Families rarely come to my office asking about the “5 by 5 rule.” They come because a parent is moving to assisted living, a child has special needs, siblings are fighting over a house, or someone just saw a messy probate case play out in the family and wants to avoid the same fate.

The 5 by 5 power in trusts sits right in the middle of several of those concerns. It touches taxes, control, creditor protection, Medicaid planning, and family dynamics. Used well, it can give your heirs flexibility and access without unraveling the protections you put in place.

What follows is the way I walk clients through this during a real estate planning meeting, weaving in the related questions that always arise: should a house pass by will or trust, how irrevocable trusts interact with Medicaid’s 5 year lookback, who should (and should not) be named as beneficiaries, and how to avoid the most common inheritance mistakes.

What “comprehensive estate planning” really means

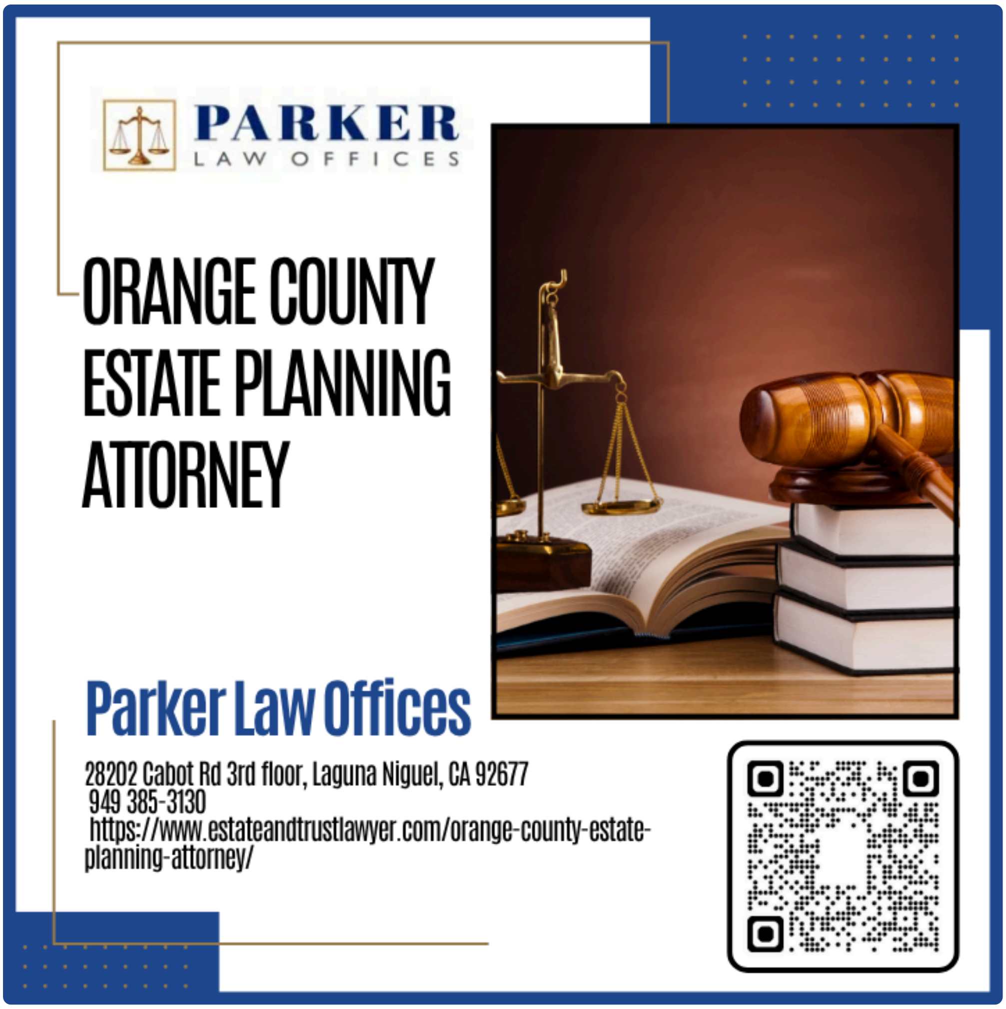
People often start by asking, “What is comprehensive estate planning?” They expect a will and maybe a trust. In practice, comprehensive planning is less about documents and more about solving a specific set of problems for your family.

