QUESTIONS BEFORE

LISTING AN

INHERITED PROPERTY

A Pre-Listing Guide for Heirs, Trustees & Real Estate Professionals

Selling an inherited home is often more complicated than most families expect.

Questions about probate, trusts, ownership, liens, missing documents, vesting, and heirs can create **delays—or even prevent a sale from closing.**

This guide was created to help you identify potential title issues **before** a property hits the market.

Whether you're working through probate, administering a trust, or simply trying to understand what comes next, these questions will help you **start the conversation early** and avoid surprises later.

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THIS GUIDE HELPS YOU IDENTIFY:

- Whether Probate may be required
- Trust issues that commonly delay closing
- Missing ownership documents
- Unknown heirs or ownership interests
- Existing loans and liens
- Recording or vesting errors
- Questions your Title Company should answer before listing

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The First Step:

How Was the Property Vested When the Owner Passed Away?

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Determining how the property was titled is the most important first step in understanding what happens next. The way title was vested at the time of death will determine whether the property passes outside of probate or must go through the court process.

COMMON WAYS PROPERTY IS VESTED

SOLE OWNERSHIP

The property was owned by the decedent as an individual and no other owner is on title.

Outcome: Probate is required.

TENANTS IN COMMON (TIC)

The property was owned by two or more individuals, but there is no Right of Survivorship.

Outcome: The decedent's ownership interest must go through probate.

OWNED BY A TRUST

The property was titled in the name of a living trust.

Outcome: Follow the trust's instructions. The successor trustee will determine next steps.

JOINT TENANCY WITH RIGHT OF SURVIVORSHIP

The property was owned by two or more individuals as Joint Tenants with Right of Survivorship.

Outcome: The surviving owner(s) automatically assume full ownership. Probate is not required.

COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP (CPROS)

Property owned by a married couple in California as Community Property with Right of Survivorship.

Outcome: The surviving spouse automatically assumes full ownership. Probate is not required.

OWNED BY AN ENTITY (LLC, CORPORATION, PARTNERSHIP, ETC.)

The property was owned by an entity rather than individuals.

Outcome: Follow the entity's operating agreement, bylaws, or governing documents to determine next steps.

WHY THIS MATTERS

Knowing how title was vested helps you avoid unnecessary delays, understand whether probate is required, and identify what documents will be needed to transfer or sell the property.

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If the Property Is Held in a Trust: Here's How to Proceed

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When real property is owned by a revocable or irrevocable trust, the trust—not the individual—owns the property. Your next steps depend on following the trust correctly and confirming the successor trustee has the authority to act.

STEPS TO FOLLOW

1 GATHER THE TRUST DOCUMENTS

Obtain a complete copy of the trust, including any amendments.

Review the trust to understand how it addresses the death of the trustor(s) and the successor trustee's powers.

2 IDENTIFY THE SUCCESSOR TRUSTEE(S)

Confirm who the successor trustee(s) are and that they are willing and able to act.

Obtain evidence of their authority (Certification of Trust or Trustee Acceptance, if available).

3 PROVIDE DEATH CERTIFICATE & SIGN AFFIDAVIT OF DEATH

Provide a certified death certificate of the trustor(s).

The successor trustee signs an Affidavit of Death to make the death a public record and confirm their role as trustee.

4 CONFIRM AUTHORITY TO SELL

Review the trust to ensure it gives the successor trustee the authority to sell or transfer the property.

Title will confirm the trust is valid and that the transfer complies with the trust terms and California law.

5 PROCEED WITH THE SALE

If the trust is valid, the trustee has authority, and everything is in order, the property can be listed and sold by the successor trustee.

WHAT IF THE TRUST DOESN'T PROVIDE CLEAR AUTHORITY?

If the trust is unclear, invalid, or does not grant the successor trustee authority to sell, or if there are disputes among beneficiaries, the property will need to go through probate to obtain court authority to sell.

When in doubt, a title professional or attorney can help you determine the safest and most efficient path forward.

IMPORTANT NOTE

Every trust is unique. Always read the trust carefully and follow its instructions exactly. This helps avoid delays, disputes, and potential liability.

WORK WITH A TITLE PROFESSIONAL EARLY

A pre-listing title review can help confirm the trust is in order, identify any title issues, and ensure a smooth path to closing.

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What Is Probate?

If the property was not owned in a trust, or in another vesting that provides Right of Survivorship, probate will be required before the property can be listed and sold.

Probate is the court's legal process for determining ownership and ensuring the decedent's assets are distributed according to law.

TESTATE vs INTESTATE

Testate: The decedent left a valid Will. The Will directs who will inherit and often names an Executor to handle the estate.

Intestate: The decedent did not leave a valid Will. State law determines who the heirs are, and the court appoints an Administrator to manage the estate.

