

Families rarely fight about money alone. They fight about what money represents: love, fairness, control, and respect. After watching many California families go through estate administrations, I can tell you that the way you leave an inheritance is often more important than the amount.

This is especially true in California, where high home values, strict probate rules, and a patchwork of state and federal regulations collide. A modest house purchased for \$80,000 in the 1980s can be worth \$1.5 million today. That one fact turns “I should probably write a will” into “I need a coherent plan so my kids do not end up in court or at war with each other.”

What follows is a practical guide, grounded in California law and lived experience, on how to leave an inheritance to your children thoughtfully and with as little conflict as possible.

Start with the real goal: protecting relationships, not just assets

Technical planning is important: wills, trusts, beneficiary designations, and tax questions. But when families end up in litigation, the root cause is usually emotional. Common triggers include a child feeling “left out,” siblings having different expectations about the family home, an uneven division that no one explained, or a son or daughter believing a new spouse had too much influence.

Before you worry about whether you should use a revocable or irrevocable trust, get clear on these questions:

1. What do you actually want your money and property to accomplish for your children and grandchildren?
2. How important is strict equality versus tailored support based on each child’s situation?
3. Who in your family is likely to struggle with a lump-sum inheritance or with sharing control?

If you start your plan from those answers, the technical tools become much easier to choose.

Wills in California: what they do, and what they cannot do

People often ask, “Is it better to have a will or a trust in California?” The honest answer is that almost everyone with a home or significant assets should have both, but they play different roles.

A will is a set of instructions to the probate court about who should receive your probate assets and who should be in charge after your death. It is not a way to avoid probate. So when people ask, “Do all wills in California have to go through probate?” the practical answer is that if there are probate assets over the relatively low thresholds and no trust or beneficiary system to bypass the court, yes, you are looking at probate.

As of 2024, if the total value of a deceased person’s California assets that do not pass by beneficiary or joint ownership is over about \$184,500, you are likely in probate territory. This number can change, so you must verify current thresholds.

The biggest mistakes people make with their will in California include:

- Having no will at all, so California’s intestacy law decides who gets what, regardless of your real wishes.
- Naming a child who lives out of state as executor without warning them, ignoring practical burdens.
- Leaving the house “equally to all my children” with no instructions on whether it must be sold, kept, or how to resolve disagreements.
- Using vague or contradictory language that sparks interpretation fights.
- Trying to control long term behavior with complex conditions that are not realistic to administer.

When you think about what are three things to avoid putting in a will, three that I see cause trouble are: detailed instructions about assets you expect to sell or move during your life, provisions that violate public policy (for example certain restrictions on marriage), and complex long term management provisions that really belong in a trust, not in a simple will.

Wills are still essential as a “safety net” even when you use a trust. A simple example is a “pour over” will that directs any assets accidentally left outside your trust into the trust after your death. That will can still trigger probate if those outside assets are large enough, but at least the distribution will follow your trust’s rules.

How California probate actually feels

Many people have heard that probate is horrible and expensive, but do not know why. The biggest issues are delay, cost, and public exposure.

When families ask, “Why do you have to wait 10 months after probate?” what they are usually bumping into is the reality that in California, a typical probate can take 9 to 18 months, sometimes longer, because of court backlog, notice periods, and mandatory steps like inventory, creditor periods, and accountings. That long waiting period makes grief more complicated, because major financial decisions remain in limbo.

If you wonder “What happens if you do not file probate in California?” the answer is uncomfortable. You can end up with frozen accounts, an unmarketable house because no one has legal authority to sign, unpaid property taxes, and sometimes penalties or foreclosure risks. Title companies and financial institutions will not “work around” probate requirements.

For modest estates, small estate affidavits can avoid full probate, and certain bank accounts avoid probate if they are set up properly with “Pay on Death” or “Transfer on Death” designations. But you should never assume an account has that designation. You must check, in writing, with each bank or institution.

