Estate planners talk about living trusts so often that many Californians assume they are mandatory. I meet people who sit down in my office already convinced they "need a trust," before we have even talked about their assets, family, or goals. For some, a revocable living trust is exactly the right tool. For others, it adds cost and complexity without much benefit, or worse, it creates a false sense of security that leads to bigger problems later.

This is not an argument against trusts. It is an argument for matching tools to reality. In California, where probate is real but also highly misunderstood, it is worth looking squarely at the downside of having a trust and at the situations where a California living trust is not necessarily the best choice.

What a California living trust really does (and does not do)

A revocable living trust is a legal container you create during your lifetime. You transfer assets into it, act as your own trustee, and retain full control. You can revoke it or amend it. When you die, the successor trustee you named manages and distributes those trust assets without a probate court case, as long as the trust was properly funded.

In practical terms, a California living trust is mainly about:

- Avoiding a full formal probate for assets titled in the name of the trust
- Providing a roadmap for incapacity, so someone can manage your trust assets if you become ill
- Preserving some privacy, since trust administration is mostly handled outside of court

What it does not automatically do:

It does not cut your income taxes. It does not avoid federal estate tax by itself. It does not shield assets from your own creditors while you are alive. It does not, by default, protect your house from nursing home costs or Medi-Cal estate recovery. It does not fix bad beneficiary choices or sloppily titled accounts.

Understanding those limits is key to understanding the downside of having a trust.

The real cost of a California trust plan

People often start by asking, "What is the average cost for estate planning in California?" The honest answer is: it depends on the complexity of your estate, the experience level of the lawyer, and what is included.

For a married couple with a home, children, and a moderate investment portfolio, you might see full trust-based plans in the range of roughly $2,000 to $5,000 from an experienced estate planning attorney. Simpler will-based plans may fall between about $800 and $2,500. At the very high or low ends of the market the numbers get less reliable: heavily discounted "trust mills" and ultra-high-end boutique firms both exist.

The cost problem is not only the initial fee. Trusts come with ongoing complexity that many people underestimate.

You must retitle assets into the name of the trust. Deeds must be recorded for real estate. Brokerage accounts and some bank accounts need new ownership paperwork. New assets you acquire later must be titled correctly or they fall outside the trust. Most failures with trusts begin here.

Then there are updates. New child, new marriage, divorce, estranged beneficiary, new house, sale of a business, changed tax law: each of these shifts the puzzle enough that your trust probably needs an adjustment. If you keep your trust for 20 or 30 years, you are really buying a long-term relationship with an estate planning process, not a one-time product. Some people are ready for that. Others are not.

For a person with a very modest estate and simple goals, the benefit from avoiding probate might not outweigh the higher upfront and maintenance costs of a trust. In those cases, a well-drafted will, beneficiary designations, and maybe a transfer on death deed on the house can do enough at a lower all-in cost.

The biggest mistakes with wills and trusts

The biggest estate planning failures I see are almost never about “the wrong form.” They are about human behavior: what people do or fail to do after the documents are signed.

When clients ask, “What are the biggest mistakes people make with their will?” or “What are common mistakes people make with trusts?” I usually give the same handful of examples, because they come up again and again.

Here are some of the most dangerous patterns:

1. Signing a trust and never funding it

   People pay for a beautiful revocable trust, put it in a drawer, but never retitle the house, accounts, or business interests into the trust. Legally, the trust owns nothing. When they die, their family still needs a probate because the assets are still in the person’s individual name. The trust did not fail. The implementation did.

2. Conflicting beneficiary designations

A will or trust might say "Everything to my three children in equal shares," but the IRA beneficiary form still names a former spouse, or just the oldest child. Retirement accounts, life insurance, and some annuities pass by beneficiary designation, not by your will or living trust. One of the most common inheritance mistakes is assuming the will "controls everything."

3. Choosing the wrong people

   "Who should I not name as a beneficiary?" is a more useful question than people realize. Someone with serious debt problems, active addiction, or on needs-based public benefits can be harmed by a direct inheritance. Minor children cannot legally manage money at all. A sibling who can barely manage their own life is not a good candidate for trustee. Can a trustee also be a beneficiary? Yes, and often they are, but combining those roles demands trust and sound judgment. In blended families, this choice can make or break the entire plan.

