

How to Avoid Probate in California

California collects no estate tax and no inheritance tax. So why do California families still lose tens of thousands of dollars at death? Because California law sets probate fees as a percentage of everything that goes through probate, mortgage included. Six legal tools move assets around probate.

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THE CALIFORNIA REALITY

California writes probate fees into law, and a mortgage doesn't shrink them.

On a \$1 million estate, the statutory executor's fee is \$23,000 (less if the will sets a lower fee or the executor waives it), and the attorney's fee is another \$23,000. Both are figured on the full value of the property, before any debt. Property that skips probate skips both fees.

Does California tax your estate or your heirs? No, neither one.

California collects no estate tax for deaths on or after January 1, 2005. California's estate tax was tied to a federal credit that ended that year, and the State Controller's Office says no California estate tax return is required for those deaths. California's inheritance tax applies only to deaths before June 8, 1982. Both facts hold in 2026. If an estate, plus taxable gifts made during life, stays below the federal threshold, **no California or federal transfer tax is due.** Real estate in another state with its own estate tax can still be taxed there. The federal threshold is \$15 million per person in 2026 under the 2025 federal tax law (Public Law 119-21). A married couple gets \$30 million if the first spouse's estate files a timely federal estate tax return electing portability.

With no estate or inheritance tax, the cost that remains in California is the **probate process.** That means court hearings, months of waiting, and two fees the Probate Code sets by formula. California law gives the personal representative (the executor) one fee and the estate's attorney a second fee on the same schedule. Both are figured on the gross value of the estate. A \$1 million house with a \$600,000 mortgage counts as \$1 million.

What a family faces at death in California	2026 reality
California estate tax	\$0 for deaths on or after January 1, 2005. No California estate tax return is required.
California inheritance tax	\$0. It applies only to deaths before June 8, 1982.
Federal estate tax	\$0 if the estate plus lifetime taxable gifts stays below \$15M (single). A married couple can use up to \$30M, for example when the first spouse's estate files a timely portability election and used none of its threshold. No scheduled expiration under the 2025 federal law; indexed for inflation after 2026.
Executor (personal representative) fee	4 percent of the first \$100K, 3 percent of the next \$100K, 2 percent of the next \$800K, 1 percent of the next \$9M, and one-half of 1 percent of the next \$15M. The court sets the fee above \$25M. Figured without subtracting mortgages or other debts (Probate Code 10800).

What a family faces at death in California	2026 reality
Probate attorney fee	The same schedule again, paid separately (Probate Code 10810). The court can allow more for extraordinary services (Probate Code 10811).
Court costs	A filing fee, a probate referee's commission of one-tenth of 1 percent of the property the referee appraises, and publication. Our estimate: about \$2,000 on a \$1 million estate.
Time tied up	At least 4 months, because creditors get 4 months after the court appoints the executor to file claims. The executor has to ask for final distribution or report on status within a year of appointment, or 18 months if a federal estate tax return is required (Probate Code 12200). Our estimate: 9 to 18 months for an uncontested case, longer if contested.

All told, a \$1,000,000 estate that runs through California probate pays **\$46,000 in statutory fees**, and about **\$48,000** once court costs are added. The estate is tied up for most of a year or more, and the attorney's fee and court costs alone come to about \$25,000 of that \$48,000.

Which tools keep assets out of California probate? Six, and a recorded deed can carry the home.

California law gives families six ways to pass property **without** a probate court supervising the transfer. Families commonly combine several of them, because each one covers a different kind of property. Which combination fits a family is a question for a California attorney.

