

Most people only think about probate when a parent dies or a friend asks you to be an executor. By that point, emotions are high, time is short, and the learning curve is steep. I have sat with many California families at that exact moment, staring at a will and asking the same question:

“Does this have to go through probate?”

The honest answer is, it depends. Not every will in California requires a full court probate, but more estates fall into probate than most people expect. The good news is that with some planning, you can often keep your loved ones out of court, or at least limit how painful the process becomes.

This guide walks through how probate really works in California, which assets can bypass it, when a trust makes more sense than a will, and the most common mistakes I see people make with both.

What probate actually does in California

Probate is the court process that:

- Proves a will is valid.
- Appoints someone to manage the estate.
- Ensures creditors get paid in the right order.
- Distributes what is left to the correct heirs or beneficiaries.

California probate is public, slow, and not cheap. Court filings, mandatory notices, required waiting periods, and statutory fees for the personal representative and the attorney all add up. For a modest estate with a home and some savings, the statutory attorney fee alone can easily run into the tens of thousands of dollars, because it is based on the gross value of the estate, not the net after debts.

Still, probate is not inherently “bad.” It creates structure when there is conflict, confusion, or debt. The key is not to fear it blindly, but to understand whether your estate would actually end up in probate under California rules, and whether that is acceptable.

Do all wills in California have to go through probate?

No. Having a will does not automatically mean there will be a probate case, and not having a will does not automatically avoid probate either.

The core idea is this: probate is largely about how assets are titled and how big the estate is, not just about whether a will exists.

A California will is a set of instructions. Probate is the formal court process used when those instructions cannot be carried out informally. Many small or well planned estates can be settled without opening a full probate, even though a will exists.

Here is when a will in California is most likely to trigger probate:

- The decedent owned real estate in their name alone (no joint owner, no transfer-on-death deed, no trust).
- The total value of probate assets is above the California small estate threshold.
- There is a dispute about the will’s validity or about who should serve as executor.
- The estate has complicated or contested debts and needs court oversight.

If none of those apply, a will may simply guide who gets what, while the actual transfers happen through beneficiary designations and other nonprobate methods.

The California small estate rules: when you can skip formal probate

California has a “small estate” procedure that lets heirs collect assets without a full probate if the gross value of the decedent’s probate estate is under a certain dollar amount. That figure is adjusted periodically for inflation. As of the mid 2020s, it sits in the mid six figures. You should always check the most current Judicial Council forms or talk to a professional to confirm the current limit.

The key word is probate estate. Many people think about their “estate” as everything they own, but the law only counts assets that do not otherwise pass by title, beneficiary designation, or trust.

If a person dies with:

- A house in a revocable living trust.
- Retirement accounts with named beneficiaries.
- A joint bank account with a surviving co-owner.
- A small checking account in their name alone.

It is very possible that only that small checking account is considered part of the probate estate. If the total probate assets fall under the California limit, the heirs may use an affidavit process instead of probate to collect those funds.

For real property below a separate threshold, there is a simplified petition process that is still filed in court but far lighter than a full probate case. Families often use it for a low value parcel of land, a mobile home, or a fractional interest in property.

This is why a blanket statement like “All wills must go through probate” misses the mark. The size and composition of the estate matter far more than the piece of paper labelled “Last Will and Testament.”

Which assets avoid probate, even if there is a will

In practice, the way an account or property is titled often controls whether probate is needed. The will is a backup plan: it governs what happens to everything that does not pass some other way.

Here are common categories of assets that can avoid probate if structured correctly:

1. Accounts with designated beneficiaries. Retirement accounts, life insurance, and many financial accounts allow you to name one or more beneficiaries. When you die, those assets are paid directly to the named people, typically without court involvement. This includes most IRAs and 401(k)s. The biggest mistake here is failing to update beneficiaries after a divorce or after a death, which can drag those accounts back into the probate mess or send money to someone you no longer want to benefit.
2. Payable on death and transfer on death accounts. Many banks in California let you add a “POD” or “TOD” designation on checking, savings, and some investment accounts. The money moves directly to the listed beneficiary upon proof of death. Used correctly, these are bank accounts that avoid probate.

