

# Estate Planning 101 for California Property Owners

**Aeyoung Kim**

Staff Attorney

*Housing and Economic Rights Advocates  
(HERA)*



**FAMILY CAREGIVER ALLIANCE®**  
*National Center on Caregiving*

101 Montgomery Street, Suite 2150

Francisco, CA 94104

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# Today

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- ❖ What is an estate plan?
- ❖ Do I need one?
- ❖ Should I tell my children?
- ❖ Should I file it?
- ❖ What do I need to do?
- ❖ .....

# What am I Planning?

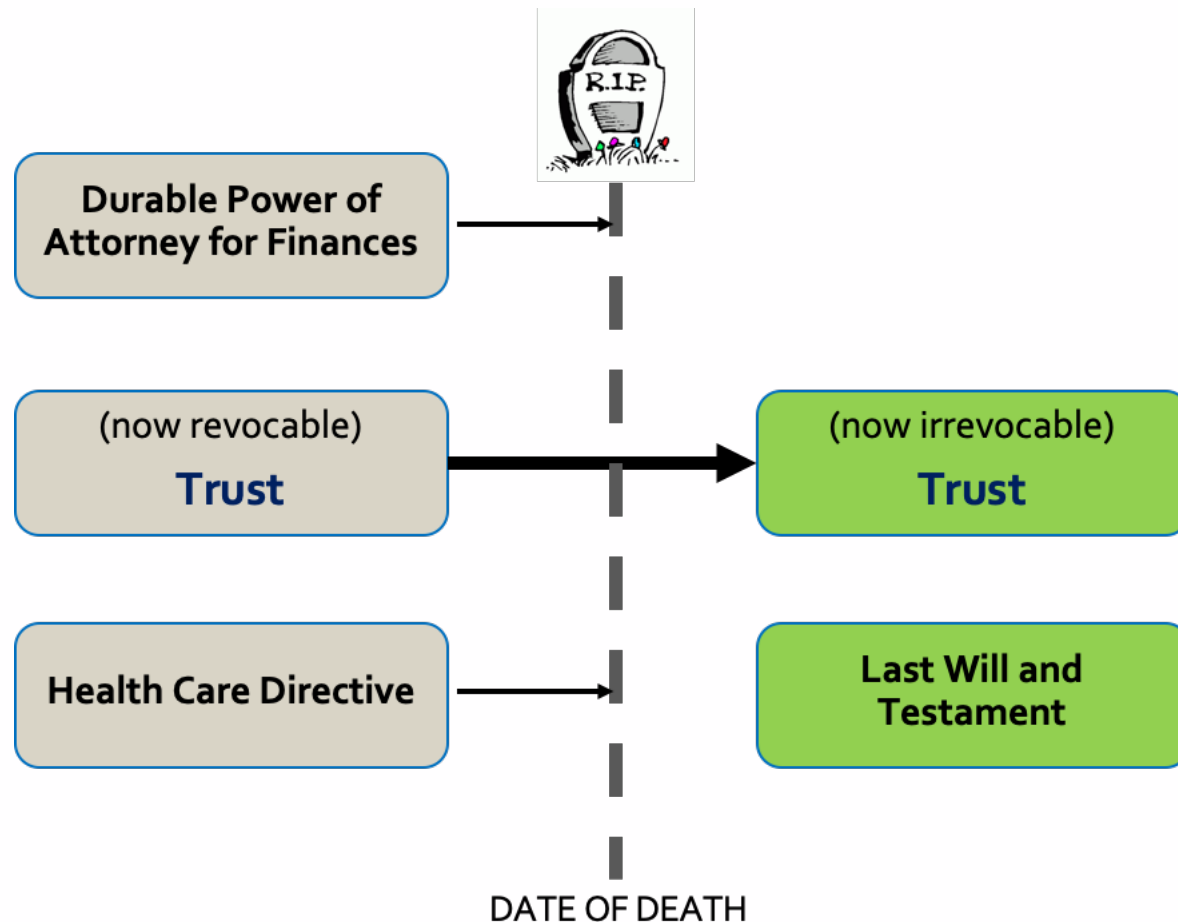
## During my lifetime

- ❖ Designate someone
  - ❖ to manage my assets and
  - ❖ to make my health care & personal care decisions
- ❖ On behalf of me
- ❖ If I ever become unable to do so for/by myself.
- ❖ Nominate a guardian for my child.

