

Most people mean well when they sit down to write a will. They want to keep the peace in the family, avoid court, and make things simple. Yet after watching hundreds of California estates play out, I have seen the same mistakes repeat, often by smart, organized people who thought everything was handled.

California has its own probate quirks, community property rules, and tax issues. A will that might work fine in another state often causes trouble here. The good news is that most of the worst problems are avoidable if you understand where others go wrong.

What follows are the ten biggest mistakes I see with California wills, along with practical ways to do better, and how wills fit into the larger questions about trusts, Medi-Cal, taxes, and leaving assets to the next generation.

Why California estate planning is its own animal

Before we dive into the specific mistakes, it helps to understand the landscape you are operating in.

California has relatively high property values, a detailed probate code, and a court system that is not known for moving quickly. If you own a modest home and a few investment accounts, your estate can easily be big enough to require a full probate, even if you think of yourself as middle class.

Many people ask, "Do all wills in California have to go through probate?" The honest answer is: a will by itself does not avoid probate. A will is essentially a set of instructions to the probate court. If you rely only on a will and your probate assets exceed the small-estate thresholds (which, depending on the year and type of asset, are in the tens of thousands of dollars, not hundreds of thousands), your family will almost certainly be in probate.

That backdrop shapes why certain mistakes with wills become so costly here.

Mistake 1: Assuming a simple will keeps you out of court

I routinely meet people who say, "I have a simple will, so my kids will not need probate." That is not how California treats wills.

Probate in California is largely triggered by the title on assets and their total value, not by the existence of a will. If you die with a house in your name alone, and your estate exceeds the statutory threshold, your executor must open a probate. The will only tells the judge who gets what and who should serve as executor.

This is where the "Is it better to have a will or a trust in California?" Question becomes real. For many homeowners, a properly funded revocable living trust is usually more effective than a will as the primary planning tool, because it can avoid probate if managed correctly. The will still plays a supporting role as a "pour-over" document that sends anything you forgot to retitle into the trust.

If your goal is to bypass probate, the focus should be on asset titling, beneficiary designations, and trust funding, not just signing a will and filing it in a drawer.

Mistake 2: Leaving the house by will instead of using a trust or deed strategy

The family home is typically the single most important asset in a California estate. People often ask, "What is the best way to leave your house to your children?" Leaving it in your will is usually the most expensive and slowest approach.

When a house passes through probate, your executor must:

- open a court case
- wait through statutory notice periods
- obtain court orders for sale or distribution
- pay statutory attorney and executor fees, typically calculated as a percentage of the gross estate

On a \$900,000 house, the statutory fee structure alone can run into tens of thousands of dollars. On top of that, beneficiaries may have to wait a year or more before they can sell or refinance.

For most California homeowners, it is wise to put your house into a living trust during your lifetime. A well drafted, well funded trust lets your successor trustee manage, sell, or distribute the house without court. It also keeps the terms private, unlike a will, which becomes a public record in probate.

Some people try shortcuts, such as "Can I sell my house to my son for \$1 dollar?" That approach creates its own tax and Medi-Cal complications and often destroys the property tax basis advantages available at death. It is almost always better to use a trust or carefully drafted deed strategy than a nominal sale.

Mistake 3: Naming the wrong beneficiaries (or not reviewing them)

One of the most painful questions I get is, "Who should I not name as a beneficiary?" The answer depends on your family, but there are common issues that regularly blow up good intentions.

People often name:

- a minor child directly, which forces a court-supervised guardianship for the money
- a beneficiary who is on needs-based benefits, such as SSI or Medi-Cal, unintentionally disqualifying them
- a financially reckless relative, without any protections
- an ex-spouse or estranged relative, because beneficiary forms were never updated

One of the most common inheritance mistakes is treating your will as the only relevant document. Retirement accounts, life insurance, transfer on death (TOD) and payable on death (POD) designations pass outside the will. If those forms are out of date, they override the careful plan you drafted later.

If you are wondering, "Which bank accounts avoid probate?" The answer often lies in how they are titled. Joint accounts with right of survivorship, POD designations, and accounts titled in the name of a trust can bypass probate. But you must coordinate that with your will and overall estate plan, or you risk disinheriting someone unintentionally.

Review beneficiary designations after major life events, and at least every few years. Coordination beats surprises.

Mistake 4: Ignoring taxes and the character of what you leave behind

California currently has no separate state inheritance tax, and most families fall below the federal estate tax threshold, which is in the multi-million dollar range. That leads many people to falsely assume taxes do not matter. They still do, just in different ways.

Clients often ask, "How much tax do you pay if you inherit \$100,000?" It depends what you inherited. Cash in a checking account is usually not taxable as income. A traditional IRA, on the other hand, can be fully taxable as the recipient withdraws it. Appreciated stock carries capital gains issues. The label on the asset matters more than the dollar amount.

That is why professionals talk about "the worst assets to inherit" or "the six worst assets to inherit." Typically, high income tax exposure assets, such as large traditional retirement accounts or certain annuities, can be worse to leave outright than, say, a taxable brokerage account with a step-up in basis at death.