TOOL 1: OFTEN USED FOR REAL ESTATE AND LARGER ESTATES

Revocable Living Trust

The owner signs a trust, usually serves as trustee during life, and retitles assets into the trust's name, including a new deed for real estate. The owner keeps full control and can change or cancel the trust. At death, a successor trustee hands out the assets under the trust's terms, with no probate court and no statutory fee schedule. A trust covers both spouses' deaths, and the successor trustee can step in if the owner can no longer manage the trust assets. A trust avoids probate only on assets retitled into it; an unfunded trust avoids nothing. **Authority: California Probate Code 15200 (creating a trust); trust property also doesn't count toward the small estate limit (Probate Code 13050(a)(1)).**

***Commonly used for:** Homeowners, business owners and blended families. Also owners of commercial buildings or apartment buildings with five or more units, which a transfer on death deed can't carry. Also people who want a named person ready to manage assets during incapacity.*

TOOL 2: OFTEN USED FOR A HOME

Revocable Transfer on Death (TOD) Deed

A revocable TOD deed names who receives a California home or other residential property at the owner's death. It covers residential property only: a parcel with one to four homes, or a condominium-type unit. The statute doesn't require the owner to live there, so a rental of one to four units qualifies. It doesn't cover farmland over 40 acres. Since 2022 the deed needs the owner's signature, two witnesses present at the same time, and a notary. It has to be recorded with the county recorder within 60 days of notarization. The owner keeps full control and can revoke it. At death, the beneficiary records proof of death, sends notice to the heirs, and takes the home subject to the owner's debts. If the owner held title in joint tenancy or as community property with right of survivorship and dies first, the deed has no effect. The TOD deed law is scheduled to expire January 1, 2032 unless the Legislature extends it; deeds signed before then stay valid. **Authority: California Probate Code 5600 through 5698 (statutory form at 5642, witnesses at 5624).**

***Commonly used for:** A single owner of one California home with a simple plan for who receives it, often alongside beneficiary designations on the accounts. Families with minor beneficiaries, commercial property or larger apartment buildings often look at a trust instead.*

TOOL 3: OFTEN USED FOR MARRIED COUPLES

Community Property with Right of Survivorship, or Joint Tenancy

Spouses and registered domestic partners can take title as "community property with right of survivorship" when the deed says so expressly. At the first death, the property passes to the survivor without administration. Joint tenancy works the same way between any co-owners when the deed expressly declares it. Either form solves only the first death. When the survivor later dies owning the property alone, it goes through probate unless another tool covers it. For federal income tax, the two titles aren't the same for spouses. Community property, including community property with right of survivorship, can get a new cost basis on both halves at the first death (Internal Revenue Code, or IRC, 1014(b)(6)). Spousal joint tenancy generally gets a new basis only on the half counted in the decedent's estate (IRC 2040(b) and 1014(b)(9)). These federal rules are written for spouses. Which title fits a couple is a question for a California attorney. **Authority: California Civil Code 682.1 (community property with right of survivorship) and 683 (joint tenancy).**

Commonly used for: *Couples who want both names on the deed and a clean transfer at the first death. Couples commonly pair survivorship title with a trust or a TOD deed that covers the second death.*

TOOL 4: OFTEN USED FOR RETIREMENT ACCOUNTS AND LIFE INSURANCE

Beneficiary Designations

A 401(k), individual retirement account (IRA), 403(b) or life insurance policy pays the beneficiary named on its form, by contract, without probate. California law confirms these designations work without the formalities of a will. **Where it breaks:** naming "my estate" as the beneficiary, or leaving the form blank. Both can pull the money back into probate, where the statutory fees apply to it. **Authority: California Probate Code 5000.**

Terrence holds the life insurance licenses on our team and is paid when a policy is placed.

Commonly used for: *California residents with a retirement account or life insurance. Families commonly review these forms every few years and after a marriage, divorce, birth or death.*

TOOL 5: BANK ACCOUNTS AND BROKERAGE

Payable on Death (POD) and Transfer on Death (TOD) Registrations

A savings account, checking account or certificate of deposit (CD) can carry a "POD" designation that names who receives the balance. A brokerage account holding stocks and bonds can be registered in "TOD" form to do the same. The owner keeps full control during life. At death, the beneficiary deals directly with the bank or broker, with no probate. A will can't change a POD designation. **Authority: California Probate Code 5100 and 5302 (POD bank accounts, the California Multiple-Party Accounts Law); Probate Code 5500 and following (TOD securities; the transfer at death is in 5507).**