In my experience, a comprehensive plan covers at least four areas. First, who handles your finances and medical decisions if you cannot. Second, who receives what when you die and under what conditions. Third, how to minimize taxes, fees, and delays. Fourth, how to protect against predictable risks such as long term care costs, divorce, creditor issues, or a beneficiary’s poor money habits.

That usually means a coordinated combination of:

- A will
- One or more trusts
- Financial and health care powers of attorney
- Beneficiary designations on accounts
- Possibly an irrevocable trust for asset protection and long term care planning

Every family’s mix looks different. A retired widow with a paid off ranch house and modest savings needs a very different structure from a couple in their 40s with blended families and retirement accounts in the seven figures.



How much does it cost to have an estate planning attorney?

Costs vary widely by region and by complexity, but ranges help with expectations. For a straightforward will based plan with powers of attorney, legal fees in many areas fall somewhere around $800 to $2,000 for an individual and somewhat more for a couple. Trust based plans, including a revocable living trust and funding guidance, often run from $2,000 to $5,000 or more, depending on how many properties, businesses, or family complexities are involved.

Advanced planning that includes one or more irrevocable trusts for tax or Medicaid planning, or special needs planning for a disabled child, can run significantly higher. When clients ask, “How much does it cost to have an estate planning attorney?” I usually pivot to a different question: what problem are we trying to solve, and what would it cost the family if we do nothing? That comparison tends to clarify whether a simple or advanced plan makes sense.

Wills, trusts, and the house: where families stumble most

The family home is often the emotional and financial centerpiece of an estate. This leads directly into the question: is it better to leave a house in a will or trust?

From a practical standpoint, a house that passes under a will will typically go through probate court. That can mean delays, court filings, and public records. A house properly titled in a revocable living trust, on the other hand, generally passes without probate. The successor trustee can transfer or sell the property according to your instructions much more quickly and with better privacy.

That said, a will is not automatically “bad” and a trust is not automatically “good.” I have seen simple estates handle probate smoothly in a few months. I have also fixed disastrous trust plans where the trust was never actually funded with the house, leaving the family stuck in both probate and trust administration at the same time.

When **Comprehensive Estate Planning Attorney Near Me** clients ask, "What is the best way to leave your house to your children?" I look at a few key factors: family harmony, disability risk, estate size, and long term care concerns. If we are mainly avoiding probate with cooperative adult children, a revocable trust often works best. If we are also trying to protect the home from nursing home costs long term, an irrevocable trust might be part of the strategy, but that choice has serious tradeoffs.

Understanding the 5 by 5 rule in estate planning

The "5 by 5 rule" comes up in the context of trusts that continue beyond a generation. At its core, the rule allows a trust beneficiary a limited right each year to withdraw the greater of $5,000 or 5 percent of the trust principal.

So what is the 5 by 5 rule in estate planning, and why would you ever want it?

Imagine you create a trust for your daughter, Emily, to last for her lifetime. You want to protect the trust assets from her creditors, from a future divorce, and from her own impulse to be too generous with friends. Without any withdrawal rights, Emily is entirely dependent on the trustee for distributions. With a 5 by 5 power, Emily has a safety valve. Each year, she may withdraw up to 5 percent of the principal or $5,000, whichever is greater, without needing anyone's approval.

From a tax standpoint, that withdrawal right is intentional. Under federal tax rules, the 5 by 5 power is usually small enough that it does not cause the trust assets to be treated as if Emily already owns them outright today, but it is significant enough that certain technical problems are avoided. Lawyers use this carefully sized power to keep the trust efficient for gift and estate tax purposes while still providing the beneficiary with access.

To make it more concrete, suppose Emily's trust holds $400,000. Her 5 by 5 power for that year would let her withdraw $20,000, since 5 percent of $400,000 is $20,000, which is more than $5,000. If the next year the trust has grown to $500,000, her power rises to $25,000. If Emily exercises that power and pulls the money out, it becomes her asset, subject to her creditors and her own estate. If she does not, the power simply lapses at year end, and the trust continues with its protections.

The core benefit is flexibility without full control. Beneficiaries who are responsible have a measure of independence. Those with poor money habits are still protected, because the annual withdrawal cap limits how much damage they can do at once.

The 5 by 5 rule for irrevocable trusts and Medicaid

The 5 by 5 power can also intersect with long term care and Medicaid planning, which is where things get more technical.