## Upon/after my death

- ❖ State who should (or should not) receive my stuff.
- ❖ Also, state who should be responsible for such task.
- ❖ Nominate a guardian for my child.

# Common Documents



# What to Expect

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What will happen to my property  
when I die?

# Yes or No to Probate?

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## CA Probate Code Section 13100.

“Excluding the property described in Section 13050, if the gross value of the decedent’s real and personal property in this state does not exceed one hundred sixty-six thousand two hundred fifty dollars (**\$166,250**), as adjusted periodically in accordance with Section 890, and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

- (a) Collect any particular item of property that is money due the decedent.
- (b) Receive any particular item of property that is tangible personal property of the decedent.
- (c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.”

# What is “Probate”?

- ❖ Probate is the court-supervised process for transferring a deceased person’s estate to the right person(s).
- ❖ If there is a will, the court validates the will.
- ❖ The court appoints someone to be responsible for the job. The person is called “personal representative” in general.
  - ❖ “executor”;
  - ❖ “administrator”;
  - ❖ “administrator with will annexed”

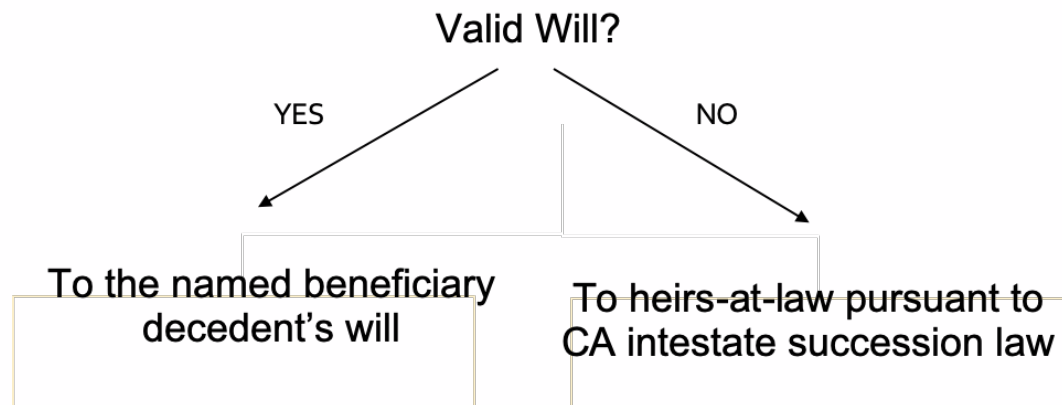


The Superior Court of California,  
The County of San Francisco  
@ 400 MaAllister

<https://www.cavagnero.com/project/san-francisco-civic-center-courthouse/>

# What/How Will the Probate Court Decide?

- ❖ If there is a will, the court validates the will.
- ❖ The court appoints someone to be responsible for the job. The person is called “personal representative” in general.
  - ❖ “executor”; “administrator”; “administrator with will annexed”
- ❖ The court oversees the personal representative’s job.
- ❖ The court approves/denies the final distribution





# What About Ruben's Home?

RUBEN had been paying mortgage diligently since he purchased his home in 2010. The title of the house is **“RUBEN RODRIGUEZ, an unmarried man.”**

- ❖ Date of purchase: 08/01/2010
- ❖ Fair Market Value as of 08/01/2010: \$300,000
- ❖ Date of death: 08/01/2018
- ❖ Fair Market Value as of 08/01/2018: \$400,000
- ❖ Mortgage balance as of 08/01/2018: \$260,000

**Net value: \$140,000**

He has a valid written will. He has no other asset.

**Q: Is his estate subject to Probate?**

# Yes or No to Probate?

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**Prob. Code §13100.**  
**Estate not exceeding**  
**\$166,250;...**

...“if the gross value  
of the decedent’s real  
and personal property  
in this state...”

