

People usually walk into my office focused on documents: the will, the trust, the power of attorney. After a few minutes, the conversation almost always shifts to people. Who is actually going to inherit? Who will be in charge? Who can you trust?

The beneficiary decision feels simple on the surface, but it is where I see the most painful and expensive mistakes. Not because someone picked the "wrong" person morally, but because the choice was not aligned with the law, taxes, public benefits, or family dynamics.

This is where the question that likely brought you here really lives: **Who should never be a beneficiary?**

The answer is less about a blacklist of people and more about patterns of risk. If you know what those patterns look like, you can choose beneficiaries in a way that protects them, honors your wishes, and keeps your estate from becoming a case study in what went wrong.

## Why beneficiary choices matter more than most people think

From a legal perspective, a beneficiary designation is powerful. It can override what your will says. It can move hundreds of thousands of dollars in a single signature. If the designation is flawed, the money may land in probate, trigger taxes or penalties, or disqualify someone from critical benefits.

From a practical perspective, your beneficiary decisions answer some hard questions:

- Who receives what, and in what form.
- Who has to wait through probate, and who does not.
- Whether creditors, ex-spouses, or nursing homes have a shot at the money.
- Whether your children or other heirs end up fighting each other.

When people ask me, "What is the most common inheritance mistake?", I do not point to obscure tax rules. The most common mistake is naming the wrong person in the wrong way, often out of habit or convenience.

Before we step into specific "never" situations, it helps to understand the overall planning framework.

## What is comprehensive estate planning?

Clients will sometimes say, "I just need a simple will," then proceed to describe a web of children from different marriages, a family business, a rental property, and a child on disability benefits. That is not simple.

**Comprehensive estate planning** means we are not just filling in blanks on a will form. At a minimum, it usually includes:

- A will that coordinates with your beneficiary designations and your broader plan.
- One or more trusts, if they solve specific problems.
- Financial and medical powers of attorney.
- Beneficiary designations aligned with the plan on retirement accounts, life insurance, and some bank accounts.
- Strategies to address taxes, long-term care, and special circumstances like second marriages or special needs.

People also ask, "How much does it cost to have an estate planning attorney?" The honest answer is that it ranges widely. For a basic plan, I have seen fees in many regions from roughly \$800 to \$2,500. For more complex planning, especially involving irrevocable trusts, business interests, or Medicaid planning, total costs often fall in a

range from a few thousand dollars to five figures. The key is value: a carefully designed plan usually saves far more than it costs, in avoided fights, taxes, delays, and nursing home risks.

Once you look at your estate through that broader lens, it becomes clear that a beneficiary decision is not just a name on a line. It is a piece of a system.

## Who should I not name as a beneficiary?

The question "Who should I not name as a beneficiary?" Shows up in almost every initial meeting, though it comes dressed in different clothing. Sometimes it is, "Is it safe to leave money to my son who has a gambling problem?" Sometimes it is, "If I leave money to my sister on Medicaid, will she lose her coverage?"

There is no universal "do not ever name this person" rule. There are, however, categories of people who are often poor choices to receive assets directly in their own names.

Here are the most common red flags I see.

## Minor children as direct beneficiaries

Parents are often surprised when I tell them that naming a young child as the direct beneficiary of a life insurance policy, IRA, or house is almost always a mistake.

Courts generally do not allow a minor to own substantial assets outright. If you die leaving a minor as beneficiary, your family may need to have a guardian of the estate appointed. That means court oversight, annual reports, fees, and sometimes a stranger in a black robe making decisions about how your child's money is managed and spent.

Worse, in many states, when that child turns 18 or 21, they receive whatever is left, all at once. I have yet to meet an 18 year old who I would trust with a sudden inheritance of \$200,000 with no strings attached.

A better approach is usually to leave assets in a **trust** for the minor, with a trustee you choose, clear instructions for how funds may be used, and guidance on when and how the child gains control. That brings us to another question clients ask: **Is it better to leave a house in a will or trust?**

For minor beneficiaries, a trust is typically the safer route. If the house passes through a will to a minor, you are back in court supervision territory. If the house is titled in a trust with provisions for the child, the trustee can manage or sell the property without going through a guardianship process.