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3. Joint tenancy and community property with right of survivorship. Real estate and some accounts can be titled so that the surviving owner automatically receives the entire asset. This often avoids probate for the first death, although it can create tax and planning issues at the second death if no trust exists.
4. Assets held in a revocable living trust. When you properly fund a trust, the trust becomes the owner. The trustee then has legal authority to manage and distribute the property under the trust terms, usually without probate. This is the primary way middle class homeowners in California avoid court involvement for their house.
5. Certain small value or special category assets. Some vehicles, personal property, or refunds can be claimed through simplified state procedures below certain thresholds, again avoiding full probate.

A common surprise for families is that the will might say "I leave my house to my children," but the house is already titled in a trust or in joint tenancy. In that case, the title arrangement generally wins, not the language in the will. The will only controls what is part of the probate estate.

When assets do not avoid probate, even if you have a will

On the other side, many people assume that having a will guarantees an easy process. It does not. Here are situations where even a well written will cannot prevent probate:

The person owned a California home in their name alone, with no trust, no survivorship title, and no transfer-on-death deed. That home typically requires some level of court proceeding to sell or transfer it.

The estate owns a business interest or lawsuit that needs to be managed, sold, or settled. The court may need to appoint someone through probate to act on behalf of the estate.

There is significant conflict among heirs or between the executor named in the will and the rest of the family. The court framework of probate becomes the place where those disputes are handled.

The estate holds “problem assets” that do not lend themselves to informal transfer, like complex partnerships, certain out-of-state real property, or heavily encumbered assets with creditors circling.

When people ask, “What are the worst assets to inherit?” or “What are the six worst assets to inherit?” they usually do not mean emotionally. They mean, “What will cause the most tax, legal, or administrative headache?” In my experience, top contenders include highly appreciated real estate outside a trust, tax-deferred retirement accounts with no designated beneficiaries, interests in closely held businesses with no buyout plan, and assets under aggressive creditor or Medicaid-style recovery claims.

What happens if you do not file probate in California

Sometimes families simply do nothing. They leave the house in the decedent’s name. They do not transfer bank accounts. They keep paying the mortgage and property taxes and hope it all works itself out.

In the short term, that may work. Over time, it becomes a tangle. You cannot sell or refinance the house without clear title. The bank may eventually freeze accounts. If a second person on title dies without ever having cleaned up the first estate, you now have two or more layers of probate or heirship to unwind.

There is no “probate police” in California that drag families into court after a death. But if you sit on your hands too long, witnesses die, records disappear, and the cost and difficulty of fixing title later can far exceed what a timely probate would have cost.

I often hear questions like, “What is the 2 year rule after death?” or “Why do you have to wait 10 months after probate?” There is no single universal 2 year or 10 month rule. California probate has specific creditor claim periods and required notice and waiting times. For example, creditors generally have a limited window after notice to file claims, and the estate should not distribute everything until those windows have passed, which is why beneficiaries sometimes feel like they are waiting forever.

If you suspect an estate needs some type of court proceeding, talk with counsel early instead of letting years go by. Delay rarely makes probate easier.

Wills versus trusts in California: which is better?

“Is it better to have a will or a trust in California?” is probably the most common planning question I hear from homeowners.

A will is a set of instructions to the probate court. It is essential if you have minor children, because it names guardians and gives structure. But a will by itself does not avoid probate if you own significant assets in your name.

A revocable living trust, when funded, acts more like a private rulebook that controls your property while you are alive and after you die. In California, for a married couple owning a home and some investments, a living trust is often the most practical way to avoid probate for the house and keep the administration private, flexible, and faster.

That said, there are real downsides of a living trust in California if handled carelessly.

