

**Understanding the Importance of
Advanced Planning**
with
NASSAU SUFFOLK LAW SERVICES
Presented by Sharon Campo, Esq.

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Housekeeping

**Doing What's Legally
Possible to Create a Just
World Since 1966.**

- Please keep your microphone muted.
- Please put any general questions in the chat and we will address them at end if we have time.
- There will be one or two polls throughout the presentation. Survey at end.
- **FRIDAY THE 13TH TRIVIA WILL BE HOSTED BY CATHY**

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WHERE DIGNITY MEETS JUSTICE

Join Nassau Suffolk Law Services as we continue to illuminate pathways to justice under our new name, **Legal Services of Long Island (LSLI)**. Help us guide our communities and neighbors in need toward accessible free legal services for all.

LEGAL SERVICES
OF LONG ISLAND

LEGALSERVICESLI.ORG

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Who we are and what we do...

- Over 6,000 legal cases each year
- Direct representation, phone consultations
- Brief service or referrals
- Offices in Hempstead, Islandia, Riverhead
- Case handling staff includes attorneys, paralegals and social workers
- Partnerships with Community Agencies

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Hempstead:
1 Helen Keller Way 5th Fl
Hempstead NY 11550
(516) 292-8100

Islandia (Western Suffolk):
1757 Veterans Hwy Ste 50
Islandia NY 11749
(631) 232-2400

Riverhead (Eastern Suffolk):
400 W. Main St Suite 200
Riverhead, NY 11901
(631) 369-1112

Office Locations

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Nassau Suffolk Law Services
Programs

Family

- Domestic Violence Unit (Suffolk)
- Child Support Defense Unit

Disability & Health-Related Projects

- HIV Unit
- Mental Health
- ICAN - Advocates in Managed Long-Term Care
- Education and Disability Rights (Special Education and Rights of Developmentally Disabled)
- Disability Advocacy Project (SSD/SSI Appeals)

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Nassau Suffolk Law Services Programs (continued...)



Housing

- Civil Unit (Eviction Prevention)
- Foreclosure Defense Project

Other

- Consumer Debt
- Veterans Rights
- Civil Rights Project (Re-Entry and LGBTQ)
- Public Benefits
- Adult Care Facility Unit
- Senior Citizen Law Project (Nassau)
- Pro Bono Project (Suffolk)
- Volunteer Lawyers Project (Nassau)
- Community Legal Help Project

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Legal Support Center for Advocates:

Advocates call (631) 232-2400 for assistance:
 Sharon Campo - x3368 Cathy Lucidi - x3324
 Hannah Fitzpatrick – x3343

- Provide Technical Support to Advocates
- “Advocates” include legislative staff, social workers, outreach workers, medical personnel, and guidance counselors
- Host Community Trainings
- Publish Newsletters

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Visit our website!

- All About Our Programs
- Sign up for our “Legal Lessons”
- Trainings
- “Self-Help” Resources
- Other Events

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POLL

What type of advocate are you

Have you ever called the Legal Support Center for Advocates?

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Just a Note...



Nassau/Suffolk Law Services makes every effort to keep legal educational materials up to date. The information contained in this material is not legal advice.

Legal Advice depends upon the specific facts of each situation. These materials cannot replace the advice of competent legal counsel.

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Agenda...



1. Power of Attorney
2. Health Care Proxy
3. Appointment of Agent to Control Disposition of Remains
4. Standby Guardian
5. Advanced Care Planning Clinic

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**October Advance Planning
Legal Clinic**

Legal Services of Long Island is hosting a FREE Advance Planning Legal Clinic in October of 2024. Volunteer attorneys, law students, and paralegals will assist eligible Suffolk County residents in completing important advanced planning documents including powers of attorneys, health care proxies, standby guardians, & appointments of agents to control disposition of remains.

Interested Suffolk County Residents should call 631-232-2400 ext. 3331 by October 14th, 2024 to be screened for eligibility.

Location: 1757 Veterans Hwy Ste 50, Islandia, NY 11749


LEGAL SERVICES
OF LONG ISLAND

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FRIDAY THE 13TH TRIVIA

QUESTION 1:

Being afraid of Friday the 13th is called what?

