

The first days after a death are usually a blur. Phones start ringing. Family flies in. Everyone looks to the “responsible” person to make decisions. That is often the worst time to make big legal or financial moves.

I have seen more damage done in the first two weeks after a death than in the entire rest of the estate administration. Not because people are careless, but because they are grieving, exhausted, and trying to be helpful.

This guide focuses on what *not* to do immediately after someone dies in California, and how those early choices affect probate, taxes, trusts, Medi-Cal, and inheritance planning. California has a dense web of rules. If you slow down a little in the beginning, you save time, money, and family relationships later.

First reality check: what actually needs to happen right away

In the first 24 to 72 hours, the true legal requirements are fairly limited. A medical professional must pronounce the death. A funeral home must be chosen so the body can be transported. A death certificate must be ordered.

You do *not* have to:

- notify every financial institution
- apply for probate
- retitle the house
- divide personal property
- call every distant relative

You also are not personally on the hook for the decedent’s debts just because you are the surviving spouse, child, or named executor. Creditors have a process. So does the court. The law gives you some breathing room, even if it does not feel that way.

What matters most in the first few days is not what you do, but what you avoid doing.

Immediate “do not do this yet” checklist

When I meet families within a week of a death, these are the actions I most often advise them *not* to take right away:

- Do not start distributing money or possessions, even “just a few things”
- Do not close or move bank, investment, or retirement accounts you do not own
- Do not sign any real estate documents (deeds, listing agreements, or transfer papers) without advice
- Do not use the decedent’s credit cards, PINs, or online accounts
- Do not throw away financial or legal papers, however unimportant they look

If you are already the trustee or executor and you have done one of these, it is not the end of the world. But each one can create avoidable legal or tax problems, especially in California.

Let us unpack why.

Do not divide or promise assets “informally”

The most common early mistake is emotional rather than technical. A sibling says, "Dad told me that watch was mine." A child wants to "just take a few things" from the house for comfort. A spouse writes checks to children because "that is what he would have wanted."

Verbally, those stories may be true. Legally, they may not matter.

In California, the person with authority to manage and distribute assets is either:

1. The trustee of a valid trust that owns those assets, or
2. The court-appointed personal representative in a probate case, or
3. In smaller estates, a person using a proper small estate affidavit or similar shortcut.

Until you know which bucket applies, you risk "stealing" from the estate without intending to, or at least creating uneven distributions that later need to be unwound. Courts look at the written will, the trust, title records, and account designations, not at verbal promises.

If you are wondering, "Do all wills in California have to go through probate?" the answer is: no, but many do. Whether probate is required depends on the total value and type of assets that did *not* pass by trust, joint ownership, or beneficiary designation. You do not know that on day one. That is why you should postpone handing out money or heirlooms until the legal picture is clear.

Do not rush to sell or transfer the house

Real estate is usually the largest asset in a California estate. It is also where I see some of the most damaging early mistakes: signing a listing agreement in the first week, recording a deed using some internet form, or "selling my house to my son for \$1 dollar" to keep it in the family.

Here are the key risks.

First, you may not yet know who legally owns the property. Was the house in a living trust? Was it held as community property with right of survivorship, joint tenancy, or tenants in common? Those details drive whether the house passes outside probate, whether a court order is required, and how the property tax basis and step-up work.

Second, moving the house too cheaply or too quickly can create tax and Medi-Cal problems. Selling a home to a child for \$1 is usually treated as a gift of the home's full fair market value, which may have gift and future capital gains consequences. It can also interfere with parent-child property tax exclusions and create trouble if you later need Medi-Cal to pay for long-term care.

Families also ask, "Is it wise to put your house in a living trust?" During lifetime, that is often a good idea to avoid probate. After death, though, the question changes. Now it is: "What is the best way to leave your house to your children?" That usually means taking advantage of step-up in basis, protecting from creditors or divorces where appropriate, and complying with California's property tax rules. None of that is served by a snap decision in the first week.

As for "Can a nursing home take your house if it is in a trust?" the answer is more complex. In California, Medi-Cal estate recovery rules and the "Medicaid 5-year lookback" people talk about online interact with how and when assets are transferred, and what type of trust is used. Dumping real estate into a last-minute irrevocable trust, or transferring it to children outright under pressure, can cause ineligibility or backfire badly. That is not a decision for the days right after a death.

