Estate Planning in California

2026

Nuts and Bolts — and a Few Hidden Screws

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Two Audiences, One Goal

For newer attorneys:

- Foundation to stay out of trouble

For experienced practitioners:

- Drafting jewels and hidden screws you can add to your forms today

Core theme:

- Estate planning is not document preparation. It is risk management.

The documents are the easy part. The counseling is the hard part.

What Really Drives Estate Planning in Ventura County

- 1. Probate avoidance and trust funding
- 2. Incapacity and elder vulnerability
- 3. Proposition 19 and property tax planning
- 4. Long-term care and Medi-Cal issue-spotting
- 5. Estate tax, basis, and higher net worth planning

The client's death is not the only event we are planning for. Decline often comes first.

Probate Reality

- Slow, expensive, and public
- Based on gross value, not equity — $1.5M home / $1.2M mortgage → fees on full $1.5M
- Ventura County: Dept. J-6, Juvenile Justice Center, Oxnard
- Even clean probates: 10–12 months

A well-drafted trust and DPOA avoid two things:

- Probate
- Conservatorship — public, expensive, slow, strips family of privacy and control

For most homeowners, avoiding both is basic consumer protection.

Where Plans Actually Fail

- Funding failures
- Property tax failures (Prop 19)
- Capacity / undue influence failures
- Medi-Cal planning failures
- Beneficiary designation failures

The plan fails if the power of attorney does not permit the agent to make gifts to himself or otherwise benefit himself.

Trust Design

Where the Real Decisions Are Made

Trusts for Couples

Default: joint trust

- Substantially all married couples own their home together — joint trust handles community property cleanly

Exception: significant separate property financial assets

- Merrill Lynch and similar institutions will not title a brokerage account in a joint trust as one spouse's separate property
- Separate trust required for those financial assets

Exception to the exception: separate property real estate

- Can go into a joint trust — deed and trust specify it as one spouse's separate property

The Basis Trap With Separate Trusts

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Joint community property trust:

- Both halves receive step-up in income tax basis at first death — the double step-up
- One of the most valuable tax benefits available to California married couples

Separate trust:

- There is a step-up in basis only on the assets in that spouse's trust when that spouse passes away
- When the other spouse passes away, there is no step-up in basis on the assets in their separate trust

Clients need to understand the basis consequences before they sign.

The Second Marriage Trust: A/B Structure

At first death, trust splits:

- B Trust (Exemption Trust) — deceased spouse's share → deceased spouse's children only
- A Trust (Survivor's Trust) — surviving spouse's share → surviving spouse's children only

The key mistake:

- Drafting equal division among all children — surviving spouse can amend their trust and redirect everything to their own children, cutting the deceased spouse's children's share in half

The correct default: each trust goes only to that spouse's own children

If clients want equal division among all children, the survivor's trust portion can be drafted to try to equalize as much as possible when both trusts are taken together

The Surviving Spouse With an Outdated A/B Trust

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Estate tax exemption is now $15 million per person — most clients are far below that threshold

What we actually do:

- Fund the B trust solely with a promissory note at no interest, due upon death of surviving spouse (Treas. Reg. § 1.7872-5T(c)(3))
- Surviving spouse does not want the hassle of administering a second trust — the note solves that

Important: no step-up in income tax basis on assets in the B trust at surviving spouse's death

Do not automatically administer an old A/B trust the way it was drafted. Analyze whether it still serves any purpose.

Distribution Structures: What Actually Works

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Staged distributions — my view:

- I use age 30 as a single distribution age. I have not seen a 30-year-old squander an inheritance.

Lifetime trusts — competing arguments:

- Problem: child files separate income tax return annually and resents it; no step-up in basis at child's death
- Reality: lawsuits against beneficiaries are rare; very few cases wish we had a lifetime trust
- For addiction/maturity problems: address specifically with a special needs or discretionary trust for that child

The jewel — co-trustee at 18:

Beneficiary becomes co-trustee of their share at 18. They learn investing and tax returns. By 30 they are ready.

Incapacity Standards: Two Physicians

The conventional approach:

- Require two physicians to certify that a settlor or trustee is incapacitated

The practical challenge:

- Occasionally hard to find a second physician who has examined the individual

The solution:

- Have doctors on call — there are physicians in Ventura County willing to visit a client and sign the incapacity letter
- Build those relationships before you need them

The incapacity letter mirrors the Probate Code language governing incapacity for conservatorship — defensible and court-tested.

Trustee Selection: The Two-Child Family

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Consider naming both children as co-trustees:

- Avoids favoritism; distributes administrative burden
- But: structural deadlock risk — must address in the document

Preferred: name a neutral tiebreaker

- A relative or family friend — not a permanent third trustee, but someone to resolve a specific impasse

If no one can be identified — court petition provision:

"If the co-trustees reach an impasse, either may petition the Superior Court to appoint a neutral third party to resolve the impasse. All reasonable costs shall be charged to the trust estate."

