

PREVENTING ESTATE DISASTERS

An Overview of Crucial Estate Planning Topics with Daniel Van Slyke, Attorney at Law

Welcome to the Senior PrimeTime Resource Guide! This handbook provides a high-level, clear overview of the crucial estate planning topics covered by **Daniel Van Slyke, Attorney at Law**, on Senior PrimeTime Episode 5. Through his years of litigation experience dealing with 'dead person files,' Daniel has seen firsthand how easily family legacies can be damaged by incomplete or unexecuted plans. This guide translates those complex legal lessons into plain English to help you and your family navigate these essential decisions with absolute confidence.

Part 1: The Courtroom Trap — Wills, Probate, and California Fees

Many seniors believe that writing a simple Will is enough to protect their family. However, a Will is merely a piece of paper until a probate judge admits it to court and issues 'letters testamentary.' A Will-based estate plan actually forces your family into **Probate Court** — a public, highly bureaucratic lawsuit where a judge determines who inherits your property.

The True Costs of Probate:

- **Loss of Privacy:** Because probate is a public court proceeding, your family's assets, debts, and personal details become public record, exposing grieving heirs to predators and scammers.
- **Time Delays:** In congested court systems like Los Angeles, getting an initial hearing takes months, and the complete process frequently drags on for years.
- **Statutory Fees:** California law sets a mandatory minimum fee that must be paid to both the attorney and the executor/administrator. These fees are based on the gross value of the estate, regardless of debt.

California Statutory Probate Fees (Base Minimums)

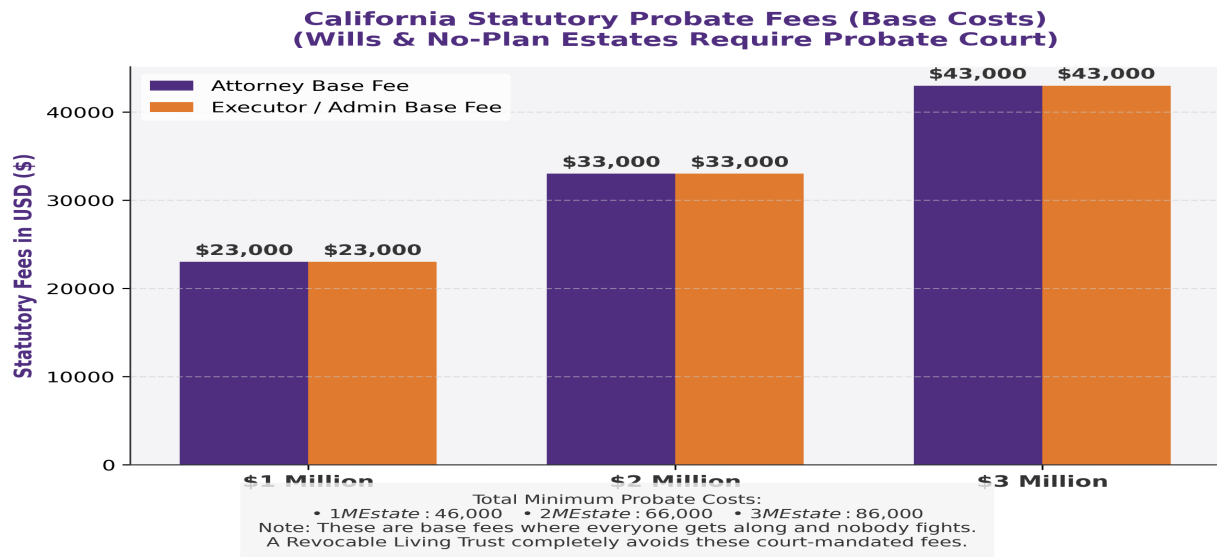


Figure 1: Statutory probate fees under California law, paid twice (to both attorney and executor).

