

# The LockerRoom

DECEMBER 2012

## FEATURING:

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BIG BLACK & BAM BAM  
RYAN BRAUN  
BRAYLON EDWARDS  
VEGAS HOTSPOTS  
TAX & LEGAL ADVICE

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# PROFESSIONAL ATHLETES

HOW  
TO  
HAVE  
AN  
OFFENSE  
THAT  
MAKES  
THE  
ATHLETES  
YOU  
REPRESENT  
SMALLER  
TARGETS

By Anita M. Ventrelli



On any given day, I see multiple e-mails about professional athletes' personal lives. Today, it was an ESPN feature captioned "Tiger Woods and the Worst Divorces" in Sports. Athletes who sign contracts to play professional sports know, going in, that they are targets for opposing team members on the court or field. What they don't know is they also become targets for lawsuits, whether founded or unfounded, and for requests from friends and family members for financial support. Most athletes have agents to assist them in negotiating their contracts, but may not know that they should also be involving their trusted advisers when personal relationships lead to issues that affect their finances.

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## What is the antidote?

Anyone advising an athlete needs to start the relationship by talking about how the athlete's life is going to change by virtue of the transition from amateur to professional and to give them an idea of the kinds of issues they could confront. A good adviser will tell them that they are experts in their sport but that they can't be expected to perform at their best if they try to deal with other issues without guidance from experts in other fields. Good advisers make athletes understand how getting advice before taking action can go a long way towards being sure that any unintended consequences from a decision they make were known possibilities before they made the decision.

Athletes are usually unprepared for requests from friends, family and acquaintances for everything from investments in business ventures to outright cash gifts. If athletes don't know in advance how to deal with these requests, they can feel pressured into making commitments with unforeseen consequences. Then the adviser gets the call to try to control the damage. Athletes should be told that anytime anyone asks them for something financial, the best answer is to say they are not sure whether the request will fit into their financial plan and they will get back to the person if it is a possibility.

In particular, when it comes to investments, an athlete should not be shy about saying that materials on the investment need to be reviewed by his financial advisers. This is a subtle way to remind people looking for help with their businesses that there is an element of due diligence involved and the athlete expects a return on the investment.

This only works if the athlete is prepared to pay advisers to go through requests like this. If the athlete would prefer not to have expenses for reviewing these types of requests, the response could be simply, "Making an investment like that isn't part of my current strategy, but I will let you know if my plans change." Being prepared to field these types of questions off the field is no different than being prepared to call or run a particular play on the field.

## Real Estate Matters

Requests from family members present even more difficult-to-spot problems for an athlete who, for example, feels honor-bound to buy a home for a parent, a sibling or a child. While the athlete might be prepared to fund the purchase and let another individual live in the home, the athlete may not want to make a gift of the home because of gift tax-consequences.

Most real estate purchases are in excess of the annual per person exemption from gift tax. That means the athlete continues to own a home where someone else lives, which does not solve possible problems the athlete may encounter. If the athlete is the owner of the home, the athlete remains responsible for payment of any mortgage, real estate taxes and upkeep of the property. If the individual living in the home does not take these

responsibilities seriously and there is not a lease or other document confirming what that individual's responsibilities will be, the athlete could be confronted with a whole host of unexpected and unwelcome expenses for a piece of property the athlete did not need in the first place.

Worse yet, if the athlete buys the home, it can be treated as either marital or community property in a divorce, and the spouse on the other side of the divorce doesn't have to honor the athlete's intention that his family member live in the home. That home is subject to division like any other marital or community property unless there is an agreement with the spouse that states otherwise.

Athletes also need to guard against overloading their investment portfolios with non-income producing real estate. When real estate values drop, mortgage loans can leave the athlete to pay off a mortgage or home equity line of credit with funds earmarked for other things. As long as the athlete plans to decide which risk is better to take, if any, there won't be surprises, and advisers who don't point out these possible downsides won't be open to criticism.

## Personal Situations

As if dealing with friends and family were not enough, professional athletes become targets for marriage and family situations that may not be right for them. These situations generally fall into two categories: marriages and having children outside of a marriage (paternity situations).

Most professional athletes get advice about getting a premarital agreement before they marry, but few get good guidance about setting goals for such an agreement. The laws on drafting and interpreting premarital agreements are not yet uniform throughout all 50 states.

This means if the athlete has residences in more than one state, the differences between the laws of those states need to be taken into consideration, and the agreement must be clear about which state's law will apply to questions of whether a premarital agreement is valid and enforceable and how to interpret the agreement.

While premarital agreements may designate what property will remain the athlete's in a divorce and how to divide any property that would be shared with a spouse, they are often the starting point for legal battles rather than an ending point.

Why is this? Laws change over time. What might be perfectly acceptable in a premarital agreement written in 2000 may not be acceptable in an agreement being judged for its enforceability in 2015. Most agreements include waivers of the right for a spouse to seek attorney fees, some courts have decided that these waivers cannot be enforced to stop a spouse from seeking fees to deal with child related issues.

While there is no absolute means to guarantee there won't be arguments over premarital agreements, they are usually enforced. Even when some parts are not enforced, the athlete is still in a bet-

ter position that not having an agreement at all.

Good premarital agreements have clear goals that athletes understand so they can be sure to title assets correctly and maintain money properly during the marriage. They will get the most value out of the agreement if this is done.

## Prenuptial Agreements

The Prenuptial Agreement should also be drafted to account for the fact that the athlete's financial fortunes can change. If there are provisions talking about some minimum property settlement or some minimum amount of support, for a spouse (alimony or maintenance), these provisions should be accompanied by a clause of "but not less than" some percent of the athlete's net worth.