## Beneficiaries on public benefits or with special needs

Naming a child, sibling, or parent who receives needs-based public benefits as an outright beneficiary can be financially devastating for them.

If your intended beneficiary is on Medicaid, Supplemental Security Income (SSI), or similar programs, a direct inheritance can push them over asset limits. They may lose benefits until they have spent down the inheritance, often quickly and inefficiently. Families then watch money they hoped would provide extras and long-term security evaporate in a matter of months.

This is where clients start asking, "What is the Medicaid loophole?" And "How to avoid Medicaid 5 year lookback?" There is no true loophole, only rules and timing. Transfers to certain types of **special needs trusts** or properly designed irrevocable trusts can protect assets for a disabled person without disqualifying them from benefits, but the details are technical and must respect both federal and state law.

If you are thinking about how to avoid the **Medicaid 5 year lookback**, or heard about the **5 year rule for irrevocable trusts**, you are in a different but related arena: long-term care planning for yourself. The basic idea is that transfers into many irrevocable trusts, or outright gifts, can be penalized if they occur within five years before you apply for Medicaid to pay for nursing home care. That is why timing and structure are so crucial.

One more timing concept people raise is the **7 year rule for trusts**. That language often comes from UK law, where certain gifts and inheritance tax rules use a seven year window. In the United States, the key timing [probate attorney orange county](#) framework for Medicaid is the five year lookback, not seven, and for federal estate and gift tax, we focus more on annual and lifetime exclusion limits rather than a seven year clock.

The takeaway: if someone is disabled or dependent on needs-based benefits, naming them directly as beneficiary is usually a mistake. A specialized trust is often the right tool.

## Heirs with serious debt, lawsuits, or addiction

Another group I am cautious about naming as direct beneficiaries are people who are in deep financial or personal crisis.

Imagine naming your son as beneficiary of your retirement account while he is in the middle of a divorce or a lawsuit. Those assets can become a tempting target for spouses, creditors, or plaintiffs. Or think of leaving a lump sum to a daughter battling addiction. A sudden windfall can fund more of the very behavior you fear.

In situations like these, I sit down with clients and outline two broad options. First, you can still provide for the person you love, but through a **trust with protective features**, such as staggered distributions, trustee discretion, or explicit conditions. Second, you might decide to skip that person as a beneficiary temporarily and direct funds to others who can support them more safely, though this is more common when the relationship has broken down completely.

## People who will be put in an impossible position

Some beneficiary choices create more conflict than benefit. Naming one child as both the trustee and the primary beneficiary, while making the others "wait and see", can fuel years of resentment. Naming a new spouse as beneficiary of almost everything, while children from a prior marriage are left with promises instead of provisions, almost guarantees litigation.

The most common version of this problem appears with the home. Parents ask, "What is the best way to leave your house to your children?" If the plan is vague, one child may want to keep living there, another wants to sell, and a third wants to rent it out. If the house is left outright to one person with a vague instruction to "treat your siblings fairly", you are placing that person in a no-win position.

Sometimes the safer structure is a trust that owns the house, with clear instructions: perhaps one child has a right to live there for a period, with a timeline for sale and a formula for dividing proceeds. Whether **it is better to leave a house in a will or trust** often comes down to this sort of clarity, along with probate avoidance.

## Beneficiaries who create legal or ethical risks

In some situations, the issue is not only practicality, but law and ethics. A few examples:

- In some states, leaving large gifts to a non-relative caregiver who helped you late in life can trigger presumptions of undue influence and invite challenges.

- Naming your estate planning attorney or another professional as a major beneficiary is often barred by professional ethics rules, except for close family relationships.
- Naming someone who is under a restraining order, or whose relationship with you has been the subject of exploitation concerns, may require careful documentation and usually should not be done casually.

