

"You win not by chance but by preparation."

Roger Maris

BURNS AND BURNS, P.C. IS AN AV RATED LAW FIRM THAT REPRESENTS MULTI-GENERATIONAL FAMILIES AND BUSINESS OWNERS WITH THEIR ASSET PROTECTION, REAL ESTATE, AND ASSET PROTECTION NEEDS.

WHY ATHLETES NEED ESTATE PLANNING

WHAT IS ESTATE PLANNING?

If it is true that most professional athletes will acquire 90% of their net worth prior to their 35th birthday, have an estimated divorce rate between 60% and 80%, and over 50% of them will have financial problems, professional athletes as a whole are in immediate need of financial and estate planning guidance. Specifically, Estate Planning is an area of law that involves: 1) planning for the management and protection of an individual's assets and business interests during their lifetime; 2) planning for healthcare decisions in the event of a medical emergency; and 3) safeguarding the distribution of the individual's assets upon their divorce or death.

WHY ESTATE PLANNING IS IMPORTANT

Estate planning is important for professional athletes because estate planning encompasses an area of law that is designed to help a person manage their assets / finances, liability exposure, medical emergencies, and retirement issues. Since professional athletes have unique earning opportunities, are targets for investment schemes, suffer from a high rate of divorce, and need privacy protection; estate planning is a relevant area of law for athletes. Specifically, estate and asset protection planning can be used to preserve the value of an athlete's pension in the event of their divorce as well as reduce their exposure to liability from a bad investment.

Although the need for athletes to engage in estate planning is real, many professional athletes fail to engage in proper planning. The purpose of this memorandum is to help educate professional athletes as to the importance of proper planning so as to help them avoid some of the common pitfalls exhibited in the following real life examples.

PLANNING SCENARIOS AND SOLUTIONS

Scenario #1 – Asset Protection

Player is a professional athlete who recently purchased a home and invited two of his former college buddies to stay in the home. In purchasing the home, player simply consulted a real estate agent and did not discuss the specific liability, privacy or asset protection needs unique to professional athletes. Consequently, player took title to the home in his personal capacity making the location and price paid for the home easily discoverable by the general public. In addition, player purchased a basic home owner's policy with minimum coverage amounts. During a party thrown by his roommates, a party guest slipped and fell severely injuring their knee while another guest leaving the same party caused an alcohol related auto accident.

Following the party, player is sued to recover medical damages in the "slip in fall" accident as well as sued by the auto accident victim for the injuries sustained in the accident. As a result of player placing the ownership of his home in his name and failing to properly tailor his insurance policy to address his risk exposure, player's finances and net worth were potentially exposed to creditors.

Scenario #1 Solutions – If player had consulted an asset protection / estate attorney, player could have:

- Implemented privacy protections shielding the location of the home and the amount paid from being easily accessed by the public media;
- Utilized a limited liability form of property ownership to help eliminate the financial liabilities associated with home ownership;
- Obtained an insurance policy to handle player's specific needs as an athlete; and

- Implemented an asset protection trust to help prevent the “slip and fall” and accident victims from being able to reach player’s assets.

Scenario #2 – Premarital Agreement

Player was drafted out of high school. While playing major league baseball and earning time towards player’s major league pension, player gets married. Following the marriage, player only plays major league baseball for a few more years until a back injury results in an early retirement. Consequently, player’s marriage also ends following player’s retirement. During the divorce proceedings, player’s spouse claims an interest in half of player’s earnings while they were married as well as a portion of player’s pension. Following the divorce, player’s spouse is awarded a substantial sum of player’s career earnings as well as a portion of player’s MLB pension.

As a result of the divorce settlement, player is forced to sell the home in order to liquidate some of his assets. Further, player’s lifestyle is drastically altered due to the fact that the divorce settlement and associated legal fees depleted his retirement funds. Without a college degree, player’s savings being cut in half, and without his full MLB pension to fall back on, player is now forced to find work commensurate with his education level and back injury.

