**Lowenstein Sandler's Real Estate Podcast: Terra Firma**

**Episode 9:**
**Estate Planning for Real Estate Portfolios: Protecting Your Assets**

**By Warren Racusin, Stacey Tyler, Stephen Tanico**

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| **Kevin Iredell:** | Welcome to the Lowenstein Sandler podcast series. I'm Kevin Iredell, Chief Marketing Officer at Lowenstein Sandler. Before we begin, please take a moment to subscribe to our podcast series at lowenstein.com/podcasts. Or find us on Amazon Music, Apple Podcasts, Audible, iHeartRadio, Spotify, Soundcloud or YouTube. Now let's take a listen. |
| **Stacey Tyler:** | Welcome to Terra Firma: Conversations on Commercial Real Estate. I'm Stacey Tyler. |
| **Stephen Tanico:** | And I'm Stephen Tanico. Stacey and I are real estate attorneys at Lowenstein Sandler. On today's episode, we'll be talking about trust and estates in relation to real estate. Joining us in this discussion is Warren Racusin the chair of Loan Size, Trust and Estates Group. And more well-known these days for being the host of his own podcast, “Splitting Heirs.” Thanks for joining us, Warren. |
| **Warren Racusin:** | Well, thanks, Steve. Thanks, Stacey. I'm not sure that's what I best. And if I'm best known for that, we might have a problem. But. But thank you, anyway. |
| **Steven Tanico:** | So, yeah, we're really excited to have you on here, particularly for your expertise as it relates to real estate, obviously. You know, ideally, our clients are wealthy, real estate holders and then inevitably the conversation comes up with estate planning and what to do about your real estate portfolio. I guess once, once you're no longer have a need for it, so to speak. |
| **Warren Racusin:** | Right. |
| **Steven Tanico:** | So, to get started, I guess, like in your world, you want to talk about some of the general challenge you've seen as the planning and how those might be specifically impacted by real estate? |
| **Warren Racusin:** | Sure. And again, it's great to be here. We represent real estate holders in lots of different ways. We represent people who are investors or developers who are traders and people who just happen to have some real estate in their portfolio, whether it's investment, real estate or their home or vacation home or something like that. So, we've seen real estate in all different permutations and combinations. When we do our planning and I think while there's lots of challenges, I think the two challenges and the two things that are probably most worth talking about here are, one, taxes and secondly, what I'll call governance. And we'll get to that. |

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Let's talk about taxes first and what we spend most of our time or a lot of our time in my world thinking about is the estate tax, what certain politicians love to call the "death tax." And before we talk about some of the scary stuff about estate taxes. There is some scary stuff about estate tax, I think it's valuable to put it in a little bit of context. So, what do I mean by that? So, in 2022, which is the last year for which we have numbers, that 3.2 million Americans die. That's a little elevated because of the aftermath of COVID. But that was the number in 2022. So, take a guess of those 3.2 million Americans who died, how many of those estates paid an estate tax? Take a guess.

**Steven Tanico:** 10%

**Stacey Tyler:** 5%

**Warren Racusin:** That would be 2,584. Less than 1/10 of 1% of American decedents paid an estate tax. And so, it's important to keep that in context. Having said that, though, those 2,584 states paid about $18 billion of estate tax.

**Steven Tanico:** That's with a "B."

**Warren Racusin:** That's with a B. Yes. And so, it doesn't hit a lot of people. But the people that hit through the estates, it hits it hits hard.

**Steven Tanico:** Okay.

**Warren Racusin:** Now, how does that work, a little bit? So, what is the federal estate tax? It is a, and I hope you're sitting down, it is a flat 40% tax for zero. A flat 40% tax on the value of your assets. And when I say your assets, everything that you own, your real estate, your real estate investments, your stocks, your bonds, your retirement plans, your insurance, in many cases, all of those assets, things that you own or have an interest in are caught in the net of the federal estate tax at 40%. And some states like New York, not New Jersey for the most part, but New York, for example, has its own state estate tax. So, tack on roughly another 10% for the governor on top of that. So, the way to think about that or a way to think about it is every time you buy something, every time you make an investment in real estate, Uncle Sam starts as your 40% partner.

