

Entertainers, Athletes and Family Offices

By Daniel J. Scott

Much has been written about family offices over the years. So much so, that it is becoming difficult to define exactly what the term means. However, from free-standing, four-walled family offices to multi-family and even so-called “virtual” family offices, there is one common theme underlying them all—wealth management. Essentially, a family office represents a governance structure for privately owned assets—it is a vehicle for managing and protecting wealth.

When it comes to wealth management, entertainers and athletes are in a unique position. Unlike most of us, the demands of their schedules virtually preclude their involvement in their own day-to-day finances and investments. In addition, the entertainer or athlete who achieves “brand” status is often involved in several different industries, such as clothing lines, perfumes, or restaurants, and may own many different companies in many different countries. Therefore, in addition to managing his or her primary entertainment or sports career, the responsibilities of an entertainer or athlete can consist of day-to-day tasks (everything from paying bills to arranging for transportation services), managing investments, overseeing operating businesses and planning for his or her own future and the future of his or her family, all of which must get done while the entertainer or athlete is touring the world, on a film or television shoot or playing in packed sports arenas. In addition, most entertainers and athletes, at least in the early stages of their careers, are not as financially sophisticated as they need to be.

In order to properly handle these many responsibilities for their entertainer and athlete clients, attorneys and other professional advisors should consider using a family office model (at least in principle, if not formally). A family office model can help protect and enhance the wealth of an entertainer or athlete, handle day-to-day responsibilities, ensure tax compliance and reporting, and provide for a long-term estate and business succession plan, which eventually is a seamless post-death transition to preserve the wealth and legacy of the entertainer or athlete in a tax-efficient manner. In order to do so, entertainers and athletes first need a core *team* of advisors.

A core team of advisors can take many forms, depending on the overall structure that is implemented. For example, the advisors can be trustees of a trust, directors of a corporate board or members of some other advisory committee. The concept can be imported into whatever structure is ultimately chosen (which could vary for such reasons as tax implications, nationality, and personal preference) and can also be duplicated at sub-levels (such as lower-tier companies). Regardless of the form used, the makeup and function of an advisory team are critical.

An advisory team should be made up of individuals the entertainer or athlete trusts, who collectively have the necessary expertise to handle the variety of issues that require attention, who have the ability to actually implement strategies and get the job done, and who are always mindful of the wishes and needs of the entertainer or athlete. For those who like acronyms, TEAM stands for trust, expertise, ability and mindfulness. At the helm of an advisory team, of course, is the entertainer or athlete.

A critical component to building a strong governance structure, and one that the entertainer or athlete will (or at least should) insist upon, is preserving the ability of the entertainer or athlete to change who the appointed advisors are and the flexibility to change the overall structure if necessary or desired (although some restrictions on the absolute control of the entertainer or athlete may be needed for tax reasons). With the entertainer or athlete ultimately in charge, the overall structure and businesses can function day-to-day with limited participation by the entertainer or athlete, who, nevertheless, will be kept informed of business operations and join regular (but less frequent) meetings of the entire team (e.g., annual board meetings).

In general, the key function of an advisory team is to oversee managing the life of the entertainer or athlete—from the day-to-day administration to managing assets and investments, to planning for the future. Having multiple independent professionals collectively make major decisions and oversee these many responsibilities, as opposed to any one person, will improve the quality of decisions made and ensure the best possible outcome for the entertainer or athlete. It is also a way of implementing a system of checks and balances in order to prevent any one advisor from engaging in misconduct, while the team as a whole can keep watch on those in charge of daily responsibilities, to ensure fiscal responsibility and to safeguard against wasteful spending or other improprieties.

Having a team of advisors with varied expertise will prevent critical (but perhaps not immediate) issues from being overlooked or pushed aside. For example, tax reporting and compliance issues (which are particularly complicated in the international arena) will be more thoroughly understood, leading to filing requirements and payments being timely met (and avoiding interest, penalties or even criminal charges, not to mention public embarrassment). In addition, ongoing attention can be devoted to long-term planning, such as estate and succession planning. By monitoring the growth of the entertainer’s or athlete’s wealth, the team of advisors will be able to devise a comprehensive plan whereby assets can be periodically transferred out of the entertainer’s or

athlete's taxable estate, thereby freezing or reducing the value of the entertainer's or athlete's estate and future estate tax liability without incurring (or at least minimizing) any present tax. Similar planning can be done for any other lifetime gifts the entertainer or athlete wishes to make to family members, friends or charity.

Having a governance structure in place will help facilitate these long-term planning strategies. For example, with respect to generational and succession planning, an existing governance structure makes it easier for family members (or others) to gradually become involved in the overall organization during the career of an entertainer or athlete. This allows a person to mature, develop leadership skills, gain business experience and become financially sophisticated (if not already) before possibly succeeding the entertainer or athlete in his or her old age or after death and carrying on his or her legacy. Upon the death of the entertainer or athlete, the governance structure should provide for a seamless transition whereby the team of advisors and underlying businesses can continue to function as they were, only with family members, instead of the entertainer or athlete, sitting at the helm. Alternatively, should the entertainer or athlete not wish family members to have control (perhaps because it could lead to family feuding), the governance structure can be operated by the team of advisors, allowing the family to benefit while limiting its involvement in accordance with the wishes of the entertainer or athlete and preserving the peace.

Two other considerations are asset protection and confidentiality. In overseeing the management of the assets and investments of the entertainer or athlete, including new acquisitions, the team will be able to implement asset protection strategies that secure the entertainer or athlete from personal liability in connection with such assets and investments (and vice versa), while preserving confidentiality to the fullest extent possible. As most ventures will require some form of entity (such as a corporation, limited liability company or trust), the team can ensure that the formalities of such entities are fully observed in order to protect the entertainer or athlete

from exposure to personal liability based on a "piercing the veil" argument. Observing corporate formalities is also relevant for tax purposes and could prevent the IRS from disregarding an entity or transaction based on one of several doctrines (such as the "economic substance" or "sham transaction" doctrines).

The lives of entertainers and athletes are complex. As trusted advisors, attorneys and other professionals must encourage them to consider and develop comprehensive plans to govern and manage their lives, plans that not only focus on their professional careers and making money, but also on their personal lives, the growth and protection of the money they earn, and the preservation of that money for future generations. Following the family office model and implementing a strong central governance structure with a core team of advisors will help (i) enhance the wealth of an entertainer or athlete through collective decision-making and more sound investment advice, (ii) protect that wealth through a system of checks and balances that defends against individual fraud or misconduct and by incorporating asset protection planning, (iii) minimize tax exposure by implementing income, estate and gift tax planning strategies and ensuring compliance with all reporting requirements and filing deadlines, and (iv) provide for a seamless post-death transition that allows heirs of the entertainer or athlete to continue benefiting from his or her success, while participating in the continued legacy of the entertainer or athlete.

Daniel J. Scott is an attorney at Chadbourne & Parke LLP in New York. His practice focuses on domestic and international estate, tax and wealth planning for high-net worth individuals, their families and businesses. With experience in, and a passion for, entertainment, Daniel concentrates on the unique estate, tax and wealth-planning issues particular to entertainers and athletes. He is a member of both the Trusts and Estates and Entertainment, Arts and Sports Law Sections of the New York State Bar Association, and is affiliated with Volunteer Lawyers for the Arts.

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