A lot rides on title ownership

Estate-Plan Edge
By CURT FERGUSON

DID you know that you have at least two estates? Nearly everyone does. One estate is normally a subset of the other.

Usually "estate" means either your taxable estate or your probate estate.

■ **Your taxable estate** is all of the property that must be reported on your death tax return. You must report all assets in which you had what the tax law calls "incidents of ownership."

■ **Your probate estate** is included within your taxable estate. The probate estate consists only of assets that will pass according to your will, and are therefore subject to probate laws and procedures. If you don't have a will, then state law provides a default will for your probate estate.

You will be taxed on what you are legally entitled to fully control at your death. You can control assets that do not necessarily go through probate. If you get to determine who will get something upon your death, generally it is counted as part of your taxable estate.

Understanding legal title

Confusion between taxable and probate estates may come from the legal concept of titles and how various title options affect the procedure for transferring assets upon death.

To illustrate, you hold legal title to (1) assets in your sole name, (2) your share of assets that are owned in joint tenancy with rights of survivorship, (3) assets that pass to designated beneficiaries by contract like life insurance or annuities, and (4) assets in a trust in which you have retained rights. The different types of title affect the process of transferring the assets upon death.

Two kinds of assets pass according to your will: assets that are owned in your sole name, and beneficiary or trust assets that have your estate — meaning probate estate — listed as beneficiary upon your death. These make up your probate estate.

Joint tenancy assets pass to the surviving owner according to property law. Beneficiary assets like annuities, IRAs and pay-on-death investments pass to the named beneficiary according to contract law. Assets in trust pass to the remainder beneficiaries according to the trust agreement, governed by contract law. These are part of your taxable estate, but don't go through probate.

Figuring life insurance

The most puzzling asset might be life insurance when you have individuals named as beneficiaries and when the beneficiary is not your estate.

You cannot spend the death benefit, and it won't be part of your probate estate, but since you have the right to name the beneficiary, then you have control over who will get the money. That death benefit is part of your taxable estate even though it is not part of your probate estate.

Assets you own in trust, like a living trust or land trust, are within your control. Unless your trust says the assets go to your estate upon death, they won't be included in your probate estate.

Coordination is critical

Failure to properly title your assets is a leading cause of plan failure.

Generally speaking, if you use a will or a living trust for your estate plan, you will need to avoid joint tenancy and designating individuals as beneficiaries of life insurance, annuities and other investments.

Imagine that your will includes estate-tax provisions and asset protection for your spouse or other heirs, and dictates how the farm will be divided among your children. If your farm does not go through probate, it won't follow your will. Avoiding probate means avoiding your plan for distribution of your estate!

Likewise, if you create a living trust to direct division and distribution of your estate, you should not have assets in joint tenancy or designated to go to individual beneficiaries. Such assets will bypass your trust and defeat your plan.

A critical part of making your estate plan work is the careful review of all asset titles, and the retitling of your entire taxable estate to make sure everything follows your plan.

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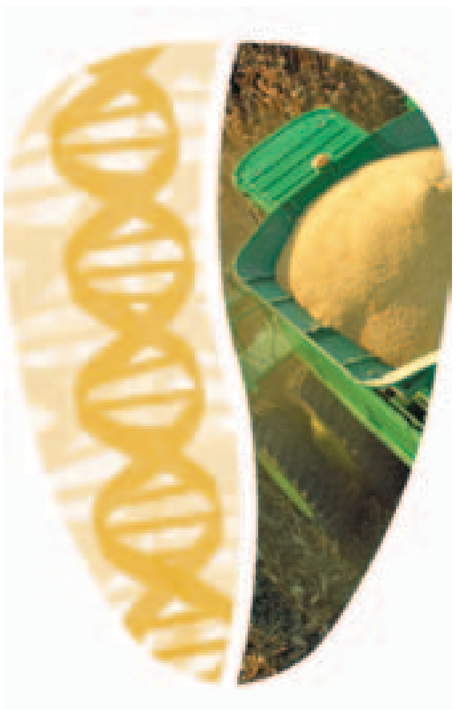

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