Your will can compound the problem if it dumps all the tax-sensitive assets on one beneficiary, while tax friendly assets go to another. A better approach is to match the type of asset to the beneficiary. For example, a charity may be the best recipient of your IRA, while your children inherit assets that get a basis step-up and lower income tax.

Even if your estate is not large enough to trigger federal estate tax, ask your adviser, "What taxes do trusts avoid, and what taxes do they not avoid?" Many people wrongly believe that revocable living trusts eliminate income tax. They do not during your lifetime. The trust is usually ignored for income tax purposes until it becomes irrevocable.

Good planning is less about fancy tax shelters and more about understanding which assets carry hidden tax burdens and assigning them thoughtfully.

Mistake 5: Overloading the will and ignoring what should go elsewhere

A will is not the right place for everything. I often get asked, "What are three things to avoid putting in a will?" While the list can vary, three categories come up constantly.

First, detailed instructions about funeral or burial can be problematic since the will is often read after arrangements are made. Use a separate written instruction to your family or agent instead.

Second, assets that already pass by beneficiary designation, such as life insurance or retirement accounts, generally should not be directed in a conflicting way in your will. It only creates confusion and, in practice, the beneficiary form usually wins.

Third, convoluted conditions that are hard to administer, like "my son only inherits if he finishes medical school," can drag your executor into disputes and invite litigation.

I also hear, "What should you not put in a trust?" Which is a related but distinct question. For some people, putting tax deferred retirement accounts directly into a revocable trust during life is not advisable, because it can have income tax consequences if mishandled. Real property that has special use or loan terms may need careful review before transferring into a trust.

The big picture is simple: use each tool for what it does best. Wills, trusts, beneficiary designations, and side letters each have a role. Do not cram everything into the will just because it feels familiar.

Mistake 6: Treating a will as a one-time project

Estate planning is not a "sign once and forget it" task. Life changes, law changes, and family changes all affect how well your will works.

People ask about "rules" like the 2 year rule after death, the 5 year rule for a trust, the 7 year rule for trusts, or the 7 year rule on inheritance. Those concepts typically come from Medicaid or Medi-Cal planning or from foreign tax rules and are often misunderstood or misapplied in California. They point to a broader truth, though: timing matters.

For example, the so-called Medi-Cal or Medicaid 5 year lookback period is about transfers made before applying for long-term care benefits. It is not a general estate planning rule, and it does not automatically apply to every

trust. If you try to "give everything away" late in life to qualify for benefits, without understanding the rules, you can trigger penalties and lose control of your assets.

A will drafted when your children were toddlers may [California Estate Planning](#) be wildly inappropriate when they are in their 30s, married, and buying homes. Executors might have died or moved. Tax laws may have shifted. Property values almost certainly will have.

Aim to review your will and related documents every three to five years, or after major events such as marriage, divorce, birth of children or grandchildren, significant change in assets, or a move in or out of California.

Mistake 7: Confusion about trusts and failing to coordinate them with the will

Almost every California homeowner eventually asks, "Is it better to have a will or a trust in California?" The practical answer is that most families benefit from having both, but using them for different jobs.

A revocable living trust holds your major assets, like your house and primary investments, to avoid probate and provide continuity if you become incapacitated. Your will acts as a safety net, catching anything you accidentally left outside the trust and "pouring" it in after your death.

Problems arise when someone signs a beautiful trust and never funds it. The house never gets retitled. Brokerages stay in the individual's name. The will is never updated to act as a pour-over. At death, the family discovers that almost everything still has to go through probate because, on paper, the trust owns very little.

That leads to questions such as, "What are common mistakes people make with trusts?" High on that list are:

- failing to transfer assets into the trust
- misunderstanding what the trust does for taxes
- picking the wrong trustee, or not giving them clear powers

There are also design questions that relate to the "Which is better, a revocable or irrevocable trust?" Discussion. Revocable trusts are flexible and popular in California for probate avoidance and incapacity planning. Irrevocable trusts can offer certain tax or asset protection features, but carry restrictions and should not be set up lightly.

On the back end, rules like "What is the 5 year rule for a trust?" Or "What is the 2 year rule for trusts?" Can come into play for specific types of retirement or special needs trusts, but they are not general rules that magically apply to every trust in California. When you see those phrases online, they often refer to federal retirement account distribution rules or out-of-state Medicaid planning strategies.

If you want to use more advanced provisions, such as the "5 by 5 rule in estate planning" or the "5 of 5000 rule in trust", understand that these are technical powers often used to give a beneficiary a limited right to withdraw the greater of \$5,000 or 5 percent of trust principal each year. They need careful drafting and are not DIY features.

Above all, your will and trusts should read like they know each other exist. They should not compete or contradict.

Mistake 8: Underestimating the human side of executors and trustees

A beautifully drafted will can still fail in practice if you pick the wrong people to carry it out.

People often ask, "Can a trustee also be a beneficiary?" In California, yes, and often they are. Naming an adult child as both trustee and beneficiary is common. The problem is not legality, but practicality. Will this person

communicate well with siblings? Can they manage record-keeping and deadlines? Is there already tension that will ignite when one child has more control than the others?