So, our job as estate planners and trusts in estates lawyers is to educate people about that and talk about ways to try to reduce that burden and make Uncle Sam meaningfully less than a 40% partner if we possibly can. So that's kind of the starting point for the tax side of this.

**Steven Tanico:** Now, before we dig into kind of more of the weeds on this, do you see a difference if, you know, Stacey has come into a ton of money and she's about to go buy real estate, is it obviously better to come see you kind of at the outset of this or I don't want to say on her deathbed, but is there a period of time where it's like, I wish you had come to me years ago or months ago or weeks ago, as opposed to it almost being too late?

**Warren Racusin:** The sooner the better. When we are dealing with and will. It's a good question. We'll talk about kind of the flip side of it in a second. But when you come to us with your assets are X, it is much easier to deal with and plan for them. By the time you come to us, your assets are five x, ten x 15, etc. Okay, So, so again, just get bad news is it's a 40% estate tax plus whatever the state might be. The other piece of bad news is that in almost all cases it is due nine months after your date of death.


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**Steven Tanico:** About.

**Warren Racusin:** There are some exceptions to that. There were in some circumstances, you can pay the estate tax in installments, but there's all sorts of problems in connection with that. So, for real estate people in particular, the estate tax kind of has two problems. One, the amount of the tax. And second, the fact that you got to pay the tax. There's liquidity issue for estate tax for real estate people. Why? Because our friends at the IRS are not interested in taking a building in payment of estate tax. The IRS folks will say, it's great that you have this wonderful portfolio. It's great that you have this building and that building, but you owe us X million dollars. Do you have X million dollars? Because if you don't have X million dollars. We will take one of those buildings and we will sell it for you. And whatever we get, we get because we at the IRS come first. So, there's two dimensions to the estate tax challenges facing real estate people in general, the amount of the tax and how you pay for it.

**Steven Tanico:** No, that makes a lot of sense. I remember when there were proposals for a wealth tax, mostly in the real estate world was I could never afford this because I'm going to have to sell off assets every year just to fund this. And it's a bit of a cyclical problem.

**Warren Racusin:** That is exactly the problem we want to try to avoid by doing good planning, as you said, sooner rather than later.

**Steven Tanico:** Excellent. So, what is some of that planning look like, Warren?

**Warren Racusin:** There's a couple of things that we think about for real estate folks. One is to see whether we can, number one, gift some of these assets out of the owner's estate during lifetime. And to go with that, get them out of your state at some discount to their real underlying value.

So, let's talk about that a little bit. By the way, so the bad news, it's a 40% tax. The bad news is that it do nine months after date of death. The good news is that each and we've kind of skipped over this, but let's come back to it. The good news is that each person has an exemption from the federal estate tax, a "get out of jail free" card. Right now, that exemption is about $13 million per person, pretty high, highest ever been historically. And so, for a married couple, if you do the planning, right, it's almost 27 million or actually a little over $27 million in combined exemption. That's the good news. And we plan using that all the time. The bad news about the good news is that in 2026, that exemption under current law will get cut roughly in half. So, on January 1st, 20, 26, the $13 million carriage turns into roughly a six and a half million-dollar pumpkin. And so planning, to your point about does it make sense? Does it help you do planning sooner rather than later? That's underscored by the fact that we've got $13 million of exemption to use today. We're not going to have it, unless Congress change the law come 2026.

**Steven Tanico:** And good news here is a very relative term, it seems like.

**Warren Racusin:** It's relative term. But that's kind of that the outline. So, let's talk about a couple of things you can do about that. First thing is, again, we start thinking about whether we can get property out of your estate during your lifetime to avoid or reduce that estate tax. And you would think that, well, if there's going to be this big estate tax when I passed away, I want to just give it all away during my lifetime. No estate tax and I beat the system.