EXECUTOR vs ADMINISTRATOR

Executor: Court-appointed individual named in the Will to administer the estate according to its terms.

Administrator: Court-appointed individual when there is no Will. They must follow California's laws of intestate succession.

COURT AUTHORITY & SELLING PROPERTY

The court must authorize whether property can be sold during probate.

- Independent Administration (most common): Property can often be sold with little to no court approval.
- Dependent Administration: Court approval (a hearing) is required before listing and selling the property.

TYPICAL PROBATE TIMELINES*

- Simple estates (no disputes, no court hearings): 4–9 months
- Estates with court supervision or hearings: 9–18 months
- Complex estates or disputes: 18+ months

**Timelines vary by county and case complexity.*

WHY PROBATE MATTERS

Until probate is complete (or the court authorizes a sale), the personal representative does not have clear legal authority to transfer title. Attempting to sell without proper authority can delay or even invalidate the sale.

A pre-listing title review can help identify whether probate is required and what steps are needed before the property can go to market.

KEY TAKEAWAY

If the property is not protected by a Trust or Right of Survivorship, probate will be required to establish legal ownership and authority to sell. Understanding the type of probate, who has been appointed, and whether court approval is needed can help avoid delays and surprises.

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Trust vs. Probate: The Difference in Time, Cost & Convenience

How a property is owned at the time of death has a major impact on how quickly — and how easily — it can be sold.
A properly funded trust can save your family months (or even years) of delay, court involvement, and expense.

TYPICAL TIMELINES*

VS.

TRUST SALE

FASTER. PRIVATE. EFFICIENT.

Locate Trust Documents Review the trust and identify the successor trustee.	1–2 weeks
Provide Death Certificate & Sign Affidavit of Death Makes the owner's death public record and confirms the trustee's authority.	1–2 weeks
Review Authority to Sell Title company confirms the trust is valid and the trustee has authority to sell.	1–2 weeks
Prepare for Sale Obtain any payoff information, preliminary title report, and list.	1–2 weeks
Close Escrow The trustee signs documents and closes escrow.	30–45 days

TYPICAL TOTAL TIME: **60–90 DAYS**

PROBATE SALE

SLOWER. PUBLIC. COMPLEX.

File Petition & Open Probate File with the court, pay fees, and set initial hearing.	4–8 weeks
Notice to Heirs & Creditors Formal notices must be sent and response periods observed.	6–8 weeks
Court Hearings Attend hearings for appointment, inventory, appraisal, and accounting (as required).	2–6 months
Court Authority to Sell Petition the court for authority to sell the property.	1–3 months
Prepare for Sale & Close Escrow Once authority is granted, list, go into escrow, and close.	30–45 days

TYPICAL TOTAL TIME: **9–18+ MONTHS**

**Timelines vary by county, complexity of the estate, court workload, and whether disputes arise.*

DON'T FORGET TO FUND YOUR TRUST

A trust only owns what is titled in the name of the trust. If the home was never transferred into the trust, it will be treated as if the trust doesn't exist — and probate will likely be required.

FORGOT TO FUND THE TRUST?

A Heggstad Petition may be an option to correct a trust that was never funded. However, it is more complex, costly, and time-consuming than properly funding the trust from the beginning.

KEY TAKEAWAY

A properly funded trust keeps the sale **out of court, maintains privacy, reduces costs,** and gets your family to the closing table **much faster.** Planning ahead today can make a difficult time significantly easier tomorrow.

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Revocable Transfer Upon Death Deed (RTDD)

A Simple Way to Avoid Probate

California law allows homeowners to name their beneficiaries and pass real property directly to them at death—without probate—using a Revocable Transfer Upon Death Deed.

WHAT IS A TRANSFER ON DEATH DEED?

A Transfer on Death (TOD) deed allows a property owner to name one or more beneficiaries who will automatically inherit the property when the owner passes away—without probate. The owner keeps full control of the property during their lifetime and can revoke or change the deed at any time.

KEY BENEFITS

Avoids Probate
The property transfers directly to the beneficiaries, saving time, cost, and court involvement.

Keeps You in Control
The deed is fully revocable. You can change or cancel it anytime.

Simplicity
Requires only a notarized deed and recording—no court filings.

No Limit on Beneficiaries
You can name one or multiple individuals, and even list contingent beneficiaries.

Applies to Your Primary Residence and Other Real Property
Includes single-family homes, condos, agricultural land (up to 40 acres), and improved residential properties.

IMPORTANT REQUIREMENTS

- Only for residential real property in California.
- The property must be your principal residence at the time the deed is recorded.
- Must be signed and dated by the owner and acknowledged before a notary public.
- Must be recorded in the county where the property is located.
- A certified copy of the death certificate must be recorded after the owner's death to activate the transfer.
- Does not affect the owner's rights to sell, refinance, or change the beneficiaries during their lifetime.