In these scenarios, I might still help a client leave something to the person they care about, but we document capacity and intent carefully, and we often adjust roles so that the beneficiary is not also in a key fiduciary position such as executor or trustee.

## When a trust, not a person, should be the beneficiary

Many of the "never" scenarios can be reframed as "never name this person outright, name a trust for their benefit instead."

This is where a lot of technical questions arise:

- What are the only three reasons you should have an irrevocable trust?
- What is the downside of putting your house in an irrevocable trust?
- What is the 5 by 5 rule in estate planning?
- What is the 5 year rule for irrevocable trusts?

The reality is that irrevocable trusts are specialized tools, not default settings. I see three broad, legitimate reasons to consider an irrevocable trust:

1. Long-term asset protection, including from your own future creditors or nursing home costs, within the bounds of law.
2. Tax planning, particularly for people with estates approaching or exceeding federal or state estate tax thresholds.
3. Planning for beneficiaries who need long-term structure and protection, such as people with disabilities, addiction, or extreme financial vulnerability.

The downsides are real. Once you transfer assets to an irrevocable trust, you usually cannot take them back or change the terms easily. That can affect your own financial flexibility, your ability to refinance property, and, in some cases, your property tax or capital gains outcomes. For example, putting your house in an irrevocable trust may protect it from certain creditors over time, but could limit your access to equity and complicate future sales or financing.

The **5 by 5 rule in estate planning** is a trust drafting concept: often, a beneficiary can be given the power to withdraw the greater of 5 percent of the trust principal or \$5,000 per year without triggering certain tax consequences. It is one of several tools used to balance flexibility and tax efficiency inside trusts.

The **5 year rule for irrevocable trusts** is often used as shorthand for the Medicaid lookback we discussed earlier. Assets transferred into many irrevocable trusts within five years before a Medicaid application may be counted as gifts that trigger penalties. Planning early is critical.

## Bank accounts, probate, and beneficiary choices

People are often surprised by how much can pass outside of a will. They ask, "Which bank accounts avoid probate?" The answer depends on titling and beneficiary designations:

Common ways bank accounts can avoid probate include:

- Accounts with pay-on-death (POD) or transfer-on-death (TOD) designations to individuals or a trust.
- Joint accounts with rights of survivorship.
- Accounts owned by a revocable trust.

This leads to another common misstep: naming one child as the joint owner of your account "for convenience" so they can help you pay bills, with a vague verbal instruction to share the money with siblings later. On paper, that account usually belongs 100 percent to the surviving joint owner at death. Siblings then argue about what you really intended.

A better approach is to give the trusted child a durable financial power of attorney or name a revocable trust as owner, then create clear beneficiary instructions for the account.

## What should not be included in a will or beneficiary designation?

Some things simply do not belong in a will or as a simple beneficiary designation.



The advertisement for Parker Law Offices features a QR code in the top left corner. To its right, the text reads: "Parker Law Offices", "28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677", "(949) 385-3130", and "<https://www.estateandtrustlawyer.com/orange-county-probate-attorney/>". Below this, the Parker Law Offices logo is displayed next to the large, bold text "PROBATE ATTORNEY ORANGE COUNTY". At the bottom center, there is a photograph of a lawyer in a suit sitting at a desk, writing on a document with a pen, with a gavel resting on the desk. The entire advertisement is framed by a dark blue border with decorative geometric shapes and dot patterns.

I generally advise clients not to include:

- Assets already controlled by beneficiary designations, like retirement accounts and many life insurance policies, unless we are naming a trust or coordinating backup plans.
- Highly specific directions for everyday household items that are likely to change or be given away during life. Use a separate, referenced memorandum if your state allows it.
- Conditions that are illegal or against public policy, for example, demands that heirs divorce a spouse, change religion, or break the law to inherit.

On the beneficiary side, I caution strongly against naming "my estate" as beneficiary of retirement accounts unless there is a deliberate reason. That choice can accelerate taxation and send more assets through probate.