Regardless of what you think of the general intelligence of the United States Congress and the people with the Internal Revenue Service, they thought about that. And so, if you give away property during your lifetime, there is potentially a gift tax to


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pay. And the gift tax is not the 10% or $75 like on monopoly board. It is a 40% tax, just like the estate tax, because they were smart enough to figure out that if you try to get property a way to beat the estate tax, they get to pick it up during your lifetime as a gift tax. Again, with that $13 million exemption, which is combined lifetime and at death.

**Stacey Tyler:** Are you saying that the gift tax exemption is that's part of the estate tax exemption?

**Warren Racusin:** Yeah. So, that's called a unified credit. So, simple example. You have a $30 million exemption. You make a $2 million gift during your lifetime, no gift tax to pay because you had $30 million exemption. When you die, you have $11 million of exemption left to apply against your estate tax.

**Stacey Tyler:** That's how they get you.

**Warren Racusin:** That's how they get you.

**Steven Tanico:** So, no gifts.

**Warren Racusin:** Right. So. Well, but in this kind of goes to the point we talked about earlier. If you have an asset that's worth X now and that you think could be worth five, six years from now, that's an asset that we're interested in from an estate planning point of view, because if we can make a gift when it's worth X and use of X of your exemption, then when it grows to five X, all of that four X of growth is out of your estate and doesn't get hit by an estate tax. So gifting assets that but can have potential for appreciation is what we spent a lot of our time thinking about doing.

Now. So that's one thing to do. What's the additional kind of turn a base hit into maybe a double or a home run? So how do you value a gift that you make during your life and or the value of an asset in your estate? Well, the tax laws say that it's you value it based upon its fair market value. What is fair market value? It's what a piece, a particular asset, a piece of property would change hands that between a willing buyer and a willing seller.

Okay, so let's take a simple example. You own a building worth $100,000. You make a gift of it. That's $100,000 gift. You used up $100,000 of your unified lifetime in that time estate and gift tax exemption. But let's say you had you put that $100,000 building into an entity like an LLC or an S corporation, and let's say you own 40% of it and you want to make a gift to that 40%. What's the value of that 40% gift for gift in estate tax purposes? Is it $40,000, 40% of $100,000? Our argument is no, why? Because you're a minority owner in that entity that owns the real estate and what you're gifting what you're gifting is an interest in the entity because that's what you own, right? If you're a minority owner, you don't control the property. You can't force a sale, you can't force distributions to yourself, you can't set the rents or anything like that. So, you don't have control that the property, nobody would pay you $40,000 for that 40% entity. They pay you somewhat less than that. And so, we go to what a good, solid, reputable appraiser, and we say, what would you appraise that 40% interest in? And they get it discounted and it could be discounted at a variety of levels for a variety of reasons. But so, let's say make let's say they use a relatively conservative 20% discount. So now so you're discounting that $40,000 by 20%. Now it's only worth $32,000. You gift that interest away. You made a gift of $32,000, not a gift of $40,000. So not only have you given away the property that you think could grow in value down the road, but you've started ahead because you've slashed the going in gift tax value by 20% in that example.

**Steven Tanico:** We might be getting a little in the weeds here, but –


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**Warren Racusin:** I apologize.

**Steven Tanico:** – no, no. I'm going to take us deeper in the weeds. Because in terms of gifting that, for example, is there a difference between gifting all $32,000 of value at once or incrementally gifting that over time?

**Warren Racusin:** You had to ask an appraiser. Probably the smaller the slice that you give, the bigger the discount you're going to get. I mean, you just have to be a little careful because, you know, the old saying bulls and bears make money only pigs lose money. Right. You want if you if you take an enormous discount, that's going to catch the attention of the IRS. Remember, when you make a gift, you have to file a gift tax return, a statement with the IRS that said, here's the gift I made. Here's the value of it. The IRS has three years to look at that say, come on, that's, really? You know, so but within reasonable parameters, you have probably the smaller sliver you give, the less it's going to be worth.