*Without deduction of  
liens or encumbrances*

**Prob. Code §13052.**  
**Date of valuation**

In making an  
appraisal for the  
purposes of this part,  
the probate referee  
shall use the date of  
the decedent’s death  
as the date of  
valuation of the  
property.

Total assets worth over \$166,250?

**PROBATE is required**

whether there is a will or not.

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He has a valid written will. He has no other asset.

**Q: Is his estate subject to Probate? YES**

# Prob. Code §13050. Property excluded in determining property or estate of decedent or its value

**Property held in the decedent's revocable trust**

Property held by the decedent with another/others (i.e. a joint tenants with right of survivorship)

Real property specified in Transfer of Death deed

Pay-on-death account/  
Multi-party account/  
Totten trust account

Beneficiary already designated (i.e. retirement, insurance etc.)

Property passing to surviving spouse/RDP under Prob Code §6401

*etc.*

# What is a Revocable Trust?

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- ❖ A legal document which contains a series of instructions regarding the trustor's properties.
- ❖ A popular estate planning tool that can serve useful property management functions during the trustor's lifetime, but mainly used as a convenient means to distribute the trustor's assets upon his/her/their passing.
- ❖ In some cases, partially substitute for Durable Power of Attorney, Conservatorship, or Will. But it is **NOT** a will.
- ❖ Trusts avoid probate court supervision

# What is a Revocable Trust?

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- ❖ Common misconception:
  - ❖ Little or no post-death work is required. Administration of a revocable trust involves many of the same tasks that are required in a probate proceeding.
- ❖ May avoid multiple probate proceeding for properties in other states.
- ❖ Able to maintain greater confidentiality and privacy.
- ❖ Common information included:
  - ❖ Identifying family
  - ❖ Nomination of Trustee/Successor Trustee
  - ❖ Designation of beneficiary
  - ❖ Conditions, powers, responsibilities, restrictions etc.
  - ❖ What if

# What is a Will?

- ❖ Your will is a legal document in which you give certain instructions to be carried out after your death.
- ❖ It becomes effective only when you die.
- ❖ Probate court supervision is required whether the decedent died with (“testate”) or without (“intestate”) a will.
- ❖ All aspects of the estate (probate proceeding) are open to the public.



<https://www.fairfaxcounty.gov/circuit/sites/circuit/files/Assets/images/dockets.jpg>

# Revocable Trust vs. Will

Revocable Trust & pour-over will	Will only / No will at all
<u>No</u> probate required	<u>Yes</u> Probate required
Greater privacy	Open to the public
<u>NO</u> statutory fees to successor trustee based on value of assets	Statutory compensations (Prob. Code §10800) based on value of assets
<u>Not</u> subject to estate recovery	Assets subject to estate recovery
Terms and conditions are effective during lifetime and upon/after death	Effective only upon/after death
"Trustee"; "Successor trustee"	"Executor"; "Administrator"; or "Administrator with will annexed"