Clients often ask, "What is the 5 year rule for irrevocable trusts?" and "How to avoid Medicaid 5 year lookback?" There is also a lot of confusion around phrases like "What is the Medicaid loophole?" that circulate online, suggesting easy ways to hide assets from nursing homes or the state. The reality is more sober.

When you move assets into an irrevocable trust, and give up certain rights to those assets, you start the Medicaid 5 year lookback clock. If you later apply for Medicaid to pay for nursing home care, the state will look back five years from the date of your application to see if you transferred assets for less than fair market value. If you did, you may face a penalty period during which Medicaid will not pay for your care.

If you retain too much power over those assets, such as the right to demand principal back at any time, Medicaid may treat the trust as if you still own the assets, and the protection you thought you had may disappear.

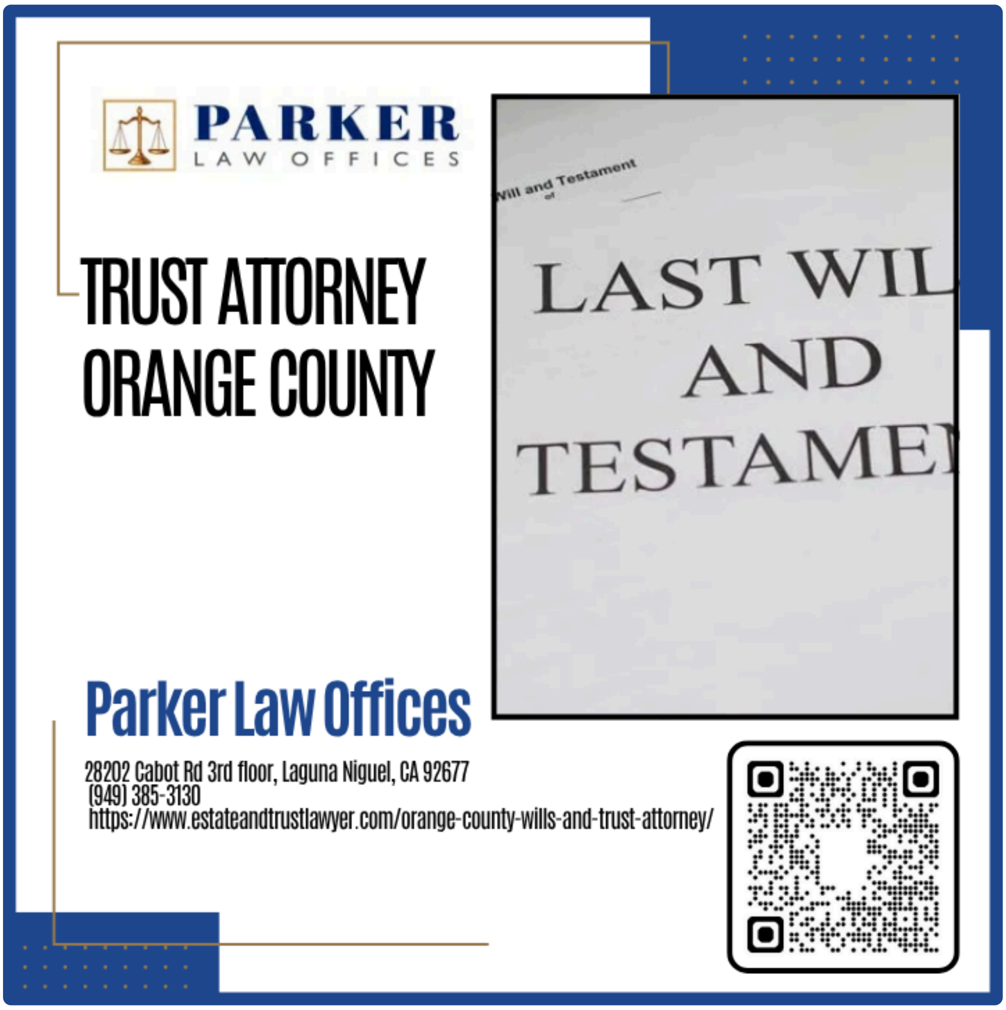
The 5 by 5 power is usually not given to the person applying for Medicaid. Instead, you might see it given to children or other remainder beneficiaries in more tax focused situations. That limited right of withdrawal usually does not make the trust assets "available" for Medicaid purposes to the person in the nursing home, but this is sensitive territory. The specific trust language, the state you live in, and how aggressively your state Medicaid agency interprets access can all matter.