**Steven Tanico:** And now you keep using the term gift, which in my head is thinking about a very large box wrapped up with a stack of money in it. But is it really as simple as writing a check or conveying a piece of property to someone? Or are there intricacies with what a gift means in your world?

**Warren Racusin:** It depends. The simplest answer is yes. If I am staying with that example for a moment, if only I own a 40% interest in the ABC Limited liability company, the mechanics are as simple as I sign a piece of paper that says I give my 40% interest or half of my 40% interest or whatever it is, I give that interest to my children. That's as simple. It can be as simple as that. Now what I think you're getting at, I'll just guess that you're getting at it.

**Steven Tanico:** I'm going to say yes to whatever this answer is. You can pick whatever you want here now.

**Warren Racusin:** The great thing when you get answer, whatever you want to say. Is that so? Now you have to remember every tax planning idea that works has some real-world consequences to it. So who are you making that gift to, Right? Are you making it to a child? If the child gets that 40% interest, is that or some other asset cash marketable securities, is that going to create is that going to be good for the child in the real world or that could create problems for the child? And believe me, we've seen every possible problem pretty much that a gift and an inheritance can create for children. So when you're doing this kind of planning, you have to think beyond, okay, I want to save estate taxes. That's great. Get to think about what they gift means to the recipient in the real world. And how does that impact your overall financial planning, estate planning, tax planning? Because, you know, taxes are important, but they're the tail. It's a pretty big tail, but it's still a tail. And you have to look at the impacts of what is you doing. One of my one of my clients was always likes to say when I say you have an estate tax problem is a no, no, no, I don't have this debt. My kids have an estate tax problem, and I don't want to solve their problem by making their real world hader on them. If you make a gift and the child becomes incompetent or the child is in a divorce or something else bad happens, you can be making a bad situation worse. You have to be. And there's lots of ways through trusts and other arrangements that you can make gifts in a way that still makes sense for everybody and, you know, keep the government out of a few bucks.

**Steven Tanico:** Always like that answer. Now let's getting into the I guess the other half of this, we've talked about estates we're to trust. Can you elaborate a little bit on how that plays a part in terms of protecting clients and moving money around both, I guess, legally and what seems like the psychological aspect of your job as well, right?


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**Warren Racusin:** There's a million different kinds of trusts that are set up for a million different kinds of reasons. At their simplest, a trust is a deal with three people, with three players, or a game with three players.

There's the donor or the settlor, the person who's creating the gift, putting the assets into this trust arrangement. There's the beneficiary, right? Who the name suggests is being benefited economically by this arrangement. And there's the trustee or trustees, the people who are given the roadmap in the trust agreement about how these funds are supposed to be utilized for the benefit of the beneficiary, and whose job it is to do that job, to carry it out in the way that the donor or the settlor wanted it to be carried out.

And again, is lots of different kinds of trusts for lots of different kinds of reasons. Some of them are real estate specific, some of them are much more general but applied to real estate. So, for example, if you wanted to make a gift, could you thought it was going to save estate taxes someday, but your children, or can 15 years old, obviously you can't give them meaningfully meaningful – do that again – you can't give them meaningful amounts of assets stock in their own names.

**Steven Tanico:** Yeah.

**Warren Racusin:** So what do you do? You create a trust and you transfer the property to the trust and you tell the trustee in the trust document. Listen, trustee, during the term of this trust, I want you to use the assets in the trust for the benefit of my child as you see fit. Use it to pay for their education. If anything happens to us, put a roof over their head. You can use the funds to help them start a business, to pay for a wedding. There's a lot of things that you can do with these funds, but you trustee during the life of this trust, you, the trustee control the assets.