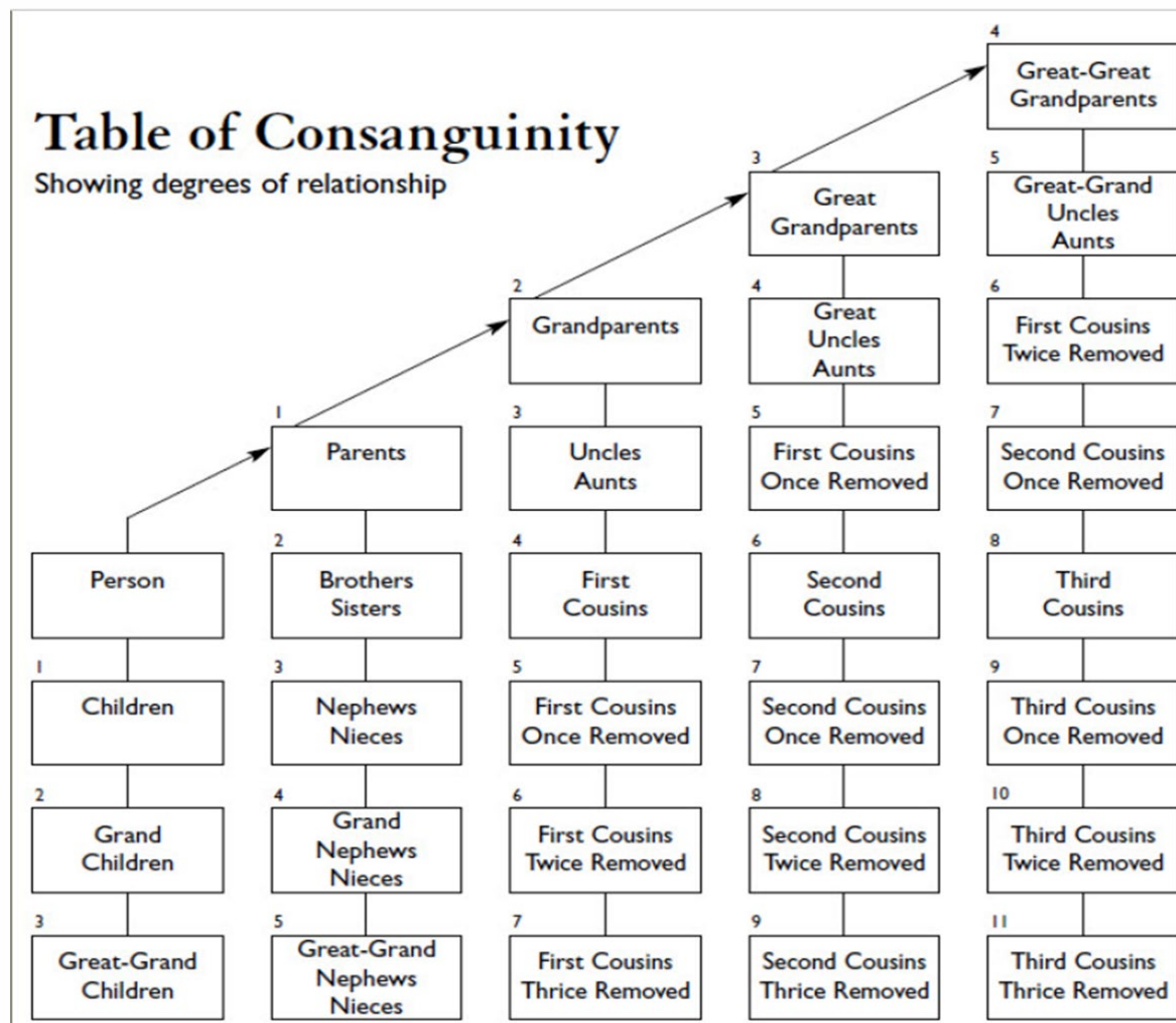
# Priority for Appointment of Administrator

## Probate Code §8461

Subject to the provisions of this article, a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse or domestic partner as defined in Section 37.
- (b) Children.
- (c) Grandchildren.
- (d) Other issue.
- (e) Parents.
- (f) Brothers and sisters.
- (g) Issue of brothers and sisters.
- (h) Grandparents.
- (i) Issue of grandparents.
- (j) Children of a predeceased spouse or domestic partner.
- (k) Other issue of a predeceased spouse or domestic partner.
- (l) Other next of kin.
- (m) Parents of a predeceased spouse or domestic partner.
- (n) Issue of parents of a predeceased spouse or domestic partner.
- (o) Conservator or guardian of the estate acting in that capacity at the time of death who has filed a first account and is not acting as conservator or guardian for any other person.
- (p) Public administrator.**
- (q) Creditors.**
- (r) Any other person.**

# Intestate Succession under Prob. Code §6400 et seq



# Statutory Fees

Prob. Code §10800

Probate Code §10800. Based on value of estate;

CA Rules of Court, Rule §7.705. Calculation of statutory compensation

Statutory %	Amount
<b>4% on the first \$100,000</b>	<b>\$4,000</b>
<b>3% on the next \$100,000</b>	<b>\$3,000</b>
<b>2% on the next \$800,000</b>	<b>\$16,000</b>
<b>1% on the next \$9,000,000</b>	<b>\$90,000</b>
½ of 1% on the next \$150,000,000	\$75,000
All amounts above \$25,000,000	TBD by the court

§10811. " ... In addition to the compensation provided by Section 10810, the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable."

