

Immigration Law Section MCLE Meeting Attorney Resource Center 12/6/2018

11:45 AM - Noon

Welcome/Introductions
Neil Levine, Section Chair

Noon - 1:00 PM

Program

Estate Planning for Undocumented Families
Roberto Romero- The Perrom Law Office, LLC

Speaker's Bio (see attached)

Many undocumented families with children born either in the U.S. or abroad are not ready to protect their assets or the welfare of their minor children if faced with deportation (or even detention pending deportation). This seminar will present simple estate planning tools which can be used to protect their assets and to protect their minor children. These very same tools are just as effective for those undocumented individuals who are single and/or with no children but have assets in the U.S.

DCBA Events:

12/13/2018 - DBF Holiday Breakfast

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Roberto M. Romero-Perez

Roberto M. Romero-Perez is an Illinois licensed attorney with more than 20 years of combined professional experience in the fields of estate planning, immigration, tax deferred exchanges, and financial services. He currently concentrates his practice in the areas of Estate Planning & Estate Administration as well as Immigration & Naturalization at the Perrom Law Office, LLC in Chicago's West Loop District.

He is a member of the American Bar Association, the American Immigration Lawyers Association, the Chicago Bar Association, the Hispanic Lawyers Association of Illinois and the Lesbian and Gay Bar Association of Chicago.

He is a board member of the Hispanic Lawyers Association of Illinois (HLAI) and co-chair of its LGBT Right Committee. He is a former member of the board of directors at the Illinois Coalition for Immigrant and Refugee Rights (ICIRR) and former co-chair of the LGBTQ Immigrant Rights Coalition of Chicago.

One of his favorite projects is teaching undocumented individuals how to use simple estate planning tools to protect their property and family when faced with detention or deportation. An increasing number of Mr. Romero-Perez' clients have dual citizenships and are retiring outside of the United States. This life event has brought to the front of his practice the issues of estate planning for clients with assets in more than one country and its tax consequences.

Mr. Romero-Perez' holds a BA in Economics from the University of Wisconsin-Madison while his law & graduate business degrees (JD/MBA) are from DePaul University in Chicago.

Contact information:

Roberto M. Romero-Perez
The Perrom Law Office, LLC
954 W. Washington Blvd. Ste. 625
Chicago, Illinois 60607
(312) 637-9886
roberto.romero@perrom.com
www.perrom.com

ESTATE PLANNING FOR UNDOCUMENTED FAMILIES:

Protecting minor children and assets of the detained or deported

Roberto M. Romero-Perez
The Perrom Law Office, LLC
Estate Planning & Administration / Immigration

Presented for the
DuPage County Bar Association
Immigration Law Section
December 16, 2018



- **How to protect your loved ones and the assets you leave behind?**
- If you do nothing, what happens to:
 - **Your minor children** (whether US born or not)
 - **Your last paycheck**
 - **Your bank account(s)**
 - **Your car(s)**
 - **Your house**
- **GUARDIANSHIP** / PoA - PROPERTY / TRUST

PROTECTING CHILDREN




If you do nothing, what happens to:

NON-ADULT CHILDREN (UNDER 18)

- DCFS "Abandoned Child" (Days 1 -2) – Protective Custody 1 – 2
- Unless someone petitions guardianship in family court...**
- Temporary Custody awarded to DCFS 3 - 89
 - "Abandoned child becomes Ward of the State and placed in FOSTER CARE"
- Trial Adjudicatory Hearing 90-120
 - Child made ward of court and placed under DCFS guardianship
- Disposition hearing 120-150
 - Court announces "Reunification Plan" giving parents time to be reunited with child
 - Problem: Parent cannot return to U.S.
- Permanency Hearing 1 year
 - Has mother complied with "Reunification Plan"?
- Termination of Parental Rights Hearing / Best Interest of Child Hearing 2 years?
 - Is it best for the child to be adopted?