Cost and complexity. A proper trust package for a California homeowner often runs anywhere from a few thousand to several thousand dollars, depending on the attorney and complexity. When people ask, “What is the

average cost for estate planning in California?" I usually respond with a range rather than a single number, because a simple will with basic power of attorney documents is at the low end, while a comprehensive trust based plan with tax planning, business interests, or blended families will sit much higher.

Funding failures. The most common inheritance mistake with trusts is not actually moving assets into the trust. You sign the glossy binder, then never retitle the house, do not change beneficiary designations, and leave major accounts outside. When you die, those "orphan" assets still go through probate, undercutting the entire point.

False sense of tax shelter. Many people think "Do trusts avoid inheritance tax?" or "What taxes do trusts avoid?" The answer is nuanced. A standard revocable living trust in California does not by itself save income tax or estate tax. It is primarily about avoiding probate and providing management. Certain irrevocable trusts can shift assets out of your taxable estate or protect them from creditors, but they bring loss of control and other trade offs.

Administrative burden. Trustees have fiduciary duties. Many are not prepared for the bookkeeping, reporting, and legal obligations that come with that role. Which leads to another common question: "Can a trustee also be a beneficiary?" In most California family trusts, the answer is yes. That is normal. The danger is not the dual role itself, but a trustee who thinks being a beneficiary gives them license to ignore the rules.

The bottom line: for many California families who own real property, a revocable living trust is usually wise. But it is not a magic shield. It must be well drafted, funded, and maintained, and you need to understand its limits.

The "rules" people hear about: 5 year, 7 year, 5 by 5, 2 year

Clients bring in phrases they pick up online: "What is the 5 year rule for a trust?" or "What is the 7 year rule for trusts?" or "What is the 5 by 5 rule in estate planning?" Unfortunately, these terms are often used loosely, and they do not all come from California law.

Here is how they typically show up in practice:

The 5 year rule for trusts or Medicaid. In many states, Medicaid has a 5 year lookback period. If you transfer assets to certain types of trusts or give them away within 5 years of applying for long term care coverage, you may be penalized. California's Medi-Cal rules and recovery practices have their own twists, and federal law continues to evolve. Anyone asking "How to avoid Medicaid 5 year lookback?" or "Can I lose my home if my husband goes into a nursing home?" needs state specific, up to date advice. In many cases, this planning starts well before anyone enters a care facility.

The 7 year rule for trusts or inheritance. That phrase usually comes from United Kingdom inheritance tax law, not California law. The "7 year rule on inheritance" is a UK concept about gifts falling outside the estate if the giver survives seven years. It does not apply to California residents, although we do have our own federal gift and estate tax rules.

The 5 by 5 rule in estate planning. This often refers to a federal tax concept: a beneficiary's power to withdraw the greater of 5 percent or \$5,000 from a trust each year without triggering certain adverse tax consequences. You may also see it described as the "5 of 5000 rule in trust." It can be useful in carefully drafted irrevocable trusts, especially for tax or asset protection planning, but it is not a standard feature of a basic California living trust.

The 2 year rule for trusts or after death. People use "2 year rule" to refer to a variety of things: deadlines for disclaimers, optional distribution delays, or certain tax elections. There is no single universal 2 year rule that applies to all California estates. Each instrument and context is different.

If you have heard one of these phrases, do not design your plan around an internet slogan. Ask what specific statute or tax rule it refers to, and whether that rule even applies to California or to your situation.

Common mistakes people make with their will

When someone asks, "What are the biggest mistakes people make with their will?" they usually expect a technical answer. In practice, the mistakes tend to be more human than legal.

People put off signing anything until they lose capacity. Families then fight over a handwritten note or a half finished form. Or they write a will once and never revisit it, even after marriage, divorce, new children, or a move to California from another state.

Three patterns I see repeatedly:

Leaving assets to someone who really should not be a beneficiary. When people ask "Who should I not name as a beneficiary?" I tell them to think about three factors: vulnerability to creditors or divorce, government benefits, and emotional instability. For example, naming a child who is deep in addiction as an outright beneficiary can be harmful. In those situations, a trust share with a responsible trustee may be safer. Likewise, naming a person with special needs outright may disrupt their benefits.