And so the trustee should be somebody who you have complete faith in their financial integrity because they're handling large amounts of assets. They should be somebody who understands your wishes and who has at least some financial savvy or at least the commonsense to hire people with good financial savvy and has the ability to say no to a beneficiary because the beneficiary could come at 15 year old, could come to the trustee someday and say, Hey, Mr. Trustee, my friend told me about this great deal for property in Florida and I know it's just a swamp right now, but I know someday it's going to be worth a lot of money. Could you just send me a check out of my trust? Like the trustees got to be able to say, Wait a minute, right? So that's and that's how trustworthy they create. Or they they hold property for the benefit of beneficiaries in ways that hopefully, if they're doing right, are going to benefit the beneficiary and not turn them into, you know, a trust fund baby. And that is a risk.

And the way the best way to deal with that risk is for the person, the donor to settle who's creating the trust, to lay out their instructions, lay out their direction, talk to the trustee, say, listen, I want you to incentivize these behaviors. I want you to disincentivize these be I want my children to be productive members of society to the extent that this trust can help them do that and they can do it in a variety, they can do it in a variety of ways, That's great. But this is not designed to have them lie on a beach, you know, and drink margaritas all day – unless that's what you want.

So am I answering your question about kind of trust and how they fit into this well?

**Steven Tanico:** Absolutely. Absolutely. I mean, because there's an interesting aspect also of what you're describing on paper for the best possible trustee, but in practicality, is that a sibling, a lawyer, an accountant. Like, what do you what do you see kind of in the real


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world for what kind of makes up the best trustee relative to what you laid out on paper?

**Warren Racusin:** First, all of the above. Secondly, there's no one size fits all here. What I always tell people and I kind of touched there already is being a trustee is a job.

**Steven Tanico:** Okay.

**Warren Racusin:** What's the job description? You know, financial integrity, common sense, some financial savvy, some backbone. Right. Who in the universe of people or it could be a bank also who in the in the universe of people and relationships that you have are best suited to do the job. That's the way I tell people to think about who to pick as. And you can have more than one. In fact, often it can be helpful to have two trustees so that honestly, the trustees can play a little good cop, bad cop. When the child comes and talk to the trustees about the swampland in Florida, you know, a family trustee, for example, can say, “If it was up to me, of course, they gave you the money.” But I've got this accountant who's a co-trustee and she's a pain in the butt. And so that gives you that's an option. We talk about that with a lot of people.

**Stacey Tyler:** Warren, does a trust makes sense in the situation where I want to have assets in trust for my children, but I want to manage them in the meantime?

**Warren Racusin:** Yes, but. What do I mean by that? In order for trust to be effective for estate tax purposes, in order for you to be able to get the property that you put into the trust out of your estate, you have to relinquish control. You cannot have a legally enforceable say in who gets the property when they get the property and how the property gets managed. So you have to be careful that in most cases the person who's creating the trust for their children is not the trustee. Now, informally, can you pick trustees who are at least going to listen to your views? And when you say didn't and listen, I think this trust should be invested in this. I think you should hold on to this piece of real property because it's going to go through the roof someday. Sure. You can have those kinds of informal and you should lines of communication with you trustee. But you have to be careful that the person who's setting up the trust, the donor doesn't have legal control because that can end up having giving the government the ability to pull that property back into your taxable estate, which is what we're trying to avoid from an estate tax point of view.

**Stacey Tyler:** So how do you see families deal with that then, when you're in a situation where you have, you know, family real estate assets, they are actively managing, leasing, what have you, how do you see them kind of plan for the future in that way?

**Warren Racusin:** Well, that first that assumes that they're going to plan for the future, which can take some time for us to persuade them that planning is necessary. You start with their goals, you start you have a sit down with them and say, what do you want to accomplish? You know, if you got hit by a food truck tomorrow, what do you want to have happen to these assets? How do you want them deployed? How do you want them control that will get into the governance question and you have an in-depth conversation with them about how they foresee the future of this property, this real estate going, what they foresee with respect to their family.

And then based upon what they tell you, you design a plan that is as best as you can, is designed to meet those goals, understand, and you build as much flexibility into that as you legally can to take into account the fact that nobody can guess the future perfectly and you want to be able to make fine tuning adjustments.