Similar questions apply to naming an executor under your will. An executor who lives out of state can serve, but they will face more travel, and in some cases, the court may require a bond. An older sibling who has always dominated the family may not be the right choice if you want an even-handed process.

The "What is the downside of having a trust?" And the "What is the downside of a living trust in California?" Questions often boil down to administration burdens. A trust that is too complex, with restrictive language, unworkable conditions, or an out-of-state corporate trustee for a modest estate, can cost more in administration and frustration than it saves in probate fees.

A better practice is to be realistic. Pick executors and trustees who are organized, reasonably diplomatic, and willing. Build in a mechanism for a neutral backup, such as a professional fiduciary, if your first choices cannot serve.

Mistake 9: Leaving everything outright with no protections

A will that simply gives "everything in equal shares to my children" may sound fair, but it may not be wise.



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Situations where outright gifts cause harm are common. One child may be in the middle of a divorce. Another may have serious debts or a history of addiction. A third may be on disability benefits that could be lost if they receive a lump sum.

This ties directly to the question, "What is the best way to leave inheritance to your children?" And, more specifically, "What is better than a trust?" In many real families, a properly structured trust is better than a simple will with outright gifts. A trust can:

- stagger distributions over time
- hold funds back from creditors
- preserve eligibility for needs-based benefits through a special needs trust

Sophisticated techniques, like special needs trusts or spendthrift provisions, do not require being wealthy. They require clear drafting and an honest look at your children's realities.

If you are concerned about long-term care, you may also hear, "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?" In California, the interaction between Medi-Cal recovery rules and trusts is complex and has changed over the years. Certain revocable living trusts do not protect a home from estate recovery after death, although current California law is more limited than it used to be. Irrevocable trusts used specifically for Medicaid or Medi-Cal planning carry their own risks and strict timing rules, often tied to lookback periods such as the 5 year rule on trusts in the federal context.

If you are seriously considering long-term care planning, do not simply transfer everything to a child or into a random trust. That can trigger penalties or loss of control. Get specialized advice.

Mistake 10: Failing to prepare your family for the practical steps after death

Even the best drafted will cannot help if your family has no idea what exists or what to do. One common question from survivors is, "What not to do immediately after someone dies?" From a probate perspective, there are a few key cautions.

First, do not start giving away personal property, cashing out accounts, or selling real estate before confirming who actually has legal authority. The executor named in the will must be appointed by the court before they have full powers, unless specific nonprobate transfers apply.

Second, do not ignore probate deadlines. "What happens if you do not file probate in California?" Varies, but creditors can still make claims, and assets may sit frozen. There can also be penalties for failing to file required documents if someone is holding an original will.

Third, understand why there can be a perception that "you have to wait 10 months after probate" or longer. The estate administration timeline includes creditor claim periods, tax return deadlines, and court hearing schedules. A realistic waiting period is often many months before final distribution.

Your will can help by clearly identifying your executor, giving them independent administration powers where appropriate, and coordinating with a living trust to keep as many assets as possible out of the court process. But just as important is leaving a practical roadmap: where the original will is, what accounts exist, who your advisers are, and what your general wishes are for the first days and weeks.

A brief practical checklist

To pull the threads together, it helps to have a short reference. Here is a compact checklist many of my California clients use as a starting point:

1. Confirm that your house and major accounts are titled to avoid probate, usually through a living trust, joined with an up-to-date will as backup.
2. Review all beneficiary designations on retirement accounts, life insurance, and bank accounts, and align them with your written estate plan.

3. Revisit your will and trust every three to five years, or after major life events, to adjust for changes in law, assets, and family.
4. Choose executors and trustees for their judgment and temperament, not just birth order, and name realistic backups.
5. Document practical details for your family, such as where to find the original documents, key accounts, and professional contacts, so they are not guessing in a crisis.

This checklist does not replace a tailored plan, but it will prevent many of the worst surprises I have seen.

Cost, tradeoffs, and when to get help

People often hesitate to update or create a will because they fear the cost. "What is the average cost for estate planning in California?" Is a fair question, but the answer depends on complexity, region, and the professional you use.

For a basic will and revocable trust package for a typical homeowner couple, I have seen ranges from roughly \$1,500 to \$4,000 with experienced attorneys, sometimes more for blended families, business owners, or advanced tax planning. While that is real money, compare it against a probate on a \$900,000 estate, where statutory fees can easily exceed \$40,000 for attorney and executor combined, even before extra costs.

On the other hand, not everyone needs an elaborate trust. If you have minimal assets and no real property, a carefully drafted will, combined with proper beneficiary designations, may be perfectly reasonable. The key is to match the tools to your actual situation rather than copying what a neighbor did.

The right plan for you is the one that:

- keeps key assets out of avoidable probate
- provides realistic instructions that your family can follow
- recognizes tax and benefit issues without overcomplicating things
- names the right people, with enough flexibility to handle surprises

A will is part of that picture, but never the entire picture in California. By understanding where others stumble, you can design a plan that quietly does its job when it matters most.