

Families are often surprised by how long everything takes after a death in California. Someone dies in January, the court appoints an executor in March, and relatives are already asking in April, "Why can't we close this out and distribute everything?" When they hear, "We should wait about 10 months after probate is opened," it can feel arbitrary or even suspicious.

It is not arbitrary. That waiting period is mostly about one thing: protecting against creditors and potential claims so the executor and the heirs are not dragged into lawsuits later or forced to pay money back out of their own pockets.

This article walks through how California's creditor period actually works, why 10 months is a common practical rule of thumb, and what you can do in your planning to avoid having your family stuck in court at all.

What "probate" really means in California

Probate is the court process for handling a person's estate when they die with a will or with no estate plan at all. It is not automatically required for every death. The answer to "Do all wills in California have to go through probate?" is no.

If the only significant assets are:

- Accounts with named beneficiaries
- Properly funded living trust assets
- Small estates under California's simplified thresholds

Then a full probate case may be unnecessary. That is one reason experienced planners often tell clients that, for most homeowners, it is better to have a trust in California rather than relying on a will alone. A will still speaks to who should receive what, but in California it usually has to be "spoken through" the probate court.

Probate becomes necessary when a person dies owning more than a modest amount of assets in their individual name with no beneficiary designation or trust. That usually means real estate or larger bank and investment accounts without a trust or pay on death instructions. For these, the court must appoint a personal representative, often called the executor or administrator, to:

1. Collect and safeguard the assets
2. Notify creditors
3. Pay lawful debts and expenses
4. Distribute what remains to heirs or beneficiaries

This entire process is wrapped around specific timeframes in the Probate Code, particularly for creditor claims.

How the creditor claim period actually works

When the court issues Letters Testamentary or Letters of Administration, the clock starts.

Creditors who want to be paid from the estate generally must file a formal claim with the court within four months of that date. If a particular known creditor receives a formal "Notice of Administration of the Estate," they often have the earlier of two deadlines: four months from issuance of letters or 60 days from service of the notice.

That is the statutory creditor period. It exists so that the executor can say, at some point, "We gave notice, we waited the required time, here are the claims that arrived, and here is how we will handle them."

In practice, this four month period is just the minimum. Two other pieces interact with it:

1. The decedent's creditors sometimes do not even realize they must file a claim until they get around to sorting their records. Some still file late and then argue about "good cause."
2. There is a one year statute of limitations from the date of death for many claims based on personal liability, even if no probate is opened. That one year rule is separate from probate and lives in the California Code of Civil Procedure.

As a result, a cautious executor, guided by a cautious attorney, does not rush to make final distributions the day after the four month probate creditor window closes.

Why lawyers talk about "10 months"

So where does the idea of waiting up to 10 months after probate come from?

You can think of it as a convergence of three practical realities:

First, the four month creditor period itself. Until that four month window runs, you do not know the full universe of claims.

Second, real life delays. It takes time to gather bank statements, obtain appraisals, file a required inventory with the court, and sometimes to sell real estate. Many California courts are backlogged, so simple hearings can be set several months out. Even with a motivated executor, a standard estate can easily hit months five, six, or seven before everything is ready for final accounting.

Third, risk management. Most lawyers prefer some buffer between the end of the creditor period and the final distribution. A late mortgage notice that turns into a claim, a Medi-Cal recovery letter, or a tax issue can wipe out the cushion for mistakes. Waiting closer to 8 to 10 months after letters are issued before fully closing the estate lets those late issues surface.

No statute in California says "you must wait 10 months." The law gives minimum periods and outer limits; the 10 month figure is a practical, conservative guideline used in many offices, especially when there are significant assets or potential disputes.

Why that waiting period matters to you personally

If you are an executor, the waiting period is about your own protection. California law can hold a personal representative personally liable if they distribute too soon and leave nothing to pay legitimate claims. That liability is not theoretical. I have seen executors have to write personal checks because they rushed distributions to impatient relatives and then a substantial creditor appeared.

