

SPECIAL REPORT: The Five MUST-HAVE Tools Required to Protect Your Family from Tragedy.



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MOST PEOPLE, including lawyers, think of estate planning as something that they can do “later”. Unfortunately for many, “later” often becomes “too late.” I believe the whole concept of “estate planning” and the use of the term “estate planning” creates a false sense of security that you can put it off.

I prefer to call taking the time necessary you to prepare the necessary documents as creating a “**Family Protection Plan**”. The five documents I am going to explain to you are **essential if you have children, grandchildren or any loved one** in your life that you want to protect. Each day that goes by without these documents is placing them at risk for an unexpected and, sadly, **an avoidable tragedy**. If you have loved ones, not having a **Family Protection Plan** is like driving a car with without seatbelts on. **You just don’t know when** that event will happen when your seatbelt is required that will save your life.

As I will explain in this **Special Report**, the following **MUST HAVE documents will protect you and your family from avoidable tragedies**. I will explain each of the tools necessary to put you in the best position to protect yourself and your loved ones when the unexpected arises. I don’t want you to be in a situation like one of my clients who called me from the emergency room to get a Power of Attorney and Living Will for their spouse who was unconscious. At that

point, **it was too late!** Here are the documents you **MUST HAVE** to protect your loved ones.

1. Designation of Healthcare Surrogate.

This is probably the most important and useful document in your **Family Protection Plan**. This is like a power of attorney specifically for making **healthcare decisions**. If you or your loved one are unconscious, **who will make the medical decisions** such as consent to surgery, blood transfusions and medications? If you are named in this document, then you can assist your loved one during this medical crisis.

This document is even more important for those of you who may not be married. I often come across a situation where two seniors have a long relationship but for certain financial reasons decided not to get married. When an unexpected hospitalization occurs, without a **Designation of Healthcare Surrogate, your partner has no authority to act on your behalf**.

This is also a vital document if your other loved ones or family members are not living close to you. If your closest relative is a two hour plane ride away, there may not be enough time in an emergency situation. Therefore, appointing someone as your healthcare surrogate who is local and who you know and trust is **vital in an emergency medical situation**.

Part and parcel with the **Designation of Healthcare Surrogate** is a **HIPAA waiver**. Under federal law, your medical records have a high level of privacy. Without a waiver, **a doctor or nurse is not allowed to disclose medical information** to your loved one. Unless you are a parent of a child,

most of your medical information will remain confidential. A properly prepared healthcare surrogate designation document should have the required HIPAA waivers in place. However, it is my practice to **also have a separate document as a HIPAA waiver** since you may want a doctor to speak to several family members or close friends, although only one has the ultimate authority to act on your behalf. Therefore, **these two documents work in partnership** to assist your loved ones in making medical decisions on your behalf. Also, if you are the decision maker, the HIPAA waiver **allows you to get the input of family members to assist you** in making a decision for your loved one.

2. Power of Attorney

Assuming you've gotten past the immediate medical emergency, there may be other items that you have to take care of on behalf of for your loved one while they are in the hospital. Some of those things may be as simple as making a mortgage payment, car payment, transferring funds to allow them to pay doctor bills or to arrange for home health aide or special medical equipment. **Without a document authorizing you to act on the behalf of your family member**, a bank or a company that you need services from, **may not** be willing to assist you.

Therefore, if you don't have sufficient funds to assist your family member and all of their funds are tied up, either your family member goes without the needed help or, you will have the greater burden of **applying to the court to be appointed as their guardian**. The guardian process **takes time, is expensive, may cost upwards of \$5,000 and could be contested**. Proper planning with having the tool of a Power of Attorney can **avoid all of these delays and hassles**

and allow you to **act immediately** when necessary to help your loved ones.

3. Living Will

If, on the other hand, things don't go well during the sudden emergency and a decision has to be made regarding what life sustaining measures should or may be used, why would you want to **put the burden on** your loved ones in **having to guess as to what you would want?** The decision to provide or not provide either life sustaining mechanical means or food and hydration is an **enormous decision** for someone to have to make. However, **you can ease the burden** somewhat by stating under what circumstances you want life sustaining measures taken for you to prolong your life or, under what circumstances you don't want extraordinary life sustaining measures to be used. Also, an issue that comes up is **whether or not you want food and hydration** that are merely used to prolong your life even if you are in a vegetative state.

These issues involve more than just signing a document. First, before signing a Living Will, it is important to have discussions with your loved ones regarding what type of treatment you would want if you were in a vegetative state. While it may be uncomfortable to talk about such things, you must keep in mind that **you are doing it for the benefit of yourself and your loved ones** in order to alleviate a tremendous burden should it arise. If you have been fortunate enough to have avoided having to make a life ending decision for a loved one, then the full ramifications of not having a Living Will may not hit you. However, for those of you reading this **who have gone through the decision process** of when to stop life sustaining efforts and moving a loved one to hospice, you know the difficult and traumatic decisions that

must be made. Giving your loved ones a document signed by you stating what your intentions are **makes that burden easier.**

