Most California families now understand that a living trust is usually better than relying only on a will. Then they sit down to do the paperwork and hit the real puzzle: what exactly should go into the trust, and what should stay out?

This is where I see the most expensive mistakes. Not because people are careless, but because the rules around taxes, retirement accounts, and beneficiary designations are not intuitive. It is entirely possible to have a beautifully drafted trust and still create a mess by funding it the wrong way.

This article focuses on what you should **not** put into your trust, and what to do instead, with a particular eye on California law and practice.

Why what you do not fund into your trust matters in California

In California, the point of a revocable living trust is usually to avoid probate, keep affairs private, and make transfers smoother for your family. You fund the trust by retitling assets into its name during your lifetime.

If you misplace assets into the trust, several things can go wrong:

- You trigger unnecessary income taxes or accelerate taxes on retirement accounts.
- You lose valuable creditor or nursing home protection you might otherwise have.
- You complicate beneficiary designations that would have been simple.
- You create extra work for your successor trustee, not less.

I often tell clients: your estate plan has three pillars, and they all have to agree with each other:

1. Your trust and will.
2. Your beneficiary designations and account titles.
3. The way you and your family actually use and manage your assets.

If those three are not aligned, you end up with the classic "most common inheritance mistake": assuming the trust controls everything, when in reality the beneficiary California Estate Planning thomasmckenzielaw.com forms or joint titles trump the language in the trust and will.

Wills, probate, and living trusts in California: a quick reality check

Before we talk about what not to put in a trust, it helps to understand how California treats wills and probate.

Do all wills in California have to go through probate?

No. Probate is required in California only if the total value of assets in the probate estate exceeds a certain threshold. As of 2024, that small estate threshold is in the low six figures and is periodically adjusted. Certain assets do not count toward that number, including:

- Assets held in a properly funded revocable living trust.
- Accounts that have pay on death or transfer on death designations.
- Joint tenancy or community property with right of survivorship.
- Retirement accounts and life insurance with living beneficiaries.

If everything is structured correctly, you can often avoid a full probate even if you do not have a trust, but it is harder and more fragile. The moment a house or a significant account slips through the planning cracks, you may end up in probate anyway.

If you never file probate when it is required, transfers get stuck. Title companies will not insure the sale of a home, banks will not release funds, and the family can end up paying more legal fees trying to fix it years later.

Is it better to have a will or a trust in California?

For a typical homeowner in California, a revocable living trust is usually the better core tool. The reasons are practical, not theoretical.

A trust often works better when:

1. You own real estate in California, especially if your home is worth more than the small estate threshold.
2. You want to avoid the cost and delay of a California probate, with statutory fees that commonly reach tens of thousands of dollars even for modest estates.
3. You care about privacy, since probate filings are public while trust administration is usually private.
4. You have young or vulnerable beneficiaries and want to control how and when they receive money.
5. You own property in more than one state and want to avoid multiple probates.

That does not mean a trust is always the answer. For some very simple estates with no real property, carefully coordinated beneficiary designations and a will can be enough. For others, a trust is a necessary backbone.

What is the average cost for estate planning in California?

Fees vary widely. For a basic but solid estate plan built around a revocable living trust for a married couple, I commonly see ranges such as:

- Around 1,800 to 3,500 dollars with an experienced solo attorney or small firm.
- 3,500 to 6,000 dollars or more at larger firms or for more complex situations, such as blended families, rental properties, or early tax planning.

Cheaper packages exist online. The risk with low cost, one size fits all documents is not always the text itself, but the lack of proper funding and alignment with your actual assets. That is exactly where people misplace things into their trusts.

The 7 assets California families commonly misplace in a trust

With that foundation, let us look at specific asset types. These are items I regularly see people try to retitle to their trust even though there is a better approach.

1. Traditional IRAs and 401(k)s

This is the big one.