4. Letting everything gather dust

   People sign great plans and never revisit them. Ten years later, the trustees are infirm, the guardians moved to another state, one child has special needs that were not considered, and tax laws have changed. The documents technically "work," but they no longer fit the family. A good estate plan should be reviewed at least every few years and after major life events.

These problems do not magically improve with a trust. In some ways they get worse, because the trust adds another layer that must be coordinated with everything else. If you are unlikely to follow through on funding and periodic review, a simpler will-based plan might create fewer opportunities for failure.

Probate myths: do all California wills go through court?

Probate fear is the main driver of the "everyone needs a trust" message. It is true that California probate can be slow and relatively expensive compared to many other states. Statutory fees for attorneys and executors are calculated as a percentage of the gross value of the probate estate, which can feel painful.

Still, not every estate in California must open a formal probate case. The key issues are how assets are titled and the total probate estate value.

If your assets are set up carefully, even a will-based plan can avoid or minimize probate. For example:

Savings, checking, and some brokerage accounts can often be set up to avoid probate through payable-on-death (POD) or transfer-on-death (TOD) designations. Those bank accounts avoid probate as long as the named beneficiaries survive you and the forms are correct.

Real property can sometimes bypass probate with a properly executed and recorded revocable transfer on death deed, or by holding title in joint tenancy with right of survivorship or as community property with right of survivorship. These tools have real drawbacks, but for some narrow scenarios they can work.

When people ask, "Do all wills in California have to go through probate?" the answer is no. A will is a set of instructions to the probate court for any assets that do end up in probate. It does nothing to avoid probate by itself. If almost everything you own passes by beneficiary designation or joint ownership, your executor may only need small estate procedures, not a full formal probate.

On the flip side, "What happens if you do not file probate in California?" If a formal probate is legally required and no one opens it, assets might remain frozen. Title companies may refuse to insure property transfers. Banks may refuse to release funds. Creditors remain unpaid. Eventually, family members can end up in expensive litigation. Skipping probate is not a strategy.

A living trust can prevent a lot of this, but if you have a genuinely small and simple estate and are willing to think carefully about title and beneficiary designations, the cost and work of a trust may not be justified.

Taxes: what trusts do and do not avoid

There is deep confusion about what taxes trusts actually avoid. People ask, “Do trusts avoid inheritance tax?” or “What taxes do trusts avoid?” as if there were a simple checklist. In California, there are a few key points.

First, California currently has no state inheritance tax or estate tax. If you inherit $100,000 in California, you typically do not pay a separate California inheritance tax. For most recipients, the question “How much tax do you pay if you inherit $100,000?” is answered by looking at the nature of the assets:

If you inherit a cash account, the receipt of the money is generally not taxable income. Future interest you earn is taxable.

If you inherit a traditional IRA or 401(k), distributions you take are generally taxable as ordinary income.

If you inherit appreciated stock or real estate from an individual, you usually receive a stepped-up income tax basis as of the decedent’s date of death, which can reduce capital gains when you sell.

A standard revocable living trust does not change these basic rules. During your lifetime, it is ignored for income tax purposes. At your death, assets in your revocable trust are typically included in your taxable estate just as if you owned them outright.

There are technical estate planning rules people sometimes hear about, such as the “5 by 5” rule in estate planning or the “5 of 5000” rule in trust drafting. That concept generally refers to giving a beneficiary a limited power to withdraw the greater of $5,000 or 5 percent of trust principal each year without causing certain unwanted tax consequences. This is used in specific types of irrevocable trusts, not in ordinary living trusts that most Californians set up to avoid probate.

Similarly, people talk about the “5 year rule for a trust” or “5 year rule on trusts.” That phrase usually refers to retirement account distribution rules, or to Medicaid’s 5 year lookback period, not to basic revocable living trusts. In the Medi-Cal context, the 5 year lookback and strategies to “avoid Medicaid 5 year lookback” are about asset transfers and eligibility, and simply placing a house in a revocable trust does not put it beyond reach.

There is also a ”7 year rule for trusts” or ”7 year rule on inheritance” commonly discussed in the United Kingdom, where gifts made more than 7 years before death can escape certain inheritance tax. That is foreign tax law and does not control California or US federal estate tax.

If you are focused on tax minimization, a standard California living trust is often tax neutral. There can be downsides if you move too quickly into more aggressive irrevocable trust structures, especially without clear goals:

Irrevocable trusts can remove assets from your taxable estate and may offer asset protection, but you lose control and flexibility. They create separate taxable entities, often taxed at higher income tax rates on undistributed income. If you later regret giving away control, unwinding those structures can be difficult or impossible.