If you are a beneficiary, the waiting period is actually about preserving the value of your inheritance. Imagine receiving \$100,000 from your parent's estate, spending most of it, and then receiving a letter a year later telling you that the executor had to overpay you and the estate is being sued. That is stressful and sometimes unfixable. A disciplined process is unpleasant in the moment but safer in the long run.

It also ties into other common fears and questions:

- What happens if you do not file probate in California? Some claims might still be enforceable under the one year limit, and important issues like title to a house can remain clouded. Heirs sometimes discover years later that they cannot refinance or sell because the decedent's name is still on the deed.

- How much tax do you pay if you inherit \$100,000? In California there is no state inheritance tax, and for many people there is no federal estate tax either because the threshold is high. But income tax issues, such as unpaid returns or retirement distributions, can still create creditor claims that must be handled during probate.

The creditor window is the period when all these loose ends are either resolved or at least identified and planned for.

Why some assets avoid probate (and creditor delays) entirely

Families often ask which bank accounts avoid probate. In practice, the following setups often bypass the court process altogether:

1. Accounts with a properly completed pay on death or transfer on death designation
2. Joint accounts with right of survivorship, where the survivor becomes the owner by law
3. Accounts held inside a properly funded living trust
4. Certain retirement accounts and life insurance with valid beneficiary designations

These transfers happen under contract or trust law, not under the will. Because they never pass through the probate estate, the four month creditor claim period in probate court does not control them. That does not mean creditors have zero rights, but it changes the procedure and often the practical ability to collect.

This is one reason many people judge that it is wiser to put the house and main accounts into a living trust: not because trusts magically avoid every tax or every creditor, but because they often avoid the timing, publicity, and cost of probate itself.

Wills, trusts, and the cost of “doing it right” in California

When people learn about probate delays and statutory fees, they naturally ask about planning alternatives. The conversation often turns on a few recurring questions.

Is it better to have a will or a trust in California? For a young person with minimal assets and no real estate, a simple will may be just fine. For a homeowner or someone with more than modest savings, a revocable living trust often adds real value by helping assets avoid probate and its timeline. The choice is not about right or wrong in the abstract, but about the size and complexity of the estate, family dynamics, and your comfort with up front planning.

What is the average cost for estate planning in California? Prices vary by region and by complexity, but as a rough sense, a basic will centered plan might run in the low thousands of dollars for a couple, while a comprehensive trust based plan with incapacity documents and property transfers might run in the mid thousands. If your estate ends up in full probate instead, statutory attorney and executor fees are based on a percentage of the gross estate value, not the net. For a home worth \$800,000 with a modest mortgage, statutory fees alone can easily exceed the cost of a proper plan several times over.

What is better than a trust? In most day to day situations, “better” means layering tools intelligently. Joint ownership, beneficiary designations, and properly designed revocable or irrevocable trusts can work together. There is no single magic document that suits every family, every creditor risk, and every tax concern. The “best” structure is the one that fits your actual facts and your tolerance for complexity.

The biggest mistake people make with their will is assuming that the will itself controls everything and avoids court, taxes, and conflict. A will does not avoid probate. It does not automatically override beneficiary designations

on accounts. It does not protect an heir from their own creditors, divorces, or addictions. The second most common inheritance mistake is setting everything up so that children receive lump sums at 18 or 21 instead of building in age based or needs based protections.

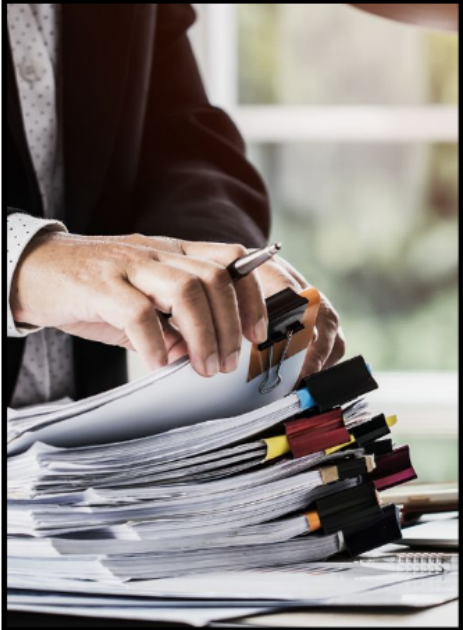
How trusts interact with creditor timing and nursing home concerns

