Most Californians who walk into my office start with a simple goal: “I just want to make sure my will is clear so my kids do not fight.” That is a good instinct, but a will is a blunt tool. Used the wrong way, it creates more confusion, extra taxes, and an unnecessary trip through the California probate court.

A better way to think about your will is this: it is the backstop, not the whole plan. Certain things belong in it. Many things do not. Knowing what to leave out, and where those items should go instead, is one of the big differences between a tidy estate plan and a mess your family spends years unraveling.

This is especially true in California, where real estate values are high, probate is slow and expensive, and families often spread across multiple states.

Below are three categories of things you should usually avoid putting in a California will, and practical alternatives that work better.

Why the structure of your plan matters so much in California

If you own a home or have more than modest savings, a bare-bones will is usually not enough in California.

A will on its own does not avoid probate. It is a set of instructions to the probate court about who should receive what. Unless your estate is under the small-estate threshold (currently $184,500 for most property, not counting some assets with beneficiary designations), your executor will likely have to file a probate case.

That means:

- Court supervision of the process
- A formal creditor period that, in practical terms, often stretches administration toward that “why do you have to wait 10 months after probate” feeling
- Statutory attorney and executor fees based on the gross value of the estate, not the net of mortgages

When people ask, “Do all wills in California have to go through probate?” what they really mean is, “If I have a will, can my family skip court?” The answer is usually no. Only assets that pass outside the will through a trust, beneficiary designation, or certain forms of title will avoid probate.

This is one reason so many Californians ask whether it is better to have a will or a trust. For most homeowners, a properly funded revocable living trust is the main workhorse. The will plays a supporting role.

With that in mind, let us look at what you should keep out of your will.

Thing 1: Assets that already have a built-in way to transfer

The first category is simple: anything that already transfers on death by contract, title, or beneficiary designation. Putting those items in your will usually causes confusion and sometimes litigation.

Common examples

Retirement accounts, life insurance, and many financial accounts do not look to your will at all. They pass according to the beneficiary form you signed with the provider. In practice, that means your will is invisible to, for example, your IRA custodian or your 401(k) recordkeeper. The will could say “divide everything equally between my three children,” but if your 401(k) beneficiary form still names your ex-spouse, the ex receives it.

This is why, when people ask “What are the biggest mistakes people make with their will?” keeping outdated beneficiary designations is near the top of the list.

Here are the types of assets that usually ignore your will:

1. Retirement accounts such as traditional IRAs, Roth IRAs, 401(k)s, 403(b)s, and similar plans.
2. Life insurance policies and annuities with named beneficiaries.
3. Payable-on-death (POD) and transfer-on-death (TOD) designations on bank and brokerage accounts.
4. Property titled in joint tenancy with right of survivorship.
5. Certain assets inside a trust that already names who receives them.

When a client asks, “Which bank accounts avoid probate?” the answer is almost always “the ones with a correct beneficiary or TOD designation, or the ones titled in your trust.” Your will is the wrong place to fix those.

The conflict problem

The most common inheritance mistake I see in this area is a mismatch between the will and the beneficiary forms. Here is a fairly typical fact pattern:

A father has three adult children. His will, signed five years ago, leaves everything equally to them. Long before that, he set up an IRA naming only his oldest child as 100 percent beneficiary. He never updated it. When he dies, the IRA passes entirely to the oldest child, even though the will says “divide equally.” The other two children are stunned, the family dynamic changes overnight, and litigation risk jumps.

The law treats that beneficiary designation as a contract. The will does not rewrite it. That is why sensitive assets, especially retirement accounts, should be managed carefully outside the will.