Why trusts matter so much in California

For a typical California homeowner with children, a properly funded revocable living trust is usually the best foundation for an inheritance plan. That does not mean trusts are magic. It means they can:

- Avoid formal probate court for assets properly titled in the trust.
- Allow faster distribution or management for children.
- Keep family financial details out of the public record.
- Let you set conditions about ages, education, or substance abuse issues, within reason.

People often ask, “Is it better to have a will or a trust in California?” For someone who owns a house and more than modest savings or investments, a revocable living trust plus a simple “pour over” will is usually more efficient than relying solely on a will.

The downside of having a trust

Trusts are not free and not foolproof. Common downsides of a living trust in California include:

- Upfront cost. A comprehensive estate plan for a couple with a house and children often runs somewhere in the range of \$2,000 to \$5,000 with an experienced attorney, depending on complexity and region. So when people ask, “What is the average cost for estate planning in California?” those numbers are a realistic starting band, not an official statistic.

- Ongoing responsibility. You must retitle your house, key bank and brokerage accounts, and often business interests to the trust. If you forget, those assets may still require probate. One of the most common mistakes people make with trusts is signing beautiful trust documents, then leaving all major assets titled in their own names.
- False sense of security. Some people think, “I have a trust, so I never have to review my plan again.” Then a child develops a serious disability, a second marriage occurs, or a business is sold, and the old trust is no longer appropriate.
- Family politics. Choosing a trustee among children can create resentment. A trustee can also be a beneficiary, and often is, especially with adult children. That arrangement can work, but only if the child has the temperament and the family trusts their judgment.

The question “What is better than a trust?” misunderstands the role of a trust. A trust is a tool. In some cases, simple beneficiary designations, life insurance, or retirement accounts that pass directly can handle most of the transfer. In other cases, especially where there is real estate, mixed families, or vulnerable beneficiaries, a well drafted trust is hard to beat.

Revocable vs irrevocable trusts, and all the “rules” you hear about

Dinner table conversations tend to generate a lot of folklore: the 5 year rule for a trust, the 7 year rule for trusts, the 2 year rule for trusts, “5 by 5 rule in estate planning,” and so on. Many of these terms are imported from other states, from federal tax law, or from Medicaid planning in general, and do not always fit California perfectly.

Here is what those phrases usually refer to:

The 5 year rule for a trust or the 5 year rule on trusts often relates to Medicaid or Medi-Cal “lookback” periods in other states. In many parts of the U.S., transfers to certain irrevocable trusts made within 5 years of applying for long term care Medicaid can be penalized. California is in the middle of shifting its Medi-Cal rules, so any [California Estate Planning](#) attempt to “avoid Medicaid 5 year lookback” or protect a home from nursing home costs with a trust absolutely requires specialized advice. General internet rules are dangerous here.

The 7 year rule for trusts and the 7 year rule on inheritance are often imported from the U.K. In the U.S., there is no simple 7 year rule that wipes away federal estate or gift tax issues. Large gifts can require gift tax returns and use part of your lifetime exemption regardless of timing. Most middle class Californians are nowhere near the federal estate tax threshold, but if you are, your plan should involve a tax professional and possibly more advanced irrevocable trusts.

MLF**MCKENZIE LEGAL & FINANCIAL**

FINANCIAL CONSULTING | ESTATE PLANNING | ELDER LAW

LIVING TRUST ATTORNEY ORANGE COUNTY



McKenzie Legal & Financial

2631 Copa De Oro Drive, Los Alamitos, CA 90720

(562) 594-4200

<https://www.thomasmckenzielaw.com/living-trust-attorney-orange-county/>

The 2 year rule for trusts or 2 year rule after death sometimes refers to specific income tax or retirement account deadlines, such as when a beneficiary must take required minimum distributions or when certain elections need to be made. These are very fact specific and can change with federal law. They are not general estate planning principles.

