

SINGLE MOMS, DON'T PANIC: PROTECT YOUR CHILDREN WITH A WILL OR TRUST

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It's 3 am, and you have just woken up in a panic. On Facebook last night, you read a post about a single mom who was hit by a car while jogging and is now in a coma. You got really upset when you learned that the kids had to go stay with a distant relative who lived in another state and really didn't even know them. You finally get back to sleep but when you wake up you are full of anxiety and questions. You worry about what would happen to *your* kids if you were in

a coma. What if you were killed? Who would take care of them? Who would pay for their food and their piano lessons and their clothes? Who would raise them the way *you* want them raised? You grab your phone and try to do a Google search to learn more, but it's all so confusing that now you are *really* panicked.

Take a deep breath. And then another. You can stop worrying. In this free e-book, I give you the information you need in ways you can easily understand so you can get the right documents drafted by an attorney to protect your kids in case of your incapacity or injury. I have friends and family who are single moms, and I know three important things. One, your kids mean the world to you. Two, you are on a shoe-string budget. Three, your kids mean *more* than the world to you. So, I'm here to tell you how to protect them.

You need an estate plan, and yes, you need one no matter how much money you make. Many people think that an estate means you have a lot of money or personal property. That is not true. If you have any property at all – a bank account, car, house, clothes - you have an estate. And if you don't have a plan, including documents in case you are incapacitated, then your kids may not be taken care of the way you want.

Let me tell you the three ways your estate plan is going to protect your kids and give you peace of mind so you can sleep through the night.

1. The plan allows you to name a guardian who can take care of your kids. That's right. Someone *you* pick. That means it will be someone you trust who will raise your kids the way you want them raised. If you don't have a guardian named, the court may send the kids to live with someone who you would never have wanted to raise your children. I know you don't want the court deciding by itself who raises your kids, right?
2. The plan allows you to leave your property how you want to, and that means you can make sure your kids are taken care of financially, even if you don't have a lot of money. You can also make sure they get important things, mementoes that may not have a lot of financial value but provide them with emotional and psychological support during a hard time.
3. The plan allows you to choose who will make your health decisions based on what you would want if you could talk, and who will have the authority to perform everyday activities for you, such as paying your bills. How does this protect your children? If you are incapacitated, like that woman in a coma, you don't want your kids being around the stress that results from people arguing over your care. The court might

even have to get involved. And if you are incapacitated for a long time, you want to make sure your bills are paid so the kids have a place to live and their other needs are taken care of by someone you can depend on.



A few housekeeping tips before I show you how to protect your children:

1. I am a Massachusetts-licensed attorney so the documents I discuss follow Massachusetts law. If you live in another state, you need to consult an attorney who practices that state's laws. If you don't know an attorney in your state, please feel free to contact me, and I will see if I can find someone who can help you.
2. I know that a lot of online places and even celebrities claim you can do an estate plan with their cheap service. Don't do it! I know it's

tempting. We all want to save money where we can. But please consult an attorney. We have the knowledge and experience to make sure the plan you have actually protects your children. We also keep updated on the law because it changes. The last thing you want to do is think you have protected your kids and then have your documents not work in your state. And, yes, it happens. I know of someone who used an inexpensive will that a celebrity said was legal, but it wasn't because part of the document was not valid in that person's state. I don't want that to happen to you or your children!

3. While I write about legal issues in this e-book, I am not giving you legal advice. I am teaching you about general estate planning in Massachusetts. If you want specific advice concerning you and your family, please contact me or an attorney in your state.

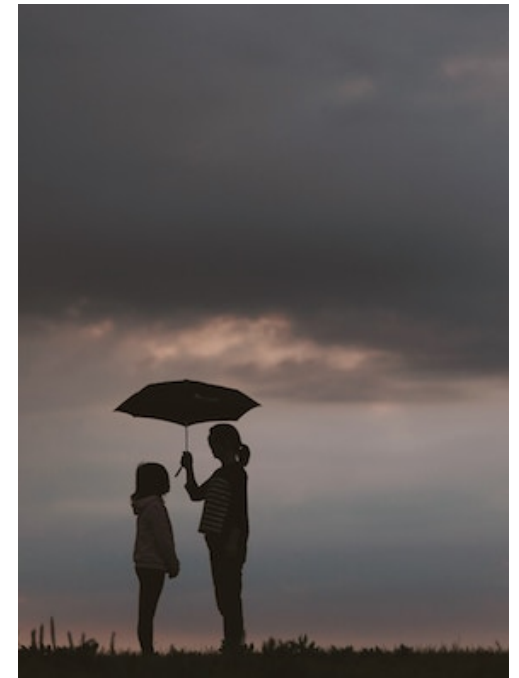
4. I'm going to say it again: Don't be afraid to contact me if you have questions or want to have an estate plan drafted. I know that a lot of people are afraid of attorneys and don't want to talk to them. I would love to talk to you about a plan that works for you and your kids. One of my mottos is that there is no such thing as a dumb question, so feel free to ask me if you are confused or just simply don't understand something about these documents. I also know that a lot of single moms are on a shoe string budget, and if you are, don't be afraid to contact me and say so. I have a lot of friends and family who are single moms, so I will not judge you at all! I understand your concerns and your financial constraints. I will do my best to help you so you get the documents you need and still stay within your financial means.