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So, I mean, I know I'm not answering your question really, but there is again, no there's no one size fits all here. It starts with and ends with an understanding of what the family's goals are and understanding of what the property looks like, how it's what it is, how the play, how we think it's going to behave, and then building a plan based on that.

**Steven Tanico:** I would almost argue there's an overarching part about trust in estates in relation to real estate is the liquidity issue. With a real estate trust, for example, or trust holding real estate assets, is there a distinction with that type of trust versus, say, a trust with cash in it in terms of what is able to be dispersed out of the trust and what the control looks like in that trust? If it's a piece of property that exists but is not generating cash other than like a disbursement, for example.

**Warren Racusin:** Sure. And in there there are differences between real estate and just investment assets, stocks, bonds, marketable securities, because while the trustees, we always give them the authority, the discretion to make distributions, there may or may not be enough cash to be able to make those distributions. If the trusts own property or an interest in the in a in a in a real estate portfolio where what makes sense is to reinvest your net income to buy more property, there's going to be less money available to distribute to the trust, to distribute to the kids. And again, everybody has to have a going in understanding, right? You're going to say, okay, this we're creating this trust for the benefit of our family. The goal of this trust is long term growth for the benefit of this portfolio so that it will be available many, many years and decades into the future to be able to make distributions and address the needs of the family. The purpose of this portfolio is not to maximize the amount of cash that we can distribute out to my miserable children.

And, you know, it's it's so yes, it's when when any trust in when it trust owns and in any business, the way that trust operates is going to be very different than if it just owned the S&P 500 for sure. And everybody needs to be on the same page about that, which goes to communication and everybody understanding why you did what you did.

But let's touch on liquidity just for a sec, because again, liquidity is part of the estate tax picture. Right? And there are ways to deal with it Again, one way to deal with that is to start getting this property out of your estate that there's less property debt and therefore less estate tax. Ideally that you may or may not be able to do that.

In a perfect world, there are ways to deal with liquidity issues. One classic way to deal with it is with life insurance, right? So and it's not the only way and life insurance is not a cure all for every possible estate planning and financial planning issue under the sun. But in certain circumstances, life insurance can come in very handy. For example, Mom and dad create these trusts there. They're they own a huge real estate portfolio. They create these trusts, they make some gift, but they still own a substantial amount of the real estate. And there's going to be an estate tax to pay. So they buy insurance on their lives. And when they die, that life insurance pays off. And that life insurance provides a fund of liquidity that can be used in a number of different ways to give the estate money, to pay the estate tax and eliminate the need to have to sell these properties that a fire sale to raise the estate. And, you know, very often when we represent when we're at the beginning of representation of a real estate family, we'll look in these that got 100 million, $200 million real estate, and there's a big estate taxable.

And we say, listen, buy as much life insurance as you reasonably can right now. So that, again, if something terrible happens before we get the planning done, at least will have the cash available to pay the tax. Then as we go through the planning exercise and we reduce the estate tax, then you can gradually cut back on the


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amount of life interest because again, when you buy life insurance, you get to pay premiums, right? And those can be expensive, and nobody loves paying them. But you start with buying as much as you reasonably can in this cost-efficient way as you can. And then as you do the planning, you can, if it makes sense, start reducing that amount of life insurance because you need less. But that way we protect on the liquidity side, and we can fine tune the amount of insurance we need as we do the planning, reduce the estate tax.

**Steven Tanico:** So that's fascinating. So that's really like almost step one day, one piece of advice you give me the clients like it. Fascinating that nothing even needs to be in place before that advice is coming out of your mouth.

**Warren Racusin:** For major real estate families who've got that kind of estate tax slash liquidity problem that we will routinely recommend. And you can design the life insurance or have it structured in a tax efficient way. And I don't want to get too deep in the weeds when I said at the beginning that the estate tax hits all of your assets, if you own a life insurance policy in your life, if you control a life insurance policy, the proceeds of that life insurance policy get hit by an estate tax also. So if you have a $10 million life insurance policy that you own, all of a sudden there's only $6 million left after the IRS takes it to 40%.

