



DECEMBER 2021, ISSUE 4

# YOUR TRUSTED LEGAL COUNSELOR



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## WHAT YOU CAN LEARN FROM ATHLETES' CHOICES



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Protecting the New Athletic Superstars

*Written by Francine D. Ward*

Effective estate planning takes into account many things. It's not just about how your assets are treated when you die, it's about protecting your assets during your lifetime.

Trust instruments are an important vehicle in the estate planning toolkit. A trust is a relationship between the person creating the trust, the settlor (sometimes called the grantor or trustor) and the trustee who manages the trust assets for the benefit of the beneficiaries. Trusts can be used for a variety of purposes e.g., providing for the settlor's incapacity; protecting the settlor's assets from divorcing spouses, bad financial decisions, lawsuits, and creditors; providing for loved ones, and potentially minimizing tax implications.

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**INSIDE THIS MONTH'S  
ISSUE:**

*What You Can Learn From  
Athletes' Choices-1*

Everyone could benefit from an estate plan, regardless of how large or small their estate. And anyone with assets can profit from the use of a trust, as part of their comprehensive estate plan strategy. There are many reasons people choose to have trusts instead of simple wills. Among the reasons are privacy of information, avoiding probate, and protecting beneficiaries from themselves. Below are a few lessons athletes learned from having or not having valid trusts.

with Reebok, and several stipulations, Allen Iverson is due to receive a \$32 million trust fund payment, in 9 years, when he turns 55. He will receive a \$32 million trust fund payment when he turns 55, thanks to a lifetime Reebok contract. Had it not been for Reebok, Iverson would likely have lost all of his money on poor choices.

Instead, annually, Reebok pays him a salary of

\$800,000. If he blows that, so be it. But at least if he is still alive, he will be sitting pretty. The specific terms of the trust are unknown, and there is a chance his former wife will receive a large portion of the money. He will still have enough money to live more than comfortably.

Take away: Having a well drafted trust can not only provide for you, but also for

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## Allen Iverson and Reebok.

Allen Iverson, also known as The Answer was drafted by the NBA in 1996, as a first round pick. He had a stellar career and retired when he was still relatively young at 34. His career achievements are many. And the money he reportedly made during that time was estimated to be in excess of \$200 million. That amount included his basketball contracts and endorsement deals. But like many young celebrities who make a lot of money quickly, he found himself in financial trouble. Lots of trouble.

Reebok saves Iverson the day. Thanks to a lifetime contract







your loved ones, especially your student athletes. It can be the thing that stands between making bad choices and living comfortably as you get older.

## Kobe Bryant

Most people over the age of 20 know of the amazing Kobe Bryant. Legendary in his ability to handle a ball, logical in how he managed his business, and smart in that he had an estate plan. He made extensive financial accommodations for his wife Vanessa and his three daughters Bianka, Natalia, and Gianna.



“Estate planning is not something you do once and forget about.”

Kobe’s situation draws to our attention another example—the importance of amending trusts on a regular basis. Interestingly, the trust was amended after the three older girls were born. The one thing Kobe failed to do before he died was amend his trust to include his youngest daughter Capri, who was 6-months old when Kobe died.

Vanessa having to deal with the loss of her daughter and her husband, now found herself battling the court to get the trust amended. She and co-trustee, Robert Peinka, Jr. petitioned the court to have the trust modified to include Capri. Fortunately for the Bryant family, in late 2020, the court allowed the trust to be amended.

The last thing Vanessa should have had to deal with was making sure her youngest daughter was protected. This could have been avoided.

Take away: Update your documents on a regular basis. What is a regular basis? Annually, birth of a child, death of a loved one, purchasing a new expense asset (e.g., home, artwork, jewelry), getting married, getting divorced, making a major move, coming into a large sum of money. Estate planning is not something you do once and forget about it.





# FTC HUNTS FOR DARK PATTERNS: ONLINE SUBSCRIPTION PLANS

*Written by Francine D. Ward*

Why do consumers take advantage of other consumers? Because they can. Thank God for our federal consumer watchdog—the FTC. The Federal Trade Commission (FTC) is always on the hunt for businesses and individuals who attempt to deceive and mislead consumers. One of the top modes of deception are what we call dark patterns.