Where to put these instructions instead

Instead of listing beneficiary-driven assets in your will, you handle them in other ways:

- Retirement accounts and life insurance: use up-to-date beneficiary designations. If you have minor children or beneficiaries with special needs, name a properly drafted trust as beneficiary rather than the child directly, and coordinate that trust language with your overall plan. This is also how you address complicated rules around required distributions. People often ask about the “5 year rule for a trust” or the “5 year rule on trusts” in the context of inherited retirement accounts. Today, under federal law, many non-spouse beneficiaries must empty the account by the end of the tenth year. Older “5 year rule” references are now mostly historic or relate to specific situations. The key point: use tailored trust language, not a simple will gift, if you want to control timing and tax impact.
- Bank and brokerage accounts: use TOD/POD designations if you are not using a trust, or better yet, title significant accounts in the name of your revocable living trust so they follow your trust instructions and avoid probate.
- Jointly owned property: understand that joint tenancy usually wins over your will. If you no longer want property to pass solely to the surviving joint owner, change the title now, do not try to contradict it later in your will.

As you review your plan, it often makes sense to sit down with both your estate planning attorney and your financial advisor to walk through every account and confirm how it will actually transfer, regardless of what your will says.

Thing 2: The house, if your real goal is to avoid probate and protect family

The second major thing to think twice about putting in your will, at least as the primary plan, is your California home. This one surprises people.

On paper, you are absolutely allowed to leave your house to your children in a will. Many do. The question is whether that is the best way to leave your house to your children, given California law and your goals.

What happens if the house is only in your will

If your house is titled in your name alone and you simply say in your will "I leave my house to my son," that house almost always must go through probate when you die, unless the total value of your probate estate is under the small-estate threshold.

Probate in California involves court oversight of the sale or transfer. It typically takes nine to eighteen months. It is also not cheap. When folks ask, "What is the average cost for estate planning in California?" there are two layers:

1. Upfront estate planning costs: a basic will-based plan might run a few hundred to a couple of thousand dollars, while a well-drafted living trust package for a homeowner often lands somewhere in the $2,000 to $5,000 range with an experienced attorney.
2. Probate costs later: if you rely on a will and probate, statutory attorney and executor fees on a $1 million gross estate (not unusual for a modest California home with a mortgage) can exceed $46,000 combined, plus court costs and possible additional fees.

That is one reason many families decide a living trust is worth the upfront cost. The downside of a living trust in California is mainly that you have to maintain it: transfer assets into it, keep it updated, and accept that it does not, by itself, protect assets from your own creditors or long-term care costs. The downside of having a trust is not so much legal as practical. Some people never finish funding it, or they assume it does tax magic it was never designed to do.

Trust vs will for the house

When clients ask, "Is it better to have a will or a trust in California?" what they usually mean is, "If I own a house, how do I keep my kids out of probate court and maybe protect the house if I or my spouse need care?"

For the house, a revocable living trust is usually the central tool. You transfer title from your individual name to yourself as trustee. You still control it entirely during your life. At your death, your successor trustee can distribute or sell it according to the trust's terms without probate.

So, what is the best way to leave your house to your children? Common approaches include:

- Giving the trustee power to keep or sell the house and divide proceeds fairly.
- Allowing one child to buy out siblings at a formula price, usually tied to an appraisal, to prevent conflict.
- Creating a special arrangement where one child, perhaps a caregiver, can live in the house for a set period, then the home is sold and the value is divided.

All of these are handled much more cleanly in a trust than in a simple will, because the trust can hold and manage the property for a period of time.

When someone asks, "What is better than a trust?" in the context of avoiding probate for real estate in California, the honest answer is that for most families there is not a practical, broadly better option. Alternatives like joint tenancy or adding a child to the deed can easily backfire with tax issues, creditor exposure, and family conflict.