Funding

Where Plans Fall Apart

Funding: What I Do With Every Client

Real estate → into the trust

Bank accounts:

- Keep one account (usually checking) outside trust for convenience
- Single client: preferably name all beneficiaries as joint owners on checking account

Retirement plans → name individuals directly:

- Exception: portion to special needs trust — e.g., 1/3 Sally Staker, 1/3 John Staker, 1/3 SNT for Adam Staker

Refinance trap: if lender pulls property out of trust to close loan, it must be deeded back.

Non-Retirement Assets and Business Interests

CDs, savings, brokerage accounts (Merrill Lynch etc.):

- Retitle into trust as owner — not just beneficiary
- Naming the trust as beneficiary works, but the power of attorney must be in place in case the client becomes incapacitated

I cover this with every client before they leave

Business interests:

- Review LLC operating agreement — assignment restrictions, consent requirements, buy-sell provisions
- S-corp stock: confirm trust qualifies as eligible shareholder (QSST or ESBT)

Business interests require document review — not just signing an assignment of the interest to the trust.

Proposition 19

The Hard Way and the Easy Way

Proposition 19: The Equalization Problem

Scope: principal residence and qualifying family farms only.

For non-residential property:

- Prop 19 generally does not provide the parent-child exclusion — but an LLC strategy can prevent reassessment on property intended to stay in the family

For the principal residence:

- House worth $900,000 (Ventura County median), free and clear, two equal children
- Child A wants house, Child B wants cash, trust has no liquidity

Child A writing a check directly to Child B — assessor reassesses the one-half interest of the child being bought out

The solution: the hard way and the easy way.

Proposition 19: The Hard Way — Annotation .005

BOE Property Tax Annotation 625.0235.005:

- Trust borrows $450,000 (hard money loan) secured against home
- Child A receives home ($900K) subject to $450K loan → $450K net equity
- Child B receives $450K cash
- Trustee did the equalizing — parent-child exclusion applies to full value

The problem:

- Hard money loans are expensive — points, high interest, delays, underwriting

A private lender (friend or family) can make the loan to the trust instead

Proposition 19: The Easy Way — Annotation .025

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BOE Property Tax Annotation 625.0235.025 — the drafting jewel:

- Trust gives beneficiary the option to receive the property
- Beneficiary contributes funds to the trust to equalize the other beneficiaries
- <u>Other beneficiary's interest is an equitable charge — a right to receive payment, not ownership of the property</u>
- BOE accepted this structure — avoids hard money financing entirely

The trust must say this explicitly. See the appendix for the full language — it follows Annotation .025.

.005 = fix it with financing. .025 = draft it so you never need the loan.

Medi-Cal

Issue-Spotting and One Critical DPOA Jewel

Medi-Cal: The Essentials

The 2026 reset:

- California eliminated the asset test in 2024. Effective January 1, 2026, asset limits returned.
- The limit is now $130,000 for a single individual. Asset limits, look-back periods, and resource tracking are fully active. Asset planning matters.

Refer immediately to a Medi-Cal specialist attorney if you see:

- Spouse entering memory care or skilled nursing
- Large recent asset transfers
- Substantial home equity with declining health

Your documents should not make Medi-Cal impossible to solve later.

DPOA Jewel: Probate Code §§ 4264 & 4265

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PC § 4264 — express authorization required in the DPOA for:

- Creating, modifying, revoking, or terminating a trust
- Making gifts or transferring assets, including to the agent, where intended
- If the DPOA does not say it expressly, the agent cannot do it. Period.

PC § 4264 also provides:

If the agent is empowered to modify or revoke the principal's trust, the trust may be modified or revoked only as provided in the trust instrument.

PC § 4265 hard stop: agent cannot make, amend, or revoke the principal's will.

The DPOA enables. The trust permits. The will is frozen.

The Trap Inside the Trap

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Even with PC § 4264 authority:

- Most DPOA forms contain a self-dealing limitation — agent may not act in a way that personally benefits the agent
- In Medi-Cal planning, the agent who needs to act is almost always the spouse or child who also benefits from the transfer

Self-dealing prohibition + amendment authority = no authority at all

The DPOA must contain both:

- Express PC § 4264 authority to make gifts, transfer assets, modify or revoke trust, without limits
- Express authorization for the agent to benefit personally from those powers where intended

If the agent is also a beneficiary, the DPOA must say so explicitly.

Probate Shortcuts

Five Tools to Remember

Probate Shortcuts: Five to Remember

1. **Small Estate Affidavit — PC § 13100:**
- $208,850 threshold; personal property only; attach statutory form to back; 40-day wait

2. **Affidavit for Succession to Real Property of Small Value — PC § 13200:**
- $69,625 or less; any real property; filed with court clerk; six-month wait; no hearing

3. **Small Estate Set-Aside — PC §§ 6600–6613:**
- Net estate $107,900 or less (excluding liens, encumbrances, and PC § 6520 homestead); real and personal property; surviving spouse or minor children only; no waiting period

4. **Primary Residence Petition — PC § 13151 / AB 2016:**
- Primary residence only; $750,000 or less; 40-day wait; court order required

5. **Heggstad Petition — PC § 850:**
- Broad assignment: “We assign all our real and personal property to this trust.” Deed is the funding; assignment is the safety net.