Commonly used for: *California bank and brokerage accounts. Each bank or broker uses its own form.*

TOOL 6: VEHICLES

Transfer on Death Vehicle Title

California lets a vehicle owner hold title in "beneficiary form," with the words "transfer on death to" and the beneficiary's name on the title. It's available when there's one owner and one beneficiary, and the Department of Motor Vehicles (DMV) charges \$10 to register it. Separately, an heir can transfer a vehicle at the DMV with a signed certificate, whatever the vehicle is worth. That works when nothing else in the estate needs probate and the decedent's unsecured debts are paid. **Authority: California Vehicle Code 4150.7 and 5910.**

Commonly used for: *A car, truck or motorcycle titled to one owner.*

What if nothing was set up? Three shortcuts skip full probate.

California has three procedures that move property after death without a full probate case. A 2024 law (AB 2016) raised the limit for a family home to \$750,000. These limits are next adjusted April 1, 2028.

Shortcut	How it works (deaths on or after April 1, 2025)
Small estate affidavit	When the decedent's California property is worth \$208,850 or less, a successor can collect money, bank accounts, securities and other personal property with a sworn affidavit 40 days after death, with no court case. Real estate counts toward the limit but passes by a separate procedure. The count leaves out property in a trust, joint tenancy, POD accounts, registered vehicles, property passing to a spouse and a home handled by a primary residence petition. Probate Code 13050 and 13100.
Primary residence petition	A home worth \$750,000 or less that was the decedent's primary residence can pass by a short court petition 40 days after death, for deaths through March 31, 2028. It needs a probate referee's appraisal and notice to the heirs within five business days of filing, but no full probate. Probate Code 13151 and 13152.
Spousal property	Property passing to a surviving spouse or registered domestic partner by will or by law needs no administration. A spousal property petition gets a court order confirming it. Probate Code 13500 and 13650.

A person who receives property through these shortcuts can be personally liable for the decedent's unpaid debts, up to the value received.

Does avoiding probate stop a property tax reassessment? No.

Probate and property tax are separate systems. Since February 16, 2021, Proposition 19 limits the parent-to-child property tax exclusion to the family home (and family farms). The home keeps its old taxable value only if it was the parent's principal residence and becomes the child's own family home. The exclusion stops at the old taxable value plus \$1,044,586, the figure for transfers from February 16, 2025 through February 15, 2027. Value above that is added to the taxable value. Rentals, vacation homes and other property get no exclusion. The State Board of Equalization lists two filing deadlines. The homeowners' or disabled veterans' exemption claim is filed within one year; if it's filed later,

the exclusion applies only from then on. The exclusion claim (form BOE-19-P) is due within three years, or before a sale to someone else if that comes first. Transfers between spouses fall under a separate rule and aren't treated as a change of ownership (Revenue and Taxation Code 63).

The result is the same whether the home passes through probate, a trust or a TOD deed. California's TOD deed form says property tax law applies at death as it would to any other change of ownership. Applying Proposition 19 to a particular home is a question for a California attorney or the county assessor.

What can probate cost a \$1 million California estate?

About \$48,000.

ILLUSTRATIVE: \$1 MILLION CALIFORNIA ESTATE

Plan A: Will only. Everything runs through probate.

Executor fee: 4% of \$100K + 3% of \$100K + 2% of \$800K	\$23,000
Attorney fee: the same three tiers	\$23,000
Filing, probate referee, publication (our estimate)	\$2,000

Total probate cost **About \$48,000**

The total is the same if the house carries a \$400,000 mortgage, because both fees are figured on gross value. Plus months of court administration.

SAME \$1 MILLION ESTATE, RESTRUCTURED

Plan B: Trust or TOD deed + beneficiary designations + POD/TOD registrations.

Setup cost (documents, recording, account forms; our estimate, lower for a TOD deed, higher for a trust)	\$500 to \$5,000
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After-death costs (recording, notices, any trustee or attorney fees; our estimate)	\$1,000 to \$15,000
Statutory executor fee	Near \$0
Statutory probate attorney fee	Near \$0
Probate court costs	Near \$0

Total cost	\$1,500 to \$20,000
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Assets transfer without a court case, and the statutory probate fees don't apply. Settling a trust or a TOD deed still has costs. After setup and after-death costs, the family keeps roughly \$28,000 to \$46,500 of the \$48,000, and less if a family executor would have waived the executor's fee.

