my guests, Mark Weber has a 30 year career in the financial industries. He's a graduate of Creighton law school and has a master's degree in financial services. He holds a charter advisor in philanthropy designation, and thanks to Mark, Mike and I also have a CAP, so we're chartered advisors of philanthropy too, and we're all somewhat passionate about it. Mark is also the author of a book called the Legacy Spectrum and the Legacy Spectrum is a great book that talks about helping children to be responsible heirs and to understand and talks a little bit about, you know, a topic I get, I get with a lot of the high net worth client, really regular topic is will I ruin my children by giving them a whole lot of money. And part of the conversation that book is to help clients consider how they should structure their estate with the beneficiaries in mind. And I know that I've had several clients that have found that to be really valuable. Mark also started a cat program here in Omaha. That's the charter advisors of philanthropy, and it's a pretty strong program as I understand it. Mark, is that correct

Speaker 3 (02:50):

To say that doing it for 10 years now and have over 100 graduates. So it's been fun to watch it grow

Speaker 1 (02:57):

I appreciate you being here, Mark.

Speaker 3 (03:01):

Thanks. Great to hear. Great to be here actually. Out in post pandemic seeing people in person again, so I look forward to it.

Speaker 1 (03:10):

So they attended an event last night that had so many people that it was like everybody's getting out and about. I think, and Mike Weaver is my partner at Vandenack Weaver, and it's been a regular on some of my podcasts. We thought we would really enjoy doing this one today with Mark, as we've both been through his chartered advisor in philanthropy programs. So welcome today, Mike, thanks. Very glad to be here. And so we both want to thank you mark for bringing that charter advisor and philanthropy program to Omaha. I know that, you know, in my career I've been really fortunate to be involved in some amazing projects. And I thought I knew a little bit about philanthropy. What was really great about that program is that you brought in people who would talk about their personal philanthropy and how they were doing that. And particularly what I found fascinating, I have started incorporating a lot more as talking to clients about how to bring their family members into it. And so partly today have a lot of interest in the whole private family foundation. So that's what we're going to talk about. And my, can you just technically tell us what is a private foundation and particularly in the context of a family who might be considered using this as a legacy tool?

Speaker 3 (04:20):

Sure. So, a private foundation, is a tax-exempt entity for IRS purposes. It's, it's known as a 5 0 1 C3 or it's one of the types of a 5 0 1 C3. Um, there's really two types of, of tax-exempt organizations. I mean, in, in the 5 0 1 C3 is theirs, public, charities and there's private charities and private foundation is considered a private charity. And the distinction there is basically based upon the type of support that you get. A public charity is going to get a broad base of, donations and support. Whereas a private foundation is basically generally going to be funded by a particular family or maybe a particular corporation.

Speaker 1 (05:05):

So a lot of times you'll hear people refer to a 5 0 1 C3 and they kind of use that term like 5 0 1 C three has a specific meaning, but 5 0 1 C3 is actually a broad term that covers a lot of types of organizations, right? And so, your American Heart Association is probably a 5 0 1 C3 that probably a public charity under that section. But then that Mike Weaver family foundation is probably going to be a private family foundation. And the rules for each of those from a tax perspective are a little different.

Speaker 3 (05:36):

They are different not only on just the way, the way, not only on the way that the contributions coming in, what is deductible, but also there are particular rules that might apply to PR that apply to a private foundation that wouldn't apply to a public charity. And sort of the default is that if you're a 5 0 1 C3, you're considered a private entity, unless you can prove otherwise. So you basically have to prove that you have a broad base of support in order to become a public charity or to be classified as a public charity.

Speaker 1 (06:07):

So, Mark, at one point you had commented that you see a lot of foundations don't get funded until death, but I know that. And partly since I went through the CAP program with you and because of the changes in the tax laws, right? So it takes a, the estate tax exemption has gotten to be well over 11 million per person and income tax rates while I've dropped, can still be expensive. So we see a lot more people can be in concerned with income taxes than estate taxes sometimes. So I know that I've gone to suggesting, well, you know, you can fund, you don't have to put many millions in a foundation. You can even start with a smaller amount and you'll get a tax deduction. So we do a little bit more and it might not get funded. It might get funded more significantly at death, but sometimes during life. And one of the things I really enjoyed in your program was listening to the stories about how you were, some people were using these private family foundations to really encourage philanthropic values in their family. Can you share some of what you are seeing in that regard?