Pitfalls to avoid

A few related questions come up often:

- "Can I sell my house to my son for $1 dollar?" Legally you can, but for tax and long-term care planning, it is usually a bad idea. It may be treated as a gift for federal tax purposes, can complicate property tax rules, and can cause problems if you later need Medi-Cal. It also exposes the house to your son's creditors, divorces, and mistakes.
- "Is it wise to put your house in a living trust?" For most California homeowners, yes, provided the trust is drafted and funded correctly and you understand its limits.
- "Can I lose my home if my husband goes into a nursing home?" or "Can a nursing home take your house if it is in a trust?" Here it is important to separate myth from reality. In California, Medi-Cal has complex asset and recovery rules. A typical revocable living trust does not, by itself, shield the house from consideration, because you still control it. There are strategies to plan around the Medi-Cal 5-year look-back seen in other states, but California rules differ and are subject to change. Do not rely on generic "how to avoid Medicaid 5 year lookback" advice from other jurisdictions without California specific guidance.

For many families, the house belongs in a revocable trust, not as a simple gift in the will. The will then becomes a "pour-over" safety net: anything left in your individual name gets routed into the trust through probate if needed.

Thing 3: Instructions that belong in other documents, not your will

The third category is broad but important: wishes and instructions that either need to be followed immediately or are better suited to other types of legal tools. Stuffing everything into your will does not make it so.

Health care, life support, and end-of-life decisions

It is very common for someone to hand me a draft will that says something California Estate Planning like, "I do not want to be kept alive on machines" or "I name my daughter to make medical decisions for me."

Those instructions belong in an advance health care directive and, if needed, a separate HIPAA authorization, not in your will.

Your will speaks at death. Health care decisions usually happen while you are still alive but unable to speak for yourself. By the time someone opens your will, the most critical medical decisions have long since been made.

If you put this type of language only in your will, your family will still be forced to guess, or worse, fight.

Funeral and burial instructions

Similarly, funeral and burial wishes are among the classic answers to the question, "What are three things to avoid putting in a will?" It is not that they are forbidden, it is that they often show up too late.

By the time a will is read, burial or cremation may already have occurred. That is not what most people intend.

Those instructions are better placed in a separate letter of instruction, shared during life with the person you expect to handle arrangements. In California you can also sign a specific disposition of remains document. Some people pre-pay arrangements with a funeral home and keep the paperwork with their estate planning binder.

Ongoing money management and complex conditions

Another area where a will is often the wrong tool involves money that needs to be managed over time, such as for young beneficiaries, beneficiaries with special needs, or those with addiction, mental health, or creditor problems.

You can create a testamentary trust inside a will, but that still requires probate to get started. In California, a stand-alone revocable living trust often makes more sense. It springs into long-term management mode without a court case.

This is where a few technical rules people read about online sometimes appear, like the "5 by 5 rule in estate planning" or the "5 of 5000 rule in trust." Those generally refer to a power of withdrawal that lets a trust beneficiary take the greater of five thousand dollars or five percent of trust principal each year without triggering certain negative tax consequences. It is a tax-planning detail for some irrevocable trusts, not something to casually drop into a will.

When you have more complex goals, such as protecting a child's inheritance from future divorces, staggering distributions over time, or providing for a beneficiary with a disability without disqualifying them from public benefits, the tool should be a carefully drafted trust, not a paragraph in a simple will.

Digital assets and day-to-day practicalities

Modern estates almost always include digital assets: email, social media, cloud storage, cryptocurrency, business websites, online banking. Your will can name an executor, but most of the practical information your executor needs will not fit well in the will itself.

I typically recommend a separate, regularly updated document that lists your digital accounts, key contact information for financial professionals, and practical "what not to do immediately after someone dies" guidance. For example: do not rush to close every account the moment you hear of the death; do not start giving away property before you have a clear picture of debts and taxes; do not ignore required tax filings.

Your will should refer broadly to empowering your executor, but the day-to-day roadmap is better handled outside it, where you can update it easily without a formal amendment.

Where, then, does the will still fit?

At this point, some people worry that the will no longer has a role. It does.

The will is still the right place to name guardians for minor children, appoint an executor, and act as a fallback to catch anything that did not make it into your trust. It is also where small personal items, with simple gifts, can live without complicating your trust.