A. Friggatriskaidekaphobia
B. Triskaidekaphobia

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What is a Health Care Proxy?

- A legal document that allows a person (Principal) to appoint someone they trust (Agent) to make medical decisions for them if, and only if, they can't make decisions themselves.
- Takes effect only in the event that a doctor certifies in writing that the Principal lacks capacity to make own health care decisions.
- Can only have one proxy at a time.



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What happens if someone does not have a Health Care Proxy and can no longer make medical decisions?

For medical decision-making: If a person has not appointed a Health Care Agent, New York Public Health Law § 2994-d (the Family Health Care Decisions Act (FHCDA)) states that if they are admitted to a hospital or nursing home, the following people, in this order, will make decisions for them:

1. a court-appointed guardian,
2. your spouse or domestic partner,
3. a son or daughter 18 years or older,
4. a parent,
5. a brother or sister 18 years or older,
6. a close friend.



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Limitations of FHCDA

Health Care Proxy

- Can choose a person even a non-family member that is not listed in the FHCDA
- The principal can control medical treatment
- Can avoid delay when multiple people may claim the right of surrogate decision maker

Family Health Care Decisions Act

- Limited in application
- Lists certain individuals who can be a surrogate for the principal
- Can lead to conflict or confusion among family members



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Who should have a Health Care Proxy?

Everyone! But especially if you are elderly or have a progressive disease or illness.



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FRIDAY THE 13TH TRIVIA

QUESTION 2:

What is the maximum number of Friday the 13ths that can occur during a calendar year?

- A. 1
- B. 2
- C. 3

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What is a Power of Attorney?

- Document in which a person (Principal) authorizes someone they trust (agent) to manage financial and banking matters during the lifetime of the Principal.
- Effective as soon as Agent signs in front of a notary public. Not triggered by loss of capacity.
- This is a powerful document. Principal should trust their agent(s) completely.



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What is a Power of Attorney?

- POA can be revoked at any time by a principal who is competent.
- Principal is not signing away their decision-making rights.
- POA is only effective during lifetime of principal.
- What if Principal lacks capacity to understand a POA? They cannot create a POA.



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Advantages of a Statutory Short Form

- Durable – not affected by incapacity of Principal
- Financial institutions and other third-parties must accept properly drafted original or attorney-certified copy.
- If a financial institution rejects a POA, it must do so within 10 days of receipt and provide a valid reason in writing to Principal and Agent. If an institution unreasonably refuses to accept a POA, it can be sued and under the new law, petitioner can be awarded damages and attorney fees.



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Principals

- Must be at least 18 years old and have capacity to sign POA
- Capacity determined at the time of signing
- Principal must understand:
 - the nature and consequences of the act of executing and granting, revoking, amending or modifying a power of attorney
 - any provision in a power of attorney, or
 - the authority of any person to act as agent under a power of attorney.



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Agents

- Agent must be at least 18 years old
- Agent owes fiduciary duty to the principal and must act according to principal's instructions or in principal's best interest
- Must avoid conflicts of interest



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Completing a POA – Grant of Authority

(f) GRANT OF AUTHORITY:

To grant your agent some or all of the authority below, either

- (1) Initial the bracket at each authority you grant, or
- (2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

I grant authority to my agent(s) with respect to the following subjects as defined in sections 5-1502A through 5-1502N of the New York General Obligations Law:

- | | |
|--|---|
| <input type="checkbox"/> (A) real estate transactions; | <input type="checkbox"/> (J) benefits from governmental programs or civil or military service; |
| <input type="checkbox"/> (B) chattel and goods transactions; | <input type="checkbox"/> (K) financial matters related to health care; records, reports, and statements; |
| <input type="checkbox"/> (C) bond, share, and commodity transactions; | <input type="checkbox"/> (L) retirement benefit transactions; |
| <input type="checkbox"/> (D) banking transactions; | <input type="checkbox"/> (M) tax matters; |
| <input type="checkbox"/> (E) business operating transactions; | <input type="checkbox"/> (N) all other matters; |
| <input type="checkbox"/> (F) insurance transactions; | <input type="checkbox"/> (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select; |
| <input type="checkbox"/> (G) estate transactions; | <input checked="" type="checkbox"/> (P) EACH of the matters identified by the following letters <u>A, B, C, D, E, F, G, H, I, J, K, L, M, N and O.</u> |
| <input type="checkbox"/> (H) claims and litigation; | |
| <input type="checkbox"/> (I) personal and family maintenance: If you grant your agent this authority, it will allow the agent to make gifts that you customarily have made to individuals, including the agent, and charitable organizations. The total amount of all such gifts in any one calendar year cannot exceed five thousand dollars; | |

