

Clients usually come in asking what they *should* put in a will. After a decade of drafting estate plans, I have learned that an equally important question is what should *never* go in there.

A will is a specific tool with a narrow job. When you overload it, or try to use it for the wrong task, you increase the risk of delays, family conflict, lost tax opportunities, and even court challenges. Worse, you often create a false sense of security, believing something is “handled” when it is not.

This is where comprehensive estate planning comes in. A sound plan uses several coordinated documents, not just a will: trusts, beneficiary designations, powers of attorney, health care directives, and sometimes business agreements. Understanding what does not belong in a will helps you see where those other tools are needed.

Below, I will walk through the most common mistakes I see, and how to handle each issue properly.

What a Will Can and Cannot Do

A will is a written set of instructions to the probate court. It only controls assets that:

1. Are in your name alone at death, and
2. Do not already pass under a contract or by law outside probate.

If something passes automatically by title or contract, the will usually has nothing to say about it. This is one of the most misunderstood parts of estate planning, and it is why so many “simple wills” fail in practice.

A will also has no legal power while you are alive. It does not protect you if you become disabled, it does not shield assets from nursing home costs, and it does not avoid probate. Those goals require different tools.

With that in mind, here are the things I regularly advise clients *not* to include in a will, and what to use instead.

Assets that Already Pass Outside the Will

One of the most common inheritance mistakes I see is clients “double planning” an asset: they name a beneficiary on the account *and* say something different in the will. The beneficiary designation wins almost every time, leaving the will provision useless and, often, unfair.

Bank accounts and investment accounts with beneficiaries

If someone asks, “Which bank accounts avoid probate?”, the usual answer is: those with valid beneficiary arrangements. These include:

- Payable on death (POD) accounts
- Transfer on death (TOD) designations for brokerage accounts
- Retirement accounts with named beneficiaries, such as IRAs and 401(k)s

These do *not* belong in your will, in the sense that the will cannot change who receives them. You can mention them for context, but if you try to override the beneficiary form in your will, the institution will follow [Comprehensive Estate Planning Attorney Near Me](#) its paperwork, not your will.

The fix is simple but often overlooked: coordinate your beneficiary designations with your overall estate plan. Update the account forms, rather than relying on your will.

Jointly titled property

Married couples often own the house or bank accounts as joint tenants with right of survivorship. When one spouse dies, the survivor automatically becomes the sole owner. The will does not control that transfer.

I occasionally review wills that carefully describe what happens to “my interest in the family home” among several children, but the house title is joint with one child. That child takes full ownership by operation of law, and the will language becomes an expensive piece of fiction.

Before you draft, review how each major asset is titled. If it already passes outside probate, your will is usually the wrong tool to redirect it.

Highly Detailed Instructions for Everyday Property

Clients sometimes feel pressured to mention every object in the house. They start dictating who gets which dishes, beds, and photo albums. Then their lives change, they redecorate, and the will is instantly out of date.

Lawyers charge not only for technical drafting, but for time. So when people ask, “How much does it cost to have an estate planning attorney?”, a large part of the answer depends on how complex and detailed your instructions are, and how often they need to be updated.

For most personal property, it is better to:

- Use generic language in the will assigning tangible items to a class of beneficiaries, and
- Refer to a separate personal property memorandum, if your state allows it, where you can more easily update specific bequests.

That way you can change your mind about who gets the kitchen table without re-signing a formal will in front of witnesses.

There is one exception: particularly valuable or sentimental items that are likely to cause conflict, such as heirloom jewelry, artwork, or firearms. Those are often worth mentioning clearly in the will or in a carefully crafted memo.

Funeral and Burial Instructions

Many people include their burial wishes in the will. The problem is timing. The funeral home and your family need guidance immediately. The will often is not even located, much less read, until days or weeks later.

If you want to specify burial versus cremation, organ donation preferences, or religious customs, do not rely solely on your will. Use:

- A separate written letter of instruction stored somewhere obvious,
- A health care directive that addresses disposition of remains, and
- Conversations with the people you are naming to make those decisions.

You can still mention your wishes in the will if it brings you peace of mind, but treat it as a backup, not the primary source of guidance.

Digital Passwords and Sensitive Security Information

In the digital age, online access is as important as keys to the house. I see more and more clients trying to place email passwords, bank logins, and even two-factor backup codes directly into their wills.

That is a serious security mistake.

A will may be filed with a court and can become a public record. Even when it is not public, copies are often emailed, scanned, and shared widely among family and advisors. Sensitive data does not belong there.

Instead, use one of the following approaches:

1. A password manager that allows an emergency contact feature, so a designated person can gain access if you become incapacitated or die.
2. A written or printed list stored in a secure location, such as a home safe or safe deposit box, with clear instructions in your estate planning binder on how to locate it.

Your will can refer generally to giving your executor authority to access digital assets, but it should not list actual credentials.