Now toss the kids outside to play or put them to bed, grab a cup of tea or coffee, and let's get started! The first two documents I discuss are wills and trusts. These documents protect your children and disburse your estate.

Where There's a Will There's a Way

I know you have heard about a will. If I asked you what a will is, you would probably tell me that it gives away your property after you die. If I asked what else you know about a will, you might not be able to tell me anything else. That's OK. I am giving you this information so you can learn more and make informed decisions to help you and your kids.

In its most basic form, a will is a written document that states what property you are giving away and who you are giving that property to. A will also does something else that is very important if you are a single mom. It allows you to name a guardian for your kids. In Massachusetts, the court must approve the guardianship of your children. If you think about it, that's a safety feature to protect children so that an unfit person is not taking care of them. You want to make sure you list a guardian in your will so that the court knows who your preference is for taking care of your kids.



Another feature of a will that means a lot if you are a single mom on a tight budget – and I know a lot of single moms are – is the cost. A will costs less for an attorney to prepare for you than preparing a trust because it is not as complicated a document.



Now, there are some things about a will that you should know because they may influence whether you want a will or a trust, which I discuss in the next section. One thing you may not know is that a will *does not* go into effect immediately when you die. I am sure you have seen at least one TV show or movie where a person dies, and right after the funeral, the will is read, sometimes with people still in their clothes from the funeral. Everyone finds out what the deceased left them, and they go to get whatever the item it is, at which time some kind of fight ensues, and you have drama to watch for an hour or two. Guess what? That isn't how it works. A will must go through probate, which means it must be processed through the court system. There are reasons for that, such as making sure the will isn't fake and that the right people get the right property. Fair enough.

What you may not know is that the probate process can take anywhere from several months to several years. There are reasons for that length of time, including an accounting the representative must make of your property, and that can take a while. The court process can also delay

things because of scheduling hearings, along with any questions or concerns the court may have about your will and assets.

Another thing you may not know is that because probate is a court process, your will and other documents can be viewed by the public. Your nosy neighbor, unhappy family member or an unscrupulous stranger can look at your will and see what property you have and who you gave it to. For example, the chef Anthony Bourdain had a will that was widely reported on by the media when he died. You may not be leaving \$1 million to your kids but you still may not want someone to know that you are leaving them jewelry or a smaller amount of money or a home.

While a will is cheaper for an attorney to prepare than a trust, there are more court costs after you die because an attorney handles the probate process with the will. Doing so can cost several thousand dollars in attorney fees and court costs. A good estate planning attorney can show you how using a trust can save you that money, and even more if you may owe estate taxes, by using a trust instead of a will. Those savings can be passed along so that your kids get a bigger inheritance, especially if estate taxes are involved.

Now that you know about wills, let me show you how a trust can help protect your kids.

When a Will is Right for You

1. You want to keep upfront expenses low.
2. You don't have a lot of assets.
3. You want to make your plan quickly and easily.

Trusted Protection for Your Children and Assets

So, as you just read, a will can work as your main estate planning document, but an even better document in many situations is a trust. A lot of people I talk to think only people with a lot of money or property need a trust. Not true!

There are several important advantages to a trust. All of them have to do with the fact that a trust, unlike a will, does not have to go through probate. Remember that the probate process involves the courts. Not having to go through that process can really help your kids. One of the biggest advantages is that a trust becomes effective immediately upon death. That means there is no waiting period like there is with a will. Money will be available immediately to take care of your kids. Another advantage is that a trust isn't a public document because it's not filed

When a Trust is Right for You

1. You want to avoid the costs and delays of probate.
2. You want to avoid estate taxes.
3. You have a special situation.

with the court. Your kids are more protected because you don't have to worry about that nosy neighbor, unhappy family member or unscrupulous person learning what property you left and who you left it to. I told you there were several important advantages and here is one more. While it costs more to initially get a trust drafted by an

attorney, it can save you thousands later because an attorney does not have to do the same probate court work that is required if you have a will. Add in issues such as inflation, and you can wind up saving a lot of money in the long run, money that can go to your kids.



Trusts also help in specific situations. Massachusetts has an estate tax that kicks in if you have more than \$1 million in assets. That may seem like a lot but with the cost of property in the state, you may be over that limit if you own a home or other property. If you have a child with special needs, there are special needs trusts that can help make sure funds are available to take care of the child. There is also a Medicaid trust, which can help save your home from having a lien placed on it if you wind up in a nursing home and need Medicaid to pay for it. If you have a special situation, please feel free to contact me so I can let you know what special trusts might exist to help you out and make the situation less stressful.