4. Last Will and Testament.

Up to this point in this **Special Report**, all of the documents I've been writing about are tools to be used while you or your loved ones are alive. This next document, a **Last Will and Testament**, does not take effect **until you are deceased.**

There are many reasons to have a **Last Will and Testament**. However, the most powerful and useful one is **to avoid having government officials deciding how your estate will be distributed** and, more importantly, **deciding who will take care of your minor children.** Again, while most people think of estate planning as something you do when you are retired, I suggest that **anyone who has a child MUST HAVE a Family Protection Plan** in place and, if they do not, they are actually being **negligent in the care of their children.**

Imagine if you will, you and your spouse finally getting a long weekend away from your two children because your parents were nice enough to have flown in to give you a break. While driving to your weekend getaway, a truck driver who has been on a 20 hour run, blows a stop sign while exiting off the interstate and slams into the side of your car **instantly killing you and your spouse.** While this may seem far-fetched to you, in 2012, there were **over 33,500 deaths in the U.S.** as a result of motor vehicle crashes (compared to only **475 deaths world-wide** from commercial airline crashes in 2012. More people are worried about having an estate plan done before they go on vacation than when they drive to work. **Statistics prove it should be the opposite!**)

So the question is, if you did not have a **Family Protection Plan** in place that states who **you want to be the guardians** of your children, who will decide who takes care of them? Ultimately, the court, through a complete stranger, namely, the judge, will decide who will raise your children based upon what the judge, who did not know you or your spouse, views as the **best interests of your children.** This can be a real problem if you have multiple family members, some of whom you may know would be **good caregivers** while some of whom you know whose **morals and principles conflict with yours.** Keep in mind that **both may apply for the right to raise your children.** If you have not stated your intentions in a written document such as your **Last Will and Testament** for the court to consider, your **children may be raised in an environment that you deem unacceptable.**

Additionally, sometimes a person may be a great caregiver but, may not be good with finances. If you have a proper **Family Protection Plan** in place, you can name someone as **trustee of your assets** on behalf of your children to make sure that your assets are invested and maintained in the best interests of your children **while another party gives them the nurturing and care** that the financially savvy person cannot give. However, again, without a **Last Will and Testament** setting up these provisions and stating your intentions to the world, ultimately a **third-party stranger will decide** who cares for your son or daughter and who handles your assets for your children. Remember, in a short hearing in court, **someone can fool a judge** to give the impression that they would be a good caregiver when you know based upon your experience with that individual that they would **not be** the best caregiver for your children. **Don't leave this to chance! Execute a Last Will and**

Testament as one of your tools in your tool belt to protect your family.

5. A Revocable Trust.

A trust is a document that you create which acts as a separate mechanism for holding your assets. The primary reason that most people create a trust and transfer assets into it **is to avoid probate**. By avoiding probate, you can **expedite** the transfer of assets to your beneficiaries and, **avoid expenses such as attorney fees** and personal representative fees which can run 3-6 % of the value of your entire estate. If you have an estate valued at \$500,000, **you can save over \$30,000** in costs and fees if your assets are transferred to a trust before your death. That means **\$30,000 more goes to your beneficiaries** that could be better used to pay off a student loan or as a down payment on a home. Again, the savings go directly to your beneficiaries **instead of into the pocket of a law firm**.

However, there are many other reasons to create a trust in order to assist your loved ones. For example, in a trust, you can specifically direct how assets will be distributed based upon the beneficiaries reaching a certain age or, for example, stating that they can only get the income from a particular asset, with ultimately the asset going on to another party upon the death of the first beneficiary.

Trusts are also a **useful tool in second marriages** when there are **children from a prior marriage**. By placing property into a trust, you can assure that your children will receive it upon your passing so that **it does not go** to your spouse's children should you predecease your spouse.

It is also very important to make sure you **properly fund the trust** and transfer the assets

into the trust. Too often I see clients whose deceased loved one created a trust but, **failed to put the intended assets into the trust**. Ultimately, it resulted in a distribution of their assets that they did not want.

FINAL THOUGHTS: The Minefield Of Do-It-Yourself Documents. I would be remiss in not addressing all of the free or discounted legal forms that are available today. You can go into your local office supply store or do a quick search online, and find all the documents that I refer to in this **Special Report**. However, you can also find instructions on **how to do your own appendectomy or root canal**. However, I don't recommend doing your own medical procedures and I also don't recommend preparing, or rather, **attempting to prepare, your own legal documents** that will affect yours and your loved ones' futures. While the Madison Avenue advertisers make all these documents **seem simple and easy to prepare by just filling in the blanks**, failure to understand the legal ramifications of each document and not properly setting them up could ultimately **lead to a greater tragedy and expense for your family**. The courts are filled with lawsuits as a result of incorrectly prepared documents. When you are looking to protect **your most important assets, namely your loved ones**, risking it all to save a couple of dollars with an online form that you're unfamiliar with, I respectfully submit, **is not in your loved ones' best interests**.

If you would like to learn more about how we can assist you in creating your own **Family Protection Plan**, please give us a call at **941-867-6865** or e-mail me at mark@martellalaw.com to schedule a complimentary **Family Protection Plan** consultation.