Putting a tax deferred retirement account, such as a traditional IRA or 401(k), directly into your revocable living trust while you are alive is usually a mistake. Moving the account itself into the trust is treated as a taxable distribution, which can blow up your current income tax.

Instead, the trust can be named as a **beneficiary** of the account at your death, if that fits your goals. That is completely different from transferring the account ownership into the trust while you are alive.

The default for many California couples is simple: each spouse names the other as primary beneficiary and their children as contingent beneficiaries, not the trust. That often works well, both in terms of taxes and simplicity.

You might name your trust as the beneficiary of your retirement accounts when:

- A child has special needs or receives public benefits and you want to avoid an outright distribution.
- You have significant creditor concerns for a beneficiary.
- You want long term control over how and when funds are used.

In those situations, the trust must be drafted very carefully to meet federal "see through" rules, or the post death withdrawals will be accelerated and taxed more quickly.

This ties into questions like "What is the 5 year rule for a trust?" And "What is the 5 year rule on trusts?" In retirement planning, the 5 year rule used to allow certain beneficiaries to withdraw the entire inherited account over 5 years. Current federal law now often imposes a 10 year rule instead, but the core idea is similar: if you name the wrong kind of beneficiary or trust, you may be forced to empty the account and pay income tax much faster than necessary.

So with traditional IRAs and 401(k)s:

- Do **not** retitle them into your trust during life.
- Do carefully consider whether the trust should be a beneficiary, and if so, make sure the language is compatible with the tax rules.

2. Roth IRAs and other tax favored retirement accounts

Roth IRAs, SEP IRAs, SIMPLE IRAs, and 403(b) accounts share the same structural issue as traditional IRAs and 401(k)s. They should almost never be **owned** by your revocable living trust during your lifetime.

Again, you work with the beneficiary designations, not retitling. The reason is that these are creatures of federal tax law, and transferring ownership during life is rarely permitted without negative tax consequences.

From a planning point of view, Roth IRAs are often among the best assets to inherit, precisely because qualified withdrawals are tax free to the beneficiaries. This is why, when clients ask about "the six worst assets to inherit" or "what are the worst assets to inherit," we are often talking about highly appreciated property with no step up, income in respect of a decedent such as deferred compensation, or certain annuities, rather than Roth IRAs.

Trust as beneficiary can still make sense in complex situations, but you need a lawyer and a tax advisor who both understand the interaction between your trust terms and federal retirement rules.

3. Health savings accounts (HSAs) and flexible spending accounts

HSAs and FSAs are another category that people instinctively try to wrap into the trust, usually for the sake of completeness. They are not designed to be owned by a trust during your lifetime.

An HSA must be owned by an individual. You cannot transfer it to your revocable trust without destroying its tax favored status. On death, you can name a beneficiary, but once the account passes to anyone who is not your spouse, the tax advantages usually end and the account becomes taxable.

Flexible spending accounts are typically "use it or lose it" plans that do not even survive your death. Putting them in your trust is not an option, and drafting elaborate trust provisions for them is wasted effort.

The practical tip here is about expectations. Do not spend much planning energy weaving HSAs and FSAs into complex trust schemes. Use them for what they are, understand who the beneficiary will be, and let them remain outside the funded trust.

4. Annuities inside certain retirement accounts

Stand alone annuities can sometimes be owned by a revocable living trust. Where I see trouble is with annuities that are already inside a tax qualified retirement account, such as a 403(b) or 401(k) annuity contract.

Trying to move those into the trust during life can trigger taxable events or violate the contract terms. As with IRAs, you work with beneficiary designations instead.

Even with non qualified annuities, trust ownership brings trade offs. Many clients ask about "what taxes do trusts avoid" and "do trusts avoid inheritance tax." In the United States, and California specifically, there is no state inheritance tax. A standard revocable living trust does not avoid federal estate tax by itself, and it does not erase the income taxation of annuity payouts.

In some cases, a trust receiving annuity payments can face higher income tax rates faster than an individual beneficiary would. That does not always mean it is the wrong choice, but it is a trade off, not a free benefit.