Trying to Use a Will to Avoid Nursing Home Costs

Elder law clients often arrive with a mix of horror stories and half-true “Medicaid loophole” advice they picked up from friends.

Your will has very little to do with Medicaid eligibility. Medicaid planning mostly focuses on what happens in the five years *before* you apply, not after you die. If you are asking, “How to avoid Medicaid 5 year lookback?” or “What is the 5 year rule for irrevocable trusts?”, you are not talking about your will at all, you are talking about lifetime transfers.

Medicaid looks at assets you have given away or transferred to certain trusts during a lookback period, commonly five years in the United States. Transfers during that time can trigger a penalty period in which Medicaid will not pay for long-term care.

The will only controls what is left after lifetime planning. It cannot “hide” assets from Medicaid, and it cannot retroactively fix transfers inside the lookback window. Trying to use a will for Medicaid strategy simply does not work.

If you are concerned about long-term care costs and wondering, “Can a nursing home take your house if it is in a trust?”, that leads into trust planning, not will drafting. Proper use of irrevocable trusts, timed well before any need for care, can sometimes protect a home or nest egg. It is highly state-specific and technical, which is one reason a thorough, comprehensive estate planning process matters.

Overloading a Will with Trust Provisions That Belong Elsewhere

Sometimes clients ask for one giant, all-in-one will that controls every scenario, protects assets from lawsuits, avoids taxes, and shelters everything from long-term care costs. They want the will to do what only a trust can do.

There is a name for a will that creates ongoing trusts after death: a testamentary trust will. These can be useful, but they still go through probate first, which may not be ideal.

If your questions include “Is it better to leave a house in a will or trust?” or “What is comprehensive estate planning?”, you are probably beyond the stage of relying on a simple will. A revocable living trust, coordinated with a well-drafted will, usually gives you more control, more privacy, and smoother administration.

Some people also hear about complex rules like the “5 by 5 rule in estate planning” and try to stuff those mechanics into a will. The 5 by 5 rule usually refers to a beneficiary’s power to withdraw the greater of 5 percent of principal or 5,000 dollars per year from a trust without negative tax consequences. That is a technical trust

provision, not a will clause. It belongs in a trust agreement, often for tax or asset protection reasons, not in the will itself.

Your will should coordinate with your trusts, but not try to recreate their complex internal rules.

When an Irrevocable Trust, Not a Will, Is the Right Tool

Irrevocable trusts are not for everyone. They are more rigid, and you lose significant control once assets are transferred. That is the downside of putting your house in an irrevocable trust: you cannot easily change [Comprehensive Estate Planning Attorney Near Me](#) your mind, refinance, or sell without following the trust's terms and the trustee's powers.

Still, there are a few focused situations where they are worth considering. Attorneys sometimes frame this informally as the "only three reasons you should have an irrevocable trust," even though the details can vary. The most common motivations are:

- Asset protection from future creditors or lawsuits
- Tax planning, such as removing appreciating assets from a taxable estate
- Long-term care or Medicaid planning, done early enough to beat the lookback period

These goals are not achieved by tinkering with your will. They require careful trust design and proper funding during life.

Clients sometimes confuse the "5 year rule for irrevocable trusts" with the "7 year rule for trusts." The five-year period usually refers to Medicaid's lookback window. The seven-year rule is a concept in United Kingdom inheritance tax planning, where gifts made more than seven years before death can fall outside the taxable estate. Neither of these rules is controlled by your will language. They relate to lifetime transfers and tax regimes.

If any of these objectives are important to you, you need to talk about trusts *before* you talk about how to word your will. The will then serves as a safety net, not the main planning vehicle.

What Should Not Be Included in a Will: A Practical Shortlist

Here is a streamlined way I explain it in the conference room. These are the items I generally keep out of a will, or place somewhere else in the plan:

- Assets with beneficiary designations that already control who receives them
- Detailed funeral or burial instructions that need to be known immediately
- Digital passwords or sensitive security information
- Day-to-day personal property specifics that will change frequently
- Medicaid or long-term care "strategies" that belong in lifetime planning

If you see any of these in your current will, that is a signal to schedule a review.

Choosing Beneficiaries: Who You Should Think Twice About

The question "Who should I not name as a beneficiary?" comes up more often than people admit. You are not obligated to treat everyone equally. You are, however, wise to be realistic about people's circumstances.

You might want to pause before naming:

- A beneficiary with serious creditor problems, an active divorce, or addiction issues
- A minor child, if you do not also provide a trust or custodial account
- A person receiving needs-based government benefits, such as SSI or Medicaid
- Someone you do not fully trust to manage money, if you are considering them as executor or trustee
- A professional advisor, caregiver, or unrelated person who could be accused of undue influence

In many of these situations, a trust for the person's benefit is better than a direct bequest under the will. That way the inheritance is managed by a responsible trustee, rather than handed over outright.