Numbers are illustrative, based on California's statutory fee schedules (Probate Code 10800 and 10810) and our own estimates for court costs, setup and after-death costs. Actual numbers depend on the county, the asset mix and any extraordinary fees the court allows. This isn't legal or tax advice.

Where does our work stop? We estimate the tax, and attorneys draft.

We're Enrolled Agents. We work on the tax: what your estate would owe the IRS, which filings it triggers, and what each choice is worth in dollars. We don't draft documents and we don't practice law.

Every tool on this page is a legal instrument. Which one fits your family, how it's drafted, and how it works with the documents you've already signed are questions for a California attorney. It helps to know what each choice is worth in tax before you sit down with that attorney.

What do California families get wrong? Five avoidable mistakes.

Each mistake costs a family time, money or control.

- **Counting on the mortgage to lower the probate fee.** California figures both statutory fees on the gross value of the estate. A heavily mortgaged house costs the same in fees as one owned free and clear.
- **Naming "my estate" as the beneficiary on a retirement account.** Pulls the account into probate and under the fee schedule. It can also force heirs to empty the account within 5 years, instead of the 10 years a named person usually gets. If required withdrawals had already started, the payout follows the owner's remaining life expectancy instead.
- **Signing a trust and never funding it.** A trust avoids probate only on assets retitled into it. A house still deeded in the owner's own name goes through probate.
- **Expecting a TOD deed to control a jointly held home at the first death.** When an owner held the home in joint tenancy or community property with right of survivorship and dies first, the TOD deed has no effect. Probate Code 5664 says so, and the statutory form repeats it, so the co-owner takes the home.
- **Letting beneficiary forms go stale.** An old 401(k) form can still pay a former spouse. Under California law, most nonprobate transfers to a former spouse fail at death if they were signed before or during the marriage. That rule doesn't cover life insurance policies (Probate Code 5040), so families commonly update every form after a divorce.

What doesn't this guide cover? Four issues that need their own plan.

Avoiding probate is one part of a full estate plan. Four California issues go beyond probate and need separate attention:

- **Medi-Cal estate recovery.** For members who die on or after January 1, 2017, California recovers only from the probate estate (Welfare and Institutions Code 14009.5(f)(3)), so whether an asset goes through probate matters here. The same section generally bars a claim when the member is survived by a spouse or registered domestic partner. Applying that to a family's assets is a long-term-care planning question for a California attorney.

- **Federal estate tax planning for estates over \$15M.** A different conversation, and the focus of Lever 5 for ultra-high-net-worth families.
- **Out-of-state real estate.** Property in Hawaii, Nevada, Arizona or anywhere else can need a second, ancillary probate in the state where it's located, unless a structure there covers it.
- **Proposition 19 property tax planning.** Whether a home or rental keeps its old taxable value turns on facts this guide doesn't address.

What do the legal words mean? Each one, in plain English.

Each term below appears in this guide.

Term	What it means
Probate	The court process that moves what a person owned into the names of the people who inherit it. In California it runs through the superior court in the county where the estate is administered.
Personal representative, executor	The person who settles an estate in probate. An executor is named in a will; an administrator is appointed when there's no will. California law sets the personal representative's fee.
Statutory fee	A fee set by a formula in the law. California's Probate Code sets one for the personal representative and one for the estate's attorney.
Gross value	The full value of property before subtracting any mortgage or other debt. California's probate fees are figured on it.
Extraordinary services	Probate work beyond the routine that a court can pay extra for, on top of the statutory fee.
Probate referee	A state-appointed appraiser who values estate property for the court and is paid a small commission on the value appraised.