§7.703. "An award of extraordinary compensation to the personal representative or to the attorney for the personal representative is within the discretion of the court..."

# Statutory Fees

Prob. Code §10800

ASSET VALUE (gross)		FEES	
\$1,000,000		\$23,000	
TRUST ADMINISTRATION		PROBATE ADMINISTRATION	
Gross FMV of estate	\$1,000,000	Gross FMV of estate	\$1,000,000
Encumbrances	\$(300,000)	Encumbrances	\$(300,000)
Cost of administration	\$(20,000)	Cost of administration	\$(20,000)
<b>Net value</b>	<b>\$680,000</b>	<b>Net value</b>	<b>\$680,000</b>
Statutory fees to successor trustee	\$0	Statutory fees to PR	\$(23,000)
Statutory fees to attorney	\$0	Statutory fees to attorney	\$(23,000)
Fees to successor trustee	\$(5,000)?	XO fees to PR	\$(2,000)?
Fees to attorney	\$(15,000)?	XO fees to attorney	\$(7,000)?
<b>Balance for distribution</b>	<b>\$660,000?</b>	<b>Balance for distribution</b>	<b>\$625,000?</b>

# Probate or No Probate?

Pamela	Alex
<b>House [\$500,000]:</b> titled as "Pamela Ander, Trustee of the Pamela Ander Revocable Trust, dated 12/25/2007"	<b>House [\$500,000]:</b> titled as "Alex Rodri, an unmarried man"
<b>Two IRA accounts [\$145,000 in total]:</b> Her brother Ben is the name beneficiary.	<b>Two IRA accounts [\$145,000 in total]:</b> No beneficiary designated.
<b>Life insurance [\$70,000]:</b> 1 <sup>st</sup> beneficiary – her mother, Stella Ander, <i>died in 2016</i> . 2 <sup>nd</sup> beneficiary – her friend, Leo Chen.	<b>Life insurance [\$70,000]:</b> 1 <sup>st</sup> beneficiary – his stepfather Sean Zappo, <i>died in 1996</i> . 2 <sup>nd</sup> beneficiary – None
<b>Total: \$735,000 \$0 subject to probate</b>	<b>Total: \$735,000 \$735,000 subject to probate.</b>
Her ex-boyfriend, Tom Lee, was named.	Named beneficiary - "my girlfriend" Approximately, twenty (25) people claim to be his girlfriend.

# Durable Power of Attorney

(for financial purposes)

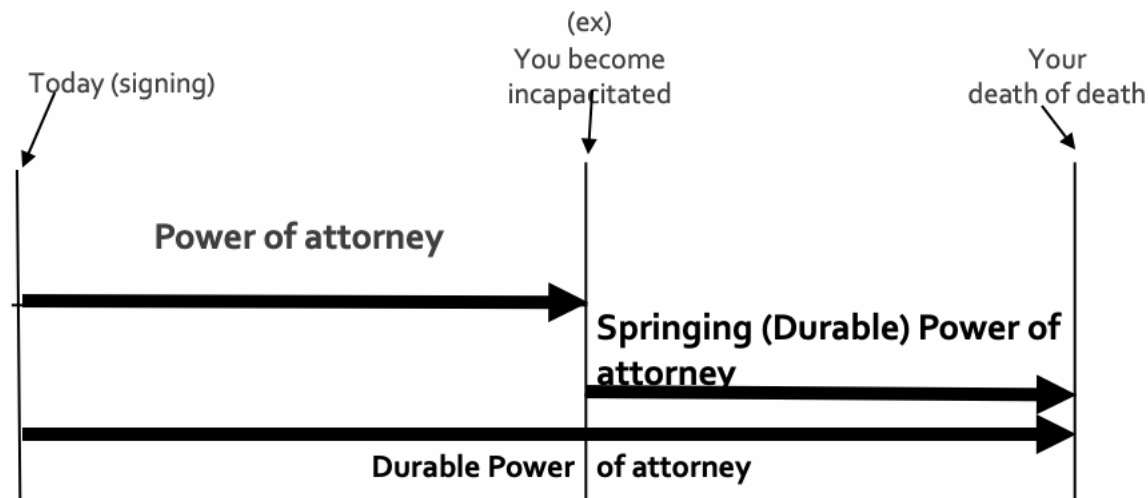
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- ❖ A written legal document that gives another person (“agent” or “attorney-in-fact”) the right and authority to act on your behalf.
- ❖ You can choose those who will care for your estate if you ever become unable to do so for yourself.
- ❖ Limited power vs. General power
  - ❖ You can authorize your agent to simply pay your bills.
  - ❖ You can empower your agent to handle nearly all of your affairs.
- ❖ Limited time/duration vs. Until your death
  - ❖ You can authorize your agent to act until a certain time.
  - ❖ You can authorize your agent to continue act until your death.

