

Bank accounts look simple on paper. A name on the statement, a balance, maybe a co-owner. From a legal standpoint, though, the way those accounts are titled often matters more than the balance itself.

After nearly every death I have handled as an estate planning attorney, families fall into one of two groups. The first group settles the estate in a few months with minimal court involvement, lower legal fees, and fewer arguments. The second group spends a year or more in probate, pays far more in costs, and risks permanent damage to family relationships. The difference usually starts at the bank.

This guide walks through how account titling, beneficiary designations, and simple planning choices can help your family avoid unnecessary probate, protect inheritances, and coordinate with your broader estate and long term care planning.

Probate in plain language

Probate is the court process that transfers a deceased person's individually owned assets to their heirs, either under a will or, if there is no will, under state law. It is not always terrible, but it is never fast, never free, and rarely private.

In a typical probate case in many states, you are looking at:

- Several months to a year (or more if there is conflict)
- Court filing fees and publication costs
- Attorney's fees that often range from a few thousand dollars for a simple estate to five figures for anything contested or complex
- Public records of what the person owned and who inherited it

The most common misconception is that having a will avoids probate. It does not. A will is a ticket into probate, not a ticket around it. Bank accounts in the decedent's sole name with no beneficiary need probate before the bank can legally release funds to anyone.

That brings us to a more practical question: which bank accounts avoid probate, and how do you title them correctly without creating a different problem.

How account titling actually works

Banks generally recognize a few common ownership structures, each with its own consequences for probate, taxes, and family dynamics.

Individual accounts

An individual account has a single owner and no beneficiary. On death, that account is frozen and becomes part of the probate estate. The only person who can access it is the court appointed executor or personal representative.

Individual accounts are sometimes appropriate for people who need tight control or who expect their will and probate process to handle distribution cleanly. In practice, these accounts often cause unnecessary delay and expense when families need cash to pay for funerals, last bills, or just to keep life moving.

Joint with right of survivorship

Joint accounts with right of survivorship are very common between spouses, and increasingly common between parents and adult children. When one owner dies, the surviving owner becomes the sole owner by operation of law. Those funds do not go through probate and do not follow the will.

That simplicity is powerful, but it cuts both ways. If a parent adds one child as a joint owner for “convenience,” intending that the child will share the money with siblings, the law does not require sharing. The surviving joint owner owns the account outright. If that child faces a divorce, lawsuit, or creditor issue, the entire balance is available to those creditors, even though it feels like “mom’s money.”

From a planning perspective, joint ownership is a tool to be used carefully, not a default solution.

Payable on death and transfer on death designations

Payable on death (POD) is the standard beneficiary designation for bank accounts and CDs. Transfer on death (TOD) is more common on investment and brokerage accounts, but some banks also use it. While the account owner is alive, the beneficiary has no rights. When the owner dies, the beneficiary presents a death certificate and receives the funds directly, outside of probate.

This is often the cleanest way to keep bank accounts out of probate without giving a child current ownership or exposing the money to their creditors. The key is to coordinate POD and TOD designations with your will or trust, rather than letting the bank’s default paperwork drive your estate plan.

Accounts owned by a trust

If you have a revocable living trust, it can own bank accounts. The trust agreement then controls what happens on your death, and your successor trustee can immediately access the funds without going through probate. This is a central piece of comprehensive estate planning for many families.

Trust owned accounts are particularly helpful when:

- You have a blended family and want to provide for a spouse but preserve assets for children from a prior relationship
- You have beneficiaries with disabilities who may need a special needs trust to preserve benefits
- You worry about a beneficiary’s spending habits or creditors
- You own property in more than one state and want to avoid multiple probates

Simply signing a trust is not enough. You have to retitle the accounts to the trust, or at least name the trust as beneficiary, for the plan to work.

The most common inheritance mistake: mismatched planning

By far the most common inheritance mistake I see is this: the will or trust says one thing, and the account titles and beneficiary designations say something very different.

A parent’s will might carefully divide everything among three children. Years later, during a banking visit, one child is added as a joint owner on the main checking account “for convenience.” That child now receives the entire account by survivorship. The will still divides “the rest,” but the largest liquid asset never touches the estate.