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Completing a POA – Grant of Authority

(A) Real Estate Transactions - covers real estate matters like signing a lease, selling property, executing release of mortgage, gifting property, executing deeds, partitioning property, releasing and enforcing liens, dealing with encumbrances.

(B) Chattel and Goods Transactions - permits agent to buy, sell, or pawn movable property.

(C) Bond, Share and Commodity Transactions - permits agent to buy or sell stocks, bonds, and commodities.

(D) Banking Transactions - allows agent to modify, terminate, make deposits and withdrawals from bank accounts.



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Completing a POA – Grant of Authority

(E) Business Operating Transactions - permits agent to handle transactions involving business owned by the Principal.

(F) Insurance Transactions - permits agent to pay premiums, modify, rescind or terminate any contract of life, accident, health, disability, or liability insurance on behalf of Principal.

(G) Estate Transactions - allows agent to handle property and affairs of a deceased person on behalf of Principal

(H) Claims and Litigation - allows agent to assert and prosecute any cause of action, claim, counterclaim, offset or defense on behalf of Principal before any court, administrative board, etc. Can submit to alternative dispute resolution, settle a case, propose or accept a compromise on behalf of Principal.

-Cannot initiate divorce proceeding, but can defend.



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Completing a POA – Grant of Authority

(I) Personal and Family Maintenance - permits an agent to do all acts necessary to maintain the customary standard of living for the Principal's spouse and dependents. Also permits customary individual or charitable gifts up to \$5,000.

(J) Benefits from governmental programs or civil or military service - permits agent to enroll in or discontinue a benefit on behalf of Principal. Also allows agent to prosecute claim to any benefit on behalf of Principal.

(K) Matters related to health care - permits an agent to make decisions related to past, present, or future payments for health care. Also allows agent to keep records of cash received / disbursed in Principal's health care accounts.

(L) Retirement benefit transactions - permits agent to contribute, withdraw from, and deposit funds in any type of retirement benefits or plan.



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Completing a POA – Grant of Authority

(M) Tax matters – permits agent to prepare, sign, and file federal, state, and local tax forms. Also allows agent to submit claims for refunds, requests for extensions of time, petitions regarding tax matters, other matters.

(N) All other matters – catchall provision. Allows agent to act for Principal in all other matters not specifically enumerated in any other sections

(O) Full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select – Permits agent to give powers to someone else whom the Principal did not select.

(P) EACH of the matters identified by the following letters – Allows agent to list powers granted so that they only need to initial one time.



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Who needs a POA?

- Elderly and need assistance with financial decisions
- Persons with serious permanent or temporary disability, injury, or illness
- Persons in Nursing Homes
- Persons with Risky Jobs
- Must be competent at time of signing



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FRIDAY THE 13TH TRIVIA

QUESTION 3:

Which President was especially superstitious of the holiday, avoiding 13 guests at meals and traveling on the 13th day of any month?

- A. FDR
- B. JFK
- C. LBJ

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What is an Appointment of Agent to Control Disposition of Remains (AACDR)?

- Appoint someone to take care of remains.
- Can give directions on what to do with remains
- Default: NY Law provides an order within which persons may handle a person's remains. The primary person is the surviving spouse, followed by a surviving domestic partner, any surviving children who are over 18, either of the surviving parents, any of the surviving siblings who are over 18, a guardian of the court, and if none of those people are living, the fiduciary of the estate. They will make decisions for you & funding will have to be found.



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If no one available....

- If no one has been appointed, the local Public Administrator will handle. Funeral costs get paid before creditors of estate. If no funds, an application to the Department of Social Services can be made for a cremation.