Speaker 3 (07:11):

Sure. So, you alluded to it earlier that many people are concerned about what happens the money when their children get it. And I know you work with a pretty affluent clientele and many people are worried about spoiling their children. And so, the state planning process does a great job of passing money with no taxes and efficiently, but what happens after that? it's really not the lawyer's concern anymore, oftentimes. And so families are realizing we want our children to be good stewards of this money, and we want to pass on some of the values that we've enjoyed during our lives. And so, what they're doing is rather than just waiting until death to fund these private foundations are starting now. And what they're doing is using that as a training ground for their children. And so they're, holding meetings and giving money away as a family, which many find it very rewarding and a great opportunity to tie, to teach the children some of the values of the parents out of things that they care about and are passionate about and why they give to them. So, it's been a great learning tool and it also, rather than just set up a private foundation to be suddenly funded at death, and now the children find out now, what do I do? It's not Virginia for them to learn and set up a, an organizational structure that will continue after the parents die.

Speaker 1 (08:29):

I think some of the stories that were shared at some of our meetings included families with multiple generations who would have meetings, might bring the whole family together one year. And what I thought was one of the effective tools that, you spoke about was that when I was originally working with family foundations, a lot of times the senior family members, they might include everybody in a meeting, but they would actually make all of the decisions. And I think you've spoken at times about turning some of that decision-making over to other generations. What does that look like?

Speaker 3 (09:03):

You're exactly right. I mean, sometimes the grant tours of the parents set up this foundation and they have the children sit around the room and just listen to where the parents give them money. And that's probably okay for a meeting or two within the children are saying, what do you need me here for? And so many families are starting to carve off a part of the assets and say, look, we're going to give away whatever the number is. Say a hundred thousand dollars this year, they have two kids. So maybe each kid gets to give away $5,000 or $10,000, to the charities that they care about. But rather than just write a check, the kids have, do a little due diligence and, and it's an opportunity for the parents to find out what the kids are passionate about. I will tell you for someone who's done that you sometimes have to sit back and say, that's not right, would have given the money, but, that's part of being a parent is to learn about from your children. What's important to them and be accepting of them. So, it’s, the parents got to remember eventually the kids after they died, the kids are the ones who can get the money away. So you better find out now and train them now. So, and that leads onto what you, you might want to create structure of that private foundation as to what the parameters are that they want the kids to give the money to.

Speaker 1 (10:18):

So, as a parent who may have created the foundation, or even a grandparent working through that during life gives you both the opportunity to share philanthropic values, but also to learn about what your child might benefit and make decisions about, whether that makes sense to you and gives you the chance to restructure your foundation, as opposed to just saying, Hey, here's a huge pile of money. We're dead. Go use it however you want.

Speaker 3 (10:44):

I see. So, I mean, it's a great way for parents to, or grandparents. I mean, one of the stories we've talked about in class was a Grandmother who set this up racy for our grandchildren. And it was a very heartwarming story to hear grandma getting, to spend time with her young grandchildren. And, but grandma got to tell stories as part of the, here's why we give to, oh, could be the, shelter for homeless. Well, she could say my brother was homeless at one time, and this was part of my family story. What happened, or it could be a why I give to animal shelter. Well, this is what happened to my pets and why they're so important to me. I mean, it's an opportunity to talk about family stories and that's what kids and grandkids want to know about your family. Everyone wants to be belong to something and be part of a story. And so private foundations are just one form, a very good forum to do something good for the community and the past on, uh, our own families, rich legacies.

Speaker 1 (11:47):

And I know I shared that since that time, when we had the grandmother, I think it was who talked about how they've structured. It, it's a story that I've shared generally with clients and have had several decide, oh, to do that, and actually include their kids. And sometimes grandkids in picking charities and how much they're going to give. And they go get financial statements and come back and report on the charity. And for the most part you do sometimes have the parents go, oh wow, we're going to limit them to like 10 bucks next year and what they can thing. But most of the stories, frankly, are parents telling me, wow, I learned some really great stuff about my kid or my kid really showed a high level of responsibility and interest when I actually turned that over to him or her. So that's really one of the alternatives that gets offered by advisors as being almost comparable is what's called a donor advise fund as an alternative to a private foundation. Can you clarify Mike from a technical perspective exactly what the donor advised fund is?