Do not use the decedent's credit cards or online accounts

This one feels harmless to many families. A surviving spouse uses a joint card "like always." An adult child logs into online banking with saved credentials "just to pay some bills."

Once the owner has died, using their individual credit cards or accounts as if they were alive crosses the line into potential fraud, even when no one complains. Financial institutions and courts take a hard view of it.

If you are a joint account holder on a bank account, you can usually continue to use that account. If you are just an "authorized user" on a credit card, that authorization disappears at death. Same idea with online accounts: the fact that you know the password does not make you the legal owner.

For the executor or trustee, the right move is to get formally appointed, obtain certified copies of the death certificate, then present those to financial institutions. The accounts will be retitled or frozen in ways that match the will, trust, and beneficiary designations.

Trying to shortcut that process can undermine your credibility later, right when you are dealing with contentious relatives or skeptical judges.

Do not ignore or destroy paperwork

Very few people leave their legal and financial life in tidy, labeled folders. It is normal to find old statements, duplicate policies, and documents that look irrelevant. Tossing big stacks of paper into a trash bag may feel cathartic, but it is dangerous.

You particularly want to preserve:

- any will, codicil, or trust document
- deeds, especially if they mention "joint tenancy," "community property," or a trust
- life insurance policies and beneficiary designation forms
- retirement account statements (IRAs, 401(k)s, pensions)
- recent bank and brokerage statements
- tax returns for at least the last three years

Those records inform whether probate is required, which bank accounts avoid probate, which assets pass by beneficiary designation, and how to handle income and estate tax reporting. They also help answer: "What are the worst assets to inherit?" and "What are the six worst assets to inherit?" in your specific situation.

In general, highly taxed or complex assets, such as large traditional IRAs, annuities with embedded gain, and property with a low cost basis, are often less attractive than cash or assets with a full step-up. But you cannot analyze any of that if the documents are in a landfill.

Do not assume a will or trust "handles everything"

It is common to discover a will or trust and immediately relax: "Good, everything is taken care of." Sometimes it is, often it is not.

People ask, "Is it better to have a will or a trust in California?" For lifetime planning, a properly funded revocable living trust usually avoids probate and offers smoother administration. A will alone does not avoid probate if the estate exceeds the small estate threshold. But even a well-drawn trust can have problems.

What are the biggest mistakes people make with their will? I see these regularly:

First, naming an executor who is not actually able or willing to serve. Second, failing to update the will after divorce, remarriage, or births. Third, attempting to control retirement accounts, joint accounts, or life insurance through the will when those assets actually pass by beneficiary designation.

Trusts have their own pitfalls. What are common mistakes people make with trusts? Not funding the trust during life. Leaving out pivotal assets like the house. Giving poor instructions or vague distribution terms. Or misunderstanding the “5 by 5 rule in estate planning” and related rules.

The “5 by 5” or “5 of 5000” rule in trust practice refers to a power given to certain beneficiaries to withdraw the greater of 5,000 dollars or 5 percent of the trust each year. That can preserve certain tax advantages and prevent gifts from being considered “general powers of appointment” for estate tax inclusion. It is a technical rule, but early missteps, such as paying out more than allowed to a beneficiary with this kind of power, can have long-term consequences.

The bottom line: just finding a will or trust does not mean you can skip probate or skip legal advice. The safest approach is to gather the documents, resist the urge to act on them immediately, and have them reviewed in context.



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Probate timing myths and what really matters

There is a lot of confusion about deadlines. Online, people talk about a “2 year rule after death,” a “2 year rule for trusts,” a “5 year rule for a trust,” a “5 year rule on trusts,” and a “7 year rule on inheritance” or “7 year rule for trusts.” Many of those concepts come from other countries’ tax systems or from narrow corners of federal tax law.

For a California family dealing with a recent death, the practical timing issues are different.

In probate, there is no strict deadline by which you *must* open a case, but waiting too long can be risky. If you ignore probate and start acting as though you own estate assets, you could face personal liability. “What happens if you do not file probate in California?” Creditors may sue, real estate may become unmarketable due to unclear title, and family disputes can intensify. Banks may freeze accounts until a court appoints someone.