The digital world has become a part of our everyday life. Armed with this knowledge, unscrupulous businesspeople manipulate consumers into giving up their assets, including their personal data and their money. The focus of this article is on the dark pattern called, unauthorized, auto-renew, subscription plans. Sometimes these plans are called negative option marketing and sometimes they are called continuity plans. While you may not recognize these names, rest assured, you know the plan when you see it. Whatever the label, the goal is clear—to bilk consumers out of their hard-earned dollars.

How do they work? They show up as online subscription services. Suppose you order a product thinking it's a one-time purchase. The next thing you know your credit card is charged every month. If you are unaccustomed to reviewing your credit card statements, this practice can go on for months, even years. Unsavory businesses count on that.

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**SUBSCRIBE**



**SUBSCRIBE**





## The Restore Online Shoppers' Confidence Act (ROSCA) imposes an obligation on companies to:

**1** Provide Clear and Conspicuous Disclosure of Material Terms. If a business offers auto-renewable subscription plans, they must disclose that information up front in clear and unambiguous terms. Further, the consent must be received as a separate transaction. Like other disclosures it cannot be hidden or placed in such a way that the consumer might be distracted from seeing it.

**2** Secure Express and Explicit Consent. The consumer's affirmative consent must be sought and received BEFORE they are billed. Further, the consumer must expressly and explicitly agree to be charged on an ongoing basis.

**3** Offer an Easy Way to Cancel. Consumers must be allowed to easily cancel. Upon discovering that they have entered into an auto-renew transaction, cancelling the unauthorized plan must be made simple. Further, if the consumer wanted to subscribe, but later discovered the plan was not for them, they should be able to cancel without having to jump through hoops to do so.

When companies violate the law, they pay and some, pay handsomely. Take for example, ABCMouse, a membership learning site operated by The Age of Learning, Inc. Through its website, ABCMouse provides access to educational content to parents with kids 2-8 years old. In addition to monthly membership plans, the website advertises a 12-month "Special Offer" for only \$59.95. As recompense for its dirty deeds, The Age of Learning, Inc. was fined and agreed to settle FTC charges of illegal marketing and billing practices. The penalty--\$10-million dollars for violating ROSCA. From 2015 to 2018, the company (a) failed to clearly disclose that memberships would automatically renew, (b) charged consumers' credit card without their express authorization, and (c) made it difficult for consumers to stop those recurrent charges.

### What can you, the consumer, take away from this?

- Beware of purchases you make online
- Read the terms carefully
- If you want a one-time purchase only, say so
- If you were not informed before making a purchase report the company to the FTC

### What can businesses take away from the ABCMouse case?

- Beware! If you violate ROSCA, the FTC will hunt you down



JOYOUS  
KWANZAA



# Protecting the New Athletic Superstars

*Written by Francine D. Ward*

## Do you have a student athlete in your life?

Student athletes have hit paydirt. The United States Supreme Court handed them a gift in its recent decision. On June 21 2021, the high court ruled 9-0 in *National Collegiate Athletic Association v. Alston*. The court held that the National Collegiate Athletic Association (NCAA) violated antitrust law by prohibiting member colleges from providing athletes with certain educational benefits. Essentially it opened the door for student athletes to be able to profit from their name, likeness, and image.

For years the NCAA reaped billions in revenue from athletic programs. Arguably, the highest earning NCAA Division I schools earn around \$8.5 billion per year. [1]

At the same time, the organization prevented athletes from sharing in the profits. A sea change is afoot. With this new opportunity for increased income from the use of their name, likeness, and image, legal protection is available.

## Short Life Span.

On average, the life of an athlete is short. With the potential to one day earn lucrative salaries and the present opportunity to attract profitable endorsement deals, more than ever good estate planning is important. So what should student athletes and their guardians do?

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[1] Craig Garthwaite et al., Who Profits from Amateurism? Rent-Sharing in Modern College Sports: family, friends, coaches, and others who encouraged and supported them has been the sports law (Nat'l Bureau of Econ. Rsch., Working Paper No. 27734, 2020), [https://www.nber.org/system/files/working\\_papers/w27734/w27734.pdf](https://www.nber.org/system/files/working_papers/w27734/w27734.pdf).





