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Sudden wealth

A substantial amount of money is one thing. Financial security is something else.

Lotteries have grown in popularity in recent years, as jackpots have grown in size. Last January the multistate PowerBall jackpot grew to nearly a billion dollars, or more than $1.5 billion if taken as annuity payments. Lotteries are seen by some as the shortcut to financial security, even though the odds of winning are so terribly low. Ironically, some studies show that as many as 70% of lottery winners end up broke or filing for bankruptcy. In fact, 44% of winners have spent the entire jackpot within five years!

They didn't have a plan for their unexpected financial windfall.

Some professionals provide for very high compensation for a very short period of time. Playing professional football is a good example. According to a study released last year, the median career earnings of an NFL player, expressed in inflation-adjusted dollars, were $3.2 million. That is far above the median lifetime career earnings of most Americans. Yet after 12 years of retirement, 15.7% of the players have filed for bankruptcy, a rate that is roughly three times greater than that of the rest of the male population of comparable age. The table below provides additional details.

One might expect that a player whose career was cut short by injury would be most likely to go bankrupt, while one with a longer career and higher total career earnings would not have a similar risk. That expectation was not supported by the data in the study. Larger career earnings appear to postpone bankruptcy but not lower the chance of it in the longer run.

It may be that many NFL players lack a long-term financial plan for their money.

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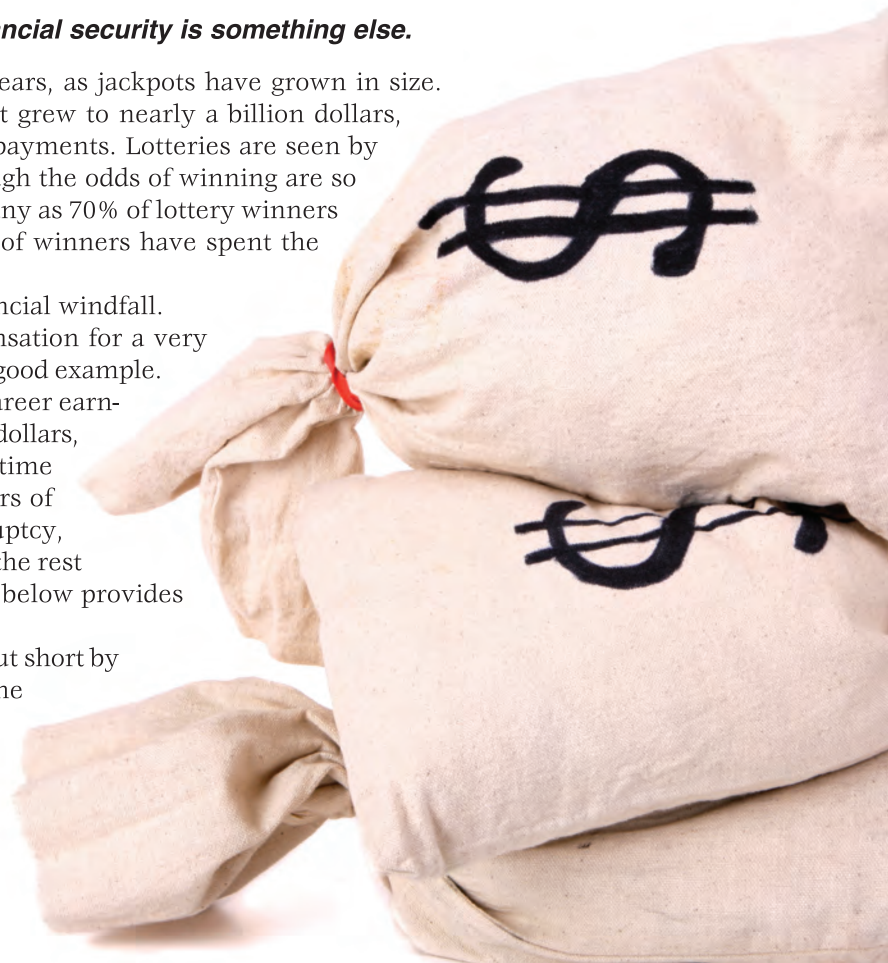


How often do bankruptcies occur?

A 2015 study found that NFL players go through bankruptcy at far higher rates than men in general do. The study did not try to pinpoint the causes. Certainly, some players did not save enough. They may have developed an expensive lifestyle that was impossible to maintain during retirement. A substantial part of player income goes to income taxes during their active years. Some observers have suggested that NFL players may choose to invest in riskier ventures, such as nightclubs or restaurants, believing that they can beat the odds just as they did in their football careers. There is no single answer.

RATES OF BANKRUPTCIES	
NFL players each year of retirement	1.19%
NFL players after 12 years of retirement	15.70%
Americans age 25-34	1.17%
Men the same age as retired NFL players	0.35%

Source: National Bureau of Economic Research, *Bankruptcy Rates Among NFL Players with Short-Lived Income Spikes* (April 2015); M.A. Co.