Risk Management

How to Sleep at Night

Four Malpractice Categories

Unfunded trusts — if you handle funding, do it; if not, say so clearly in writing

Capacity & undue influence — meet privately, ask open-ended questions, document answers

Property tax mistakes — Prop 19 errors cost families tens of thousands over time

Beneficiary designation failures — the IRA does not care what the trust says

Your biggest risk is often not what you drafted. It is what you failed to coordinate.

Capacity Documentation: Red Flags and What to Do

Red flags: beneficiary speaks for client, isolation, sudden change, disinheritance, dependency, client cannot explain assets

My practice:

- Beneficiary in room is fine — until they start talking for the client or angling for more
- Then: stop the meeting, excuse the beneficiary, explore with client directly

Push back on outright gifts: trust for life, then to issue by representation? Five or ten years?

- But: some gifts are justified — a child who gave up a career to care for a parent for 20 years deserves real consideration.
- You cannot represent both the principal and the agent unless the client signs a waiver of conflict. I include that in my DPOA.

Document everything. Your file matters more than your memory.

Caregiver Gifts and the Certificate of Independent Review

Caregiver is broadly defined:

- Anyone not a relative who was compensated for services — stop and analyze the statutory definition; do not reduce it to simply "any paid person"

Gift over $5,000 — PC § 21380 applies:

- CIR required — confirms gift is voluntary, not product of undue influence
- Drafting attorney can now sign CIR in care-custodian context (PC § 21384(c)) — but for large gifts, bring in independent outside counsel

CIR is not a magic wand:

- Does not cure incapacity; does not eliminate every undue influence argument
- Used correctly, may remove the statutory presumption

Document the file as though the disappointed family member will read every page.

Beneficiary Designation Failures

At every signing, ask about every IRA and 401(k):

- Only retirement plans should name individuals directly — SECURE Act income tax reasons
- Everything else (life insurance, annuities, POD/TOD) → trust as beneficiary

I was retained as an expert witness:

- Attorney failed to ask who the beneficiary was on a substantial retirement plan
- In my opinion: breach of duty. You do not need to be a retirement specialist. You need to ask.

Ask every client. Document it. If they refuse to update, document that too.

Workflow

Make It a Process, Not a Meeting

Intake, Drafting & Post-Signing Checklists

Intake:

- Conflict check, asset list, family map, capacity screen, deeds, beneficiary designations, Prop 19 screen, Medi-Cal screen

Always include in drafting:

- DPOA: express PC § 4264 authority to gift, transfer, modify/revoke trust, without limits
- Trust: provision allowing agent under POA to amend or modify trust as contemplated by PC § 4264
- DPOA: self-dealing carveout; waiver of conflict between attorney and parties
- Trust: waiver of conflict between husband and wife
- Prop 19 equalization / equitable charge clause
- Beneficiary designation instructions in closing letter

Ask the client — their choice: co-trustee impasse provision

During signing meeting:

- Go over assets and trust funding; review beneficiary designations on retirement plans

Post-signing:

- Confirm deeds recorded, funding letter, beneficiary designation instructions, refinance trap warning

The Hidden Screws in 2026

- Prop 19 equalization — the clause allowing a beneficiary to contribute funds to the trust to equalize
- DPOA authority — express gifting and amendment powers, self-dealing carveout
- Caregiver gift analysis and Certificate of Independent Review
- Beneficiary designation coordination
- Discuss funding at the signing meeting
- Be aware of long-term Medi-Cal planning needs
- Co-trustee deadlock provisions

Estate planning is not a document. It is a process.

Questions & Discussion

I have shared my jewels with you today.

I don't pretend to know everything.

Does anyone have a jewel of their own they would like to share with the group?

Appendix: Prop 19 Equitable Charge Provision (BOE Annotation 625.0235.025)

Right of First Refusal; Distribution of Real Property:

- Each child who is an outright remainder beneficiary shall have the right to acquire any interest in real property held by the Trust, subject to the other terms of the Trust. The child must give written notice of exercise of this right to the Trustee within ninety (90) days after the Trustee sends notice that the Trust has become irrevocable.
- If more than one child exercises this right, the child offering the highest price, which shall not be less than the fair market value, shall have the right to acquire the property.
- The child acquiring the property may use his or her share of the trust estate (after reduction for a reasonable reserve) in whole or in part toward the purchase price and may contribute his or her own funds or other assets to the Trust as necessary to balance the distribution of the trust estate among the beneficiaries. The Trustee shall distribute such funds or assets to the other beneficiaries as required to carry out the above division of the trust estate.

The interest of the other beneficiaries with respect to such real property shall be limited to the right to receive their share of the balancing payment, and they shall not be deemed to have any beneficial ownership interest in the real property itself. To the extent necessary to secure payment of such balancing amount, their interest shall be in the nature of an equitable charge against the property.