A common follow up is whether trusts avoid inheritance tax or other taxes. In the United States, a standard revocable living trust does not avoid income taxes and does not, by itself, avoid estate taxes if you are above the federal threshold. It is a management tool that keeps your affairs out of probate and private, but it is not a tax shelter. Depending on design, certain irrevocable trusts can help reduce estate taxes or protect assets from some creditors, but this comes with tradeoffs in control and flexibility.

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People also worry about medical costs. Clients often ask, “Can a nursing home take your house if it is in a trust?” or “Can I lose my home if my husband goes into a nursing home?” The honest answer is nuanced. In California, Medi-Cal rules and the estate recovery program look at ownership and transfers. A simple revocable living trust generally does not protect the house from Medi-Cal recovery because you still own and control it. Irrevocable trusts used in long term care planning, and strategies to avoid the Medicaid 5 year lookback, are more complex and require planning well before anyone needs care.

That is where rules like the 5 year rule for a trust, the 7 year rule on inheritance, and the 2 year rules you may read about in other contexts come from. They relate to how long assets must be out of your name or out of your control before the government or creditors stop treating them as yours. These rules differ between federal gift and estate tax law, Medicaid or Medi-Cal eligibility, and other benefit systems. They are easy to mix up and hard to fix after the fact.

When you hear about the 5 by 5 rule in estate planning or the 5 of 5000 rule in trust drafting, that is usually a reference to limited withdrawal powers for beneficiaries: the greater of \$5,000 or 5 percent of trust principal per year. These powers have specific tax and creditor consequences and are often used in beneficiary controlled trusts. They are not about probate timelines, but they do show how design choices today affect flexibility and exposure later.

All of this circles back to creditor periods because if your assets pass through probate, creditors get a clear, structured opportunity to stake their claims. If your assets pass through carefully planned trusts, those claims often look very different, both in timing and in scope.

Common traps that drag estates into longer, more painful probates

From watching many estates unfold, some patterns repeat. When people ask, "What are common mistakes people make with trusts?" or "What should you not put in a trust?", they are trying to avoid these same landmines.

One chronic problem is never funding the trust. People pay for a trust, put it in a binder, and never deed the house into the trust or move key accounts. At death, the trust is beautifully drafted but nearly empty. The house and non trust accounts still require probate, including the creditor period everyone hoped to avoid.

Another problem is naming the wrong people. "Who should I not name as a beneficiary?" is more subtle than it looks. Sometimes the worst choice is an adult child with serious addiction or creditor problems. Sometimes it is a spouse in the middle of a fragile second marriage. In other cases, the risky choice is naming a minor outright instead of using a trust share. Beneficiary decisions ripple through probate or trust administration for years.

Similarly, "Can a trustee also be a beneficiary?" Often yes, and it is common. The issue is not legality but wisdom. A child who is both trustee and beneficiary can manage things well, or they can fuel sibling resentment and trigger litigation. The more complex the estate and the more tension in the family, the more important it is to choose a trustee with judgment and transparency.

There is also the question of which assets are smart to pass and which are, frankly, the worst assets to inherit. The six worst assets to inherit often include heavily tax deferred retirement accounts, interests in closely held businesses with unclear buy sell agreements, highly leveraged rental properties, timeshares, complicated partnership interests, and large tax deferred annuities. The reason is not just tax. It is the combination of ongoing fees, creditor exposure, and administrative headaches that keep the estate or trust open longer than expected.