# Durable Power of Attorney

(for financial purposes)

- ❖ Your agent's authority under a power of attorney will end if you become incapacitated.
- ❖ Durable Power of attorney will remain in effect while you are incapacitated.
- ❖ You may choose to set up a “springing” power or attorney. It would only become effective at a specified future date or event (ex. your loss of capacity).



# Power of Attorney

## (for health care)

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- ❖ With an advance health care directive, you can also designate someone to make health care decisions for you in the event that you become unable to do so for yourself.
- ❖ Also, this legal document can contain your wishes concerning such matters as life-sustaining treatment and other health care issues and instructions concerning organ donation, disposition of remains and your funeral.
- ❖ You can revoke the directive at anytime, as long as you are still competent.



# HERA

housing and  
economic  
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Any Questions?

(510)271-8443 (ext. 300)

[inquiries@heraca.org](mailto:inquiries@heraca.org)

THANK YOU!

# California Property Taxes and Transfers in Families

**Nicole Agbayani**

Director of Community Affairs

*Office of Assessor-Recorder Carmen Chu*



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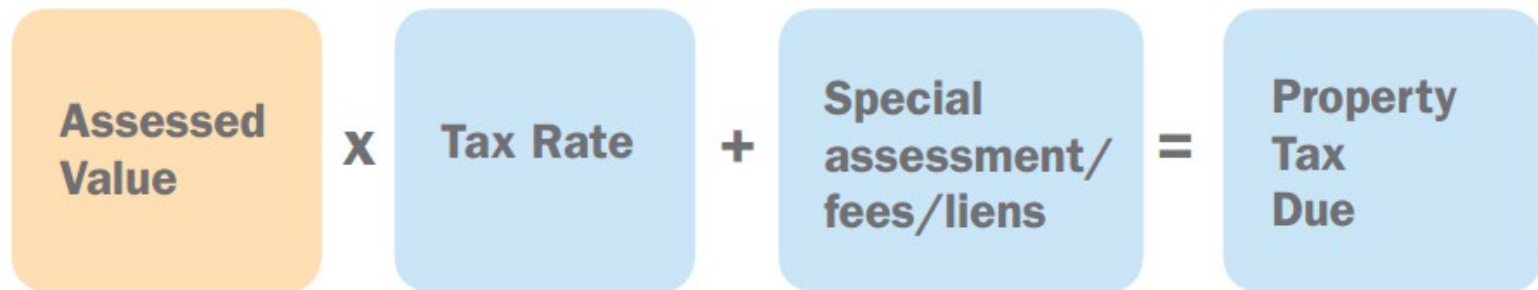
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# How do Property Taxes Increase Over Time?