Before you name your trust as the owner or beneficiary of an annuity, it is worth having a coordinated conversation between the estate planner, the financial advisor, and the tax preparer. In practice, that conversation often never happens, and families inherit complicated, tax heavy contracts sitting inside trusts that were never designed to handle them.

5. Vehicles and other short lived personal property

California does not require you to transfer every car, motorcycle, or boat into your trust, and in many situations, it is not worth the effort.

The Department of Motor Vehicles does allow you to title a vehicle in the name of a trust, and some people choose to do so, especially with RVs or high value vehicles. But for ordinary family cars, putting them into the trust can create hassles with registration, insurance, and financing without delivering much real benefit.

In practice, vehicles are often transferred to heirs using California's streamlined procedures for small estates or by affidavit. They rarely trigger a full probate by themselves.

This is where we run into the question "What are three things to avoid putting in a will?" A will is still important for so called "tangible personal property" such as furniture, art, jewelry, and vehicles. However, many families handle these informally: the trust covers the house and financial accounts, the will pours over any stray items into the trust, and the family uses written lists and common sense for the cars and household contents.

If you have valuable collectibles, classic cars, or luxury items where ownership and titling really matter, those deserve individual attention. But mechanically retitling every ordinary vehicle into the trust is rarely the best use of your time.

6. Certain bank accounts that already avoid probate

Another set of assets that are often misplaced into the trust are small bank accounts that already avoid probate by virtue of their titling.

For example, California banks often allow:

- Pay on death (POD) designations.
- Transfer on death (TOD) designations.

- Joint accounts with right of survivorship.

When people ask which bank accounts avoid probate, these are at the top of the list. If you already have these designations set up correctly, and the balances are modest, moving them into the trust is optional.

There are, however, two caveats.

First, pay on death designations are crude tools. They transfer the account to the named person outright. If you want staged distributions, protections for minor children, or coordination with your broader plan, the trust may still be the better recipient.

Second, mixing too many different patterns can create chaos. I once worked on an estate where every single account had a different pay on death beneficiary, none of them matched the trust terms, and the will said something else entirely. The family spent a year trying to reverse engineer what the parents had intended.

So while some POD or TOD accounts can stay outside the trust, they should still be deliberately coordinated. Do not assume that "avoids probate" automatically means "good planning." It only solves one piece of the puzzle.

7. 529 plans and custodial accounts for minors

Education savings plans and custodial accounts for minors often live in a gray zone in people's minds. Are they part of the estate? Should the trust own them? Should the child?

With 529 plans, the usual structure is that an adult is the owner and the child is the beneficiary. The owner controls the money, even though it is earmarked for the child. Transferring ownership of a 529 to a trust is sometimes possible, but not always recommended.

If your trust owns the 529, it can complicate contributions and financial aid planning. In some cases it can alter how those assets are counted for college aid. Often it is simpler to let a responsible adult continue as owner, and give your successor trustee or your agent under your power of attorney the authority to manage or change that ownership if needed.

For custodial accounts such as UTMA or UGMA accounts, the story is different. By law, that money already belongs to the child. You are merely the custodian. You cannot simply move those funds into your trust without violating your custodial duty.

This connects with the question "What is the best way to leave inheritance to your children." Handing a teenager outright control of a six figure custodial account at 18 or 21 is rarely wise. The better route is usually to keep substantial funds in your trust, with thoughtful distribution terms, rather than overfunding custodial accounts during life.

Common mistakes with wills, trusts, and beneficiaries

The mistakes I see are rarely about obscure tax provisions. They are about human behavior and family dynamics.

Who should you not name as a beneficiary?

The law allows broad freedom, but experience suggests caution with a few categories:

- People who are already in deep financial trouble, active addiction, or abusive relationships. Leaving them money outright can do more harm than good.
- Very young adults, especially if the amount is large. Eighteen is usually too young to manage an inheritance wisely.
- People who receive needs based government benefits, such as SSI or Medi-Cal, where a direct inheritance could disqualify them.

