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The Wilson Group at Morgan Stanley Smith Barney  
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# “Considering my embattled family, how can I possibly plan for the distribution of my wealth with any level of comfort?”

By Eric S. Wilson

**No discussion on family dynamics and wealth transfer planning is complete without including the “troubled family” scenario.** One essential requisite for such families is the need to preserve the structural integrity of the wealth plan. Indeed, preservation can very well mean the difference between life and death, abject poverty and substantial comfort. Because, more often than not, the trustee is the key to determining whether the wealth plan for the senior generation succeeds or fails, protection for this individual is an important consideration.

**A trustee who lives under the constant threat of litigation almost inevitably is impaired in exercising his or her responsibilities and functions.** In these cases, the senior generation—the client—must ensure that the trustee has the requisite independence and protection to withstand assaults via litigation or other coercive means. Toward this end, the client can draw on a number of devices, some fairly basic, and others seemingly extreme or onerous under ordinary circumstances, to preserve and protect the trustee and the wealth transfer plan—and

ultimately the family. Let us look at a few of these devices:

**01 Incentive Trusts** contain provisions designed to provide beneficiaries with incentives to engage in, or refrain from, specified or general behaviors. This type of trust may provide some benefit where parents are combating self-destructive behaviors, such as drug or alcohol abuse.

**02 Exoneration Clauses** are written to absolve trustees from liabilities. They can be drawn widely enough to exclude and protect trustees from liability from all negligence, excluding cases of personal dishonesty, bad faith, recklessness, or fraud. An exoneration clause often is the fiduciary’s first line of defense against disgruntled beneficiaries.

**03 Indemnification Clauses** provide the funds to pay for the trustee’s defense in case of actual litigation—versus an exoneration clause’s protection against threatened litigation. Indemnification can be critically important: If the trustee cannot afford a legal defense,

a disgruntled beneficiary’s threat to sue may deter even the most determined trustee.

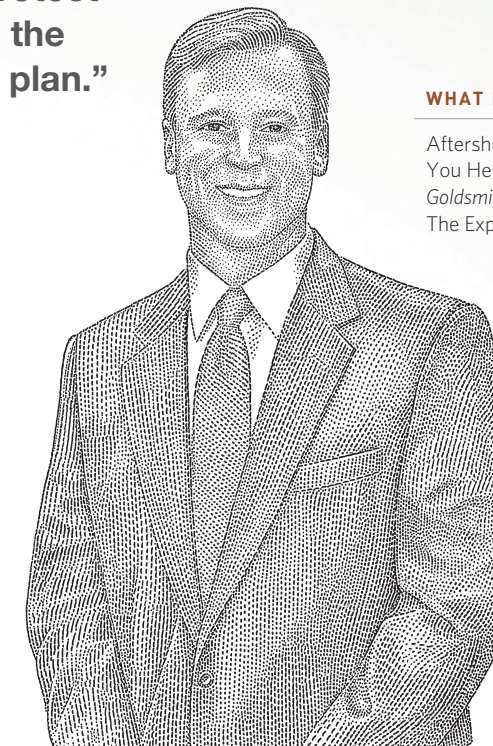
**04 Encourage Release Clauses** can be used to address the client’s concern that a trustee’s conduct will be challenged after the client’s death. This provision “encourages” the client’s descendants to release and indemnify “family counselors” for acts of omissions taken or not taken in good faith.

**05 Best Interest Clauses** are a simple yet powerful approach. They empower trustees of trusts for descendants created after the client’s death to make distributions of income and principal for the best interests of the beneficiary. Here, “best interest” is defined so as to effectuate the client’s goals.