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Who needs an AACDR?

Anyone who wants it.



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FRIDAY THE 13TH TRIVIA

QUESTION 4:

Which pop star considers the number 13 her lucky number?

- A. Madonna
- B. Taylor Swift
- C. Pink

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What is a Standby Guardian?

- New York State standby guardianship law (SCPA Sect. 1726) allows parents and caretakers to designate or seek court appointment of a guardian who will only assume guardianship if a particular event (“triggering event”) occurs
- The law was initially designed for parent with a progressively chronic illness or irreversibly fatal illness. The triggering events included the death of the parent, the incapacity of the parent, or the physical debilitation and concurrent consent of the parent



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What is a Standby Guardian?

- In 2018, the law was amended to include immigrants at risk of being separated from their children. The triggering event is an “administrative separation” and the parent’s consent



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Who can appoint a standby guardian?

- parents
- legal guardians
- legal custodians
- primary caretakers



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Benefits of Standby Guardianship

- Parent does not give up their own rights, even when the guardian's authority has commenced. The parent maintains concurrent authority with the standby guardian
- Guardianship goes into effect only when parent is actually unable to care for children



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Benefits of Standby Guardianship

- Plans can be made in advance rather than in time of emergency
- Gives opportunity to deal with potential legal issue such as an unfit noncustodial parent, while parent is available to participate



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Benefits of Standby Guardianship

- The standby guardian does not have any legal decision-making power over the children until the triggering event has occurred. Until then, the parent retains full decision-making power
- As the name suggests, the proposed guardian is “standing by” until they are needed



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Two Ways to Appoint a Standby Guardian

- by written designation
- petitioning for court appointment



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Designation

- a form that enables parents to name a standby guardian and an alternate standby guardian to care for their children if a “triggering event” occurs



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Designation

- Will be filed with any future Petition for Guardianship by the standby guardian
- Expresses parent’s wishes to the court
- Conveys information about why it is in the child’s best interest for this person to be appointed guardian
- Explains why the other parent should not (or cannot) be guardian
- Sets forth special needs of the children



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Triggering of the Guardianship By Designation

- The guardianship automatically goes into effect when triggering event occurs. (The Designation is proof of parental consent.)
- The guardian must go to court (Family or Surrogate's Court) within 60 days of that time to petition for legal guardianship
- Only a court can appoint a permanent guardian



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Who can use this form?

If you are the parent or legal guardian of a minor child (under the age of 18). You might want to set up a Standby Guardianship if you are worried about:

- Arrest, prison, or deportation.
- A mental impairment (disability, injury, illness) or
- Disability
- Death



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FRIDAY THE 13TH TRIVIA

QUESTION 5:

Some Spanish-speaking countries have a fear of a different day of the week when it falls on the 13th.

Which is it?

- A. Wednesday
- B. Saturday
- C. Tuesday

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Advance Care Planning Clinic

What Should Clients do:

Have the client call us by Monday, 10/14/2024
631-232-2400 Ext:3331

If possible, have them mention on the recording they are calling for the advance planning clinic or for help with a health care proxy, power of attorney, etc. If they don't, it is ok.



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Advance Care Planning Clinic

Next Steps:

We will call them back and ask a few questions to determine next steps. If it appears they are possibly eligible, we do a full eligibility intake process in person or by mail. You can prepare your clients for this, but we will absolutely walk them through it.



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Advance Care Planning Clinic

What is Needed:

For a full eligibility intake process:

Client fills out our intake paperwork and will be required to give us proof of income and assets. We speak to the client to help them pull these documents together but here is a general list (does not apply to everyone):

- SSI or SSD award letter
- 3 months of bank statements
- 1 month of paystubs
- 2 years of tax returns



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Advance Care Planning Clinic

Clinic Details:

We then inform the client if eligible about where and when the clinic is and we prepare them for how it will work/what to bring. Clinic will be held Wednesday, October 23rd from 3:45-6pm at our office 1757 Veterans Hwy, Suite 50, Islandia, NY 11749



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Thank you for attending!

Check out our website at www.nslawservices.org and follow us on social media @nslawservices or @nassausuffollawservices

Please complete survey.



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