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Estate Planning and
End-of-Life Issues

ESTATE PLANS INVOLVING EQUAL BUT NOT EQUITABLE ASSETS

By Cason Parker



Equal is when a set of twins wears the same outfit. Equal is when younger and older siblings both receive the same amount of money from the tooth fairy. Equal is not when daughter inherits a Roth IRA and son a traditional IRA. Equal is not when son who worked in mom's widget business inherits the same shares as daughter who did not.

As we seek to be better advocates for our clients, consider how different assets or even differently titled and taxed assets pass to heirs. Have you ever encountered one piece of real estate with multiple heirs? Or a family business with multiple heirs but only one who wants to operate the business? Or a business that requires a license (such as a dental or legal practice), but the business has no successor with said license? How can we intercede for these clients?

Consider two avenues:

Avenue one, tax-deferred retirement plan equalization. Consider the embedded tax of some retirement plans and how they will be distributed under the Setting Every Community Up for Retirement Enhancement (SECURE) Act, which mandates a ten-year distribution for certain beneficiaries. An heir with low taxable income could be an appropriate beneficiary for a non-Roth asset as he or she might not owe as much tax as an heir with higher taxable income. In the case of a high-income/taxed heir, the parents might consider executing a Roth conversion and paying tax now on previously tax-deferred funds; this could be advantageous as it ensures that the ten-year distribution requirement is tax-free and passes tax-free assets to the heir. A mix and match of taxable, tax-free, and tax-deferred assets could be compared to see which heir benefits most and least while looking holistically at distribution options.

Avenue two, life insurance for estate equalization. Consider one piece of real estate and two heirs. One option, sell the property and distribute 50 percent of the proceeds to each heir. Another option, have an amount of life insurance equal to the property value; one heir keeps the property, while the other receives life insurance proceeds. Consider a family business example. One heir is groomed to take over operations, and another only wants income. As above, the business could be sold, or one heir could receive the business outright and another could receive assets or life insurance proceeds with appropriate

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buy-sell agreement planning. In the case of a business where no heir is capable of succession (e.g., a law practice inherited by a nonlawyer), life insurance could be purchased on the owner based on the value of the practice. This allows for full valuation. Insurance can also provide insulation against heirs not being able to sell or a postponement of selling due to probate or other factors. Insurance proceeds pay out at death; the non-licensed heirs receive proceeds and can choose whether to pursue a sale. The heirs have more time flexibility to choose a buyer that would honor the departed's legacy.

Undoubtedly, clients have many options and obstacles based on the law as well as their family and business dynamics. Next time you find yourself counseling those living, breathing embodiments of the American dream on business succession, illiquid assets, and IRA planning, know how significant of an impact you can make for them for generations. From a grateful financial planner, thank you for the work you do! ■

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