Trying to use a will to control everything forever. You cannot realistically manage every dollar from the grave. Overcomplicated conditions can create resentment and litigation. There is a balance between reasonable guidance and trying to micromanage adult beneficiaries.

Using a will to dispose of things that should never be there. When people ask "What are three things to avoid putting in a will?" I usually point to certain categories, which I will cover in a focused list below.

There is also the practical mistake of ignoring beneficiary designations. Your will might say that your accounts should be divided among your three children, but if your 401(k) beneficiary still names your ex spouse from 20 years ago, the account will not follow the will. This misalignment is one of the most common inheritance mistakes.

Three things to avoid putting in a will

Here is where a short list helps, because people remember it:

1. Assets that already pass by beneficiary designation or joint ownership, such as life insurance, retirement accounts, or joint tenancy property. Mentioning them in the will does not override those existing designations and can create confusion among heirs.
2. Detailed instructions about nonprobate assets that really belong in a trust or beneficiary form, particularly if you want to control distributions over time. If you want to stretch out how your children receive inherited retirement accounts or control how a house is used, that usually belongs in a trust instrument, not the bare will.
3. Certain sensitive digital information or passwords. A will becomes a public record in probate. You do not want bank logins, crypto keys, or other sensitive data sitting in a court file. Use a separate, secure inventory with directions given to your executor or trustee.

You can reference these matters generally in the will, but the actual mechanisms should sit in private, more flexible documents.

Trust mistakes: what not to put in a trust and what can go wrong

A trust is only as good as what you put in it and how you use it. People often ask, "What should you not put in a trust?" and "What are common mistakes people make with trusts?" The answers vary by tax situation, but some themes recur.

Qualified retirement accounts, like traditional IRAs and 401(k)s, are usually not retitled into a revocable trust during life. Instead, you name the trust or individuals as beneficiaries. Moving the account itself into the trust can trigger unwanted tax consequences. Whether to name a trust as beneficiary is a nuanced question that touches on income tax brackets, ages of beneficiaries, and new federal distribution rules.

Out of state property without local guidance. Placing an out of state vacation home into a California trust may avoid an ancillary probate, but you need to confirm how that other state treats your California trust and what tax or reporting duties it creates.

Personal vehicles used daily. In California, many practitioners leave everyday cars outside the trust for practical reasons and rely on the small estate processes to transfer them after death. This is not a hard rule, but it illustrates that not every single item you own must be in the trust.

On the other hand, if you are wondering “What is the best way to leave your house to your children?” or “Is it wise to put your house in a living trust?” the answer is often yes, provided the trust is properly drafted and fits your broader goals. A house in a revocable living trust remains largely under your control while you are alive, and it can avoid probate at death. The disadvantages of putting your house in a trust tend to be about the upfront cost and the risk of sloppy drafting or poor funding, not about losing control, as long as the trust is revocable and you are the trustee.

Questions like “Can a nursing home take your house if it is in a trust?” hinge on whether the trust is revocable or irrevocable, and on the specific long term care and Medicaid or Medi-Cal rules in play. Revocable trusts usually do not protect assets from those types of claims. Certain irrevocable trusts might, but they involve giving up control, planning well in advance of any care needs, and accepting complex tax and eligibility rules.

Taxes, inheritances, and the \$100,000 question

People are understandably anxious about taxes on inheritance. I often hear, “How much tax do you pay if you inherit \$100,000?” or “Do trusts avoid inheritance tax?” Here are some grounded realities for California residents:

California, at the time of writing, does not have a separate state inheritance tax or estate tax. The main tax players are federal estate tax, federal and state income tax, and property tax rules on real estate.

If you inherit \$100,000 in cash from a nonretirement account, you generally do not owe income tax simply because you received an inheritance. The decedent may have owed tax during life on gains, but the inheritance itself is not taxable income to you under federal law. If that \$100,000 comes from a traditional IRA or 401(k), distributions you take as the beneficiary are generally taxable as ordinary income.