In those situations, using a trust for that person, rather than naming them outright, is often the safer path.

Clients also ask whether a trustee can also be a beneficiary. The answer is usually yes. In family trusts, it is extremely common for an adult child to serve as trustee and also share in the inheritance. The key is clear instructions and, in some families, mechanisms for accountability such as co trustees or periodic accountings.

Three things to avoid putting in a will

A will is still a core document, even in a trust based plan. It acts as a backup and legal safety net. There are, however, several things that do not belong in it.

Here are three of the most common:

1. Detailed funeral instructions that your family needs immediately. Wills are often read too late. Use a separate letter or family conversation for urgent wishes.
2. Assets that already pass by beneficiary designation, like retirement accounts and life insurance. The beneficiary forms control those. Conflicting will language only creates confusion.
3. Complex conditions that are impractical to enforce, such as "my son only inherits if he visits his grandmother weekly." These tend to generate resentment and litigation.

What is the downside of having a trust?

For California residents, the downside of a well drafted revocable living trust is usually not legal risk, but practical trade offs:

- You must fund it properly, which takes time and attention.
- You need to keep it synchronized with your real life, especially when you refinance property, open new accounts, or roll over retirement plans.
- In some cases, people develop a false sense of security and neglect beneficiary designations or tax planning, thinking the trust itself fixes everything.

Some ask whether there is a specific "downside of a living trust in California." The main one is cost and effort compared with a bare bones will. However, given the price of a full California probate and the 10 to 18 months it often takes, the balance usually favors a trust based plan for anyone with a house or significant savings.

Timing rules that confuse people: 5 years, 7 years, 2 years, 10 months

Estate planning conversations are full of timing phrases that sound similar but refer to different rules.

What is the 5 by 5 rule in estate planning?

The "5 by 5 rule" or "5 of 5000 rule in trust" is a power that shows up in some older trust documents. It lets a beneficiary withdraw the greater of 5,000 dollars or 5 percent of the trust principal each year. The idea was to give beneficiaries access to modest amounts without jeopardizing certain tax advantages.

In modern middle class California planning, this rule appears less often, but you might still see it in technical explanations of older irrevocable trusts or insurance trusts. It rarely applies to standard revocable living trusts.

Medicaid and Medi-Cal lookback rules

The "5 year rule for a trust" or "how to avoid Medicaid 5 year lookback" refers to federal rules for long term care benefits, not to California living trusts directly.

If you transfer assets to qualify for Medicaid, there is a 5 year lookback period in most states. Transfers during that period can create a penalty. California historically had a more relaxed system for Medi-Cal, but policy has been evolving, and planning to shield assets from nursing home costs is a specialized area.

Clients often ask variations such as:

- Can a nursing home take your house if it is in a trust?
- Can I lose my home if my husband goes into a nursing home?
- Is it wise to put your house in a living trust?

A standard revocable living trust in California does **not** protect your home from Medi-Cal estate recovery or nursing home costs. It is primarily a probate avoidance tool, not an asset protection trust. If you are worried about long term care, you should be talking about a different set of strategies, which may include irrevocable trusts, specific Medi-Cal planning, and long term care insurance.

There is also chatter online about a "7 year rule for trusts" or "7 year rule on inheritance." That is a United Kingdom concept tied to their inheritance tax. It does not apply in California or under U.S. Federal tax law. Here, gift and estate tax rules revolve more around exemption amounts and lifetime totals than a clean 7 year cutoff.

Two year and ten month references

You may encounter questions about a "2 year rule after death" or "2 year rule for trusts." In practice, these often relate to:

- Deadlines for certain tax elections.
- Time frames for electing portability of a deceased spouse's unused estate tax exemption.
- Internal trust deadlines set by the drafting attorney, not universal law.