Finally, "What is the 5 by 5 rule in estate planning?" and "What is the 5 of 5000 rule in trust?" refer to a common clause in certain irrevocable trusts. It allows a beneficiary to withdraw the greater of 5 percent of the trust principal or \$5,000 each year without triggering certain tax issues. This can be useful in advanced tax planning, but it is rarely a concern in a basic California family living trust, which is typically revocable and does not rely on those withdrawal powers.

For most families deciding which is better, a revocable or irrevocable trust, the answer is clear. A revocable living trust is usually better for basic estate planning and probate avoidance because you can change it, use the assets freely, and it has no special tax complications. Irrevocable trusts are powerful in very specific cases: estate tax minimization for very large estates, asset protection in some contexts, or specialized Medi-Cal planning with expert guidance.

Taxes, trusts, and what your kids actually face

Questions about taxes create enormous anxiety, often unnecessarily. People ask, "Do trusts avoid inheritance tax?" and "What taxes do trusts avoid?" In California, there is no state inheritance tax and no separate state estate tax. Whether your assets sit in your own name or inside a revocable living trust, for federal purposes they are still yours. The trust by itself does not avoid federal estate tax.

At current federal thresholds, only a very small percentage of estates pay federal estate tax. That threshold is scheduled to decrease after 2025, subject to future legislation, so higher net worth families should monitor it.

For most California children, the more relevant concern is income tax on what they inherit. A common question is, "How much tax do you pay if you inherit \$100,000?" If the \$100,000 comes from a regular bank account or from the sale of a non retirement asset after your death, there is usually no income tax just for inheriting the money. However, if that \$100,000 comes from an inherited traditional IRA, 401(k), or similar retirement account, then the withdrawals generally are taxable as ordinary income to the beneficiary.

So when people ask, "What are the worst assets to inherit?" or "What are the six worst assets to inherit?" retirement accounts with large built in income tax obligations are often near the top of the list, especially when handled poorly. Other difficult inheritances include highly illiquid minority interests in family businesses, timeshares with high fees, and certain types of deferred compensation. The "six worst assets to inherit" varies by family, but you want to think about liquidity, tax drag, and complexity.

On the other hand, a home or stock with large built in gains often receives a "step up" in basis at death for federal income tax purposes. That means a child who sells shortly after your death may owe little or no capital gains tax. This is one reason why "Can I sell my house to my son for \$1 dollar?" is usually a bad idea. A bargain transfer during life can destroy the step up in basis and create a large future tax bill. It can also trigger gift tax reporting requirements and cause fairness fights with other children.

So when you ask, "What is the best way to leave your house to your children?" in California, the answer is often to hold it in a revocable living trust, allow the basis to step up at your death, and give the trustee clear written instructions about whether to sell, allow one child to buy out the others, or permit a reasonable period for a child to live there and then sell. A transfer on death deed is sometimes used, but it has pitfalls, including potential for conflict and lack of coordination with the rest of the plan.

Nursing homes, Medi-Cal, and protecting the family home

Few topics generate more fear than long term care. Many clients 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 short answer is that nursing homes do not directly "take" homes. Instead, Medi-Cal (California's Medicaid program) has rules about eligibility and recovery for long term care benefits.

Putting your house into a revocable living trust does not shield it from Medi-Cal estate recovery because you still own the house in the eyes of the law. Certain irrevocable trusts, structured properly and created early enough, can sometimes help protect assets, but the rules are extremely technical and in flux. Anyone serious about how to avoid Medicaid 5 year lookback or structure the home for Medi-Cal purposes must work with a lawyer who focuses on elder law and is up to date on California's evolving rules.

For many middle class families, the more practical focus is to ensure that the spouse who remains at home is safe and housed, and that any Medi-Cal planning is integrated with the broader inheritance plan rather than done as a one off tactic.

Beneficiaries, family politics, and who should not be in charge

Who you put in charge of your estate or trust often matters more than exactly how the numbers are divided. When you ask, "Who should I not name as a beneficiary?" you are really asking about both emotional and practical factors.