The expected windfall

Another kind of financial windfall should not come as a surprise, yet it often does. That is the inheritance. Many families remain reluctant to discuss financial matters openly, and the timing of an inheritance is unknown. Also, the sad fact is that a potential inheritance can be consumed by major family medical expenses or an extended period in a nursing home.

Nevertheless, affluent families need to engage in estate planning if they hope to provide for a foundation for financial security instead of a temporary windfall. They need to plan for success. That plan may take many forms, and it may include the thoughtful use of trusts for asset protection and management.

If you have come into a fortune

We have quite a bit of experience with wealth management. We know all about financial transitions and attendant emotional adjustments. When you come into significant sums, call upon us for:

- *personal investment accounts*, with asset allocation planning, unbiased investment advice and fees linked to account value (not transactions);
- *revocable living trusts*, for an added measure of financial flexibility, including protection in the case of disability and probate avoidance;
- *rollover IRAs* to extend the tax-deferral benefits for your retirement money.

If you will be giving a fortune

If your estate plan includes a substantial legacy for a younger family member who lacks full financial maturity, consider using a trust for the bequest. Your trust will be a gift of more than financial resources. You will be including our investment and financial management expertise as well. A gift or bequest in trust can provide for a lifetime of financial security.

Talk to us

Wealth management is about taking control of your assets, as well as letting go of control, so you can enjoy your life. We can help you with all phases of your asset management. If you would like to learn more about how our personal trust services might help you to conserve and manage your wealth, we invite you to meet with us in person. We look forward to meeting with you to discuss your goals and requirements. ☐

How do trusts work?

Trusts may seem somewhat mysterious to the uninitiated, but the basics are simple enough. The person who creates the trust is called the *grantor.* Every trust has four elements:

Assets. Usually a trust holds stocks, bonds, mutual funds or other financial instruments, but other sorts of property may be managed in trust as well.

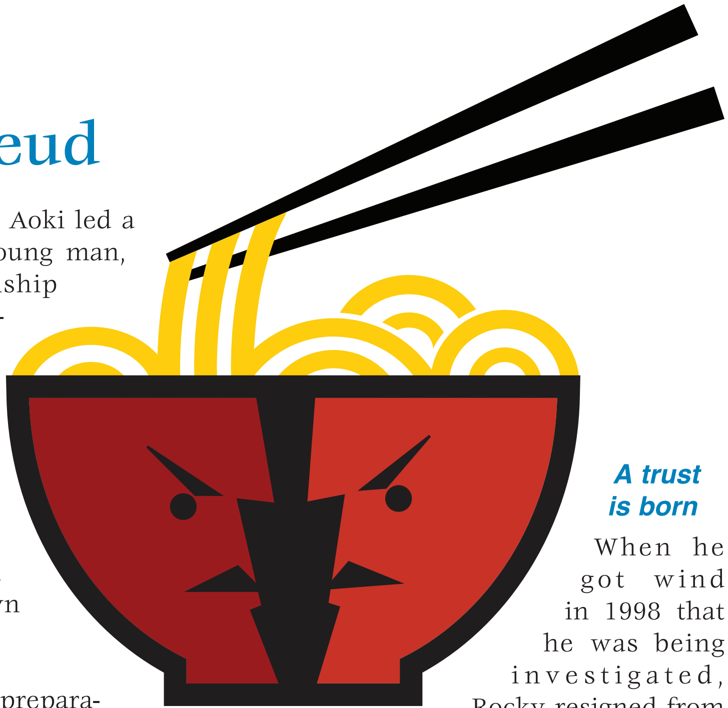
One or more trustees. You may choose a trust institution and/or an individual for this role. The trustee takes legal title to the money or property, but receives none of the privileges or benefits of ownership.

Beneficiaries. With a revocable living trust, the grantor and his or her spouse normally would be the primary beneficiaries. Successor beneficiaries may be named as well. A testamentary trust (one that is established by will) is likely to have income beneficiaries for a period of time, then remainder beneficiaries when the trust ends.

Instructions. In a written trust agreement, the grantor tells the trustee how to manage the trust assets and distribute the income and principal for the beneficiaries. The instructions may be broad, giving the trustee considerable latitude and discretion, or they may be as specific as the grantor feels is appropriate.

In recent years another role has emerged in trust management, the *trust protector.* An individual or committee may be given special supervisory powers over the trust, sometimes including the power to hire and fire the trustee, but not have day-to-day fiduciary responsibility for the trust. Care must be taken in articulating the duties of the trust protector to avoid running afoul of tax regulations that could compromise the hoped-for tax benefits of the trust.

