

**SUMMER
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LAW OFFICES OF FREDERICK J. MARTORELL, ESQ., P.C.

DEDICATED TO BRINGING JUSTICE
TO THE INJURED AND THE ELDERLY

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LIVING TRUSTS

There are many situations where the *living trust's* main benefit of avoiding probate is both beneficial and preferable. If you own property out of state, have unknown heirs, anticipate a will contest, anticipate a loved one will become incapacitated, or you want the value and distribution of your estate to remain private, then a living trust may be your salvation.

At your death, property owned out of state will require an ancillary probate proceeding in that state. By transferring the out-of-state property into a living trust, you will save the cost of unnecessary ancillary probate proceedings.

New York law requires that upon your death, the beneficiaries of your estate must be notified of the probate proceeding. If the whereabouts of an heir is unknown, the court will require the executor to identify and locate that heir, no matter the costs. The use of a trust allows the trustee to distribute the assets pursuant to the trust agreement without the need to inform disinherited heirs of the estate.

If a will contest is anticipated, a living trust

will require the challengers to bring their own proceeding before the court at their cost. There is no formal procedure like probate to challenge a living trust.

A living trust allows you to manage a person's financial affairs with less hassle where it is anticipated that the person will lose his or her ability to manage their own affairs. The trust would be funded during the loved one's lifetime and trust accounts opened in the names of the trustees. If the loved one or trustees become incapacitated, the successor trustee will become the new trustee. There is no mechanism in a power of attorney to appoint a new agent if the original agent can no longer serve.

Finally, a trust is a private document that is not available for public view. A will, once filed with the Surrogate's Court upon the death of the client, becomes public record.

If you wish to discuss the use of a living trust or if you have any other estate-planning questions, please contact my office to schedule an estate-planning consultation.



AUTO ACCIDENTS Failure to maintain lane

Drivers and passengers may suffer auto-accident injuries when other vehicles fail to stay on their side of the road. What causes these "failure to maintain lane" accidents?

Rainy, snowy, or icy weather is one reason. Faulty brakes, nonfunctioning windshield wipers, and bald tires are among other reasons. Even roadway design or maintenance may create conditions that cause drivers to lose control of their vehicles.

Negligent drivers cause many accidents due to inattention, roadside distractions, or fatigue. Additional reasons are driving too fast for conditions, driving too aggressively, or driving while impaired.

A head-on collision

A driver suffered multiple hip and leg fractures, nerve injuries of the back, and severe pain when a courier delivery truck crossed the center line and crashed head-on into his pickup truck. This victim's medical and rehabilitation expenses totaled more than \$2 million. He sued the delivery driver and his employer for negligence and failure to maintain lane. The parties settled for an undisclosed amount.

We take your family's safety and security personally.

WHAT IS A *Trial lawyer?*

Trial lawyers help obtain access to our civil justice system for the powerless in America—working families, individual workers, and consumers who often lack the resources to take their grievances to court.

Trial lawyers play a valuable role in protecting the rights of American families. They champion the causes of those who deserve redress for injury to their person or property; they promote the public good through their efforts to secure safer products, a safe workplace, a clean environment, and quality health care; they uphold the rule of law and protect the rights of the accused; and they preserve the constitutional right to trial by jury and seek justice for all.

The kinds of cases that trial attorneys handle include:



• *A child paralyzed after being struck by a drunk driver.*



• *A young woman unable to have children because of a medical mistake.*



• *A person denied a promotion because of racial discrimination.*



• *An elderly man mistreated in a nursing home.*



• *A community whose water was made toxic by a local manufacturer.*



Auto accidents

PARKING BRAKES

Vehicle parking-brake systems usually work well. But like most other automobile elements, design, manufacture, and poor maintenance can lead to malfunction. Driver, passenger, or pedestrian injury or property damage may result.

Here are some instances:

2005—Toyota recalled more than 20,000 Tacoma trucks with ineffective parking brakes.

2005—Owners of General Motors cars, trucks, and SUVs filed a national class-action lawsuit after being charged to replace defective parking brakes.

2004—Hyundai Motor Co. recalled minivans with defective parking-brake cables.

2004—Jaguar Motor Company recalled vehicles with electronic sensors that locked parking brakes while cars were moving.

If you or someone you know has sustained a personal injury or property damage from a parking-brake incident, consider obtaining legal counsel.

Jury duty *and* **TELEPHONE FRAUD**



The Federal Bureau of Investigation (FBI) has warned the public

against an ongoing scam involving jury duty.

Unscrupulous individuals identifying themselves as court employees have been phoning victims, telling them they have been selected for jury duty. Callers then ask for verification of social security numbers, credit-card numbers, and passwords. When those who are called hesitate, callers allegedly threaten with civil fines, or worse.

Members of our judicial system never phone and ask for compromising financial information that can be used to defraud consumers.

Anyone who has been contacted or who gave out confidential information should contact local law enforcement, the local FBI office, banks, credit-card issuers, and other financial services.

FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **Connecticut Electric & Switch Mfg. Co.** has recalled 64,000 counterfeit “Square D” Circuit Breakers, which may fail to operate properly and burn consumers.
- ✓ **Target Stores** has asked buyers to return 40,000 Home Patio Sets. Weakened front-end arm rests can collapse and injure users.
- ✓ **Bumbo International**, a South African firm, has recalled 1 million “Baby Sitter” Seats. If placed on elevated surfaces, the seats may allow children to arch their backs, flip out of the seat, fall to the floor, and suffer serious head injuries.
- ✓ **Alltrade Tools, LLC**, wants 800,000 battery chargers supplied with certain Kawasaki Power Tool Kits returned. If used with incompatible chargers, battery packs can overheat, melt, or explode, bruising, lacerating, or burning users.
- ✓ **Dunkin’ Donuts, LLC**, has recalled 1 million free-giveaway Pink and Orange Glow Sticks. Caps and lanyards can detach and choke or strangle young children.
- ✓ **Huffy Corp.** has voluntarily called back 22,000 2007 Huffy “Howler” and “Highland” bicycles, whose pedal cranks can unexpectedly detach and harm riders.



TEEN DRIVERS

Trust but verify

Although parents do their best to see that family teenage drivers are well-trained, teens remain a high-risk category.

Why? Newly licensed teen

drivers are still in the process of learning good driving skills.

Teens often underestimate hazards and take risks. Further, young drivers may be distracted by friends in the vehicle or by talking or messaging on cell phones while driving.

According to the Centers for Disease Control, for each mile they drive, teenage drivers aged 16 to 19 are four times more likely than older drivers to have an auto accident.

Protect your young drivers

Parents can take a number of steps to safeguard teen drivers:

1. Let them know you can always pick them up anywhere, anytime, day or night.
2. Set rules for nighttime or weekend driving.
3. Have parties at your home to keep teens off roads during high-accident times.
4. Make teens promise to always wear seat belts.
5. Restrict passengers to one or two other teens.
6. Make teens promise not to use a cell phone while driving.
7. Drive with teens to monitor their driving habits.
8. Serve as a good driving role model.
9. Have teens pay for their driver’s insurance.
10. Keep any vehicle teens drive well-maintained.



Ultrasound drug CAUTION

Echocardiography

The Food and Drug Administration (FDA) has warned physicians that two drugs used in cardiac ultrasound diagnosis may cause cardiopulmonary complications and death.

Definity® and Optison®, called contrast agents, use minute gas-filled bubbles to bring cardiac ultrasound images into sharper focus during echocardiography.

Should preliminary cardiac testing be inconclusive, physicians may inject these drugs during testing procedures to obtain better cardiac images for diagnosis of cardiac malfunctions and defects.

The FDA, which received reports of serious cardiopulmonary reactions and deaths following injections of these medical products, has asked the manufacturers to update the drugs’ labels to warn doctors about using the drugs on patients with specific cardiac conditions, and to carefully monitor patients for half an hour after administering the drug.

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THE "litigation crisis" MYTH

Are greedy plaintiffs filing lawsuits as though they were money machines? Do we have a national litigation crisis? No, we do not.

Our civil justice system and conscientious jurors serving at state trial courts don't tolerate "out-of-control" lawsuits.

- At trials, fair median damage awards granted by juries have decreased 56 percent since 1992, down from \$64,000 to \$28,000.
- In state courthouses, jurors are cautious about punitive damages, granting such awards in about only six percent of all cases.
- Jurors are watchful. They reduced award amounts for 16 percent of plaintiffs who won jury trials.
- In a third of all premises-liability cases, juries reduced awards by about 42 percent due to plaintiff negligence.
- When states recognize potential plaintiff negligence, juries reduced damages by 14 percent in lawsuit cases.

Our commitment to clients

Clients who use our legal services mean everything to our law firm.

That's why our promise to each client is to always do our best every time we provide legal assistance.

- Our firm is committed to providing clients the highest-quality legal services at competitive rates.
- We always treat our clients with respect and appreciation.
- If we cannot speak with clients when they call, we return calls the same day.
- We always provide copies of all pleadings and correspondence.
- Our lawyers stay in touch with clients to keep them informed of the developments in their legal matters.
- We provide prompt processing of pleadings and document preparation.
- Attorneys apply their professional experience, legal resources, and knowledge to deliver value-added legal services.

This is our commitment to our clients.

PREMISES LIABILITY

PARKING LOTS

Businesses that invite customers to their premises have a legal duty to provide sensibly safe parking for those who enter their grounds.

Customers should never have to worry about dangerous conditions such as insufficient security, poor lighting, broken sidewalks, hazardous construction areas, or other safety breaches or conditions that can injure them.

A parking lot pothole

Just after a woman parked her car at an unlit casino parking lot, she stepped into a large pothole, fell, and fractured her leg. When her attorney sued the establishment for failing to maintain safe conditions for customers, the casino claimed the hole was an obvious condition and that it had no duty to repair it or warn anyone about it. Casino attorneys also argued that that the victim should have seen the pothole and avoided it. The parties settled before a jury trial.