HOW IT RELATES TO PROBATE & TRUST SALES

No Probate Required
If a valid TOD deed is in place and properly recorded, the property transfers outside of probate.

Not a Trust
A TOD deed is not a trust. It does not provide privacy, protect assets from creditors, or manage other type of property.

Trust Still Needed?
If you own multiple properties, want broader estate planning, or need incapacity planning, a revocable living trust may be a better option.

PLAN AHEAD. PROTECT YOUR LEGACY.

A Revocable Transfer Upon Death Deed can be a powerful tool to help your loved ones avoid probate and get your home faster. Review your ownership and estate plan with your title professional or estate planning attorney to determine if a TOD deed is right for your situation.

A PRE-LISTING TITLE REVIEW CAN IDENTIFY THE BEST OPTIONS FOR TRANSFERRING YOUR PROPERTY.

THE RIGHT TITLE TEAM MAKES A DIFFERENCE.

I believe in proactive communication, early problem solving, and clear guidance so you can make informed decisions and keep your transaction on track.

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I'm here to make the real estate transaction smoother with knowledgeable, experienced, and proactive title support.

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Questions Before You List

A Checklist for Trustees, Successor Trustees & Executors

Answering these questions early will help you understand the best path forward and avoid delays, surprises, or legal obstacles when it's time to sell.

KEY QUESTIONS TO ANSWER

- **How was the property owned at the time of death?**
  Review the deed and title report to confirm vesting.
- **Was the property owned in a revocable or irrevocable trust?**
  If yes, is the property properly titled in the name of the trust?
- **Who is the successor trustee or personal representative?**
  Do you have documentation proving your authority?
- **Is the owner incapacitated?**
  If the owner is unable to act, the trust may be exercised and/or probate may need to be pursued.
- **Is probate required?**
  If not in a trust or Right of Survivorship, probate may be necessary.
- **Are there any outstanding loans, liens, or tax issues?**
  Identify anything that could delay a sale.
- **Is the property ready to sell?**
  Consider condition, occupancy, insurance, and curb appeal.
- **Do you have all necessary documents?**
  Trust documents, deeds, death certificate, court documents (if any).
- **What is your timeline and goal for the sale?**
  Understanding your priorities helps create the right plan.

WHY GET TITLE INVOLVED EARLY?

Title is often the first step in determining whether probate is required—or can be avoided.

- We review the title and vesting to identify potential issues early.
- We help determine if the property can be transferred or sold without probate.
- We can connect you with trusted probate and estate planning professionals if needed.
- Early involvement saves time, reduces stress, and helps you move forward with confidence.

A PRE-LISTING TITLE REVIEW CAN SAVE YOU MONTHS OF DELAY AND THOUSANDS OF DOLLARS.

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Common Issues We Find During Pre-Listing Review

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Issues Found Now Can Save You Time, Money & Stress Later

A pre-listing title review helps uncover hidden issues that could cause delays, require court involvement, or even prevent a sale. Here are some of the most common problems we find.

PROPERTY STILL IN DECEDENT'S NAME

Without proper transfer, title hasn't passed and cannot be sold.

TRUST WAS NEVER FUNDED

The trust exists, but the property was never deeded into it—probate may still be required.

UNKNOWN OR MISSING HEIRS

Unlocated heirs can delay or prevent the sale until proper notice is given or consents obtained.

MISSING OR INCOMPLETE DOCUMENTS

Missing deeds, trust documents, affidavits, or death certificates can stop a transaction in its tracks.

INCORRECT VESTING OR OWNERSHIP

Errors in how title is held can create future disputes or require corrective deeds.

UNRECORDED OR INVALID DEEDS

Deeds that were never recorded or improperly executed can cloud the title.

LIENS, JUDGMENTS OR TAX ISSUES

Outstanding debts, tax liens, or judgments must be resolved before the property can be sold.

HOA LIENS OR OPEN ESCROWS

Unpaid assessments or open escrows can delay closing or result in payoffs at escrow.

EASEMENTS OR ENCROACHMENTS

Unrecorded easements or encroachments can affect value, usage, or insurability.

SURVEY OR LEGAL DESCRIPTION ISSUES

Boundary disputes or inaccurate legal descriptions may require a survey or legal resolution.

BANKRUPTCY OR DIVORCE ORDERS

Court orders or past bankruptcy can impact ownership or require additional approvals.

CODE VIOLATIONS OR PERMIT ISSUES

Unpermitted work or code violations may have to be resolved before closing.

DON'T LET SURPRISES DELAY YOUR SALE.

Finding issues early gives you time to fix problems, gather documents, or take the right steps—so your transaction can move forward smoothly.

A PRE-LISTING TITLE REVIEW CAN HELP YOU AVOID DELAYS, REDUCE STRESS, AND PROTECT THOUSANDS OF DOLLARS.

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