From the lawyer’s chair, it is completely predictable. From the family’s perspective, it feels like a betrayal: “That is not what mom wanted.” Yet the bank is not wrong, and the joint owner is not required to hand anything over.

Comprehensive estate planning tries to avoid this mismatch. That means taking a coordinated approach to wills, trusts, powers of attorney, beneficiary designations, and account titling, rather than treating each in isolation.

What is comprehensive estate planning?

Many people think “estate planning” means a simple will and maybe a power of attorney. Comprehensive estate planning is broader. It usually involves four coordinated layers.

First, you decide who manages things if you become incapacitated. That includes financial powers of attorney and health care directives. Second, you decide who handles and receives your estate after death, usually through a will and, for many families, a revocable living trust. Third, you line up beneficiary designations, account titling, and real estate deeds so they support, not undermine, those documents. Fourth, if appropriate, you consider advanced tools like irrevocable trusts, business succession arrangements, or tax planning for larger estates.

The right level of planning depends on your goals, your assets, your family situation, and your tolerance for complexity. For some clients, a well drafted will with properly titled accounts is enough. For others, ignoring long term care and Medicaid issues would be dangerous, so we discuss whether an irrevocable trust and the Medicaid 5 year lookback should be part of the plan.

Bank accounts that typically avoid probate

People often ask which bank accounts avoid probate. The answer is less about the type of account and more about how it is titled. Most basic account types can bypass probate if set up correctly.

Here is a simple checklist of common approaches that generally avoid probate when properly implemented:

- Joint accounts with right of survivorship, where the surviving joint owner becomes full owner at death
- Accounts with a valid payable on death (POD) beneficiary designation
- Accounts titled in the name of a revocable living trust
- Certain retirement accounts and annuities with designated beneficiaries, which pass under contract rather than through the estate
- Some state specific transfer on death account structures offered by banks or credit unions

Each of these has trade offs. For example, jointly owned accounts may expose funds to another person’s creditors. POD accounts leave funds outright to beneficiaries, even if that upsets the balance achieved in your will or trust. Trust accounts add a layer of administration, but provide flexibility and protection.

The key is intentionality. If you can look at each significant account and explain exactly how and to whom it will pass on death, and that answer matches your broader plan, you are ahead of most people.

Who should you not name as a beneficiary?

Beneficiary designations feel simple, which is why they are often done in haste at a bank counter or during a quick HR enrollment. Certain choices almost always lead to trouble.

You generally want to avoid naming:

- Minor children directly, because a court guardianship or conservatorship will likely be required to handle the funds

- A person with significant disabilities who relies on Medicaid or SSI, because an outright inheritance can disqualify them from benefits
- Someone with serious creditor problems, addictions, or a history of financial mismanagement, because the inheritance may evaporate or be seized
- People you do not intend to benefit long term, such as a new romantic partner when your legal obligations to a spouse or children remain unresolved
- “My estate” as beneficiary of retirement accounts or life insurance, unless part of a deliberate tax and creditor protection strategy

Instead, consider using a trust as beneficiary in many of those cases. For example, a special needs trust for a disabled child, or a spendthrift trust for a child with debt issues.

This is where coordinated planning shines. You can often answer “Who should I not name as a beneficiary?” only after you understand the person’s broader situation, your state’s laws, and your own priorities.

Houses, wills, trusts, and nursing homes

Bank accounts are only part of the story. Real estate, particularly the family home, creates its own set of questions and anxieties.

Is it better to leave a house in a will or a trust?

For a modest, debt free home in a state with a straightforward probate process, leaving the house in a will may be acceptable. Probate will transfer the property to your heirs, and the process might be manageable if the rest of your assets are simple.

That said, a revocable living trust usually offers more control and less delay. If the house is titled in the name of your trust, your successor trustee can manage, rent, or sell the property immediately after death, often without court intervention. This is particularly useful when:

- Children live out of state and cannot easily handle local probate
- You own property in more than one state
- You expect conflict among heirs
- You want to stagger distributions or protect the home from a child’s creditors

So there is no universal answer, but for many families, using a trust for the home is the “easier on your kids” choice, even if it costs more to set up.

