

Inherited Property Playbook

Trusts, probate, and step-up basis. What changes about the transaction, who signs, how long it takes, and how the money moves. California rules.

Updated September 2026 · Reflects AB 2016 thresholds · Not legal or tax advice

Three ways an inherited house gets sold

Find out which one you're in before you do anything else. It changes the timeline more than any other factor.

PATH A

Living trust

The trust owns the house. A trustee signs. No court, no judge, no hearing.

List in days

PATH B

Probate

No trust. The court appoints someone to run the estate and decides how much rope they get.

List in 1 to 4 months

PATH C

Shortcut petition

Small estate, or a primary residence under \$750,000. Skips full probate with a simplified filing.

40-day wait, then file

Step-up basis, in one paragraph

The reason inherited property behaves differently from everything else you sell

Whatever a house was worth on the day the owner died becomes the heir's new cost basis. Mom bought it for \$200,000, it's worth \$700,000 when she passes, the kids inherit it at \$700,000. Sell at \$700,000 and the taxable gain is zero. Half a million in appreciation disappears for tax purposes.

That's why heirs so often sell right away, and it's why **the date-of-death value needs to be nailed down early**. In a trust, the family hires an appraiser, roughly \$400 to \$700, and it can be done retroactively. In probate, a court-appointed Probate Referee does it and the number is official.

Don't confuse this with property taxes

Step-up handles **capital gains**, which is federal income tax. It has nothing to do with the **property tax bill**, which is Prop 19 and a completely separate set of rules. Clients mix these two up constantly. Keep them separate when you explain it, and see the next section.

Prop 19 and what the heirs do with the house

The single biggest factor in whether an inherited house stays in the family or comes to market

Before 2021, a parent could hand a house to a kid and the kid kept the parent's low property tax bill, no questions asked. Rent it out, leave it empty, use it as a beach house, didn't matter. Prop 19 ended that in February 2021.

Now there is exactly one way to keep the low tax bill: **at least one of the kids has to move in and make it their own primary residence**. Everything else gets reassessed to today's market value.

SCENARIO 1

A child moves in

One of the heirs makes it their primary home and files for the homeowners' exemption within a year. The old low assessed value carries over, up to a cap.

Tax bill barely moves

SCENARIO 2

They rent it out

No exclusion at all. The county reassesses to full market value the year it transfers. This is the one that catches families by surprise.

Full reassessment

SCENARIO 3

Second home or empty

Same as a rental. Vacation house, kids' crash pad, sitting empty while they decide. None of it qualifies.

Full reassessment

What the cap actually is

Even when a child moves in, the protection isn't unlimited. The exclusion covers the parent's assessed value **plus \$1,044,586** for transfers between February 16, 2025 and February 15, 2027. That number gets adjusted every two years. Anything above that line gets added onto the new assessed value.

TYPICAL INLAND EMPIRE HOUSE · PARENTS BOUGHT IN 1995 · CHILD MOVES IN

Parents' assessed value after decades of Prop 13	\$300,000
Plus the exclusion	+ \$1,044,586
Protected up to	\$1,344,586
Market value today	\$850,000
Under the line, so the new assessed value is	\$300,000

Most houses in our market land under that line, which means a child who moves in keeps the parents' assessed value outright. At roughly 1.1%, that's about \$3,300 a year instead of the \$9,350 they'd pay on a fresh \$850,000 assessment. Call it six thousand dollars a year, every year, for as long as they live there.

SAME PARENTS, HIGHER-VALUE HOUSE · CHILD MOVES IN

Parents' assessed value	\$300,000
Protected up to	\$1,344,586
Market value today	\$1,600,000
Amount over the line	\$255,414
New assessed value	\$555,414

So on the bigger house they still come out way ahead of a full \$1,600,000 reassessment, but they don't get away clean.

Two traps that cost families the exclusion

01 The one-year filing deadline

The child has to file for the homeowners' exemption within **one year of the transfer**. Miss it and the exclusion is gone even though they moved in and did everything else right. Nobody at the county calls to remind them.

02 Moving out later undoes it

The protection only lasts as long as at least one eligible child keeps living there. The day it stops being their primary residence, the county reassesses to market value as of that date. A kid who moves in for three years and then rents it out gets the full tax bill anyway.