You also hear the question, “Why do you have to wait 10 months after probate?” There is no exact 10 month statute, but there are built-in waiting periods. In a typical probate, creditors have 4 months after letters are issued to file claims. Federal estate tax returns, if required, are due 9 months after death, with possible extension. Title companies and cautious attorneys often prefer to see those periods expire before final distribution or sale, which makes the entire process feel like a 10 to 12 month wait at a minimum.

Trust administrations have their own timelines. Beneficiaries usually have 120 days after receiving a trustee’s formal notice to contest the trust. That is one practical “2 year rule for trusts” misunderstanding I see, where people mix up that 120 day window with something they read about in another jurisdiction.

The “5 year rule for a trust” most often comes up in relation to inherited retirement accounts. Under federal rules, in some situations a beneficiary must withdraw the entire balance of an inherited IRA or similar account within 5 years. The newer 10 year rule also applies to many non-spouse beneficiaries. That is a federal tax issue, not a California probate rule, but it shapes how and when you take distributions. Again, not a decision to make in the first week.

The “7 year rule on inheritance” and “7 year rule for trusts” are usually references to the United Kingdom inheritance tax system, where gifts made more than 7 years before death escape certain taxes. That rule does not apply in California or under U.S. Federal estate tax law. It often appears online without that clarification, so people worry unnecessarily.

All of this is a long way of saying: there are deadlines, but they are not as immediate as your grief and your inbox might suggest. Your first job is to avoid damaging acts, not to master every timeline overnight.

Do not assume trusts avoid every tax or nursing home risk

Many people are shocked to learn that “Do trusts avoid inheritance tax?” is not a simple yes. In the U.S., there is no separate “inheritance tax” at the federal level, and California has no state estate or inheritance tax. Trusts can help manage or reduce estate and generation-skipping taxes in large estates, but by themselves they do not magically erase income tax or capital gains.

“What taxes do trusts avoid?” is the wrong starting question. Better questions are: which assets belong in a trust, what is the goal (probate avoidance, creditor protection, tax planning, Medi-Cal planning), and who is the right trustee.

There are real downsides to a trust too. “What is the downside of having a trust?” and “What is the downside of a living trust in California?” share some answers: cost to set up and maintain, the need to retitle assets properly, potential trustee fees, and the risk of poor drafting or careless funding. A revocable trust offers flexibility and control, but no asset protection for the person who created it. An irrevocable trust can offer protection or tax benefits, but with loss of control and a complex “Medicaid 5 year lookback” landscape if long-term care planning is involved.

“Which is better, a revocable or irrevocable trust?” depends entirely on your goals. Right after a death, the key is not to create or amend trusts in a rush out of fear. You may hear, “If you do not put the house in an irrevocable trust now, a nursing home will take it” or “Can I lose my home if my husband goes into a nursing home?” Those are serious planning issues, but not emergencies on day three of grief.

In California Medi-Cal planning, there are real tools to protect a spouse at home, but they require thoughtful, individualized work, not blanket transfers or last-minute deeds that can invalidate benefits or trigger penalties.

Do not name or change beneficiaries without context

Sometimes, a surviving spouse or adult child feels a wave of responsibility and starts changing beneficiary designations in the days after the funeral. Life insurance, IRAs, TOD (transfer on death) accounts, and payable-on-death bank accounts can all be retitled by surviving owners or beneficiaries who inherit outright.

"Who should I not name as a beneficiary?" is a question that should be asked calmly, not under pressure. In general, you should think very carefully before naming:

1. Minor children outright, rather than a trust for their benefit
2. Beneficiaries with serious creditor, addiction, or marital problems
3. Individuals who receive needs-based government benefits
4. People who are also your fiduciaries, if it creates conflicts
5. Distant relatives you have not seen in decades but feel guilty about

It is legally possible in many situations for a trustee to also be a beneficiary. "Can a trustee also be a beneficiary?" Yes, that is common in family trusts. The problem is not legal validity, but human behavior. A trustee-beneficiary needs clear guidance and often professional support to manage conflicts of interest.