This is one of the reasons “Which is better, a revocable or irrevocable trust?” is the wrong starting question. The better question is: ”What risks and taxes am California Estate Planning I actually trying to address, and do my assets justify that complexity?”

Nursing homes, Medi-Cal, and the illusion of protection

Some of the hardest conversations I have start with: “Can a nursing home take your house if it is in a trust?” Families are often told, sometimes by non-lawyers, that a living trust will “protect the house from the nursing home” or that “you will not lose your home if your husband goes into a nursing home” if you just put it in a trust.

For a typical revocable living trust in California, this is simply not true.

If you create a revocable trust and remain the beneficiary during your lifetime, you have not really given the property away. For Medi-Cal eligibility and estate recovery purposes, the state generally still treats the house as your asset. The facility does not literally “take your house,” but the cost of care and potential estate recovery after death can still reach that equity.

The federal Medicaid rules include a 5 year lookback period, in which transfers for less than fair market value can create penalties. Families looking to “avoid Medicaid 5 year lookback” sometimes hear suggestions to transfer the house to children or to an irrevocable trust. These strategies are complicated, heavily regulated, and very fact specific. Used casually, they can trigger disqualification, tax problems, and family disputes. They also raise issues for the children, who now hold legal title.

Similarly, you may hear about a “2 year rule for trusts” or “2 year rule after death” in various contexts such as pension plans, contest periods, or state recovery timelines. Those are narrow technical rules, not broad safe harbors that magically protect a trust.

If your primary goal is long term care planning, a standard living trust will not do the job. It may be part of the puzzle, but you are now in the world of Medi-Cal planning, long term care insurance, and possibly specialized irrevocable trusts. That is a different conversation from a simple “probate avoidance” trust, and it has very real downsides if implemented poorly.

Your house: trust, deed, or something else?

For many Californians, the house is the largest asset. So it is natural to ask, “Is it wise to put your house in a living trust?” or “What are the disadvantages of putting your house in a trust?”

Placing a primary residence into a properly drafted revocable living trust usually preserves your property tax protections (like Proposition 13 base year values) and your capital gains exclusion on sale, as long as you remain the beneficiary and occupy the property. When done correctly, the disadvantages are modest: some title insurance questions, modest refinance paperwork complications, and the initial cost of setting up the trust and recording a deed.

The larger question is whether this is the best way to leave your house to your children.

The options most people consider include:

1. Keeping the house in your name and letting it pass through a trust or will at death, which generally allows your children to receive a step-up in tax basis.
2. Using a revocable transfer on death deed to name one or more beneficiaries, which can avoid probate but can create calamities if the named beneficiary dies first, has creditors, or is on public benefits.
3. Adding a child as a joint tenant during your lifetime, which exposes the house to that child’s creditors and can cause partial loss of step-up in basis.
4. Transferring the house outright to a child, often for “$1,” which is usually a mistake because it is treated as a gift, may lose important tax benefits, and removes your control completely.

When clients ask, “Can I sell my house to my son for $1 dollar?” what they are really asking is how to move the house cheaply. The IRS does not treat that as a true sale at $1. It is treated as a gift of the equity, with gift tax implications and a carryover basis that can increase capital gains for your son later. It can also affect your property tax and Medi-Cal planning. The fact that the deed shows “$1” does not fool the tax system.

For many families, the best way to leave your house to your children is still through a properly funded revocable living trust, paired with careful attention to California property tax change of ownership rules. For others, especially those with one child who already lives in the home or estates well below probate thresholds, a simpler deed plus beneficiary designations might suffice.

The downside of a trust here is not that it “does not work,” but that it might be more tool than you need if your situation is truly straightforward.

Problem assets: what not to put in a trust or a will

People sometimes ask, “What should you not put in a trust?” or “What are three things to avoid putting in a will?” because they have heard that some assets are awkward enough to justify different treatment.

Retirement accounts like IRAs and 401(k)s are a good example. You generally do not retitle them into a living trust during life. Instead, you use beneficiary designations. In some cases, naming a properly drafted “see-through” trust as the beneficiary can make sense, especially for minor or spendthrift beneficiaries, but that is a deliberate choice, not a default.

Similarly, some employer benefits, pensions, and the so-called “$10,000 death benefit” from certain policies or contracts pass by form, not by will. Trying to control them exclusively through your will or living trust without aligning the underlying beneficiary designations is a common mistake.