How to use this on a listing appointment

Ask early what the heirs plan to do with the house. If nobody's moving in, the property tax bill is about to triple and the math on keeping it as a rental usually falls apart. That family is selling, they just may not know it yet. If one of them *is* moving in, say so plainly: holding it may be worth thousands a year, and telling them that when you could have pushed for the listing is how you get the referral two years from now.

The other half of Prop 19, for your move-up sellers

Prop 19 also lets homeowners 55 or older, severely disabled homeowners, and wildfire victims carry their low assessed value to a new house **anywhere in California**, up to **three times in their life**. The old rules capped it at one move, usually within the same county. If you have a 60-year-old sitting on a 1998 tax basis who thinks they can't afford to move, this is the conversation that unsticks them.

Trust sale vs. probate sale

Same house, same market, completely different transaction

	TRUST SALE	PROBATE SALE
Who signs	The trustee , or the successor trustee if the original one died. All co-trustees must sign.	The executor (named in a will) or administrator (no will). Either one is called the personal representative.
Who picked them	The person who made the trust, years ago. Already decided.	The judge. Someone has to petition, and heirs can contest who gets appointed.
Proof of authority	Certification of Trust plus a certified death certificate. Get it on day one.	Letters issued by the court. Nothing happens before these exist. Read them, they state the authority level.
Time to list	Days. As soon as the certification is in hand.	4 weeks to 4 months, depending on the county's hearing calendar.
Who sets value	Private appraiser the trustee hires. Optional, but do it.	Court-appointed Probate Referee . Required. Fee is 0.1% of value.
Price floor	None. Trustee sells at market like anyone else.	Under limited authority, no less than 90% of the referee's appraised value.
Can heirs block it	No signing power. They can sue the trustee, which brings its own problems.	Yes. They get formal written notice and a window to object in writing.
Court hearing	Never.	Only under limited authority, and then your buyer can be outbid in the courtroom.
Death to close	45 to 75 days . A normal escrow.	6 to 12 months with full authority. 9 to 18 months with limited.
Cost to the family	An appraisal and normal closing costs.	Statutory attorney and representative fees, both calculated on gross value. See below.

What probate fees cost

California sets them by statute: 4% of the first \$100,000, 3% of the next \$100,000, 2% of the next \$800,000. That gets paid **twice**, once to the attorney and once to the personal representative. On a \$700,000 house that's about \$17,000 each, roughly \$34,000 total. And it's charged on the **gross value, not the equity**. A \$700,000 house with a \$500,000 mortgage still pays fees on \$700,000.

The one thing to check on a probate listing

Full authority or limited authority. Read the Letters before you take the listing.

FULL AUTHORITY

Sells like a normal house

- No court confirmation, no hearing, no overbidding.
- Representative accepts an offer directly.
- A **Notice of Proposed Action** goes to the heirs. They have **15 days** to object.
- If every heir signs a waiver, that wait disappears and you close immediately.
- Contingencies, normal financing, normal escrow. Treat it like any other transaction.

LIMITED AUTHORITY

The courtroom sale

- Price must be at least **90%** of the referee's appraisal.
- A Report of Sale and Petition for Order Confirming Sale gets filed. The hearing lands roughly **30 to 45 days out**.
- At the hearing, **anyone can show up and outbid your buyer**.
- Buyer typically puts down 10%, waives contingencies, and can still lose the house.
- The judge approves the commission, and it splits differently if an overbidder wins.

Why an estate ends up with limited authority

The authority belongs to the personal representative (the executor or administrator), not the heirs, though the representative is often one of the heirs. The judge sets it when they're appointed. Most people ask for full authority. It gets limited for one of four reasons:

1 A family member objected

When the probate petition is filed, any heir can object to full authority. If a sibling doesn't trust the one who's about to be in charge, this is how it usually happens. It's the most common reason.

2 The will says so

Some wills limit what the executor can do on their own, or rule out independent administration completely. The person who wrote it wanted a judge watching.

3 They couldn't get a big enough bond

A bond is an insurance policy that protects the heirs if the representative mishandles the money. If the representative can't qualify for one large enough, taking limited authority can lower it, because the sale money runs through the court.