Equally important is what *not* to funnel through a trust or a will. "What should you not put in a trust?" and "What are three things to avoid putting in a will?" can vary by case, but often include: certain retirement accounts where a trust is not a qualified beneficiary, assets you do not own yet or do not control, and vague personal promises or conditions that are hard to enforce.

None of those designation changes need to happen in the first week after a death. Starting with an inventory and a quiet review of the existing plan is far more valuable.

Do not underestimate tax consequences of inheritances

Another trap in the early weeks is treating every asset as if it were just "money." The tax consequences vary dramatically.

"How much tax do you pay if you inherit \$100,000?" In California, there is no state inheritance tax. If you receive \$100,000 in cash from a U.S. Citizen's estate, with no income earned on it yet, there is typically no income tax just for receiving it.

Things change if the \$100,000 is inside a traditional IRA, 401(k), or an annuity with built-in gain. Those are often "the six worst assets to inherit" or at least among the worst, because every withdrawal may be taxable income. The "5 year rule for a trust" or the 10 year rule for retirement accounts can determine how quickly those distributions must be taken.

Real estate, by contrast, usually receives a step-up in basis at death. That means that "What is the best way to leave your house to your children?" is often to let them inherit at death, not to gift it during life for a dollar. Gifting the house during life, especially at a very low price, can cost them thousands or hundreds of thousands in extra capital gains tax when they sell.

And "Which bank accounts avoid probate?" tends to be those that are held in trust, jointly with survivorship, or with proper POD / TOD designations. Those designations can be powerful, but if misused they create what I often

see as “the most common inheritance mistake”: accidentally disinheriting some children or beneficiaries because you [California Estate Planning](#) “just added one name” to an account or deed.

All of this is why moving money or changing titles quickly, before you understand what you are touching, is riskier than it looks.

Longer-term inheritance and trust mistakes to avoid

Not every mistake happens in the first week. Some unfold over months, as patience runs thin and people get tired of “paperwork.” Here are the bigger, slower traps I see most often:

- Rushing to close the estate before all debts, taxes, and claims are known
- Leaving inherited IRAs or annuities on autopilot without a withdrawal strategy
- Treating the trust as a simple checking account instead of keeping records and accountings
- Ignoring tensions among beneficiaries until they erupt into litigation
- Assuming “a trust is always better” and never asking, “What is better than a trust for my situation?”

The “best way to leave inheritance to your children” usually blends tools: sometimes a living trust, sometimes beneficiary designations, sometimes lifetime gifts, sometimes no trust at all for simple situations. A living trust is powerful, but not free. “What are the disadvantages of putting your house in a trust?” include cost, the risk of poor drafting, and confusion about ownership if the trust is never explained to the family.

“Do trusts avoid inheritance tax?” is less important in California than “Do our choices avoid avoidable fees, family warfare, and unnecessary income tax?”

And if you hear about a “\$10,000 death benefit,” know that group life policies, union benefits, or small burial benefits sometimes use that phrase, but amounts and eligibility vary. Do not assume you are entitled to a magic check. Ask for plan documents, not rumors.

A practical path forward in the first few weeks

So where does this leave you, standing in the kitchen with a stack of sympathy cards and a pile of unopened mail?

First, give yourself explicit permission *not* to solve the entire estate this week. You are allowed to say, “I am not ready to make decisions about the house yet” or “We will review Dad’s will once we have all his papers together.”

Second, focus on essentials: secure the home, care for dependents and pets, and arrange the funeral or memorial. At the same time, quietly collect legal and financial documents in one place and order multiple certified copies of the death certificate. Most California families do fine with 8 to 12 copies, but erring slightly high is easier than going back to reorder.

Third, before you sign any deed, listing agreement, major beneficiary change, or large distribution check, have someone who understands California probate and trust law look at the whole picture. That might be an attorney, a seasoned fiduciary, or a tax professional experienced with estates and trusts.

Finally, remember that the law in this area assumes you are human, grieving, and imperfect. The real harm comes less from a single small misstep and more from fast, irreversible decisions made without context. Slowing down a bit is not a luxury. For your future self and your family, it is one of the most valuable gifts you can give in the days after a loss.