Juvenile Court Act of 1987 and Illinois Adoption Act: DCFS required to petition court to terminate parental rights

S.M. v E.M.B.R. (In re adoption of C.M.B.R.) 332 S.W. 3d 793 (Mo 2011)



PROTECTING CHILDREN

If you do nothing, what happens :

Two Systems

ICE	DCFS (Juvenile Court)
Mother taken into custody	Police call DCFS re: "abandoned child." (Day 1-2) Child Protection Investigator will investigate If unsafe, child taken into protective custody
Mother moved to detention facility out of state (avg. detainee transferred 370 miles from home) Perhaps cannot raise bail/mandatory detention. Court Appointed Attorney cannot locate mother	Temporary Custody Hearing (within 48 hours of PC) Temporary custody awarded to DCFS Child placed in foster care.
ICE refuses to transport Mother to Trial	Trial/Adjudicatory Hearing (within 90-120 days) Child made ward of court and placed under DCFS guardianship
Mother has her hearing and is deported	Disposition Hearing (within 120-150 days): Child court announces "Reunification Plan"

PROTECTING CHILDREN

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If you do nothing, what happens : (Cont.)

Two Systems

In the home country...	DCFS / Family Court
In country of origin, <i>Mother is unable to comply with Reunification Plan</i> which requires her to secure housing, a job, and completing parenting classes. Requires communication with DCFS/Court from overseas, in English.	<p>Permanency Hearing (at one year) Has mother complied with Reunification Plan?</p> <p>Termination of Parental Rights Hearing (may occur as soon as 12 months). May be terminated for many reasons, including mother's failure to comply with Reunification Plan</p>
	Best Interest Hearing: is it in BI of the child to be adopted ?

PROTECTING CHILDREN

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SOLUTION:

- **Guardianship** (ILCS 755 5/11-5 et seq)
 - **What is Guardianship of a minor?** Transfer of rights and responsibilities for a child from the natural parent to another person
 - **Two main types of guardianship of minors:**
 - **Court ordered**
 - Court monitors
 - **Non Court ordered – Short Term Guardianship**
 - Private document (No court intervention)
 - No Court monitoring

PROTECTING CHILDREN



SHORT TERM GUARDIANSHIP (755 ILCS 5/11-5.4)

- **Duration: From 1 to 365 days** (Can be renewed)
- **Who can be a guardian?** 18+, Resident, Clean record
- **Who should be a guardian?** Person of trust
- **When does it become effective?**
 - Upon signing or occurrence of specific event
 - Question for you...
- **When does it expire?** Upon cancellation or 365 days, whichever is shorter
- **Who must sign the guardianship document?** →

PROTECTING CHILDREN



SHORT TERM GUARDIANSHIP

- **Who must sign the guardianship document?**
 - **BOTH parents**
 - **One parent households**
 - **Absent parent**
 - rights unless absent parent lacks "capacity"
 - Must consent to election of 3rd person as guardian
 - **Adult sibling can be guardian for minor brothers and sisters**

PROTECTING CHILDREN



• **How to protect your loved ones and the assets you leave behind?**

• If you do nothing, what happens to:

- **Your minor children** (whether US born or not)
- **Your last paycheck**
- **Your bank account(s)**
- **Your car(s)**
- **Your house**

• GUARDIANSHIP / **PoA - PROPERTY** / TRUST

PROTECTING ASSETS




• **How to protect your loved ones and the assets you leave behind?**

• If you do nothing, what happens to:


- **Your last paycheck** - no one else can collect it, cash it, or deposit it
- **Your bank account(s)** - no one else has access
 - Escheatment (765 ILCS 1025)
 - Uniform Disposition of Unclaimed Property Act
 - Joint tenancy
 - Electronic banking
- **Your car(s)** - no one else can sell it
- **Your house** - no one else can refinance or sell it

PROTECTING ASSETS



- **SOLUTION:**
- **POWER OF ATTORNEY FOR PROPERTY**
(ILCS 755 ILCS 45/3)
 - What is it?
 - Powers granted to agent can be limited or expanded beyond statutory form
 - Who can be an agent? Who should be an agent?

PROTECTING ASSETS



- **How to protect your loved ones and the assets you leave behind?**
- Simplifying the process:
 - Your minor children (whether US born or not)
 - Your last paycheck
 - Your bank account(s)
 - Your car(s)
 - Your house
- GUARDIANSHIP / PoA - PROPERTY / **TRUST**

PROTECTING ASSETS



- **How to protect your loved ones and the assets you leave behind?**

Protecting your Real Property:

Who is on title to your house?