4 The attorney asked for it on purpose

When the family is fighting, having a judge approve the price protects the representative. It's hard for a sibling to sue later over "you sold it too cheap" when a judge signed off on the number.

Full authority can still end up in court

Even with full authority, if an heir objects to the Notice of Proposed Action on a specific sale, that sale has to go to court for confirmation, overbidding and all. So on any probate listing, ask whether every heir is on board with the sale, not only what the Letters say.

The 10% deposit and the overbid

Both of these exist only in limited authority sales. Full authority sales have neither.

Why the deposit is so big

On a court confirmation sale the buyer puts down **10% of the purchase price**, not the 1% to 3% earnest money you see on a normal deal. On a \$526,000 offer that's \$52,600 up front.

The reason is that the judge is approving a sale on behalf of people who can't speak for themselves: heirs, creditors, sometimes minors. The court wants proof the buyer is real before anyone spends months on it. A 10% cashier's check filters out tire-kickers on day one.

Where the money goes

Who is the check made out to?	For the opening offer, almost always the escrow or title company , same as a normal transaction. For an overbid handed over in the courtroom , it's usually made payable to the estate , written as "Estate of [decedent's full name]." Some attorneys want it payable to escrow instead. This varies by attorney and by county, so call the estate's attorney two or three days before the hearing and ask how they want it written. Getting this wrong at the podium can cost the bid.
Does it get deposited right away?	The opening buyer's deposit goes into the escrow trust account within a few days of opening escrow and sits there. The estate cannot touch it. A courtroom overbid check is held by the estate's attorney at the hearing and only makes its way into escrow if that bidder wins.
Can it be wired instead?	For the opening offer, yes. A wire to escrow is normal and usually preferred. For a courtroom overbid, no. You can't produce a wire standing in front of a judge. That's the whole reason it's a cashier's check: physical, certified, verified on the spot, handed over in the room.
Does it sit in an escrow account?	Yes. Once the sale is confirmed, the deposit sits in escrow's trust account and becomes part of the buyer's funds at closing. These accounts don't pay interest. The estate doesn't see a dollar until escrow closes.
When does the buyer get it back?	Outbid at the hearing: full refund. A courtroom check that loses is usually handed straight back at the hearing. A deposit already sitting in escrow takes a few days to a couple of weeks to release. Sale isn't confirmed: refunded. Buyer walks after the court confirms: this is where it hurts. The estate can keep it and in some cases pursue the buyer for more.

The trick experienced overbidders use

You don't know your final bid until the bidding stops, so you can't know the exact 10% in advance. Bidders bring **several cashier's checks in different amounts**, say one for \$50,000 plus a few \$10,000s and \$5,000s, and combine them to hit 10% of whatever they end up winning at. The simpler version is one check for 10% of your absolute maximum. Overshooting is fine. The extra gets credited or refunded through escrow.

How an overbid actually plays out

1

DAY 0

The offer gets accepted

The personal representative signs. It feels like a normal deal. It isn't. Nothing is final until a judge says so.

2

WEEK 1

The petition gets filed

The attorney files a Report of Sale and Petition for Order Confirming Sale. The court sets a hearing, typically 30 to 45 days out.

3

WEEKS 1 TO 6

The sale gets advertised

The hearing is public and the sale is published. This is on purpose. The court wants other bidders to show up. The judge's job is to get the estate the best price, not to protect your buyer's deal.

4

HEARING DAY

The judge opens the floor

Anyone in the room can overbid. All they need is a cashier's check for 10% of what they intend to bid.

5

HEARING DAY

The first overbid has a required minimum

Set by statute, and big enough on purpose. It stops someone from taking the house for \$500 more and forces the first challenger to commit real money. The math is below.

6

HEARING DAY

It turns into a live auction

After the first overbid the judge sets the increments, usually \$1,000 to \$5,000 at a time, out loud in open court, until nobody bids higher.

7

HEARING DAY

The judge confirms the sale

Winner hands over the check. The original buyer gets their deposit back and goes home with nothing. Escrow closes 15 to 30 days later.