What is the best way to leave your house to your children?

That depends on your goals. Some parents want the children to sell and split proceeds. Others want the house kept in the family, at least for a while. Some have a child already living there.

Common options include:

- Titling the house in a revocable trust and giving the trustee instructions on sale, occupancy, or buyout rights
- Using a transfer on death deed, in states that allow them, to pass the house directly on death without probate
- Leaving the house under a will, sometimes with a direction that the executor sell it and divide the proceeds

The “best” method hinges on family dynamics, tax considerations, and long term care planning. What you absolutely want to avoid is an unclear plan that triggers fights over who moves in, who pays expenses, and who is

“owed” what.

Nursing homes, Medicaid, and house protection

Families also worry about whether a nursing home can take the house if it is in a trust. That question is more about Medicaid rules than about the nursing home itself.

Medicaid helps pay nursing home costs for people with limited assets. To prevent last minute transfers, most states apply a Medicaid 5 year lookback period. If you transfer assets for less than fair market value during that period, including into certain irrevocable trusts, Medicaid can impose a penalty period before it will pay.

So how to avoid the Medicaid 5 year lookback? The honest answer is that you cannot avoid it if you are already within the window and need care. The better approach is early planning. Some families use properly structured irrevocable trusts to move the home and other assets out of their name more than five years before care is needed. After that period, those assets may be better protected from Medicaid recovery efforts, subject to very specific state rules.

This planning is complicated, and there is no simple “Medicaid loophole” that safely hides assets at the last minute. Anyone selling an easy fix is either oversimplifying or ignoring key rules.

Irrevocable trusts, the 5 year rule, and the so called 7 year rule

Irrevocable trusts come up in two primary contexts: tax planning and asset protection, including Medicaid planning. You lose direct control, but you may gain protection and tax benefits.

The “5 year rule for irrevocable trusts” most clients ask about is really the Medicaid 5 year lookback. Transfers to an irrevocable trust are treated as gifts, and if made within five years before applying for long term care Medicaid, they can trigger a penalty. Different states treat specific types of trusts differently, so the exact impact depends on local law and careful drafting.

You may also hear about the 7 year rule for trusts. That phrase comes from United Kingdom inheritance tax rules, not from U.S. Law. In the U.K., certain gifts fall out of the taxable estate if the donor survives seven years. In the U.S., we instead have a lifetime federal estate and gift tax exemption, and most transfers to an irrevocable trust are “taxable gifts” that use up part of that exemption, but they do not disappear after seven years.

Clients sometimes repeat lines they have heard online, such as “there are only three reasons you should have an irrevocable trust.” In reality, I see a handful of recurring reasons:

- Reducing federal or state estate taxes for larger estates
- Protecting assets from future creditors or long term care expenses, within the law
- Providing for a loved one with special needs, or a beneficiary who should not receive assets outright

Those are not the only reasons, but they are common. The downside of putting your house in an irrevocable trust is that you give up direct control. You typically cannot freely sell or refinance without the trustee’s cooperation, and you may limit your ability to change course if family relationships or laws shift. If the trust is not drafted correctly, you might also lose favorable tax treatment on sale or at death.

This is why irrevocable trusts should be created only after a thorough discussion of risks, not as a quick “Medicaid loophole” solution.

The 5 by 5 rule in estate planning

Another concept that confuses people is the 5 by 5 rule. In trust planning, a “5 and 5 power” usually refers to a beneficiary’s right to withdraw the greater of 5 percent of the trust principal or 5,000 dollars per year. This power can have important tax consequences, particularly for older irrevocable trusts.

From a beneficiary’s perspective, this may feel like a guaranteed annual withdrawal right. From a drafting perspective, it can preserve certain tax benefits while limiting how much a beneficiary can demand. Most people encounter the term only when dealing with older family trusts or advanced tax driven plans.