The "why do you have to wait 10 months after probate" type of question reflects the creditor claim period. In California, personal representatives commonly wait several months, often approaching a year, before making final distributions, to ensure all legitimate debts and taxes are resolved.

A trust administration in California, while technically outside probate court, often follows similar timing for the same practical reason. Rushing to distribute everything and then discovering unpaid taxes or creditors is a recipe for personal liability for the trustee.

A word on taxes, inheritance, and your house

Clients frequently zoom in on three related concerns: how much tax their heirs will pay, how to leave the house, and whether a trust avoids "inheritance tax."

How much tax do you pay if you inherit 100,000 dollars?

For California residents, the key points are:

- There is no California inheritance tax.
- California also has no separate estate tax.
- Federal estate tax only applies if the estate is larger than the very high federal exemption, which is currently in the multi million range per person.

Income tax is different. If you inherit 100,000 dollars from a bank account or from the sale of a house that receives a full step up in basis, there is usually no immediate income tax.

If you inherit 100,000 dollars of an IRA or other retirement account, withdrawals will generally be taxed as ordinary income in the year you take them. That is where the account type and the beneficiary designation matter much more than whether there is a trust document.

What taxes do trusts avoid?

A standard revocable living trust in California:

- Does avoid probate court in most cases, which saves statutory probate fees and time.
- Does not automatically avoid federal estate tax, although it can be designed to help a married couple use both of their exemptions.
- Does not avoid income tax on interest, dividends, capital gains, or retirement distributions.

So when you hear "do trusts avoid inheritance tax," the honest answer in California is that there is no inheritance tax to avoid. What you are really avoiding are court processes, not a state level tax.

What is the best way to leave your house to your children?

For most California homeowners, placing the house into a properly drafted revocable living trust during life is still the cleanest approach. It lets your successor trustee manage, sell, or distribute the property without probate.

Clients sometimes ask "can I sell my house to my son for 1 dollar" as a shortcut, or wonder about "the disadvantages of putting your house in a trust." Selling for a token price can create gift tax and property tax issues. It often triggers a reassessment of property taxes and can destroy the step up in basis your child would have received at your death.

The trade offs of putting the house into a trust are relatively modest: you must sign a new deed, update your insurance, and remember to use the trust name in future transactions. These are usually worth it compared with the cost and delay of a California probate focused on that same house.

What not to do immediately after someone dies

When a loved one dies, the temptation is either to act too fast or to freeze. Both can cause problems.

From the standpoint of trusts and what is or is not in them, a few practical cautions help:

1. Do not start retitling assets or closing accounts just because your name appears somewhere. Get death certificates, read the trust and will, and understand your role.
2. Do not assume that because an asset has a beneficiary designation, it should bypass all planning. Sometimes it is better for a beneficiary to disclaim an asset and let it pass under the trust if that achieves a better tax or protection result.
3. Do not distribute everything within days. Outstanding debts, taxes, and hidden accounts often surface over several months.

If a California probate is required, expect that full access to and final distribution of assets can easily stretch over 10 to 18 months. That is not usually because lawyers are dragging their feet, but because of the built in waiting periods and procedures in the Probate Code.

Pulling it together

A trust is a powerful tool, but it is not a magic box that fixes everything you throw into it. The most reliable California plans are built on three simple habits:

- Use your trust for what it does best: owning your house and significant non retirement assets, setting rules for your beneficiaries, and avoiding probate.
- Respect the special rules for retirement accounts, HSAs, annuities, and custodial arrangements. Coordinate beneficiary designations instead of casually retitling.
- Revisit your plan when life changes: births, deaths, divorces, refinances, new businesses, out of state properties, or serious health changes.

If you already have a trust and are wondering whether you have misplaced something inside it, pull a current list of every titled asset and every beneficiary designation. Sit down with a California estate planning attorney who will walk through each item line by line. The hard work is not drafting another 60 page document. It is making sure everything you own, and everything your loved ones rely on, is pointing in the same direction.