Family feud



In many ways, Rocky Aoki led a charmed life. As a young man, he was a championship wrestler. He immigrated to the U.S. from Japan at age 19, and began selling ice cream from a Mr. Softee truck in Harlem. After four years he had saved enough money to open a restaurant in midtown Manhattan in 1964.

Benihana's.

The style of food preparation, *teppan-yaki,* included a large measure of entertainment from the chefs. A good review from a New York restaurant critic led to a crush of customers, a second restaurant, and by 1972 Benihana's had 20 restaurants and $12 million in profits.

Rocky led a colorful and very public life. He hosted the Benihana Grand Prix speedboat race, which he himself won in 1979 and 1982. He piloted a hot-air balloon across the Pacific, won an international backgammon contest and produced Broadway plays. Rocky had seven children by three different women, two of whom he married. His first wife learned of his mistress when the two met in his hospital room after a boating accident. The mistress soon became his second wife.

Rocky lived large.

One very bad mistake

In 1998 Rocky paid $10,000 for an illegal stock tip. He learned that former Apple CEO John Sculley would soon be joining Spectrum Information Technologies. Rocky invested heavily in Spectrum, and profited by hundreds of thousands of dollars. Unfortunately, he was caught. In 1999 Rocky pled guilty to insider trading, paid a $500,000 fine and was put on probation for three years.

A trust is born

When he got wind in 1998 that he was being investigated, Rocky resigned from Benihana's and transferred all of his shares in Benihana's to an irrevocable asset protection trust. Rocky and six of his children were discretionary beneficiaries during his life. (The child born out of wedlock was excluded.) Two of the children and a lawyer were the trustees. Rocky retained the power to direct the trust assets, via instructions in his will, to anyone except himself, his estate or his creditors. Property subject to a "special power of appointment" such as this is not subject to federal estate tax.

A third wife enters the picture

After two divorces, Rocky told his children that he would never marry again. He was wrong.

Keiko Ono Aoki was also a Japanese immigrant to the U.S., arriving in 1988. She eventually became a business consultant, and this brought her into contact with Rocky in 2000. She provided advice on expanding the restaurant chain into Asia. Although Rocky was no longer directly running the restaurants, he still was consulting for them. Evidently, Rocky and Keiko got along well. In July 2002 the two were married at City Hall in New York City. They had not told their families in advance.

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Timeline of the Benihana Protective Trust

1998

Trust is established and funded

July 2002

Rocky marries his third wife

September 2002

Partial release is executed, making descendants the sole eligible trust beneficiaries

December 2002

Second release executed, barring noncitizen descendants from being beneficiaries

August 2003

Codicil to the will is prepared, naming wife as beneficiary

September 2003

Codicil is rejected, as wife is no longer an eligible beneficiary. Efforts to retract releases begin.

September 2006

Rocky claims that he did not fully understand the releases were irrevocable, even though his lawyer did explain it to him

July 2008

Rocky dies

May 2010

Lower court rules for wife

March 2014

Appellate court reverses

March 2016

State's highest court affirms for the children

Worried heirs

The children became worried about their inheritance. Rocky had not asked for a pre-nuptial agreement. When the children approached Keiko about signing a post-nup, she flatly refused.

So the children approached Rocky's lawyer for a solution. He suggested a "partial release" of Rocky's power of appointment, so that Rocky could only direct property to his descendants. Rocky signed a partial release in September 2002, and another partial release was signed in December 2002 to exclude noncitizens from the eligible recipients of trust property.

The heirs were right to be worried. In August 2003 Keiko's lawyer drafted a proposed codicil to Rocky's will, in which Keiko would receive 25% of the trust at his death and have a lifetime interest in the remaining 75%. Evidently, at this point she learned for the first time about the restrictions that had been placed on the trust a year earlier. The lawyers warned that the codicil would be ineffective, because the releases that Rocky signed the year earlier were irrevocable.

At this point Rocky tried to disavow the releases. In a deposition he admitted that the lawyer had explained the releases to him, and he had time to read them, but he claimed he never fully understood them. He stated that he never would have signed them had he known he couldn't later change his mind.

Read before signing

The controversy was unresolved at Rocky's death in July 2008 at age 69. In February 2009 the court fight began.

Keiko challenged the releases as being the product of fraud. The lower court agreed with her, stating that the attorneys had violated their fiduciary duty to Rocky. The appellate court reversed. Rocky had plenty of time to read the releases and ask questions about the consequences of signing them. There were no misrepresentations or omissions by the lawyers involved.

In March 2016, nearly eight years after Rocky's death, the Court of Appeals of New York (the state's highest court) agreed that the releases were effective, and that the attempt to direct trust assets to Keiko was ineffective.

Questions

Was there a way to avoid this family feud? Should Keiko have been included in the discussions about adding new restrictions to the trust? In planning the releases, who was really the client, Rocky or his children? ☐