In the case of support, it may be some percentage of the athlete's gross or net income. Athletes should know that they cannot bind a spouse with respect to child custody and child support in a premarital agreement. These items can remain open even if there is a premarital agreement with comprehensive provisions about division of assets and support for a spouse in the event of divorce. If terms like "net worth, net estate, gross income, or net income" find their way into an agreement, they need to be defined specifically in terms that are not open to multiple meanings.

## Postnuptial Agreements

While many athletes have prenuptial agreements, most do not get information on post-nuptial agreements. These are any agreements entered into, after marriage. There are times when circumstances change or a spouse asks an athlete to make a large purchase. The athlete may be in favor of doing this, but needs the protection of an agreement to spell out how that change or purchase will be treated in the event of a divorce.

An example is buying a house a spouse wants that has a heavy monthly carrying cost. If the athlete doesn't already have an agreement about limiting spousal support if there is a divorce, the athlete might be wise to have an agreement that states, "While there will be a home purchased because the spouse wants it, the spouse waives the right to the lifestyle in that home if there is ever a divorce."

## Paternity & Parental Right

Whether by mutual decision, by accident, or as a result of a woman seeking a better lifestyle, children born into a relationship can present another set of issues for athletes.

Situations involving children are different from property issues in divorce. The biggest difference is there are statutes in place in every state that make it impossible for more than one state to properly have the power (subject matter jurisdiction) to decide matters of child custody (this includes visitation) and child support. In the case of child custody, the state where the child resided during the six months before a lawsuit was filed, will be the state that makes custody and visitation decisions. If a child hasn't lived consistently

in one state for those six months, other rules apply.

Once a particular state gets the power to make custody and visitation decisions, that state keeps the power until circumstances change in a way where the federal statute would allow a different state to take over. There is a similar federal statute for deciding child support issues and enforcing them across the states.

Different states also have different ways of calculating child support, and some states' child support guidelines result in higher awards than other states. This can lead to those who target athletes for pregnancy trying very hard to make sure a case will be heard in a state where the guidelines are higher. There is no way to protect the athlete against high guidelines applying when the parent who has the child is free to move from one state to another. This is why it is sometimes to the athlete's advantage to be the first one to file a petition to determine parental rights and responsibilities.

When it comes to children, the first rule of thumb and one which most athletes have a hard time following, is not to sign an acknowledgment of parentage at the hospital. Athletes are no different than any other parents. They like to take part in the birth of their children. Hospital staff follow a standard operating procedure that is no different for athletes than for others, and it includes getting the parents to acknowledge the parentage so that they are listed on the child's birth certificate.

In some states, these acknowledgments can only be revoked inside short time windows, which can change from state to state. Once the window closes, the athlete is not entitled to paternity testing because the court can presume the athlete is the father even if the athlete turns out not to be the father in genetic testing. The best practice is for the athlete to wait to sign anything until after paternity testing confirms parentage. Even if the acknowledgment is signed, there will be paternity testing done in enough time to give the athlete the option to revoke the voluntary acknowledgment of parentage.

## Spousal and Child Support

Athletes, and those working with them, sometimes argue that spousal support or child support should take into consideration the athlete's career will not last forever, and the athlete needs to accumulate savings that allow for life after the athlete's career ends. This argument can cut both ways. It may lead some courts to require athletes to establish trusts to take care of children once the athlete's earning career as an athlete ends. It may award higher support to a spouse so the spouse can have resources when the athlete's earnings change.

Many who advise athletes, consider establishing the athlete's primary residence in a state like Florida that has no state income tax. If the athlete is eligible to do that, there is nothing wrong with this kind of tax planning. However, it can have unanticipated effects during a divorce.

Not all states' laws are the same when it comes to defining what is marital property, what is subject to being divided by a court and what is non-marital property that can be protected as the athlete's own property. What does this mean? It means that an athlete who does not have a premarital agreement and establishes residency for tax purposes in a state where the laws are more favorable to creating marital property can be surprised.

For example, Florida makes it easier for a spouse to get access to the appreciation on non-marital property than Illinois does. Without an agreement, there is no perfect way to both enjoy the tax savings of living in a state like Florida and having the protections of non-marital property that exists in Illinois. The key for the adviser is knowing that the athlete should be told about both instances and be part of the choice so any downside that comes later is not a surprise.

## Multiple and Different Jurisdictions

Although a person can only have one residence for income tax purposes, more than one state can have the power (jurisdiction) to enter a divorce decree. This sometimes results in races to the courthouse and rushes to judgment when an athlete's homes are in more than one state.

Sometimes the difference between one court having the power to deal with the case exclusively comes down to who files first or who serves the other party with papers first. Because of the variables, athletes considering divorce would be wise not to mention it to their spouse until they have a well-developed plan for how to proceed based upon their advisers' recommendations.

Advisers to athletes should have standing relationships with family law professionals who have access to resources nationwide so that questions about comparisons, between the laws, of multiple states can be addressed quickly and efficiently.

## Social Networking and Spin Doctoring

Now that gossip about professional athletes and their lives, has so many more venues, among social networking sites, on the Internet, anyone working with an athlete must take the steps necessary to include provisions regarding the confidentiality of any agreements reached. They should consider restrictions on sharing the athlete's photographs in social media.

Athletes should also be reminded that e-mails, texts, tweets and twitters, as well as things they post and that others post on their social networking sites, can be used as evidence against them in legal proceedings. As hard as it might be, an athlete should not say anything in writing that they wouldn't want to show up in the media, particularly since more and more professional teams hold athletes accountable for negative acts off as well as on the field.

In short, those serving professional athletes need to seek the advice of professionals in other disciplines as soon as issues surface so a well-conceived strategy on offense will limit the need to be on defense.