There is no simple "Medicaid loophole" that works safely in every case. Any strategy that sounds like a magic trick to instantly shield assets from a nursing home is almost certainly incomplete or misleading. Real planning for long term care requires acting early, often at least five years in advance, and accepting some loss of personal control in exchange for protection.

The 7 year rule, 5 year rule, and timing realities

Another source of confusion is the difference between the "5 year rule for irrevocable trusts" under Medicaid and the "7 year rule for trusts" that people may have heard about from relatives in the United Kingdom. The 7 year rule typically refers to UK inheritance tax rules, where gifts may escape tax if the donor survives seven years after making them. In the United States, there is no general 7 year rule like that, though individual states can have their own quirks.

Here, the primary timing rule that families run into is the Medicaid 5 year lookback. Move your house into a properly designed irrevocable trust today, survive and stay mostly out of nursing care for five years, and you may have protected the house from Medicaid estate recovery in some states. Do the transfer a year before entering the nursing home, and the move may cause a penalty period.



Families who want to keep options open sometimes wait too long. I often see people try to hurriedly set up an irrevocable trust after a serious diagnosis, hoping to “beat” the five year period. That rarely works well. Sensible Medicaid planning is a 5 to 10 year project, not a 5 month scramble.

Can a nursing home take your house if it’s in a trust?

This question usually comes in two forms: “Can a nursing home take your house if it’s in a trust?” and “What is the downside of putting your house in an irrevocable trust?”

If your house is sitting in your own revocable living trust, and you are the trustee during your lifetime, Medicaid generally treats that house just as if you still own it outright. That type of trust is flexible and easy for estate administration, but does not protect the home from nursing home costs.

An irrevocable trust designed for Medicaid planning is different. Done correctly, you give up the right to pull the house back into your own name or to spend the principal on yourself. You may retain the right to live in the house and to receive income, such as rent if the house is rented out. After five years, the home may no longer count as an available asset for Medicaid in some states. After your death, the state might not be able to claim against the house for Medicaid benefits it paid, depending on local law.

The downsides are real. You lose a measure of control. Selling the house or refinancing becomes more complex. Depending on how the trust is drafted, you may not be able to change beneficiaries later. If family circumstances change, the trust may not adapt easily. That is why I tell clients that irrevocable trusts are like putting assets into a safe bolted to the floor. Very protective, but you must be sure what you put in and whether you can live with the limited flexibility.

The only three reasons you should have an irrevocable trust

Clients sometimes ask in frustration, “What are the only three reasons you should have an irrevocable trust?” Lawyers could argue about the exact list, but when I simplify it for families, it tends to look roughly like this:

- To protect assets from long term care costs or certain creditors, especially with enough lead time before you might need nursing home care
- To remove appreciating assets from your taxable estate for estate tax planning, often using life insurance, business interests, or investment portfolios
- To provide for someone in a controlled way where outright ownership would be risky, such as a special needs child, someone with addiction issues, or a beneficiary in a high liability profession

Many families never need an irrevocable trust. For them, a solid revocable trust based plan handles probate, privacy, and most inheritance issues perfectly well. The irrevocable version makes sense when there is a big enough problem that justifies the loss of control.

Bank accounts, probate, and the “easy” parts people skip

Compared with trust drafting, bank accounts look simple, which is exactly why people ignore them until they cause trouble.

When clients ask, “Which bank accounts avoid probate?” they are often surprised to hear the answer has less to do with the bank and more to do with the title on the account. An account with a valid pay on death (POD) or transfer on death (TOD) designation, or a joint account with right of survivorship, typically passes outside probate directly to the named person. Accounts properly titled in your revocable trust also bypass probate and fall under your trust instructions.

Problems appear when the paperwork does not match the plan. I once worked with siblings who discovered that their late mother's largest account named only one child as joint owner. The mother thought she was "just putting someone on to help pay bills." Legally, that account went entirely to the named child, not through the will or trust. The family had to resolve the mismatch informally, and not every sibling group can manage that peacefully.