Term	What it means
Revocable transfer on death (TOD) deed	A recorded deed that names who receives a California home or other residential property of one to four units at the owner's death, without probate. The owner can revoke it anytime before death.
Revocable living trust	A trust the owner controls and can change or cancel during life. Assets titled in it skip probate.
Successor trustee	The person who takes over a trust at the owner's death or incapacity, and hands out the assets under the trust's terms.
Funded trust	A trust that holds assets because they were retitled into its name. An unfunded trust avoids no probate.
Community property	Property a married couple or registered domestic partners acquire during the marriage or partnership while living in California. At the first death, half belongs to the survivor.
Quasi-community property	Property acquired while living in another state that would have been community property if acquired in California. California treats it the same way at death.
Community property with right of survivorship, joint tenancy	Forms of title that pass a co-owner's share to the surviving co-owner at death, without probate. The deed has to say so expressly.
Spousal property petition	A short court petition confirming that property passes to a surviving spouse or registered domestic partner without a full probate.
Small estate affidavit	A sworn statement that lets a successor collect a small estate's money and other personal property from a bank or other holder without a court case. It doesn't transfer real estate.
Beneficiary designation	The form on a retirement account or life insurance policy that names who receives it at death.

Term	What it means
401(k), IRA, 403(b)	Retirement accounts. A 401(k) or 403(b) comes through an employer. An individual retirement account (IRA) is opened by the owner.
Payable on death (POD), transfer on death (TOD)	A beneficiary named directly on a bank or brokerage account. The account passes to that person without probate.
Certificate of deposit (CD)	A bank deposit held for a set term at a set interest rate.
Department of Motor Vehicles (DMV)	California's vehicle agency. It registers vehicle titles in transfer-on-death form.
Estate tax	A tax on what a person leaves, paid by the estate before anyone inherits. California collects none for deaths since 2005.
Inheritance tax	A tax on what a person receives, set by that person's relationship to the one who died. California's applies only to deaths before June 8, 1982.
Transfer tax	A general name for estate, inheritance and gift taxes: taxes on wealth passing from one person to another.
Federal threshold, exclusion	The amount a person can leave before federal estate tax applies: \$15 million per person in 2026.
Taxable gifts	Generally, gifts made during life above the federal annual exclusion (\$19,000 per recipient in 2026). They count against the same federal threshold as the estate.
Cost basis	The value used to figure the taxable gain when property is sold. At death, inherited property can get a new cost basis, generally its value on the date of death. Retirement accounts don't get one.
Portability	A federal election, made on a timely filed estate tax return after the first spouse's death, that passes that spouse's unused threshold to the survivor. It's how a married couple gets to \$30 million.

Term	What it means
Proposition 19	The 2020 California ballot measure that narrowed the parent-to-child property tax exclusion to the family home and family farms.
Taxable value, reassessment	Taxable value is the value a county taxes a property on. A reassessment resets it, usually to market value, after a change in ownership.
Medi-Cal estate recovery	California's right to be repaid from some estates for benefits Medi-Cal paid during the member's life.
Ancillary probate	A second probate in another state where the person owned real estate.
AB 2016	A 2024 California law (Assembly Bill 2016) that raised the limit for passing a primary residence by short petition to \$750,000.
Probate Code, Civil Code, Vehicle Code, Revenue and Taxation Code, Welfare and Institutions Code, IRC	Parts of California's statutes, and the Internal Revenue Code (IRC), the federal tax law. Each citation on this page names the code and the section number.

Questions about the federal estate tax?

California has no estate or inheritance tax, but the federal estate tax can still apply. We're always glad to talk about how it works. For anything about drafting or choosing legal documents, talk with a California attorney.

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Important. This guide is general educational information about California probate law as of October 2026. It isn't legal advice or tax advice for your situation, and it isn't a substitute for the advice of an attorney licensed in California. California probate, trust, property tax and tax law changes; statute citations should be re-verified against the current California codes before any document is filed. Federal estate tax figures reflect Public Law 119-21 of 2025 (\$15 million per individual exemption, 2026) and should be confirmed against current IRS guidance. Taylored Tax isn't engaged in the practice of law. Sources for every statute and dollar figure above are available on request.