Here is a focused list that often helps clients sort out beneficiary and fiduciary decisions:

1. Be very cautious about naming someone with serious addiction, gambling, or uncontrolled debt problems as an outright beneficiary without protections.
2. Think twice before naming a current romantic partner of your child instead of the child directly, unless you have a specific reason and understand the risks.
3. Avoid naming very young adult children as co trustees or executors alongside a dominant older sibling, which can harden family power imbalances.
4. Do not name someone who you know cannot handle paperwork or conflict as the primary person in charge, no matter how "fair" it feels.
5. Use professional trustees or co trustees when family dynamics are already strained or there are complex asset management issues.

A trustee can also be a beneficiary, and that is sometimes the only practical option, particularly for adult children who are also the primary heirs. The key is to ask: will other siblings accept this person's judgment, and does this person have the temperament to handle the inevitable complaints?

If no child is a good candidate, or if you anticipate conflict, you can name an independent third party, such as a professional fiduciary or trust company. This introduces cost, but it also removes accusations that one child "manipulated" the process.

What you should not put in a trust, and what not to do after a death

Most assets can comfortably sit inside a revocable living trust: the house, brokerage accounts, non retirement investments, and sometimes even interests in closely held businesses. But there are some things you usually should not put in a trust.

Qualified retirement accounts like 401(k)s and traditional IRAs are typically left outside the trust and pass by beneficiary designation. Trying to retitle those accounts to the trust can create immediate tax consequences. Instead, you coordinate the designations with the trust, so that the trust is a backup beneficiary if children die or special needs planning is needed. Also, certain vehicles like health savings accounts and some forms of deferred compensation have their own beneficiary systems that should be handled separately.

Another practical area that breeds conflict is the immediate aftermath of a death. There is a lot of "What not to do immediately after someone dies" advice floating around. Here are a few that I have seen create real damage: do not start cleaning out the house and dividing personal property without clear authority and agreement, do not close accounts or retitle assets based on "what mom wanted" without following legal procedures, and do not "borrow" from estate accounts for personal reasons even if you are sure you will pay it back.

Many fights begin in that first chaotic month, when everyone is sad and tired. A calm, clear executor or successor trustee who knows the plan can reduce the temperature dramatically.

Avoiding the most common inheritance mistake: silence

Clients often ask, "What is the most common inheritance mistake?" If I had to pick one, it would be planning in secret and never explaining the plan. Children then discover surprises during probate or trust administration, long after you are gone, and they interpret every unexpected choice as favoritism or manipulation.

You do not need to show your children every page of your trust, but a family meeting where you share your broad intentions can erase many future conflicts. You can explain why one child who devoted years to caring for you is receiving a slightly larger share, why the family cabin must be sold after ten years if children cannot agree,

or why a struggling child's inheritance is held in trust instead of paid outright. Once they hear the reasons from you, these choices feel less like judgments and more like thoughtful planning.

Putting it together: a conflict sensitive California plan

For a California parent with children, a balanced, conflict aware structure often looks like this:

2. A revocable living trust that owns your house and major non retirement accounts, with clear instructions about how and when your children receive their shares, including options if they disagree about selling or keeping property.
3. A simple "pour over" will that catches anything left outside the trust and sends it into the trust system, plus backup guardianship nominations if you still have minor children.
4. Updated beneficiary designations on retirement accounts and life insurance that align with the trust and your tax planning.
5. Realistic choices of executors, trustees, and backup decision makers, potentially including a neutral professional if family politics are rough.
6. A written note or family conversation explaining your priorities and any choices that might otherwise feel like favoritism.

Is it wise to put your house in a living trust? In California, for most homeowners with children, yes, provided you do the rest of the work: funding the trust properly, coordinating beneficiaries, and updating the plan over time.

There is no single "best way to leave inheritance to your children" that fits every family. Some children need structure and protection, others need freedom and trust. What matters is that your plan reflects reality, honors your values, and gives your kids a fighting chance to stay siblings first and heirs second.