How do you avoid that? The classic loophole is what's called an insurance trust. You have a life insurance trust, different kind of trust, that owns the policy and gets the proceeds and that way. And the trust is designed so that pros, those proceeds can be used to lend money to the estate, to pay the estate tax, to buy assets from the estate, to pay the estate tax. But because the life insurance is in a trust, because you didn't own it, it does not get hit by that estate tax. So that's just that's just one, one game we play. And in that when I say it's loophole, it absolutely this is not a gray area It is absolutely positively works and we've done it all the time.

**Stacey Tyler:** And folks this is why you get a trusts and estates attorney.

**Warren Racusin:** There’s the right way to do it, there is all sorts of not right ways to do it all, most of what we've seen from other places. So, yeah, there's a lot of moving parts here.

And the last part of this is governance. a lot of real estate situations we see are real estate, the run by families, their family businesses and the issue that you have to counsel people on all the time is that often people put more emphasis on the family and less emphasis on the business for a whole lot of reasons. There's all sorts of emotional things and dynamic family dynamics that are going on that can get in the way of treating this portfolio in a business-like fashion. You got to treat it in business like fashion. Otherwise, money's going to go to the government for taxes. The family could break up with fights about how the real estate was supposed to be managed. So you have to create a governance structure. Mom and dad or whoever owns the real estate have to say, you know, if something happens to us, here's who's going to control it, here's who's going to get it. Here's the succession plan, if you will, because that is what's going to make it the most possible that this portfolio is going to benefit for the family, for generation after generation. That could be hard to do because a lot of these folks, the parents or the people who start the real estate business are either convinced of their own immortality or for any one of a number of family or the region to want to deal with this. And you have to deal with it. And that's part of our job is to gently persuade people that they have to deal with it.

**Steven Tanico:** Now, I've heard horror stories about this, right, because it's one year you, let's say, parent or staring into your own demise. And then, you know, I'm thinking of an example of a client where it's a brother and sister started a real estate company, and now between them, they have six kids and they're starting to have tough


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conversations about corporate governance because it's we love all of you, but someone needs to be in charge here. And it can't just be a six way split on everything or nothing's going to get done, which seems like a tough conversation, but less tough than dealing with this problem after.

**Warren Racusin:** Exactly. And what I always tell people is your family, your kids may or may not love what you decide to do, but if they hear it out of your mouths, it is much less likely that there's going to be a problem or a fight after that because you told them this is what you want and that's going to engender a certain amount of respect from the family. Right. So I couldn't agree with you more. I mean, communication is the key. We do a lot of trust in the state litigation around, a fair amount of it involving major pieces of real estate. And the biggest cause for trust in state litigation is lack of communication, people not knowing what was done, why it was done. And that leads to all the petty jealousies. And “mommy and daddy loves you more than me”. And that and that's not an exaggeration. We see that and so to the extent that you can communicate what you wanted done and why you wanted it done, it's much less likely you get to have a problem. That’s a fact.

**Steven Tanico:** And is that litigation kind of run the gamut from established, let's say, establish estate planning? Our children just don't agree with it or just there was nothing ever put on paper and now it's not clear what happens next.

**Warren Racusin:** Or sometimes the wrong things are put on paper. That happens. We have been involved in litigation involving a major real estate owning family in Rockland County for well over a decade.

**Steven Tanico:** Wow.

**Warren Racusin:** And the reason for being or a reason for the litigation the thing that got it started was that dad decided that he somebody told him that he needed trust for some of this real estate. And he said to his cousin, can you just give me a copy of your trust? And whited the name to change the name, boom created the trust. He didn't really read it. And there were a few things you probably should read before. This is a matter of public records on that. But I'm not going to and I'm not going to name any names. But sometimes it's you, sometimes it's didn't you didn't put down on paper. Sometimes you put the wrong things down on paper. So there's a lot of different causes, but it just it creates the possibility for all those fault lines in a family cracking open. If you haven’t planned it the right way.