FIRST OVERBID, WORKED OUT ON A \$526,000 ACCEPTED OFFER

Accepted offer	\$526,000
Plus 10% of the first \$10,000	+ \$1,000
Plus 5% of the remaining \$516,000	+ \$25,800
Minimum first overbid	\$552,800

What this means for you and your buyer

A Your buyer has to be in the room

Miss the hearing and they can lose the house for \$2,800 more without ever getting a chance to respond. Send them in with a written maximum and enough cashier's checks to cover it.

B Your commission is on the line too

If your buyer gets outbid, the buyer's agent generally gets paid nothing. Inspections, the offer, six weeks of waiting, all of it gone. The court sets the commission and it follows whoever wins.

C Sit in on one before your first probate deal

Hearings are public and anyone can attend. It costs an afternoon and the whole process stops being theoretical.

D Most hearings have no overbidders

The property was already marketed and the accepted offer is usually close to market. This is a real risk, not a likely outcome. A buyer who hears about it in week six will walk and blame you. A buyer who hears about it on day one will either accept it or opt out early, and both of those are fine.

One more thing about contingencies

Court confirmation sales usually come with none. No loan contingency, no appraisal contingency, often no inspection contingency. The house sells as-is. That means all inspections happen **before** the offer, on the buyer's dime, with no guarantee they'll end up owning it. Financing is allowed, but the buyer can't walk if the loan falls apart, so they need to be verifiably qualified or paying cash.

What probate requires that a trust doesn't

Every one of these is a step the trustee simply skips

- ☐ Petition for Probate filed with the Superior Court in the county where they lived
- ☐ Notice published in a local newspaper of general circulation
- ☐ Written notice mailed to every heir and beneficiary
- ☐ A hearing, then Letters Testamentary or Letters of Administration issued
- ☐ A bond, unless the will waives it or all heirs agree to waive it
- ☐ Probate Referee appraisal, filed with the court as an Inventory and Appraisal
- ☐ A four-month window for creditors to file claims against the estate
- ☐ Notice of Proposed Action (full authority) or a confirmation hearing (limited authority)
- ☐ Final accounting and a court order before a single dollar reaches the heirs

When probate can be skipped

Thresholds for deaths on or after April 1, 2025. This is newer than most agents realize.

\$750,000

A primary residence at or under this value can transfer through a **simplified court petition** instead of full probate. File 40 days after death. This is AB 2016, and it takes a lot of California homes out of probate entirely.

\$208,850

Small estate affidavit for **personal property**: bank and investment accounts, collected with no court involvement at all after a 40-day wait.

\$69,625

Affidavit procedure for **real property other than the primary residence**. A small lot, a timeshare, a sliver of raw land.

Why this matters to you

If the house is worth \$700,000 and it was their primary residence, the family may be looking at a petition rather than a year of probate. Most people, and plenty of agents, don't know this changed. Mention it and you're the most useful person they've talked to.

The \$750,000 petition, step by step

Probate Code 13151. No will required. It works the same either way.

- 1**
DAY 40
Wait 40 days after the death
Nothing can be filed before that. If there's a will it still has to be lodged with the court within 30 days of death, whether or not anyone uses it.
- 2**
BEFORE FILING
Get the probate referee appraisal
A county-approved referee completes an Inventory and Appraisal showing the home is at or under \$750,000. Their fee is 0.1% of value, with a \$75 floor and a \$10,000 ceiling.
- 3**
FILING
File the petition
Form DE-310, Petition to Determine Succession to Real Property, in the Superior Court of the county where they lived. Filing fee runs roughly \$435 to \$465.
- 4**
WITHIN 5 BUSINESS DAYS
Notify every heir named in the petition
AB 2016 added this. The clock runs from the filing date, not the death. Miss it and the petition can be thrown out.
- 5**
15 DAYS BEFORE
Serve the Notice of Hearing
Form DE-120, out to all the same people at least 15 days ahead of the court date.
- 6**
HEARING
The judge signs the order
Form DE-315, Order Determining Succession. This is the document that says who owns the house now.
- 7**
AFTER
Record it with the county
The order gets recorded with a Preliminary Change of Ownership Report, plus the assessor's change-of-ownership form within 150 days. Title is now in the heirs' names and the house can be listed.

Start to finish this usually runs **three to five months** instead of twelve to eighteen, and costs a filing fee, a referee fee, and a few thousand in attorney time instead of tens of thousands in statutory fees.

