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## Did Madoff, others turn wives into Swiss bank accounts?

Many wonder if tainted titans protected assets by using spouses' names

By **Mark Bruno**  
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When Bernard Madoff made his way into his prison cell this month, he likely said goodbye to his now-infamous Upper East Side penthouse forever.

His wife, Ruth, however, may not necessarily have to part ways with the posh pad — or several other critical pieces of the roughly \$100 million of assets in her name — anytime soon, some say.

Mr. Madoff, 70, like some other high-profile Wall Street figures, clearly received some sound estate-planning and asset protection advice over the years.

Some of his most valuable assets have been held in his 67-year-old wife's name for years — including the \$7 million penthouse — a move that could eventually prove to thwart the efforts of his angry Ponzi scheme victims, who are attempting to claw back a portion of their \$65 billion losses from his estate.



Ms. Madoff's holdings raise the question of whether her assets are the result of careful estate planning.

"When your career puts you in a position to take on a lot of personal risk like a doctor does, it's common to use your wife to shield some of your wealth," said Gideon Rothschild, a

partner at New York-based law firm **Moses & Singer LLP**, where he specializes in asset

*Asset protection: Madoff's French Riviera home and New York City penthouse are in his wife's name.*

Bloomberg protection and estate planning.

"You might lose it in a divorce, but you could keep it if you get sued," he added. "It's a poor man's version of an asset

protection strategy."

Ironically, of course, the people who some say may be employing such approaches are anything but poor.

While they're not facing criminal charges, executives caught in Wall Street's meltdown, such as Richard Fuld, the former chief executive of Lehman Brothers Holdings Inc., and Stanley O'Neal, the former chief executive of Merrill Lynch & Co. Inc., were also scourged when it was learned that they put some of their most-prized assets in their wives' names.

Mr. Fuld, for instance, is said to have sold his \$13 million mansion in Florida to his wife, Kathy, in November for just \$100, about two months after New York-based Lehman filed for bankruptcy.

Mr. O'Neal, meanwhile, signed over both a \$20 million Park Avenue apartment and a more than \$4 million Westchester (N.Y.) County mansion to his wife, Nancy Garvey, in the same year he stepped down from Merrill, also of New York.

It's a simple move, but it could prove to be effective if a wealthy individual is ever the subject of a bankruptcy or civil suit.

That's because anyone who is attempting to pursue the assets of a spouse would have to prove that there was some act of "fraudulent conveyance" involved when an asset was either originally purchased or transferred, said Steven Oshins, an asset protection specialist at Oshins & Associates LLC, a law firm in Las Vegas.

"In other words, was the asset in question intentionally put in a spouse's name specifically to avoid any potential creditors?" asked Mr. Oshins. "It's a tough question to answer, and it can be a very tricky thing to prove."

In the case of the Fuld's, it might not be that challenging because the transfer was made after Lehman's collapse already occurred, and the home "was obviously sold for well below fair-market value," said Rocco DeFrancesco, an asset protection attorney and founder of the Wealth Preservation Institute in St. Joseph, Mich. "On the surface, that would seem to have all the signs of a fraudulent transfer," he said.

The Madoffs, however, present a much more challenging scenario: Many of the major assets that are currently in Ms. Madoff's name, including three residencies in the United States and France worth a combined \$19 million — were purchased directly by Ms. Madoff years ago, according to court documents.

She bought the New York penthouse in 1984, according to a financial statement Mr. Madoff

submitted to the Securities and Exchange Commission that was disclosed earlier this month. Ms. Madoff also ponied up for the family's \$11 million mansion in Palm Beach, Fla., in 1994, and then she bought a \$1 million home in France's Cap d'Antibes in 2000 or 2001, according to court documents. The Madoffs' \$3 million home in Montauk, N.Y., was jointly purchased by the couple in 1979.

Given the timing of these purchases, the assets may now be considered "old and cold," or off-limits to Mr. Madoff's victims, noted Mr. Rothschild.

Mr. Madoff, when he entered his guilty plea this month, said that "to the best of my recollection, my fraud began in the early 1990s."

Unless the federal prosecutors probing his massive fraud can prove that the scheme began any earlier, then family assets purchased before that time may be untouchable.

"And even assets in her name after that time may prove to be off-limits too," said Barry Engel, an estate planning attorney at Engel & Reiman, a Denver-based law firm. "It will depend on the specific facts associated with her situation."

If Ms. Madoff can somehow show that she inherited or independently earned major portions of her wealth, for instance, Ponzi scheme victims may not be able to touch her assets, Mr. Engel noted. That could include, perhaps, \$45 million in municipal bonds that court documents show Ms. Madoff owns, as well the yacht company in her name — The Yacht Bull — which has an estimated value of roughly \$7 million.

While victims in the Madoff case have reportedly been swindled out of \$65 billion, less than \$1 billion of his family's wealth has been located through the end of last week. So Ms. Madoff possesses one of the few discernable pools of assets that investors could target — meaning she'll likely be the focus of her husband's victims, as well as federal prosecutors, in the coming months.

So far, Ms. Madoff has not been accused of any wrongdoing, but federal prosecutors have reportedly been moving to freeze her assets and to prevent her from leaving the country.

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