**Steven Tanico:** No, it's I actually dealt with a client here where parents were still alive and had trusted a son in law, decided to get involved and suddenly he had an input. And now why are you listening to me? And it almost reached a point where the father was like, I'm still alive. Like, I can just change this now. What are we doing? Okay.

**Warren Racusin:** Well, and that sometimes that communication needs to be had. And we have had that communication of different circumstances. And it can be useful.

**Stacey Tyler:** That's when you're less of a legal counsel or more of a family counselor, I suppose.

**Warren Racusin:** We spend a lot of our time doing handholding around here, and yes, for sure.

**Steven Tanico:** And that sounds like real hand-holding, unlike, you know, holding hands through a legal you know, a legal problem.

**Warren Racusin:** You become the family's counselor in a way. And they and they turn to you and mean in some ways, that's the hardest part of this job, is having, you know, common the


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wisdom, whatever it is, to be able to counsel the family in a way that they could accomplish their goals. But at the end of the day, which we always say at the end of the day, you want your family to still be a family. right. This makes sense, right?

**Stacey Tyler:** Remember what all this investing is all meant to be doing.

**Warren Racusin:** Exactly it. And and it's and it it is it can be the great it can be the great golden egg. But you don't want to be you know, you don't want to kill the goose that laid the golden eggs. So that's why the more thought you can put into all of this, as you said, coming full circle early on, the more chance there is that things are going to work out well. And besides, our wills guarantee long life So if you come, you know, you got to sign, though. You got to sign.

**Steven Tanico:** Now before we wrap up, Warren, can you talk a little bit about the importance of planning with the real estate, apart from the tax aspect, which kind of focused the majority of this on?

**Warren Racusin:** Well, yeah, I think the governance aspect is very important, is structuring how this property's going to be owned, managed, run, etc. on a long-term basis. I think that's very important. I think that, from my part, the thing that kind of jumps out at me as I think about your question is what we try to do is build enough flexibility into all of this planning. Because remember, you're planning, and this is something you have to educate clients about. You're planning not just for today, you're planning for 2050, 100 years down the road. Right. And so you've got to build enough flexibility into this plan so that if accumulation of real estate seemed like a great idea now, but 30 years from now, real estate may be an awful investment. You've got to have the ability that to give your trustees, give your family the ability to get out, reinvest and continue to manage whatever is there in a way that's going to make sense then.

So it's it's a real balance between setting out your goals and trying to achieve your goals now, but understanding that things that made a lot that seem to make a lot of sense right now may not make a lot of sense because maybe you're thinking about yourself, you're thinking about children, grandchildren, great grandchildren. You got to get people's heads around that idea when they start thinking multi generationally, their perspective changes and we have to help them account for that.

**Steven Tanico:** Warren, this is impressive. I mean, you're a lawyer, podcast host, family counselor. It sounds like you might keep some sort of crystal ball on your desk.

**Warren Racusin:** I know my crystal ball is no better than anybody else's. People always say to me, I always say to people, you know, listen to what I say about the stock market and do the opposite and you'll make a lot of money. But we do the best you can. We can with a really cloudy crystal ball to try to get families where they want to be. That's what we do for a living. At the end of the day.

**Stacey Tyler:** Well, thank you so much, Warren. This has been so educational and entertaining as well. I hope our listeners got a lot out of the conversation today.

**Steven Tanico:** Thank you, listeners for tuning in today. Be sure to like to subscribe and follow Terra Firma and “Splitting Heirs,” **–**

**Warren Racusin:** “Splitting Heirs.”

**Steven Tanico:** “Splitting Heirs” wherever you're listening to this episode. I would love to hear from you, so feel free to reach out to us at Terra Firma at lowenstein.com Until next time –


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**Stacey Tyler:** Ciao!

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