## Things to consider:



1

**Power of Attorney for Finance.** State laws differ as to the age of majority. Whatever it is, when an athlete reaches that age, they are legally deemed adults. Unless other factors are at play, parents have no authority to make decision for the athlete.

If the athlete is over the age of majority, then any deal entered into is between the athlete and the other party to the transaction. It doesn't matter if the transaction is an endorsement deal, a car purchase, or a new home.

Having a conversation with an estate planning attorney would be a smart business judgment decision. That would allow the athlete a chance to discover to options for protecting them from themselves. Among the options: executing a financial power of attorney, appointing a responsible and trusted person as the athlete's agent.

2

**Thoughtful Gift Strategy.** Like celebrities who have made it big in a short period of time, athletes develop a generous nature. Often as a way to give thanks to those who supported them along the way, the athlete gifts money, cars, jewelry, and homes. They often do this without much thought. Before gifting expensive items, establish a strategy as part of an overall estate plan. Tax reduction should always be taken into account.

In 2021, taxpayers are allowed to gift up to \$15,000/ per recipient. The athlete can gift up to \$15,000 to as many people as desired, without gift tax ramifications. Gifts in excess \$15,000 require the filing of a gift tax return and counts against the athlete's lifetime exemption.

3

### Trusts are Your Friend.

Despite wanting to splurge on anything and everything when the big payday comes, sometimes it's best to transfer control. This could allow the athlete to be protected from him or herself. A great tool for athletes unaccustomed to managing their finances might be a trust.

If the athlete establishes a trust and appoints a competent trustee to manage their assets, they will be protected from creditors and predators. Depending on how the trust is drafted, the athlete can receive distributions for necessities e.g., lodging, tuition, medical needs, or other items upon the trustee's discretion. Different types of trusts serve different purposes. Understand the best vehicle for your athlete's needs. All too many athletes who make millions of dollars end up broke, all because of poor choices. Don't let your athlete fall into that category.

Schedule a complimentary consult with my office today.



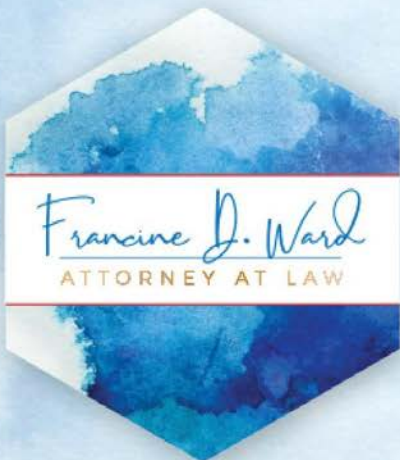
# When *Christmas* Became Less About Me, More About Others

*Written by Francine D. Ward*

When I was young, I thought Christmas was all about getting something. All about ME. I'm sure that thinking resulted from growing up poor in New York's South Bronx and having my birthday follow on the heels of Christmas. We didn't have a lot, so my presents were often combined. But how grateful I am that I had a mom who tried her best to make Christmas as special as possible for my sister and me. But that what's in it for me mentality was carried into my adult years—until I met Louise Robertson.

I was twenty-six years old when I started to understand that the Holidays were about giving, regardless of how much I had. The first time I remember making Christmas about someone other than me was when I was living in Las Vegas in 1980. I moved to Vegas, had no family there, and had just started on a journey to change my life. It was an exceptionally lonely time. Louise suggested that instead of feeling sorry for myself, I get into action to do something for someone else. So I invited other "orphans" (people like me who had no family in Vegas) to come to my house and bring a food dish. Someone donated a turkey, and thanks to my mom, I prepared the turkey. She spent two-hours on the phone walking me through how to prepare turkey and stuffing. My first ever. After dinner, the ten of us went to the children's hospital and sang Christmas carols. OMG, that was the best Christmas ever!

Since that time, every Christmas, with few exceptions, I have done some kind of service. How grateful I am for that mentor Louise who helped me shift my consciousness from "ME" thinking to "Others" thinking, too.



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