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## UNDERSTANDING ASSESSED VALUE & PROP 13

# How are Property Taxes Calculated?

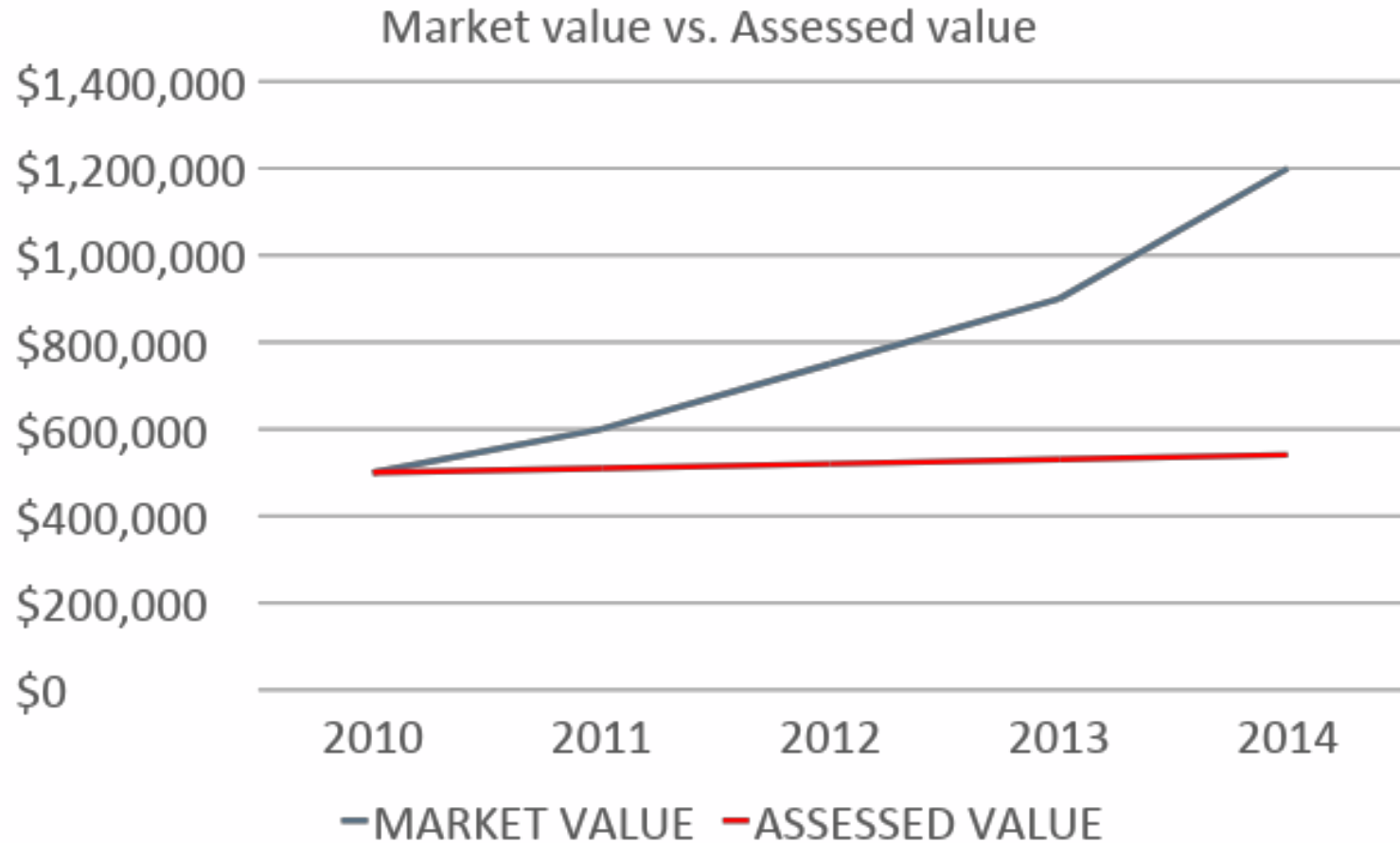


# Assessed Value vs. Market Value

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- ❖ The assessed value is the dollar value assigned to a property by the Office of the Assessor-Recorder for the purpose of property tax calculation. Due to CA Prop 13 (1978), your assessed value may not reflect the market value of your property.

# How Does my Assessed Value Increase Under Prop 13?



# How can my family save money on property taxes?

P58 EXCLUSION

# Prop 58: Parent – Children Transfer

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- ❖ Under Prop 58, property owners may avoid reassessment to market value if the property transfers from their parents or children.