When people refer to “the six worst assets to inherit” or “the worst assets to inherit,” they usually mean assets that come with embedded tax problems or high carrying costs: heavily taxed retirement accounts, highly appreciated property in entities without a step-up in basis, timeshares with steep annual fees, certain annuities, or property with environmental or legal headaches. A trust does not automatically fix those issues. In fact, placing problem assets into a trust without understanding the consequences can compound the trouble, especially if the trust forces beneficiaries to hold them.

There are also categories of information that should not go into your will: sensitive passwords, private grievances, and instructions you want to keep absolutely confidential. Wills become public documents during probate. Trusts generally remain private, but you still want to be cautious about putting certain information into any document that may end up being shared with multiple parties.

When a simpler will-based plan might be better

Clients often ask, “Is it better to have a will or a trust in California?” The honest answer is: it depends on your assets, your family, your tolerance for upfront effort, and how much you fear probate.

For a single person with modest assets, mostly in retirement accounts and life insurance with clear beneficiaries, and perhaps a small checking account, a well drafted will, powers of attorney, and health care directives can work perfectly well. If that person also keeps bank accounts below probate thresholds and adds proper payable on death designations, the downsides of not having a trust are relatively minor.

For a young couple with small children but not yet much in the way of taxable investments or home equity, I often recommend starting with a strong will-based plan that focuses on guardianship, life insurance coordination, and basic beneficiary planning, with the understanding that a trust can be added later when their asset picture matures. For them, the primary financial risk is not probate fees. It is inadequate insurance and unclear guardianship if something happens while the children are still young.

In these scenarios, forcing a living trust into the picture can distract from the more urgent planning work. It costs money, requires funding, and may give a sense of "we are done" when the core issues are unresolved.

Timing, administration, and emotional downsides

People are often surprised by how long estate administration takes, even outside of probate. "Why do you have to wait 10 months after probate?" is a common frustration. The delay is partly due to statutory creditor claim periods, tax return windows, and the practical reality of gathering, valuing, and sometimes liquidating assets. A trust does not fully escape these realities. Trustees still need to identify debts, address taxes, communicate with beneficiaries, and avoid distributing too early.

There is also a human side. Administering a trust can feel like a second job dropped into the lap of the eldest child or a stressed surviving spouse. If the trust is complex, or if the beneficiaries do not get along, the trustee may be caught in the crossfire. The trust document can become a rigid script that prevents the kind of flexible, informal arrangements the family might have worked out in life.

On the other hand, a clear will-based plan with a modest probate can sometimes feel more orderly and transparent than a private trust that few understand. Court supervision is not always a curse. For some families, it is a protection.

Right after a death, when emotions are raw, one of the best pieces of advice is about what not to do immediately after someone dies. Do not rush to make major financial decisions. Do not assume you must clean out accounts or sell the house right away. Gather documents, get death certificates, notify key institutions, and find out what the actual legal requirements are before acting. Whether you are dealing with a trust or a will, moving too fast can create irreversible mistakes.

When a trust really shines, and when something else is better

Trusts are powerful where you have real complexity: blended families, beneficiaries with special needs or serious financial problems, significant real estate holdings in multiple states, privacy concerns, or estates large enough that tax planning is justified. They allow you to stagger distributions, protect against some creditors at the beneficiary level, and customize terms far beyond what a will alone can accomplish.

The question, "What is better than a trust?" often has this answer: the right combination of tools for your situation. For some people, that might be:

A simple will, POD/TOD designations, and careful titling.

A revocable living trust plus a special needs trust for a disabled child.

An irrevocable life insurance trust paired with a revocable trust for liquidity and tax planning.

Business succession arrangements, buy-sell agreements, or family limited partnerships, coordinated with but not replaced by a trust.

There is no single document that solves everything.

The downside of having a trust in California, then, is not that trusts are flawed as tools. It is that they are often used as default products without enough thought about alternatives. A trust you do not understand, that you do not maintain, and that does not match your real-world needs can be worse than no trust at all.

The most useful step is not asking, “Do I need a trust?” It is sitting down with someone who will walk through your assets, your family, your fears, and your goals, and then help you choose among wills, trusts, deeds, beneficiary designations, and sometimes doing nothing. From there, the right structure tends to reveal itself, and the downsides become manageable tradeoffs instead of surprises.