

Insight

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Financing With the Stars

By Daniel J. Scott

If there is one cliché that I would love to do away with, it is that of the entertainer who, after achieving great success and fortune, is left penniless. How can this keep happening? While the reasons may be complex and varied, at least one solution is fairly simple — you guessed it, the family office.

The concept of a “family office” has been around in some form or another for quite some time. In recent years, however, the term has been making headlines in the wealth planning industry, due in large part to the rise in so-called multi-family offices and an ever-expanding menu of services available to the rich. As a result of the growing popularity of family offices, and our insatiable appetite to use buzz words whenever possible, defining exactly what a “family office” is or how it can be useful has become somewhat difficult. In the broadest sense, a family office represents the governance structure for privately owned assets — it is a vehicle for managing wealth.

Entertainers are in a unique position because the demands of their schedules virtually preclude their involvement in their own day-to-day finances and investments. In addition, entertainers who achieve “brand” status are often involved in several different industries, such as clothing lines, restaurants, etc., and may own several different companies. Therefore, in addition to managing his or her primary entertainment career, an entertainer’s responsibilities can consist of day-to-day tasks (everything from paying bills to arranging for car 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 is out in the world, well, entertaining. Not to mention that most entertainers, at least in the early stages of their careers, are not financially sophisticated. With so many moving parts, it is no wonder why so many in the industry who do not have a central governance structure see their fortunes squandered. Attorneys and other professional advisers should consider using a family office model (at least in principal, if not formally) as a means of protecting and enhancing an entertainer’s wealth, taking care of day-to-day responsibilities, ensuring tax compliance and reporting, and providing for a long-term estate and business succession plan that provides for a seamless post-death transition and preserves the entertainer’s wealth and legacy.

In order to do so, the entertainer first needs a core team of advisers. This team

can take many forms, depending on the overall structure that is implemented. For example, the advisers 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, personal preference, etc.) and can also be duplicated at sub-levels (such as lower-tier companies). Regardless of the form used, the makeup and function an advisory team are critical.

Attorneys and other professional advisers should consider using a family office model as a means of protecting and enhancing an entertainer’s wealth.

An advisory team should be made up of individuals who the entertainer 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 entertainer’s wishes and needs. For those who like acronyms, T.E.A.M. stands for trust, expertise, ability and mindfulness. At the helm of an advisory team, of course, is the entertainer.

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

In general, the key function of an advisory team is to oversee the management of the entertainer’s life. No one person can

possibly oversee every aspect of an entertainer’s life. And even if they could, history has proven that they probably should not. Having multiple independent professionals collectively make major decisions and oversee all aspects of the entertainer’s life will improve the quality of decisions made and ensure the best possible outcome. It is also a way of implementing a system of checks and balances in order to prevent any one adviser from engaging in misconduct, while the team as a whole can keep watch of those in charge of day-to-day responsibilities, to ensure fiscal responsibility and safe-guard against wasteful spending or other improprieties.

Having a team of advisers with varied expertise will prevent critical (but perhaps not immediate) issues from being overlooked. 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 wealth, the team will be able to devise a comprehensive plan whereby assets can be periodically transferred out of the entertainer’s taxable estate, thereby freezing or reducing the value of the entertainer’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 wishes to make to family members, friends or charity.

Having a governance structure in place itself will help facilitate these long-term 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 entertainer’s career. This allows a person to mature, develop leadership skills, gain business experience and become financially sophisticated (if not already) before possibly succeeding the entertainer in his or her old age or after death and carrying on his or her legacy.

Upon the entertainer’s death, the governance structure should provide for a seamless transition whereby the team and underlying businesses can continue to function as they were, only with family members sitting at the helm. Alternatively,



should the entertainer not wish family members to have control, the governance structure can be operated by the team or, allowing the family to benefit while limiting their involvement in accordance with the entertainer’s wishes.

Two other considerations are asset protection and confidentiality. In overseeing the management of the entertainer’s assets and investments, including new acquisitions, the team will be able to implement asset protection strategies that secure the entertainer 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 from exposure to personal liability based on a “piercing the veil” argu-

ment. 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 are complex. As trusted advisers, attorneys and other professionals must encourage them to consider and develop a comprehensive plan to govern and manage their lives, one that not only focuses on the entertainer’s career and making money but also on their personal life, the growth and protection of the money they earn and its preservation for future generations.

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