**NLG-Massachusetts Chapter**

**ESTATE PLANNING TOOLS FOR VULNERABLE POPULATIONS**

1. **What is Estate Planning?**

Broadly, estate planning is an area of law focused on making arrangements for when a person is no longer able to make legal or financial decisions for themselves. Most people think of this as an issue to be addressed much later in life, but the problems an estate plan addresses can arise at any age. Having these kinds of documents in place before you feel they are needed ensures that if you are ever unexpectedly experience a significant medical problem, detainment or deportation, or other emergency in which you are not able to handle your financial, legal, and medical decisions independently, your loved ones are able to quickly and effectively step in to manage the situation.

Most people do not know that Massachusetts law allows non-citizens to establish estate planning documents. While you may be asked to prove your identity in relation to these documents, you do not necessarily need to prove your citizenship.

1. **What basic documents would be helpful to me?**

Three basic documents are especially relevant:

• Durable Power of Attorney

• Massachusetts Healthcare Proxy

• Family Protection Planning

1. **What do these basic documents do?**
* **Durable Power of Attorney** (DPOA) is a document that names a person you would like to be able to make legal and financial decisions for you, if you are unable to do so yourself. There are several kinds of power of attorney, but a durable power of attorney is often preferable as there are no conditions that need to be satisfied for your decision maker to be able to step in for you — they do not need to wait for you to be declared incapacitated. This document is valid as soon as it is signed, so it is extremely important to choose someone you trust as your decision maker. In general, a DPOA set up in MA is usable anywhere in the U.S.

***Consider the following situation:***

Alexis is detained for several days. During that time, she needs to write a check to her landlord to pay her rent. If Alexis does not have a DPOA, no one can do this for her. If she has named her sister Beth as her DPOA, however, Beth can write the check for her.

* **Massachusetts Healthcare Proxy** (HCP) is a document that names a person to make medical decisions for you, if you are unable to do so yourself. Unlike a DPOA, a doctor must activate your HCP for your decision maker to have the power to decide anything for you.

A HCP set up in MA is typically geared toward MA law and may not be valid everywhere.

***Consider the following situation:***

Chris becomes very sick and is unconscious in the hospital. Their doctors have multiple options as to how to treat their condition, but each has risks. As Chris cannot voice their own opinion, without a HCP, they have no ability to participate in this important decision about their health. If Chris’s doctor invokes their HCP, their husband Dan, who is named as their decision maker, can speak for Chris and advise the doctors as to which treatment they would prefer.

* **Family Protection Planning -** refers to documents that can be set up to designate someone to care for your minor children. For example, you are allowed to nominate someone to be your child’s legal guardian if neither parent is able to do so themselves. A legal guardian can do all of the same things a parent can, but crucially, living parents do not give up the rights to their child the same way an adoption would sever them.

All guardianships will go through the probate court where the child lives. While having a family protection plan set up in advance can help to expedite and ensure the desired outcome for your guardianship case, there is not a way to avoid courts entirely. That said, not all probate courts require guardians of a minor to be U.S. citizens.

***Consider the following situation:***

Emilia is 9 years old and lives in Bristol County. He lives with his mother, Francisca, who is a single parent. Francisca is unexpectedly detained for a significant period time. Luckily, Emilia’s uncle, Ernest, is able to take over caring for Emilia. Emilia moves in with Ernest, but Ernest lives in a different town, requiring Emilia to change schools, doctors, and several other key services related to her education and welfare. To do so, Ernest needs to become Emilia’s legal guardian. With a plan in place, Ernest will have the resources to become her guardian ready to go, saving time and potentially avoiding unnecessary conflict in the courts.

**4. Where can I get these items prepared?**

Many estate planning tools can be set up on your own — templates for these documents are often available online. If you are doing these kinds of documents yourself, it is highly recommended that you have them notarized. These services are often available at your local town hall or bank.

However, it is recommended that you consult with an attorney as the versions you find online may not be suited to accomplish what you want to achieve. Additionally, they can better explain the risks and benefits of any documents you want to set up. Sometimes, attorneys refer to estate planning specialties as “elder law”; this does not mean that they are unable to assist you, if you are not elderly!

**Free or low-cost counsel is also available in Massachusetts, if you need it - to locate these services, go to:** <https://masslrf.org/en/triage/info>