Your House: Why the Will Is Often the Wrong Primary Tool

For most families, the house is the largest single asset and the hardest to divide. That is why questions like "What is the best way to leave your house to your children?" or "Is it better to leave a house in a will or trust?" are so common.

Legally, you can leave a house by will, but there are trade-offs:

1. Wills require probate, which takes time and carries costs. Your children cannot sell or refinance the property until the court gives your executor authority and then approves the final transfer.
2. Probate is public and can invite challenges from disgruntled family members.
3. If you own the house in another state, your executor may face multiple probate processes.

A revocable living trust is usually a smoother way to handle real estate. You retitle the house into the trust during your life. You still control it as trustee and still live there as usual. After death, your successor trustee can manage or sell the property without going through probate.

For clients worried about nursing homes and Medicaid, an irrevocable trust can sometimes be used, if set up and funded at least five years before application, to keep the house from counting as an available resource. But that brings us back to the earlier trade-off: you give up control, and you must be very deliberate about it.

Your will then plays a supporting role. It should contain a "pour-over" clause that moves any stray individually owned assets into the trust at death, but the main planning for the house occurs in the trust document, not the will.

Taxes, Gifts, and What the Will Does Not Control

People also tend to overestimate the tax aspect of wills. They ask, "How much can you inherit from your parents without paying taxes?" and assume the will can change the answer.

In the United States, the federal estate tax exemption is very high by historical standards, in the multi-million dollar range per person, though Congress can change it. Many states have their own separate estate or inheritance taxes with lower thresholds. These tax rules apply based on total estate value and lifetime gifts, not how you word the will.

If your estate is below the relevant thresholds, your heirs are unlikely to owe estate tax on what they inherit. However, income tax still matters. Certain inherited assets, like traditional IRAs, produce taxable income when withdrawn, and your will cannot change that.

When clients ask, "What is the best way to gift money to an adult child?", the answer often has little to do with the will. Direct lifetime gifts, 529 education plans, or contributions to a trust can be more efficient. Annual exclusion

gifts, commonly up to a set amount per person per year, let you transfer wealth without using up your lifetime exemption, as long as you stay within current IRS limits.

Your will covers what remains after your lifetime gifting strategy. It does not change gift tax rules or income tax rules, and it does not retroactively apply the annual exclusion.

How Comprehensive Estate Planning Ties It All Together

All of this points in one direction. A will is necessary, but not sufficient.

So what is comprehensive estate planning? In practice, it is a coordinated set of documents and decisions that address:

- Who manages your finances and health care if you become incapacitated
- How your assets are titled and who is named on your beneficiary designations
- Whether you should use a revocable trust, an irrevocable trust, or both
- How to protect vulnerable beneficiaries, including those with special needs or risky habits
- How to address long-term care and Medicaid planning before the five-year lookback
- How to minimize taxes consistent with your values and goals

The will sits inside that larger framework. It should not carry burdens that belong in trusts, contracts, lifetime transfers, or health care directives.

When people search “estate planning attorney near me,” they are usually looking for documents. What they really need is advice on *how* each document should work together, and what does not belong where.

If your current plan largely consists of a will that tries to do everything, with outdated beneficiary designations and no trust planning, then you may already see some of the problems described above.

What to Do If Your Existing Will Includes the Wrong Things

If you have read this far and recognized your own will, you are not alone. I regularly meet clients with documents that were perfectly “legal,” but poorly designed for their actual lives.

Here is a simple, practical path forward:

First, gather what you have. That means your will, any trust agreements, powers of attorney, health care directives, and statements or summaries that show how your major assets are titled and who the beneficiaries are.

Second, identify the mismatch points. Look for places where the will says one thing and a beneficiary form or account title says another. Look for funeral instructions buried in the will without any separate letter. Look for digital passwords written into legal documents.

Third, meet with an experienced estate planning attorney and be transparent about your goals and fears: protecting a child from themselves, keeping the house in the family, avoiding unnecessary taxes, or planning around potential nursing home care. Ask about the cost of a full review and update, not just “a new will.” Oftentimes, the fee you pay for tailored advice and a coherent plan is far less than the legal and emotional cost your family would incur if the plan fails.



PARKER
LAW OFFICES

TRUST ATTORNEY ORANGE COUNTY

Parker Law Offices

28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677
(949) 385-3130

<https://www.estateandtrustlawyer.com/orange-county-wills-and-trust-attorney/>



Revisions do not always require starting from scratch. Sometimes it is a matter of moving certain instructions out of the will into a memorandum, updating beneficiary designations, or adding a revocable trust for your house, while leaving the broad contours of your existing will in place.

The key insight is simple: the power of a will lies as much in what it leaves *out* as in what it includes. When you let each planning tool do its proper job, your will becomes clearer, your family's path becomes smoother, and your intentions have a far better chance of being honored the way you meant.

Parker Law Offices

28202 Cabot Rd 3rd Floor, Laguna Niguel, CA 92677

9493853130