Jay Law | California estate planning attorneys

A GUIDE FOR CALIFORNIA FINANCIAL ADVISORS AND WEALTH MANAGERS

7 Estate Planning Issues to Watch For in Client Reviews

What to look for, what to raise, and what to ask your clients, even if they don't have a taxable estate.

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Jay Law, P.C. · 2026 edition · General information, not legal or tax advice. Examples use round, illustrative numbers.

You don't need an estate tax problem to have an estate planning problem.

While we deal with many taxable estates, this guide focuses on clients who do not yet have taxable estates. Even for clients who won't owe estate tax, how they own their homes, plan for incapacity, and name beneficiaries can have a significant impact on what their families receive.

01 Changes in family structure

Marriage and divorce change who a client wants to provide for and protect, and warrant revisiting estate plans. Divorce affects many gifts to the former spouse, but clients do not always properly finalize those changes.

WATCH FOR	RAISE
A recent marriage or remarriage	**Update the plan for the new spouse and, possibly, step-children**
A divorce, final or pending	**Update the plan and beneficiaries**

EXAMPLE: A DIVORCE WITHOUT A PLAN UPDATE

A client finalized their divorce in 2022, never remarried, and never updated his 401(k), which still names his ex-wife. While California's revocation law automatically revokes the couple's trust, the 401(k) is governed by federal law, so the account may still go to the ex-spouse.

> **ASK YOURSELF**
>
> *"Have your client's plan and beneficiaries been updated since a marriage or divorce?"*

02 Home titling and probate

How a home is owned affects whether it goes through probate. A *funded* living trust can generally avoid probate. If the client never deeded the home to their trust, the will's executor may find themselves in probate court.

WATCH FOR	RAISE
A home that hasn't been deeded to a trust	**Possible probate**
Property in another state	**Possible second probate**

EXAMPLE: A $1.8 MILLION HOME THAT GOES THROUGH PROBATE

$31,000
Statutory attorney fees

+

$31,000
Personal representative, if claimed

=

$62,000
Total statutory fees

If a $1.8 million home goes through probate, California law sets fees of about $31,000 for the attorney and another $31,000 for the executor (the person named in the will to settle the estate), if claimed. The amount comes from a sliding scale: 4% of the first $100,000, 3% of the next $100,000, 2% of the next $800,000 and 1% of the remaining $800,000.

There are additional costs on top of the statutory fees, and holding the home in a living trust avoids or minimizes many of them. Note that if the home was listed in the trust but never deeded over, a shorter court proceeding (a Heggstad petition) may confirm that it belongs to the trust without a full probate. But why take the risk? Just ensure the home is properly deeded over today.

> **ASK YOURSELF**
> *"Do you know how your client's home is titled?"*

03 Proposition 19

Children who inherit California rentals or second homes generally have them reassessed to market value, which could mean substantially higher property taxes every year. A family home can keep the parent's tax base, but only if a child moves in within a year and properly files several forms with the county assessor.

EXAMPLE: A PARENT'S PRIMARY HOME WORTH $2 MILLION, ASSESSED AT $300,000.

Parent's taxable value	Child qualifies	Rental or second home
$300,000	**~$955,000**	**$2 million**
Est. annual property tax: ~$3,300†	**Est. annual property tax:** ~$10,500†	**Est. annual property tax:** ~$22,000†

How it's calculated (transfers from Feb. 16, 2025, to Feb. 15, 2027)

Value limit	$300,000 + $1,044,586*	= $1,344,586
Amount above limit	$2,000,000 − $1,344,586	= $655,414
New taxable value	$300,000 + $655,414	= **$955,414**

*$1,044,586 is the Prop 19 exclusion amount published by the State Board of Equalization. †Tax estimates assume a 1.1% combined rate (the 1% base rate plus typical local assessments); actual rates vary by county and parcel.

ASK YOURSELF

"Would your client's children live in the home or rent it out?"
"Do they know the requirements for keeping their parent's tax base and are they executing on them?"

04 Incapacity

Before clients lose capacity, they need to provide someone with legal authority to manage their assets, including financial accounts. A durable power of attorney makes clear who should have that authority, and a properly executed trust makes it easy for the agent to transfer assets into the trust.