Estimated Base Costs of California Probate Court

Gross Estate Value	Attorney Statutory Fee	Executor Statutory Fee	Total Base Cost
\$100,000	\$4,000	\$4,000	\$8,000
\$500,000	\$13,000	\$13,000	\$26,000
\$1,000,000 (Modest LA Home)	\$23,000	\$23,000	\$46,000
\$2,000,000	\$33,000	\$33,000	\$66,000
\$3,000,000	\$43,000	\$43,000	\$86,000

California Fee Rule: Probate fees are calculated on the *gross value* of real estate. If you own a \$1,000,000 home with an \$800,000 mortgage, the statutory probate fee is still calculated on the full \$1,000,000, costing your family a minimum of **\$46,000** in base fees.

Part 2: Why Sibling Co-Trustees Fail (And the Fiduciary Solution)

A common mistake made by well-meaning parents is appointing all of their adult children to serve as co-trustees. While done to show equality, forcing siblings who do not naturally get along to manage a trust together is a recipe for disaster. Family dynamics, old childhood rivalries, and emotional resentments frequently derail trust administration, leading to gridlock, accusations of financial mismanagement, and expensive court litigation.

The Economical, Licensed Solution: Professional Private Fiduciaries

In California, an excellent alternative is naming a **Professional Private Fiduciary** as successor trustee. A fiduciary is a licensed, bonded professional regulated by the State. Because they are entirely objective and independent, they offer several major advantages:

- **No Emotional Baggage:** Fiduciaries carry no family history or sibling rivalry, ensuring your instructions are carried out objectively and strictly.
- **Professional Competence:** Fiduciaries undergo regular training and are experts in accounting, filing complex trust tax returns, and managing asset liquidations lawfully.
- **Shielding Your Heirs:** Appointing a professional private fiduciary shields your children from the immense work and legal liability of acting as a trustee, often saving the family relationship itself.

The 3 Dynamic Roles of a Revocable Living Trust

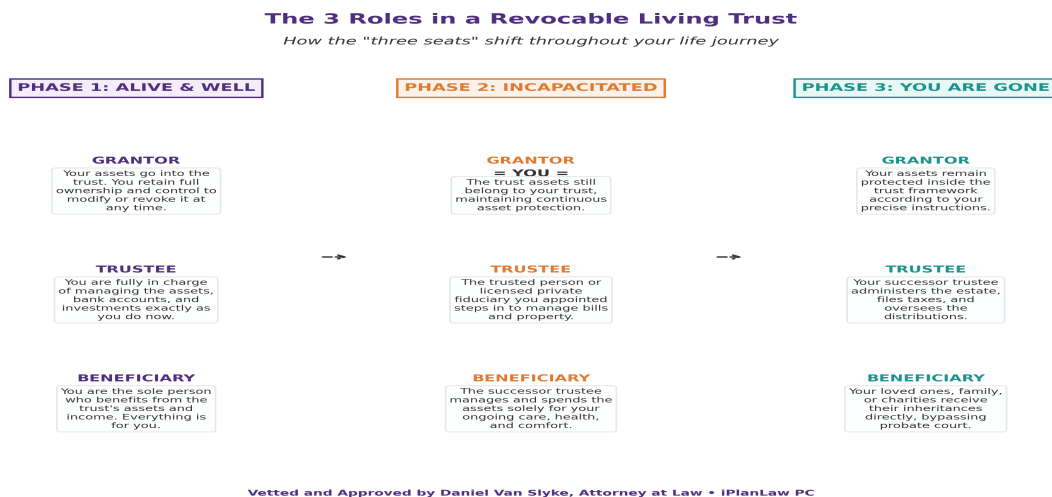


Figure 2: How your role shifts dynamically through your lifetime, incapacity, and eventual passing.

Part 3: The 'Empty Trust' Pitfall — Funding and Refinancing

A Revocable Living Trust is the single most effective tool to avoid probate, but it has one major limitation: **it only controls the assets that are actually transferred into it.** An estate plan without 'funding' is like buying a beautiful safe but leaving your valuables scattered on the counter. If your assets remain in your individual name at death, your family must still go through a probate proceeding.