Your spouse?

A friend or other relative?

Consider an Illinois Land Trust

Are there enough funds to take care of your children?

PROTECTING ASSETS

- **How to simplify this process?**

- **Use a Revocable Trust** (760 ILCS 5)

- **Who administers / controls the trust?** Grantor

- **Advantages:**

- Can leave specific instructions on the use of your assets
- You can decide when to return to be trustee
- Can manage all assets through a single document
- Can leave specific instruction regarding care of your children
- Transition issues once detained/deported
 - Can name co-trustee at creation OR
 - Can name successor trustee(s)
 - checks and balances / minimizes chances of fraud

- **Disadvantages:**

- Cost

PROTECTING ASSETS



- **How to use all these documents?**

Example 1:

John is single with no children.
He works, rents an apt., owns a car and has a bank account
John names his sister Lupe (who lives nearby) as his Agent under an Illinois Power of Attorney for Property.

John is **detained** by ICE. Lupe can:

- Access John's account to pay for:
 - John's bond; Make monthly payments on his car, rent, and utilities
- Pick John's last check from employer or can submit a Wage Claim application with the Illinois Dept of Labor (as John's Agent)

John is **deported**. Lupe can:

- Terminate John's lease
 - Disconnect utilities at John's apartment.
 - Sell John's car and deposit net proceeds in John's bank account
 - Close John's bank account(s)
 - Wire money to John

PROTECTING ASSETS



- **How to use all these documents?**

Example 2: CHILDREN REUNITE WITH DEPORTED PARENTS IN HOME COUNTRY

Eduardo & Maria (Ecuador): Married with U.S. born children.
They both work, own a home, cars, and have bank accounts

They name:

Art as **Guardian** under a Short-Term Guardianship documents,
Louise as **Agent** under a Power of Attorney for Property

Eduardo & Maria are **detained**:

- **Art** is notified and picks up Eduardo & Maria's children from school
- **Art** contacts **Louise** and gives him news
- **Louise** withdraws funds from Eduardo & Maria's bank account and sends funds to **Art** ...
- When bank funds are exhausted while Eduardo & Maria are still detained. **Louise** sells car and sends funds to **Art**

Eduardo & Maria are **deported**:

- They decide they want to send for their children to join them in Ecuador.
- **Art** takes the children to Ecuador to be reunited with Eduardo & Maria

(What does Art need to depart the U.S. with minor children who are not his?)

PROTECTING CHILDREN & ASSETS



- **Travelling abroad with minor children not your own?**

Control Border Patrol:

- **Letter of consent signed by both parents**
 - preferably notarized
- **Guardianship document**

PROTECTING CHILDREN



- **How to use all these documents?**

Example3: CHILDREN STAY IN THE U.S. – Use TRUST

Eduardo & are deported.
They decide children should stay in the U.S.

All their assets have been placed in a revocable trust before they are detained.

- Louise is named either co-trustee or successor trustee
- - Louise withdraws funds in bank accounts and sends to Art, as needed to funds children's needs
- - Louise sells car and house, if needed, and net proceeds stay in the trust
- - Louise continues to send funds to Art, as needed.
- Strategy buys Eduardo & Maria some time until they decide on next steps

PROTECTING CHILDREN & ASSETS



• How to use all these documents?

Example3: CHILDREN STAY IN THE U.S. – Use TRUST

Agent under PoA sends bank account funds to Guardian for the children's care and maintenance

Louise: Agent under PoA-Property

If not enough funds in accounts, sells house and pours net proceeds to Trust F/B/O the children's care and maintenance

Louise: Agent under PoA-Property

Your house

Trustee

Art: Guardian

U.S. born children

PROTECTING CHILDREN & ASSETS

ESTATE PLANNING FOR UNDOCUMENTED FAMILIES

?s

Romero-Perez

Roberto M.

The Perrom Law

Office, LLC

Estate Planning & Administration

Immigration

info@perrom.com

www.perrom.com

PERROM
LAW OFFICE, LLC

PROTECTING CHILDREN & ASSETS

312-637-9886