WATCH FOR	RAISE
No durable power of attorney or unclear agent	**Who can act?**
A trust with accounts still outside it	**Can these be put in the name of the trust, and does the person with POA know how to access those accounts?**

EXAMPLE: AN OUTDATED POWER OF ATTORNEY

A client develops dementia. Her power of attorney, signed in 2009, names her late husband as agent and no backup. Her daughter can't access any of her accounts, and the family may need to go to court.

> **ASK YOURSELF**
> *"Who could manage the accounts if your client couldn't? Would they know where to start?"*

05 Spousal property and tax basis

When one spouse dies, both halves of the couple's community property take a new tax basis equal to date-of-death value. Other assets reset only to the extent the deceased spouse owned them: all of the deceased spouse's separate property, half of property held in joint tenancy, and none of the surviving spouse's separate property. California residency does not necessarily decide which rule applies. The character of the asset under California law, the form of title, and the custodian's records all affect what the surviving spouse gets.

WATCH FOR	RAISE
Appreciated real estate or investment accounts titled "joint tenants" or "JTWROS"	**Retitling as community property with right of survivorship, or transferring to the trust with a community property declaration, so the custodian and the IRS see community character without a dispute**
A couple who acquired assets while living in a non-community property state	**Whether they have converted those assets to community property in writing. Without a written agreement, assets the survivor acquired get no step-up, and jointly titled assets get a half step-up**
Retirement accounts, annuities, and other income in respect of a decedent	**No basis step-up at the first death regardless of title**
A recently widowed client	**Whether the custodian stepped up the whole account or only half, and whether the character of the account supports correcting it**

EXAMPLE: A $2 MILLION PORTFOLIO AT THE FIRST DEATH

A couple bought a portfolio for $500,000. It is worth $2 million when one spouse dies. If the account is community property, the basis on the whole portfolio steps up to $2 million and the survivor can sell with little or no taxable gain. If only the deceased spouse's half steps up, the basis is $1.25 million and the survivor has about $750,000 of taxable gain. Custodians adjust only half when the account is registered as joint tenancy, even in California. The survivor may still be able to prove community character and claim the full adjustment, but that takes evidence, time, and often an amended return. Correct titling before death avoids the question.

> **ASK YOURSELF**
> *"If one spouse died tomorrow, would the custodian step up the whole account or only half, and could the survivor prove the answer should be the whole account?"*

06 Business and equity

Business owners need to account for who can act if they die or become incapacitated. Founders and executives also need to consider stock ownership, option deadlines, and company transfer restrictions, as well as the practical reality of how they will successfully transfer ownership and control without disrupting the underlying business.

WATCH FOR	RAISE
No successor or outdated ownership records	**Business succession**
RSUs, options, or a planned sale	**Equity terms and transfer rules**

EXAMPLE: A FOUNDER BEFORE A SALE

A founder holds her shares in her own name, not her trust, and her plan predates the company. If she died before a pending sale closed, the shares could go through probate and complicate both the deal and the management of the business.

> **ASK YOURSELF**
> *"Who could make business decisions if your client couldn't?"*

07 Beneficiary designations

Retirement accounts, life insurance, and transfer-on-death accounts generally pass to named beneficiaries, not according to the terms of a will or trust. Old designations can lead to the wrong person receiving an asset.

WATCH FOR	RAISE
Beneficiaries not updated after a life change	**Update designations**
A trust named as an IRA beneficiary	**Review trust and distribution rules**

EXAMPLE: LIFE INSURANCE THAT DOESN'T MATCH THE TRUST

A client's trust divides her estate equally among three children, but her life insurance still names only the two oldest. The policy generally pays those two, regardless of the trust.

> **ASK YOURSELF**
> *"When were your client's beneficiaries last checked?"*

Things to watch for in client reviews

WATCH FOR	RAISE
☐ Marriage, divorce, or remarriage	Changes in family structure
☐ Home owned individually or outside the trust	Home titling and probate
☐ Children expected to inherit a home or rental	Proposition 19
☐ No power of attorney or unclear agent	Incapacity
☐ Joint tenancy title or a recently widowed client	Spousal property and tax basis
☐ Business, equity awards, or a planned sale	Business and equity
☐ Beneficiaries not updated after a life change	Beneficiary designations

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Meet with Travis Neal.

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