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## Who Really Owns Your Investments?

By David Macchia     *Wed, Feb 25, 2026*

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*The well-known retirement industry entrepreneur urges advisers to understanding "UCC Article 8," the vulnerability of the claims we think we have on our investments, and the wisdom of diversifying ownership of retirement assets across more than one legal structure.*

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For decades, investors have been taught to focus on asset allocation, diversification, and long-term market returns. Advisers spend enormous time debating portfolio construction, rebalancing strategies, and investment selection. Yet one foundational question is rarely asked—by investors or their advisers:

What does it actually mean to “own” an investment in today’s financial system?

The answer is not intuitive, and it has little resemblance to how people own a home, a bank account, or a piece of real estate. Modern securities ownership is governed by a legal framework—largely invisible to investors—that shapes rights, priorities, and outcomes when financial institutions come under stress.

Understanding that framework is not about predicting crisis or sowing fear. It is about understanding structure. That structure is found in Article 8 of the Uniform Commercial Code (UCC) and its interaction with U.S. bankruptcy law.

### **The assumption most investors make**

Ask a typical investor who owns the stocks in their brokerage or retirement account, and the answer is immediate: “*I do.*” This assumption feels reasonable. Account statements list securities by name. Online dashboards show balances updating in real time. Dividends arrive as expected. Voting materials appear in the mail. Everything about the experience suggests direct ownership. Legally, however, that is not how modern securities are held.

### **UCC Article 8 and the concept of the “security entitlement”**

Under UCC Article 8, most publicly traded securities in the United States are held through a system of securities intermediaries—broker-dealers, custodians, clearing brokers, and clearinghouses. Rather than owning a specific stock or bond directly, investors hold what

the law calls a *security entitlement*.

A security entitlement is a bundle of contractual and property rights created by book entry—a credit recorded on the books of a securities intermediary. It is not ownership of a specific, identifiable share.

This distinction is critical. Article 8 explicitly states that an entitlement holder does not have a property interest in any particular financial asset held by the intermediary. Instead, investors hold a pro-rata interest in a pooled mass of securities.

There are no name-tagged shares. This structure exists because modern markets require speed, scale, and fungibility. Millions of trades occur daily. Securities must be easily transferable, netted, pledged, and settled. The intermediated system makes that possible. Under normal market conditions, it works extremely well.

### **The intermediation chain**

To understand how security entitlements function, it helps to visualize the chain:

- The investor holds an account at a broker-dealer
- The broker-dealer works with a custodian or clearing broker
- Those firms interface with clearinghouses
- Securities are immobilized at a central securities depository and transferred electronically

Each layer maintains records rather than physical certificates. The system allows global markets to function efficiently, but it also means that investor rights are indirect. The investor's claim is against their intermediary—not against the issuer of the security itself.

### **Why legal structure matters during stress**

In ordinary times, this distinction has little practical impact. Trades settle. Statements reconcile. Markets function. But the legal structure becomes critical when a financial intermediary fails.

Under UCC Article 8, if a securities intermediary does not hold sufficient assets to satisfy all security entitlements, entitlement holders share pro rata in whatever remains.

No investor has priority based on ownership of specific securities, because no such ownership exists. This is where UCC Article 8 intersects with U.S. bankruptcy law, and

where confusion often arises.

### **The priority “waterfall” explained**

The term “*waterfall*” does not appear in the statutes themselves. It is a practical description of how claims are resolved when a broker-dealer or major financial intermediary becomes insolvent.

U.S. bankruptcy law provides special safe-harbor protections for certain financial contracts, including:

- Derivatives and swaps
- Repurchase (repo) agreements
- Margin and settlement payments
- Master netting agreements

These protections allow counterparties to these contracts—often large financial institutions—to terminate, net, and seize collateral immediately, without being subject to the automatic stay that applies in most bankruptcies.

Clearinghouses play a central role in this process. They act quickly to contain risk, enforce margin requirements, and allocate losses according to pre-approved rulebooks. This is not discretionary behavior; it is mandated by regulation and contract.

The result is a legally defined order of operations:

1. Clearing and netting occur
2. Collateral is applied to secured and derivatives-related claims
3. Residual assets remain, if any
4. Investors share what is left on a pro-rata basis

This is not a conspiracy, nor is it hidden. It is explicitly embedded in law.

### **This is not alarmism**

Understanding this framework does not mean that investors should expect losses, confiscation, or systemic collapse. Financial markets have endured stress events before, and most investors emerge without incident. The point is more subtle and more practical: Investment outcomes depend not only on market performance, but also on legal structure. Account balances do not exist in a vacuum. They sit within a hierarchy of rights, contracts, and priorities that only become visible during stress.

### **Why this matters for advisors**

For financial advisors, this discussion is not about changing how markets work. It is about broadening how retirement risk is understood. Traditional portfolio theory focuses on:

- Market risk
- Volatility
- Sequence of returns
- Diversification across asset classes

These are important considerations. But they assume that liquidity and legal access to assets will always be available when needed. Advisors increasingly recognize that retirement success is not measured by peak account values, but by reliable income over time. Nobel laureate Robert Merton has emphasized that retirees do not consume wealth—they consume income. That shift in thinking naturally raises questions about structure, not just returns.

### **Diversifying legal structures, not just investments**

One practical implication of UCC Article 8 is that many retirement strategies now intentionally combine assets governed by different legal regimes. Market-based assets held through brokerage accounts are powerful tools for growth. They provide liquidity, upside potential, and flexibility.

Contractual income instruments—such as annuities governed by state insurance law—operate differently. They create direct contractual obligations backed by an insurer’s general account and supported by statutory policyholder protections. They do not rely on the securities intermediation chain.

This distinction does not make one approach “better” than the other. It makes them complementary. A resilient retirement plan recognizes that growth assets and income contracts serve different purposes and are governed by different legal frameworks.

### **What advisors should communicate to clients**

This topic must be handled carefully. Alarmist language is neither accurate nor helpful. The goal is clarity, not fear. Advisors can responsibly explain that:

- Brokerage accounts provide contractual claims, not direct ownership of specific securities
- Legal priority rules exist and function as designed

- These rules matter most under stress, not in everyday markets
- Retirement planning benefits from balancing growth potential with contractual income certainty

Clients do not need a law degree to appreciate the takeaway: Structure matters.

#### **A more complete definition of fiduciary care**

As fiduciary standards continue to evolve, advisors are increasingly expected to address not only performance risk, but outcome risk. Outcome risk includes:

- Market timing risk
- Longevity risk
- Behavioral risk
- And yes—structural risk

UCC Article 8 is not a flaw in the system. It is the system. Understanding it allows advisors to design plans that are more robust, more transparent, and better aligned with how modern finance actually works.

#### **Conclusion**

The modern investment system is highly sophisticated, deeply interconnected, and legally precise. Investors do not directly own most securities in the way they assume—but that does not mean the system is broken. It means that ownership is intermediated, priorities are pre-defined, and outcomes depend on both market performance and legal structure.

For advisors, acknowledging this reality is not about fear. It is about professionalism.

Markets remain essential tools for growth.

Contracts remain essential tools for income.

The most effective retirement strategies understand the role of both.

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*outcomes.*

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