Incapacity Documents

Now that you know about wills or trusts, let's talk about documents that protect your children if you are incapacitated. Remember the Facebook story you read that woke you up at 3 am? There are a few documents that are a part of your estate plan that can help alleviate those fears. I call these incapacity documents because they are important if you have an accident or medical condition that makes you incapable of saying what your medical wishes are and of taking care of your daily life, including paying bills and taking care of your children. These documents also give you peace of mind that your kids won't experience additional stress, such as worrying about who will take care of them or of you while you are incapacitated.

Parental Nomination of Guardian

I know the first question you have for me is how you can make sure the person you want is taking care of your kids while you are incapacitated. So, let's deal with that issue first. Under Massachusetts law, you can protect your child by naming a guardian in a written document that is signed by two witnesses. A parental nomination of guardian allows you to name who you want as guardian for your children. This document ensures that your children are taken care of right away by the person you name in the form.

It is also important to name a guardian in your will or trust. Why? Because the parental nomination of guardian is only valid for 60 days. If you are still incapacitated or you die after those 60 days, the court will get involved as a safety measure to make sure the kids are being well taken care of. If you are incapacitated, the court has your parental nomination as a guide to appoint a guardian. If you die, it can look to



your will to see who you wanted as a guardian. You can also instruct your trustee in your trust to file court documents concerning who should be appointed as your guardian. What you want to do is make sure that you have a document to let the court know, whether you are incapacitated or die, that you want a certain person or people taking care of your kids.

Durable Power of Attorney

Now that you have the person you want to take care of your kids, you need to make sure your children are fed, housed, and have other needs met, as well as taking care of the needs of your daily life. A durable power of attorney, also known as a POA, is the document that allows your financial and daily affairs to be taken care of if you are incapacitated. A POA gives you the ability to grant someone access to your finances and accounts so that your bills are paid and financial and business matters are handled until you can take care of them yourself. Many people pay bills and do other daily tasks and business online, so you want to make sure your POA gives your representative access to those digital accounts. Having a POA in place means someone can take

care of your bills and pay for necessities for your children, such as food and other expenses, from your accounts until you are able to resume those activities. Your children won't have to worry about being taken care of financially during an already stressful time.



Health Care Proxy

I know that you are most worried about your kids if you are incapacitated but you also must take care of your own medical needs. Doing so will actually make this a less stressful time for your kids because someone will be able to deal with medical personnel and make sure your wishes are followed. If you are incapacitated, you will be unable to tell emergency and medical personnel what kind of medical treatment you want and what kind you don't want. You won't be able to tell them about things such as your allergies. A health care proxy allows you to name someone who can convey your wishes and other important information to medical personnel. Your kids will obviously be upset about your condition if you are incapacitated. The last thing you want is confusion and disagreement over how you want to be

treated medically, and you certainly want to avoid anyone having to go to court to determine such things. Having a health care proxy in place allows the stress to be lowered so that your kids don't have to be exposed to that stress during an already difficult time.

HIPAA Release

This document is similar to one you have already seen if you have been to a doctor. You must sign a HIPAA Release with a medical professional for them to have access to your medical records. The one in your estate plan allows you to have your medical documents released to your health care proxy and anyone else you name so she or he can make an informed decision about your health care.

Advance Directive

An advance directive in Massachusetts is known as a living will in most other states. In case you aren't familiar with what a living will does, it's a document that states your end-of-life wishes. Now I know that no one wants to think about that, but I also know it's even harder to think about your proxy, during an emotionally difficult time, having to figure out what your wishes are -- or worse yet, having arguments break out between your proxy and your family over your wishes. It's also something that your proxy could show your older children if they don't understand why the proxy is making the decisions he or she is making. While in Massachusetts an advance directive is not legally enforceable, which means you can't sue to have it enforced or if medical personnel don't follow it, it is still important to have one to outline your end-of-life wishes to avoid the stress and potential fighting I just mentioned.

In Closing . . .

I hope this e-book has given you information that now makes you feel comfortable and confident contacting an attorney and getting an estate plan drafted that is right for you and your family. Please feel free to contact me, as I would be more than happy to create an estate plan that protects your children and gives you peace of mind, including a good night's sleep.



Be sure to share this free e-book with the single dads you know who are rockin' it.



About Joanne L. Belasco, Esq.

Attorney Joanne L. Belasco graduated from Suffolk University School of Law in 1993, and from Boston College *magna cum laude* with a BA in Psychology in 1990. She has been a member of the Massachusetts bar since 1993. Her legal experience includes litigation work as a staff attorney for the Boston Police Department's Office of the Legal Advisor. During her time at the Department, she successfully argued a case before the Massachusetts Supreme Judicial Court concerning the protection of Criminal Offender Records Information. Police Commissioner Paul Evans recognized her work by giving her a Special Citation and a Distinguished Service Award. After leaving the BPD, Joanne worked as a legal writer and Editor-in-Chief of Law Enforcement Publications at Quinlan Publishing, where she wrote "The Internal Affairs Handbook." She also worked as an online legal editor for Lexis-Nexis, a large legal research company. Since 1998, Joanne has been involved with the nonprofit Tapestry Institute, which helps people reconnect to nature through programs based within Indigenous worldview. She is currently its president.

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