The Bank Refinancing Trap:

A frequent tragedy Daniel encounters occurs during a home refinance. To secure a new mortgage,

lenders and title companies will often deed your home *out* of the trust and back into your individual name to process the loan. They routinely fail to deed the house back *into* the trust once the refinance is complete. If you pass away without catching this, your home will be fully exposed to probate court. Regularly reviewing your deed records and working with an attorney is the only way to safeguard your legacy against this hidden trap.

Part 4: The 'Sticky Note' Trap — Fights Over Sentimental Items

Many families assume that the biggest courtroom fights must be over large sums of money. Surprisingly, the most bitter and expensive litigation often involves items of purely sentimental value — what Daniel refers to as 'tangible personal property' (furniture, jewelry, old photos, or heirlooms). In one shocking case, siblings spent tens of thousands of dollars in legal fees fighting over a **Raggedy Ann doll worth less than \$50**.

Why Sticky Notes Do Not Work:

Many seniors put sticky notes on the back of paintings or jewelry to dictate who inherits what. This method is a complete legal disaster for three reasons:

1. **Not Legally Enforceable:** Sticky notes are not valid, signed testamentary documents.
2. **They Fall Off:** Notes easily peel off, get lost, or are destroyed over time.
3. **Tampering Risks:** The first person to enter the house after you pass away can easily re-arrange, swap, or discard the notes to suit their own personal preferences.

The Solution: The only safe, legally binding method to distribute sentimental items is through a formal **Tangible Personal Property Memorandum** linked to your Revocable Living Trust.

Part 5: Incapacity Planning — The 'Complete and Nutritious' Estate Plan

A complete, secure estate plan is not just about what happens after you pass away. It is equally about protecting your medical, physical, and financial well-being while you are alive but unable to make decisions due to sudden illness, accident, or cognitive decline.

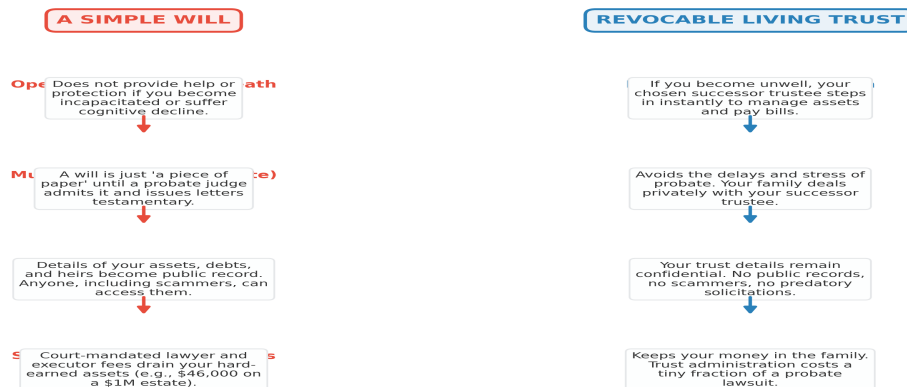
To ensure you are fully protected, a complete plan must always include:

- **Durable Power of Attorney for Assets (DPOA):** Empowers a trusted individual to manage non-trust assets (such as retirement accounts, Social Security benefits, or IRS taxes) and pay your bills if you become incapacitated.
- **Advanced Healthcare Directive (AHCD):** Allows you to appoint a medical decision-maker (healthcare agent) and outline your specific choices regarding end-of-life care, ensuring doctors and hospitals know exactly who is authorized to speak on your behalf.
- **The Age 18 Rule:** The moment your child or grandchild turns 18, parents no longer have the automatic presumptive legal right to access their medical records or make healthcare decisions. Every adult, starting at age 18, needs an Advanced Healthcare Directive in place.

Procedural Pathway: Will vs. Revocable Living Trust

Pathway to Your Legacy: Wills vs. Revocable Living Trusts

Which route will your estate and loved ones take?



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Figure 3: Side-by-side comparison of private trust administration versus a public court probate lawsuit.

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