Three things that disqualify it

Gross value, not equity. The mortgage does not get subtracted. A \$900,000 house with a \$400,000 loan does not qualify, even though the family only nets \$500,000. In our market this is the number one disqualifier.

It has to be the primary residence. A rental or a second home doesn't get the \$750,000 path. Other real property has its own much smaller affidavit limit.

Heirs take on the unsecured debts. Anyone who receives the house this way is personally on the hook for the decedent's unsecured debt, up to the value of what they received. Full probate gives you a hard four-month creditor cutoff; this shortcut does not. If the parent had real credit card or medical debt, full probate may genuinely be the safer route, and that's a conversation for their attorney.

Two faster paths worth asking about first

A surviving spouse usually skips all of this with a **Spousal Property Petition** (DE-221). No dollar limit at all, and it's quicker. If a husband or wife survived, ask about this before anything else.

Joint tenancy or a Transfer on Death deed means no court at all. An Affidavit of Death of Joint Tenant gets recorded and title clears. Check how the property was vested before assuming anyone needs a judge.

Disclosures and forms

Trustees and personal representatives get an exemption, and it's narrower than they think

If the trustee or representative **never lived in the house**, they're generally exempt from the TDS and the SPQ. Buyers' agents will push back on this. The exemption covers *not knowing*, not *not telling*. A daughter who grew up in the house and is now the trustee knows plenty, and hiding behind a form is how sellers get sued after closing.

Still required either way: lead-based paint on anything pre-1978, smoke and carbon monoxide detectors, water heater strapping, Megan's Law, and every material fact they know about. Assume you still owe the Natural Hazard Disclosure unless escrow tells you in writing that this sale is exempt.

C.A.R. TA

Trust Advisory. Give it to every trustee seller.

C.A.R. PA

Probate Advisory. The probate equivalent.

C.A.R. ESD

Exempt Seller Disclosure. What replaces the TDS.

C.A.R. AVID

Your own visual inspection. Still yours. Still required.

Seven things that kill these deals

Every one of them is findable before you take the listing

01 It's an irrevocable trust

There may be **no step-up at all**, which means a surprise tax bill big enough to make the family cancel the sale. Send them to a CPA before you spend a dollar on marketing.

02 Mom is alive but not competent

The successor trustee can't just decide they're in charge. Most trusts require one or two doctors' letters declaring incapacity first. Skip that step and the sale isn't valid.

03 A parent put a kid on title years ago

That half was a gift, and gifts carry the original basis. Mom's half steps up, the son's half doesn't, and he owes tax on decades of appreciation. Common, and nobody sees it coming.

04 Co-trustees who don't speak

Every document needs every signature. Two siblings as co-trustees, one of them overseas, is a problem you solve at listing, not at day 22 of escrow.

05 No Certification of Trust

Title and escrow will not close without it, and it's the most common source of delay on a trust sale. Ask for it the same day you take the listing.

06 Limited authority nobody flagged

You market it like a normal listing, get a great offer, then explain to the buyer that a stranger can take the house at a hearing. Read the Letters first.

07 An heir who thinks they're in charge

Legally the trustee or representative decides. Practically, a brother who thinks the price is low can torpedo the deal at week four. Get everyone in a room before you list.

Five questions on the first call

These five answers tell you what kind of transaction you're walking into

1 Is the house in a trust, or is it going through probate?

If they don't know, ask whether a lawyer has filed anything with the court. That answers it.

2 Can you send me the Certification of Trust, or the Letters?

One document tells you who signs and whether they can sell. Everything else waits on it.

3 If it's probate, do the Letters say full authority or limited?

This decides whether you're running a normal listing or a courtroom sale. It's printed right on them.

4 Has anyone done a date-of-death appraisal?

If not, get one moving now. It sets their tax basis, and it can still be done retroactively.

5 Who are all the heirs, and is everyone on the same page about selling?

The quiet sibling is the one who blows up the deal. Find out who they are before the market does.

A note on scope. This is a working reference for Provident Real Estate agents, not legal or tax advice. Trust language, incapacity provisions, and authority levels vary case by case. Probate timelines, deposit handling, and overbid procedure vary by county and by the attorney running the estate, so confirm the details on any specific deal with that attorney. Every one of these conversations should end with the family talking to their own attorney or CPA.