# Prop 58: Eligibility

- ❖ Eligible child
- ❖ Eligible transfer
- ❖ Eligible property
- ❖ Both ways

Office of the Assessor-Recorder  
Carmen Chu, Assessor-Recorder

Assessor-Recorder  
City and County of San Francisco

PROPERTY TAX SAVINGS: TRANSFERS IN FAMILY May 2015

DO YOU KNOW property owners in California may avoid reassessment to market value if the property transfers from their parents, children or grandparents?  
Please see below for more information.



**Parent - Children Transfer**

Parent to Child or Child to Parent Transfers: passed by California voters in 1986, Proposition 58 allows property to be transferred between parents and children (both-way) without reassessment if certain conditions are met.



**ELIGIBILITY CHECK LIST**

- Eligible Child**
  - Biological child
  - Stepchild
  - Child adopted before the age of 18
  - Son-in-law or daughter-in-law
  - Spouse of eligible child until divorce, or remarriage of the surviving spouse if the marriage was terminated by death
- Eligible Transfer**
  - A sale, a gift, an inheritance, or transfer via trust
- Eligible Property**
  - No value limit if it is the principal residence of the person(s) transferring ownership
  - First \$1 million in assessed value of real property other than the principal residence (see FAQ Q3)

**Grandparent - Grandchild Transfer**

Grandparent to Grandchild Transfers: passed by California voters in 1996, Proposition 193 allows property to be transferred from grandparents to grandchildren (one-way) without reassessment if certain conditions are met.



**ELIGIBILITY CHECK LIST**

- Eligible Grandchild**

Any child of an "Eligible Child" (see):

  - The parents of the grandchild are deceased before the date of transfer OR
  - The grandparent's child is deceased, and the surviving in-law parent has remarried before the date of transfer
- Eligible Transfer**
  - A sale, a gift, an inheritance, or transfer via trust
- Eligible Property**
  - No value limit if it is the principal residence of the person(s) transferring ownership
  - First \$1 million in assessed value of real property other than the principal residence (see FAQ Q3)

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# For More Information

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# About FCA

**Family Caregiver Alliance** offers education, services, research, and advocacy based on the real needs of caregivers. Founded in the late 1970s, FCA is the first community-based nonprofit organization in the United States to address the needs of families and friends providing long-term care for loved ones at home.

**National Center on Caregiving (NCC)** was established by FCA to advance the development of high-quality, cost effective programs and policies for caregivers in every state. NCC sponsors the Family Care Navigator, a state-by-state resource locator designed to help caregivers find support services in their communities.

**Bay Area Caregiver Resource Center** — operated by FCA for the six-county San Francisco Bay Area — provides support to family caregivers. FCA's staff of family consultants through education programs and direct support offer effective tools to manage the complex and demanding tasks of caregiving.

**Be sure to visit FCA on social media:**



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# Acerca de FCA

**Family Caregiver Alliance** ofrece servicios educativos, de investigación, y abogacía basados en las necesidades reales de los cuidadores. Fundada a finales de 1970, FCA es la primera organización comunitaria sin fines de lucro en los Estados Unidos, dedicada a atender las necesidades de familias y amigos que brindan cuidado a largo plazo a seres queridos.

**National Center on Caregiving (NCC)** fue establecido por FCA para promover el desarrollo de programas y políticas de alta calidad y efectivas en costo que beneficien a los cuidadores en cada estado. NCC es patrocinador del Family Care Navigator, un localizador de recursos disponibles en los estados, diseñado para ayudar a los cuidadores a encontrar servicios de apoyo en sus comunidades.

**Bay Area Caregiver Resource Center** — operado por FCA para los seis condados en el Área de la Bahía de San Francisco — ofrece apoyo a cuidadores. El equipo de consultoras familiares de FCA provee herramientas efectivas para sobrellevar las complejas y demandantes tareas de ser cuidador a través de programas educativos y apoyo directo.

**Asegúrese de visitar FCA en las siguientes redes sociales:**



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