Trusts themselves do not magically avoid tax. A revocable trust is ignored for income tax while you are alive. After death, a trust may pay income tax on its earnings or pass that tax burden through to beneficiaries, depending on how it is drafted and administered. Certain irrevocable trusts are structured specifically to shift future appreciation or income growth out of the grantor’s taxable estate, but they are tools with clear trade offs.

There is also a lot of confusion about death related benefits, such as “What is the \$10,000 death benefit?” Different systems use similar language: some unions or pension plans provide a flat death benefit, certain federal programs historically referenced small burial benefits, and some insurance or employer programs set a fixed payout. There is no single universal \$10,000 benefit that everyone receives at death. Families should review the decedent’s employment, veterans, and benefit statements carefully instead of assuming a standard payment.

Practical steps: what not to do immediately after someone dies

In the earliest days after a death, families often fixate on legal paperwork before they have even located key documents or taken stock of assets. That urgency can backfire.

Here is a short, focused list of what not to do immediately after someone dies in California:

1. Do not start moving or retitling assets in your own name simply because you held a key or were told “everything is yours.” Until authority is clear, this can be treated as self dealing.
2. Do not ignore or shred financial mail. Statements, bills, and notices help trace assets and debts. Tossing them in grief makes later administration harder.
3. Do not rush to sell the house or personal property before you understand who has legal authority and what the market or family dynamics really look like.
4. Do not assume a will or trust from another state works perfectly in California. It might be valid, but certain provisions can interact differently with community property rules and local procedures.
5. Do not sign complex legal forms you do not understand simply to “get it over with.” Early mistakes in probate or trust administration can be expensive to unwind.

Give yourself permission to handle the immediate human tasks first: notify close family, arrange for remains, gather basic papers. Then, within a few weeks, start building a clear picture of assets, debts, and documents before deciding whether a California probate is required.

Selling the house to children, fairness, and long term planning

The family home triggers many of the toughest questions: “Can I sell my house to my son for \$1 dollar?” “What is the best way to leave inheritance to your children?” These questions sit at the intersection of legal, tax, and emotional issues.

Selling a house to a child for \$1 is generally a bad idea. It often counts as a large gift for tax purposes, may trigger property tax reassessment in California under current rules, and can create resentment among siblings. It also sets a very low tax basis for your child, potentially increasing capital gains if they later sell.

Alternatives that often work better include placing the house in a well drafted trust with clear distribution provisions, or equalizing inheritances through other assets if one child is to receive the home. Whether there is anything “better than a trust” depends on goals. For pure probate avoidance on modest assets, careful use of beneficiary designations and transfer-on-death deeds may be enough. For blended families, long term care planning, or special needs, a trust is usually the only flexible, realistic structure.

When [California Estate Planning](#) spouses worry, “Can I lose my home if my husband goes into a nursing home?” they are blending estate planning, long term care, and public benefits law. The best answer is to start planning early, understand the interaction between home equity, Medi-Cal rules, and spousal protections, and be skeptical of quick fixes that promise absolute protection without regard to changing laws.

Bringing it back to probate

So, do all wills in California have to go through probate? No. But if you die owning a significant amount of property in your own name, particularly real estate, your loved ones will likely face some level of court process, regardless of what your will says.

The path out of that default is straightforward but requires conscious action:

- Clarify which assets you own, how they are titled, and who your beneficiaries are.
- Decide whether a revocable living trust fits your situation and, if so, actually fund it.
- Align your will, trust, and beneficiary designations so they are not contradicting one another.
- Revisit your plan when major life events occur or when you move into or out of California.

Thoughtful estate planning is less about fancy jargon like 5 year rules and more about avoiding very human pain points: conflict among siblings, delay when money is needed for care, and the feeling of being trapped in a process you do not understand.

Handled well, your will becomes a safety net rather than a ticket to probate, and your broader plan reflects how you actually want your family to live after you are gone.