Speaker 3 (12:53):

Yeah. Donor advise fund. I think the easiest way to think about it is probably just like a charitable investment account. And, you know, you can set them up at Fidelity and Schwab. They all can do that. Omaha community foundation here locally can do them for you as well. And you're, you're, you're putting generally cash or maybe securities into that account. And then each year the sponsor, the account, whether it's Omar, community foundation, Fidelity or Schwab, they're checking with you and you're advising them on how you want the money to be, how much and, and where you want the money to go.

Speaker 1 (13:29):

So is the donor advised fund absolutely bound to direct the funds where you want it to go?

Speaker 3 (13:36):

Well, there, that's an interesting, there's, there's been some recent, recent case on that where there was a donor out in California that made a hundred million dollar, I think, around a hundred million dollar gift to stock, to a font, to a donor advised fund. And they had some parameters about how the stock was supposed to be sold because it would impact the market and everything. And, and those instructions weren't followed. And there was a law suit that, that commenced, and basically the judge has ruled, that, you know, when you, when you set up a dozer donor advised fund, you are transferring ownership to the fund and the fund has ownership of it. And while you have an advisory role, other than that, you don't have, you don't, you can't tell them, you can't tell the fund what to do. So, , the answer to your question is you have input, but you don't have control.

Speaker 1 (14:28):

And so that is becoming a significant difference in our minds this year, as we look at donor advised funds versus private foundation, given the significance of that donation, but historically mark, when might you have seen somebody go to a donor advised fund versus the private foundation?

Speaker 3 (14:45):

I would say typically at or in my experience has been the size of the contribution. Larger contributions typically are oftentimes on bi-product private foundations, donor advice funds have become certainly in terms of numbers, of being implicated much more popular in recent years, the amount into private foundations is larger because it's the very large donors are doing these, putting billions into them, but donor advise funds. I read recently; they've been growing at double digit rates for the last five to six years. Community foundations have the most donor advised funds, but like Mike talked about the really large financial institutions, , Schwab Vanguard, Fidelity have the most dollars, I think next, I just did this research project I'm working on, but I believe next year, uh, the financial institutions are geared to have more than $100 billion in donor advised funds. So it's enormous.

Speaker 3 (15:50):

Part of the giving landscape, I think 12% of all annual giving by individuals now goes into donor advised funds. So, it's, it's a big piece and it's become, I guess, more accessible, donor advice funds, , because of the scale of these organizations. I can now pull up on my phone, frankly, while we're talking and I can make a gift to an organization and have a receipt printed and sent to me by email and be done, and an individual private foundation normally don't have that kind of efficiencies, but again, they're larger amounts and you normally have a, a board and often an attorney sitting on that group and they have staff to do that for you.

Speaker 1 (16:36):

Donor advised funds are simple. You just write a check, get a receipt, receipt, your consultant. You just need to realize that in the recent case that you may not actually have as much control as sometimes people think they do. If the family is really trying to pass on the philanthropic values, even in smaller amounts, I have discussions about private foundations. I think the donor advised funds, if you know, I have no kids and I just want to have, you know, make this charitable contribution where I have some say, while I'm alive, or I'm not really interested, Mary, and you pass it on this philanthropic values to my family that I found even with some smaller clients. So I used to, I used to talk about the concept. I call them mini private foundation. Cause sometimes we had advisors say, oh, you have to have $5 million to do a private foundation.

Speaker 1 (17:25):

And the fact is I could set one up and put, have, you know, five people put in a thousand bucks and we'd still have a private foundation. Cause it's not really that expensive to do. I think a lot of times that's a little bit driven by, Hey, if we're investing in that funds, we like to have larger amounts, but it is possible to do a smaller one if we're really concerned. But I think the kind of difference when I'm advising and you guys can tell me if you feel differently, is, are you trying to bring other people in, into this and involve them in passing on the philanthropic values? Or do you just want to give it to make it really simple and have a little involvement thereafter? Is that a fair way to?

Speaker 3 (18:04):

I think you can do either one. I mean, I help hold family meetings with my family and we use a, community foundation. So, I don't think that's necessarily a differentiator. It can be of course, but it's just the tool by which you give money through. It's up to the family, whether you have a, you're going to have a donor advice fund to have a formal family meeting and talk about your values and best in Oregon, or you can do, you know, private funds. So, , I, I don't necessarily feel that's a major distinction, but Mike, do you agree or disagree?