When someone asks, "Who should I not name as a beneficiary?" that question is just as important with your will as with your trust or beneficiary forms. Generally, be cautious naming:

- People who are likely to be sued or divorced in the near term.
- Beneficiaries on needs-based government benefits, unless you are using a special needs trust.
- Caregivers who might be subject to legal restrictions in California, particularly if you are in a facility or dependent on them.
- Very young adults, if a lump-sum inheritance would do more harm than good.
- People you do not really know well, simply to "be fair," without thinking through family dynamics.

For many of these situations, a trust is safer, because it lets you manage timing and conditions.

Taxes, "worst" assets to inherit, and what does not belong in a will

A will is a poor tool for managing income tax issues, especially around retirement accounts.

Clients often ask, "How much tax do you pay if you inherit $100,000?" The honest answer is "it depends what the $100,000 is." California does not have an inheritance tax, and most estates are nowhere near the federal estate tax threshold, so the real question is income tax. Inheriting $100,000 in cash is different from inheriting $100,000 in a traditional IRA.

This ties into the topic of the six worst assets to inherit. The label "worst" is a bit dramatic, but assets that often create headaches include:

1. Large traditional retirement accounts, where beneficiaries must pay income tax as they withdraw, often on a faster schedule under current 10-year rules.

2. Non-qualified annuities, which can carry substantial deferred income tax.
3. Real estate with big built-in capital gains but also mortgage or maintenance headaches, especially vacation homes or timeshares.
4. Closely held business interests without clear succession planning, which may be illiquid and stressful.
5. Collections or unique assets (art, classic cars, niche businesses) that are hard to value and hard to divide.
6. Debt-laden property where the equity is small but the responsibility is large.

Your will can say who receives these, but it cannot change the tax character. That planning needs to happen earlier, often using trusts, beneficiary designation strategies, or outright lifetime gifts, taking into account rules such as the "2 year rule after death" or "2 year rule for trusts" that appear in specific tax or benefit programs.

The popular "7 year rule on inheritance" and "7 year rule for trusts" seen online usually refer to United Kingdom inheritance tax law, not California. Similarly, general claims that "trusts avoid inheritance tax" or "what taxes do trusts avoid" are too broad. In the United States, most revocable living trusts do not avoid estate tax. Their main purpose is control and probate avoidance, not tax elimination.

Probate, timing, and what happens if you do nothing

People sometimes discover all of this late, when a relative dies with only a will or no plan at all.

If there is a will, the person holding it must usually lodge it with the probate court within a short time. If someone asks, "What happens if you do not file probate in California?" the technical answer is that assets may be frozen, title problems multiply, and those who should receive property can sue to force action. There are even penalties for intentionally hiding a will.

The "2 year rule after death" that some people mention often reflects practical, not legal, reality: if an estate sits idle for a couple of years, tax filings, property maintenance, and title problems stack up. The longer you wait to settle things correctly, the harder and more expensive it becomes.

This is another reason to keep the will focused, and push as much as practical into well-structured non-probate transfers.

A simple checklist for "will vs not-in-will" decisions

Here is a short way to think about whether something belongs in your will or somewhere else:

1. Does this asset already have a beneficiary form, joint owner, or trust ownership? If yes, fix it there instead of in the will.
2. Does this instruction need to be acted on while I am alive (medical decisions) or immediately at death (funeral)? If yes, put it in a directive, contract, or letter of instruction, not just the will.
3. Does this property need to be managed over time for someone's benefit? If yes, a trust is usually the smarter tool.
4. Would probate be required if this stayed in my individual name and only in my will? If yes, consider moving it into a living trust or using a non-probate transfer.
5. Is this a highly taxed or "problem" asset, like a large IRA, annuity, or business interest? If yes, talk to an attorney and tax advisor about strategy now. Do not rely on a one-line gift in the will.

Used wisely, your California will does not try to do everything. It works alongside a trust, beneficiary designations, health care directives, and practical instructions to give your family clarity, speed, and as little court involvement as possible at a difficult time.