By including one or more of the above clauses in discussions with your tax and legal counsel with regards to your wealth transfer plan, you should be better prepared to protect and preserve your family’s wealth, even if you cannot guarantee that you will preserve the family as a whole. ☺

**“The client can draw on a number of devices to preserve and protect the trustee and the wealth transfer plan.”**

—Eric S. Wilson



### WHAT MAKES A GOOD CLIENT...

*A family that knows where it wants to go, is willing to seek help in getting there, and is willing to listen to the hard things that have to be said in a meeting. Remember, when two people always agree, one is not needed.*

### How to reach Eric S. Wilson

Interested families may reach me with questions or with interest at 877.442.5445 or [eric.s.wilson@mssb.com](mailto:eric.s.wilson@mssb.com).

### WHAT I'M READING NOW...

Aftershock, by David Wiedemer; What Got You Here Won't Get You There, by Marshall Goldsmith; Moneyball, by Michael Lewis; and The Explicit Gospel, by Matt Chandler

### MY HOBBIES ARE...

Teaching my sons about life through sports, playing tennis, reading and gardening

### About Eric S. Wilson

Eric S. Wilson is a Senior Vice President and Family Wealth Director at Morgan Stanley Smith Barney, and for the past 18 years he has served the varied needs of families whose wealth has the potential to change the essential nature of their descendants’ lives. Mr. Wilson began his career at Merrill Lynch in 1994, where he served until joining Morgan Stanley Smith Barney in 2010. For his work with families throughout the Southeastern United States, he has been nominated to *Barron's* Top 1000 Wealth Advisors and was named one of *Atlanta* magazine’s Best Personal Wealth Managers in the Atlanta area in 2009. Mr. Wilson is a Certified Investment Management Consultant and an Accredited Investment Fiduciary Analyst through Fiduciary360. He is one of seven such dually certified individuals in the state of Georgia. Mr. Wilson graduated with a BBA degree in finance, economics and accounting from Mercer University. He serves on the advisory boards of the Community Foundation of Central Georgia and the Children’s Hospital of Central Georgia and is a member of the Macon Estate Planning Council. He and his wife, Cindy, are proud parents of four sons, ages 11 and 4.

Assets Under Management <b>\$1.6 trillion (Morgan Stanley Smith Barney)</b>	Compensation Method <b>Asset-based fees and commissions (investment and insurance products)</b>
Minimum Fee for Initial Meeting <b>None required</b>	Primary Custodian for Investor Assets <b>Morgan Stanley Smith Barney</b>
Minimum Net Worth Requirement <b>\$5 million (planning services); \$2 million in investable assets (investment services)</b>	Professional Services Provided <b>Planning, investment advisory and money management services, advanced wealth transfer planning and liability management</b>
Largest Client Net Worth <b>\$25 million+</b>	Association Memberships <b>IMCA, Fiduciary 360 (<a href="http://www.fi360.com">www.fi360.com</a>)</b>
Financial Services Experience <b>18 years</b>	Website <b><a href="http://fa.smithbarney.com/ericwilson">http://fa.smithbarney.com/ericwilson</a></b>
	Email <b><a href="mailto:eric.s.wilson@mssb.com">eric.s.wilson@mssb.com</a></b>

*Eric S. Wilson is a wealth advisor and family wealth director with Morgan Stanley Smith Barney in Macon, GA. Although Eric S. Wilson has compensated Worth to have this article featured in its publication, it is not a solicitation, nor is it intended to provide individually tailored investment advice. The strategies and/or investments referenced may not be suitable for all investors. The views expressed herein are those of the author and may not necessarily reflect the views of Morgan Stanley Smith Barney LLC, member SIPC. This article is directed to residents in the states where Eric S. Wilson is registered. <http://fa.smithbarney.com/ericwilson/>. Morgan Stanley Smith Barney LLC, its affiliates and Morgan Stanley Smith Barney financial advisors or private wealth advisors do not provide tax or legal advice. This material was not intended nor written to be used for the purpose of avoiding tax penalties that may be imposed on the taxpayer. Clients should consult their tax advisor for matters involving taxation and tax planning and their attorney for matters involving trust and estate planning and other legal matters.*

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