Speaker 1 (18:40):

I'm going to just ask a question. Cause it was the case, was that one of the financial institutions versus the community foundation with the donor advise fund and that's where you might, you go to the community foundation, say in Omaha, Nebraska, they know you, they probably aren't. And this was a major financial institution.

Speaker 3 (18:59):

That was Fidelity was the subject of the case and they had numerous meetings with this donor about, you know, the input that they were going to have. And, and specifically about, you know, how this, how these blocks of stocks were going to get sold. And they had very specific instructions because they didn't want to have a negative impact on the stock if they just went out and dumped a bunch of stock and one day and during death, that's what they did. And so that was the reason for the lawsuit or one of the reasons for the lawsuit.

Speaker 1 (19:27):

And we think we might see that less in the community foundation context, but we don't really know.

Speaker 3 (19:32):

Don't really know. And I don't really know what the reasoning for Fidelity what doing they did. I don't know that, you know, why they felt the need to do it and whether or not a community foundation would do that. I mean, it's, I think that was a lack of, I read that case too. I think it was a lack of communication. And I think, these organizations that receive your money or this a donor advise fund or private foundation, they don't want the risk of the stock going up or down, so they're going to execute immediately. But in that case, there was a verbal communication that no, we won't execute. We will follow your directions. Right. But they didn't do that, but that's a little bit different than where they, where the money gets dispersed, the grants that were made and you are right.

Speaker 3 (20:14):

The community foundation legally has the right, not to allow a grant to go someplace. I mean, I was on a board of committee foundation for 13 years. And I think in that time we had one person not be approved, not organization be approved. And that was, it was be going to some, was deemed to be a racist organization, so otherwise, unless it's illegal or it's, the community is almost always likely to agree to what you want to give it to. And the same with the large donor advice funds fidelity or Schwab's or Vanguards, or, I mean, there's, when I say those three names, there are thousands of sponsors of donor advice funds around the country.

Speaker 1 (21:02):

And for the most part, we just don't see what happened in that case with the donor advised fund. And it's typically a good tool. Are there tax differences for the donor Mike, when somebody's putting funds in a donor advised fund, rather than a private foundation.

Speaker 3 (21:17):

There are tax differences on the amount that's deductible, and, in a donor advised fund you're, if it's a cash gift, 60% is what you're able to, 6% of your adjusted gross income is what you're able to deduct. And if it’s, appreciated securities or publicly public securities, it’s, 30%. And then, for a private foundation, when you're doing a cash gift, you're limited to 30% of your adjusted gross income. And if you're doing securities, if they're publicly traded, it's 20%. And if it's non-public and then that's fair market value. And if it's a non-publicly traded. So, if it's a closely held stock, you're limited 20%, 20%, but you're also limited to your, your, the basis that you have in that.

Speaker 1 (22:06):

So, let's just say, you know, as compared to, so we're kind of talking about, I was asking you to compare donor advised fund and private foundation, but this closely held stock limitations important. If a client has their key asset is maybe a business that they built and they have new basis and it's worth a lot of money. So, if I just give that, you know, some of that stock in that company to American Heart Association or the American Cancer Society, I get a deduction for fair market value. Right? Correct. But when, if I give that to my own private foundation, I don't get that same tax benefit. It's just that zero basis. And so it's the private foundation isn't greatly is not necessarily a great strategy. If what I'm looking to do is give away the value of my business and get a deduction for it.

Speaker 1 (22:52):

Right. Right. And we're going to talk in another podcast about some other ways you can sure. Other strategies, you can actually do that. So, and one of the things with private foundations mark, is that people used to say, well, it's a little more complicated than the donor advice fund. And I think that's a fair statement, right? So when somebody does go to a private foundation, what are the things they have to consider? That's just a little bit more work than like your example of going online. I give some money to the donor advice fund and I'm good, but now I've got a private foundation. There's just a little more to it.

Speaker 3 (23:24):

Well, once while you're here, wealthy people say it's actually harder to give away money. That was to make it. And we all kind of smirk at that. When they hear that I'd like the opportunity, you know, but the, the points are making as most of us give away. It's like a knee jerk reaction. Somebody ask us as a firm, you guys get asked all the time to make gifts. And I know you're very generous, but you can't honor all the gifts. And what I would encourage people to do is create their own personal giving statement. And that is where you set parameters around, where you want to give.

And that might be geographically. It might be whether you give to endowments or you want to do operating costs, you don't want to give large opera organizations or small organizations. It helps you kind of narrow the scope of what you're doing.