## Taxes, gifts, and how much you can leave

Beneficiary choices often intersect with tax questions, especially about inheritances from parents.

People frequently ask, "How much can you inherit from your parents without paying taxes?" Under current federal law, most families do not pay **federal estate tax**, because the exemption is very high, in the multi-million dollar range per person. However, there are several layers to think about:

- A handful of states impose their own estate or inheritance taxes with much lower thresholds.
- Traditional IRAs and other pre-tax retirement accounts are subject to income tax when withdrawn by beneficiaries.
- Large lifetime gifts can interact with your lifetime gift and estate tax exemption, even if no tax is due immediately.

Sometimes it makes sense to shift part of your plan during your lifetime. Parents ask, "What is the best way to gift money to an adult child?" The answer depends on goals. For modest gifts, using the annual gift tax exclusion allows you to give a certain amount per year, per person, without using your lifetime exclusion. For larger or more strategic gifts, we may use trusts, intrafamily loans, or partial interests in property to balance control, tax outcomes, and protection from the child's creditors or spouses.

If you are weighing whether to leave a property through an irrevocable trust, keep in mind potential capital gains treatment and step-up in basis issues. The "best way to leave your house to your children" is rarely the same for every family. In many cases, a carefully drafted **revocable living trust** that owns the house, combined with thoughtful tax planning, gives the best blend of control, probate avoidance, and tax efficiency, with less of the rigidity of an irrevocable trust.

## A short checklist for choosing and excluding beneficiaries

At this point, it may help to translate all of this into a concrete set of questions. When I sit with clients and we ask, "Who should never be a beneficiary in your particular case?", we walk through a simple mental checklist.

- Does this person have special needs or rely on Medicaid, SSI, or other needs-based benefits that a direct inheritance could disrupt?
- Is this person in the middle of serious financial trouble, lawsuits, bankruptcy, or active addiction, such that a lump sum would harm more than help?
- Is this person a minor, or just barely an adult, with little track record of managing money or responsibility?
- Would naming this person cause severe conflict with other heirs, invite accusations of undue influence, or put them in a role they cannot realistically handle?
- Could a trust for this person, or a different structure entirely, achieve your goals with less risk than naming them directly?

The answers do not always mean "never name them". More often, they mean "do not name them outright without protections."

## How beneficiary decisions fit into the cost and value of planning

When people ask about cost, they often compare a do-it-yourself document to a professionally drafted plan. On paper, the DIY route looks cheaper. What is rarely visible in that comparison are the downstream costs of unclear or risky beneficiary choices.

A poorly crafted beneficiary designation on a retirement account can easily cost a family tens of thousands of dollars in extra income tax. A home that must slog through probate because of a missing or flawed designation can take a year or more to reach the people you intended. A direct inheritance to a disabled child can wipe out benefits and force an expensive scramble to recreate protections.

So when you consider **how much it costs to have an estate planning attorney**, factor in not just the drafting time, but the insight about who should, and should not, be a beneficiary, and how to structure things so that your gifts actually help the people you love.

## Putting it all together

Naming beneficiaries is not about playing favorites. It is about aligning your assets, your people, and the law so that what you leave behind does not create harm or chaos.

Some people should rarely be direct beneficiaries: minor children, individuals on needs-based public benefits, loved ones in severe financial or personal crisis, and, in some cases, caregivers or professionals whose involvement raises legal questions. The key is not to exclude them from your plan, but to protect them with the right structures: trusts where appropriate, careful timing, and clear instructions.

If you find yourself wrestling with questions like who to name, **what should not be included in a will**, whether **it is better to leave a house in a will or trust**, or whether **an irrevocable trust** is warranted, that is a sign your situation deserves more than a form. It deserves a conversation that connects the legal tools to the actual people in your life.

That is where comprehensive estate planning earns its keep. Not in the thickness of your binder, but in the quiet, orderly way your wishes are carried out, and in the crises that never happen because you chose your beneficiaries, and the way they receive your assets, with intention.

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