This connects directly to one of the quiet answers to, "What is the most common inheritance mistake?" A leading candidate is failing to coordinate beneficiary designations *Comprehensive Estate Planning Attorney Near Me* and account titles with the overall estate plan. The documents say one thing, the forms say another, and the forms usually win.

Who should you not name as a beneficiary?

Another repeat question is, "Who should I not name as a beneficiary?" This usually comes up when someone is tempted to "keep it simple" by naming a person directly on an account instead of flowing the asset through the trust. There are several situations where that quick solution creates more risk than it saves.

- A minor child, because a court process will almost certainly be needed and the child will receive full control at 18 or 21, ready or not
- Someone receiving disability benefits, where a direct inheritance may disrupt Supplemental Security Income (SSI), Medicaid, or similar programs
- A person with serious debt, lawsuits, or addiction history, who might see an inheritance evaporate quickly or flow straight to creditors
- A non citizen spouse, in certain tax and immigration contexts, where special planning is preferable
- Someone you actually intend to benefit only indirectly, such as the oldest child "who will take care of the others," which almost always breeds resentment

A well drafted trust can receive those assets instead, then hold or manage them in a way that fits the beneficiary's situation. That is often kinder in the long run than handing someone a check they are not ready to manage.

What should not be included in a will or trust

While we are on structure, it helps to know what not to put into your will or trust. Specific personal instructions that change frequently, like which niece gets which piece of costume jewelry, may be better in a separate letter of wishes. Highly regulated assets like retirement accounts usually should not be retitled into a trust during your lifetime, but instead should name the trust as a beneficiary if that fits the broader plan.

As for, "What should not be included in a will?" I often caution against rigid micromanagement that ties the trustee's hands. Rules that seemed wise at age 55 can become absurd at age 80 when grandkids are adults, tax laws have changed, and the world looks different. Strong core principles and clear goals in the document tend to age better than pages of precise but brittle instructions.

Taxes, inheritance, and gifting to adult children

Tax questions lurk under many of these conversations. People ask, "How much can you inherit from your parents without paying taxes?" In the United States, most families will never owe federal estate tax under current law, because the exemption is very high, in the multi million dollar range per person. Inheritances are generally not taxable income to the recipient, though certain assets like pre tax retirement accounts do trigger income tax when withdrawn.

At the state level, some states have separate estate or inheritance taxes with much lower thresholds. A local attorney will know whether that affects you. Many middle class families worry about taxes they will never actually face, while ignoring fees, delays, and family conflict that are far more likely.

The related question, "What is the best way to gift money to an adult child?" depends heavily on your goals. If you are simply helping with a down payment while alive, an outright gift may be fine, documented in a simple letter. If you expect to continue supporting a child over time, or if you are worried about divorce or creditors, using a trust, either during life or at death, can preserve the benefit for your child even if their personal situation is rocky.

Annual federal gift tax rules allow you to give up to a set amount per recipient each year without using any of your lifetime exemption. That limit adjusts from time to time. Large gifts above that amount must be reported, but most people will not owe actual gift tax unless their total lifetime gifts and estate exceed multi million dollar thresholds.

How the 5 by 5 power fits into real family planning

When you look back across all of this, the 5 by 5 rule in estate planning is not a magic number so much as a tool that lets you fine tune the balance between protection and access.

If you are designing a trust for children or grandchildren, the 5 by 5 power can give them a small but real annual right to tap principal. Responsible beneficiaries might use that window occasionally for a down payment, medical emergency, or business opportunity. Less responsible ones are limited in how quickly they can drain the trust.

Inside more sophisticated irrevocable trusts, such as those used for tax planning or asset protection, carefully drafted 5 by 5 powers help keep the trust within favorable tax rules. At the same time, they avoid making the trust so restrictive that the family feels trapped by your planning decisions decades later.

The key is context. A 5 by 5 power in the hands of a future beneficiary typically supports your long term goals. Giving yourself too much retained power in a trust that is meant to protect assets from Medicaid or other creditors can undermine that protection. That is why a candid conversation about your priorities, health risks, and family dynamics is worth more than clever language alone.

For families willing to invest the time, comprehensive estate planning weaves together the 5 by 5 rule, the Medicaid 5 year lookback, beneficiary designations, wills, and both revocable and irrevocable trusts into one coherent story. The plan then functions not just as a legal structure, but as a practical guide for how your loved ones will navigate aging, illness, and inheritance with as much clarity and as little conflict as possible.

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