Speaker 3 ([24:13]):

And you try to do it in alignment with your values. If you happen to value education, for example, you might lean towards those organizations. So, when somebody sets up a private foundation or for that matter, if they want to be more involved in a, in a donor advised fund with their families to set up some parameters of their giving. So it's not just reactive of yes, no, yes, no, wait a minute. Is this consistent with what we are as a family? So I think that helps people feel more purposeful or intentional in their giving. And if you're, whether that's a beauty, as you talked about, if, if you set up a private foundation or you're live, you get to do that now and talk to your children. If you wait until you die to have it take effect, well, then I would encourage you to have that written out. So, your children have some direction by which to give money. So, they don't kid, aren't giving to something that is completely opposite of what you would have gotten given to all your life.

Speaker 1 ([25:07]):

But what I'm hearing from you on one issue, I just want to back up is like, to the extent you go with the donor advise fund, you can still involve the family to some degree, the same way that you might with a private foundation. And does that continue to happen after death?

Speaker 3 ([25:22]):

I mean, what, what you can do is set up a donor advised fund, and I'll just tell you what we do as a family. We give each children a certain amount of money and put it in their own little donor advice fund. And they each get to give to organizations they care about, but they have to report. So to the whole founders, everyone sees what they're doing and why. And that gives insight into that individual. And you can structure a donor advice funds. I think it depends on the sponsor and perhaps the amount of money involved, but you can make it so it's multi-generational so it can continue past the donor's gift. But there are some limitations, I don't know what they are at various organization, but you have to have a certain sum of money to make it, you know, cost-effective for the sponsor to allow that to go on beyond one generation.

Speaker 1 ([26:10]):

Yeah. It has to make sense. Yeah. So Mike, there are some like technical requirements for the private foundation that don't like, the donor advised funds takes care of that. Right. They create the whole structure. If you create a private foundation, do you have to have a board of directors, policies, things like that. Absolutely. And so I think like say in Nebraska and each state's different, we've really found as we've worked with different states that their rules or different in each, and you can do, I think a corporation or a trust are those, the two options. Typically there's a couple options in how you can structure it, but regardless you have an entity, you have some tax filings, you have, you have to have some people involved. So if you're one person and you don't really have anybody you want to put on this board with you, that it might not be the technical requirements might say, yeah, you should look at the donor advice fund. So there's a variety of factors to consider.

Speaker 3 ([27:06]):

That's correct. And you know, and there are filings, you know, you can't just set up a nonprofit corporation in, in Nebraska, for example, and just call yourself a tax exempt entity. You have to, there's a, there's a filing you got to make with the IRS. And you got to show that, you know, what you're doing is for charitable purposes,

Speaker 1 (27:26):

You know, it was like to make the distinction that there's a legal entity that's created at the state level. That's a nonprofit entity. And I think that's true in most states. I know I ran into a couple of weird ones in some other states recently, and I won't go through those state requirements, but so you have some, and then that's different from your federal tax exempt status. You have to have an entity that's nonprofit, and then you have to qualify that as non-exempt or as tax exempt with the IRS. Correct. Well, I have to say that helping clients with philanthropic values and particularly, I really have had a lot of great opportunities to do some private foundation type projects, and those are really fun and amazing to be part of. Do either of you have any last comments, Mark?

Speaker 3 (28:11):

Well, first, kudos to you and Mike and your practice for promoting more of this, in the estate planning process. Having worked with a few families who do give back to the communities it's, as you know, it's for a rewarding, that to see what they get out of it. I, I learned some time ago, which was nudes to me, really giving is a gift to ourselves. It, it feels good. I also learned, I read, a book by two women. I can't remember the title of it, but they actually have done some studies and showed that people who give regularly in their lives live longer, are happier. And I'd never seen that documented before. I think most of your clients probably give quite a bit more than you realize, while they're alive. And so, to me, it's a natural extension to continue that after you're dead and the past set gift onto your children and a private foundation is a great, vehicle to do that. Any last thoughts, just to maybe echo what, what mark was saying, it is just, it's very rewarding to be involved in the process and, and assisting people do something that they really are passionate about. And it's just, it's really rewarding from, from a practice standpoint.

Speaker 1 (29:29):

Thanks to both of you for joining me today, as we get to the end of our show, I want to thank our sponsor interactive, legal that's all for today. Stay tuned for our weekly releases,

Speaker 4 (29:46):

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