In routine estate planning for a house, bank accounts, and typical retirement savings, the 5 by 5 rule is usually not a central concern, but you may see it referenced in trust documents.

Taxes, inheritances, and gifting to adult children

Many planning questions eventually lead to taxes. Here are a few of the most frequent that come up in client meetings.

How much can you inherit from your parents without paying taxes?

For federal purposes, as of 2024, the estate and gift tax exemption is in the range of 13 million dollars per person. That means most people can leave assets well into seven figures to children without incurring federal estate tax. That exemption is scheduled to decrease after 2025 unless Congress acts, and some states have their own separate estate or inheritance taxes with much lower thresholds.

Income tax is different. Heirs usually do not pay income tax on an inheritance itself, but they may owe income tax on distributions from pre tax retirement accounts, or on income produced by inherited assets. The details depend on the type of asset.

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When clients ask “How much can you inherit from your parents without paying taxes?” the practical answer, for a typical middle class estate, is “likely all of it, at least from a federal estate tax perspective,” but with important caveats for retirement accounts and state law.

What is the best way to gift money to an adult child?

If your goal is to help a child now rather than later, you have options. Direct gifts are simple and often appropriate. Under federal law, you can give up to a certain annual amount per recipient each year without even using your lifetime exemption; that number adjusts over time. Larger gifts may require a gift tax return, but rarely require actual tax payment unless you have already used most of your lifetime exemption.

Sometimes, though, the “best” way is through a trust. If you worry that a child will spend unwisely, or may divorce soon, a trust can provide structure and protection. For a child with special needs, a properly drafted trust can preserve public benefits. The trade off is complexity and cost.

One important tip: avoid naming your child as joint owner on your main bank account as a “gift” or for convenience. That move can create tax confusion, creditor exposure, and inheritance disputes. A separate account, a trust, or a clear gift is usually cleaner.

What should not be included in a will

A will is powerful but not all powerful. Certain things do not belong in it.

Beneficiary designations for life insurance, retirement accounts, and many financial products are controlled by the contract, not by your will. If your will says one child gets your IRA but the account lists another child as beneficiary, the account wins.

You should also avoid detailed instructions that are better handled through other documents, such as day to day health care choices or funeral arrangements that need immediate attention. Some people also try to cram complex long term trusts into a simple will, creating ambiguity that leads to litigation.

The practical move is to keep the will focused on naming an executor, naming guardians for minor children, and stating who inherits the balance of your probate estate, while letting properly coordinated beneficiary designations and trusts handle the rest.

The cost of doing it right

Clients always ask, often a bit sheepishly, “How much does it cost to have an estate planning attorney?” The honest answer is that it varies widely by region, by attorney experience, and by the complexity of your situation.

For a straightforward will, powers of attorney, and basic guidance on titling accounts, many lawyers in smaller markets charge somewhere from several hundred to a couple of thousand dollars. A full trust based, comprehensive estate plan with tax and long term care considerations may cost several thousand more. Large, complex estates can run much higher.

What matters more than any single number is value. A modest investment now can save your heirs multiples of that amount in probate costs, delay, and conflict. On the other hand, there is no need to buy an irrevocable trust, elaborate tax structures, or business entities if your situation does not justify them.

The key is to find an attorney who is willing to say both “yes, you should do this” and “no, you do not need that.”

Pulling it together: practical next steps

Proper titling of bank accounts, clear beneficiary [Parker Law Offices orange county trust administration lawyer](#) designations, and a coherent estate plan spare your family confusion and conflict at a hard time. The technical rules about probate, Medicaid, trusts, and taxes are only tools. What matters is how they serve your real world goals.

For most people, a few concrete steps make a huge difference.

First, make a complete list of your financial accounts, including ownership type and listed beneficiaries. Second, decide who you actually want to receive each asset and under what conditions. Third, sit with an estate planning attorney who can explain how best to align wills, trusts, account titles, and beneficiary designations so that everything points in the same direction. Fourth, revisit the plan every few years, or after major life events, to keep it current.

Handled that way, your bank statements stop being a pile of numbers and start being an organized roadmap for your family's future.

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