Solution to Scenario #2

If player had executed a premarital agreement, he could have:

- Made an agreement with his spouse that, in the event of a divorce, the spouse would receive a set amount of money which player could anticipate and pay over time;
- Player could have protected his MLB pension from the claims of a divorcing spouse; and
- Player could have avoided the large legal fees associated with divorce because the division of assets was already agreed upon in the premarital agreement.

Scenario #3 – Will and Trust

Player was drafted in the 5th round and signed for \$150,000.00. Although player’s parents are divorced and have since remarried, player maintains a relationship with both. Conversely, player’s parents have not maintained any form of relationship and do not communicate with each other. Player has one biological sister and maintains a close relationship with her. In fact, player is desirous of using a portion of his signing bonus to help his sister pay for her college tuition.

One night driving home after a game, player is injured in an auto accident. After the accident, player is left in a vegetative state. Player is kept alive by life support. Player’s parents are faced with the difficult decision of agreeing on whether to remove player from life support. Unable to decide, player’s parents engage in costly and bitter litigation further causing emotional stress on a family already dealing with a tragic situation. In the end, player is removed from life support and dies.

Following player’s death, the remaining assets of player’s signing bonus, after legal fees, are split between his divorced parents. Player’s father, who is not a skilled investor, loses his portion of player’s signing bonus through poor investment decisions while player’s mother uses her portion of player’s signing bonus to pay-off her credit card debt. As a result, player’s sister does not receive any portion of the signing bonus to be used towards her college tuition which was contrary to player’s wishes.

Solution to Scenario #3

If player had executed a basic estate plan, he would have:

- Avoided the unnecessary legal costs and stresses incurred by his parents by executing a Living Will and Healthcare Power of Attorney setting forth his wishes in the event of his incapacity; (e.g. comma, vegetative state)
- Helped prevent the loss of his signing bonus through poor investment decisions by appointing a professional advisor as the trustee of his stock accounts; and
- Insured that his sister received the financial assistance she needed for her college tuition by naming her as a beneficiary of his estate.

COMMON UNINTENDED CONSEQUENCES

As evidenced above, player’s failure to engage in asset protection planning, execute a premarital agreement or prepare an estate plan resulted in drastic unintended consequences. In all of these scenarios, player never imagined the impact his failure to engage in asset protection and estate planning would have on his financial security, retirement or family. Unfortunately, situations like these do happen as evidenced by the circumstances surrounding the death of Anaheim Angeles pitcher, Nick Adenhardt.

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COMMON ESTATE PLANNING MISCONCEPTIONS

Misconception #1: Estate planning only comes into play when a person dies. Estate planning is an area of law that includes asset protection, liability minimization, privacy protections, and business and tax planning for individuals and families. Since all of these topics are relevant during a person's lifetime, it is a misconception that estate planning only comes into play at the time of death.

Misconception #2: Estate planning is just for the wealthy. While estate planning can provide significant estate tax benefits, most estate planning involves setting forth one's wishes in the event: 1) you can no longer make decisions on your own; 2) are unavailable for a period of time; 3) want to make provisions for the smooth operation of your business; 4) want to decide how your assets will be split in case of a divorce; or 5) want to outline how your estate shall be distributed upon your death.

Misconception #3: Estate planning is just for married people with children. The need to engage in estate planning is applicable to all, especially those who are single. Absent proper estate planning, today's laws do not adequately protect individuals desirous of financially providing for their fiancée, specific family members or protecting a child from future creditors. Further, depending on which state laws are applied, the decisions concerning the administration of life prolonging medical treatment may be thrust upon an adversarial or disinterested family member.

Misconception #4: Estate planning is just for the elderly. Estate planning is for all people regardless of their age. Since no one can predict when an auto accident may occur, everyone should plan for the unexpected! Further, the sooner you establish a relationship with an experienced estate planning attorney, the sooner you tap into a tremendous resource which can help you navigate through life's many business, family, and insurance decisions.

About the Author **Scott F. Burns, Esq.**

Scott F. Burns, Esq. is an Arizona attorney whose clientele includes professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

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