By contrast, the best way to leave your house to your children in California typically involves getting clear on goals: Is the priority probate avoidance, creditor protection, step up in basis for tax purposes, long term care planning, or all of these in some balance? A well prepared living trust, properly funded, usually serves most families better than gimmicks like selling the house to a child for \$1. When people ask, "Can I sell my house to my son for \$1 dollar?" they often have generous instincts but do not realize the gift tax, property tax, and capital gains consequences that can backfire on the child.

Finally, there are items you should handle outside the will. When someone asks, "What are three things to avoid putting in a will?", I usually emphasize: first, assets already handled by beneficiary designation or joint ownership; second, detailed instructions about digital passwords or personal grievances that can inflame tensions; and third, anything that incorrectly suggests you are disinheriting a spouse or child in a way that violates California law. These do not directly change the creditor period, but they do affect how contentious and delay prone the administration becomes.

What not to do right after someone dies

The days immediately after a death are fragile. People are grieving, and they often feel pressure from well meaning relatives to “do something” fast. That is where the question “What not to do immediately after someone dies?” becomes important.

You should not rush to close accounts, retitle property, or distribute belongings before you understand the legal framework. You should not start writing checks out of the decedent’s account unless and until you are formally authorized, often by the court in a probate case or under trust powers. You should not assume that, because a will appoints you as executor, you instantly have legal authority before the court acts.

Respecting the creditor period begins with a measured approach at the very beginning. A calm inventory, obtaining multiple death certificates, securing real property, and speaking with counsel before making irreversible moves often saves months of trouble later. It also keeps you within the rules about the 2 year rule after death that can show up in certain benefit and tax contexts, such as deadlines for disclaimers or special tax elections.

Using the waiting period wisely

If you are involved in a California probate, the period between opening the case and that 8 to 10 month point does not have to be dead time.

It is a good window to:

1. Identify which bank and investment accounts might be converted to pay on death or trust arrangements for surviving spouses or future planning, so the next generation is not stuck in probate again.
2. Review whether putting a house into a living trust is wise for the surviving spouse or older parents, taking into account their age, Medi-Cal exposure, and comfort with trustees.
3. Clean up beneficiary designations on retirement accounts and life insurance, so that the next round of transfers is clean and avoids probate.
4. Have candid conversations about who should and should not be named as successor trustees or beneficiaries, using the current estate as a live case study of what works and what does not.

During this same period, you can address smaller but important questions, such as the \$10,000 death benefit in certain employer or union based plans, or how best to structure modest inheritances so that a child does not lose needs based benefits.

Most importantly, you can correct the planning gaps that brought you into probate in the first place. That often means sitting down with an attorney to design a revocable or, in some cases, irrevocable trust structure that fits your family’s real situation. For some, that includes learning the 5 year rule on trusts in the Medicaid or Medi-Cal context. For others, it involves understanding what taxes trusts avoid and what they do not, and being honest about the downside of having a trust: the need to maintain it, keep assets properly titled, and sometimes give up a level of spontaneity in how property is handled.

The downside of a living trust in California is rarely the trust itself. It is the neglect that follows: never updating it after divorces, remarriages, births, or major purchases; never funding it properly; or assuming it solves long term care and tax issues that it was never designed to handle.

Final thoughts: creditor periods as part of the bigger picture

The question, “Why do you have to wait 10 months after probate?” opens the door to a broader understanding of how California treats debts, inheritances, and timing.

The four month creditor period in probate is strict, but in real life you are dealing with a longer ecosystem of deadlines: the one year limit on many claims, multi year lookback periods for benefits like Medicaid or Medi-Cal, and the long shadow of poor planning choices made decades earlier. Rules like the 5 by 5 power in certain trusts, or the 7 year rule for trusts in some tax systems, do not exist in isolation. They intersect with how and when your heirs actually receive what you intend for them.

When you look at your own planning, or at a loved one's estate in probate, the real goal is not simply to "get through" the 10 months. It is to use that uncomfortable waiting period [California Estate Planning](#) as a prompt to design smoother paths for the next generation, minimize the chances of your children inheriting the worst possible assets in the worst possible way, and reduce the role that judges and creditors play in your family's story.