Deportation Preparation Manual for Immigrant Families

Make a Plan to Protect Your Kids and Finances in the Face of Deportation

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Appleseed Network

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Appleseed Network

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Disclaimer

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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1. Child Custody

In the face of deportation, you may face wrenching decisions about child custody. This section outlines the basic custody issues you may face as an immigrant parent and offers guidance on protecting parental rights before, during, and after deportation. This section addresses the following issues:

Understanding Child Custody and Guardianship: Basic Definitions ➤ Who Can Seek Custody or Guardianship and How Does a Court Determine It? ➤ Planning Child Custody Arrangements before Detention or Deportation ➤ Protecting Parental Rights During Detention ➤ Options for Parents Facing Deportation ➤ Barriers an Immigrant Family May Face in Court

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Understanding Child Custody and Guardianship: Basic Definitions

"Child Custody" is a collection of various legal rights to care for a child and make major decisions about that child's life. These various legal rights – physical custody, legal custody, joint custody, and sole custody – are described below.

"Custodian" is the person to whom a court grants custodial rights. This may be a parent or another person, as a court may deem appropriate.

"Physical Custody" is the parent or custodian's right to have a child live with the parent or custodian. The person with physical custody may make decisions about the routine day-to-day activities of the child.

"Legal Custody" is the right to make decisions about the child's upbringing. A person with legal custody may make decisions about how to raise the child, including decisions about schooling, religion and/or medical care.

"Sole Custody" is when one parent has all the custodial rights. This could be sole physical custody, sole legal custody or both.

Note: In a number of states, courts will not award sole custody to one parent unless the court deems that the other parent is "unfit," meaning the parent is not capable of caring for the child. Examples of being "unfit" include a parent's alcohol or drug dependency or history of child abuse. Also, even if a court awards sole physical custody to one parent, it may still grant visitation rights to the other parent.

"Joint Custody" is an arrangement where both parents share custodial rights of their child. It may be joint physical custody, joint legal custody or both. Courts in some states regularly award joint legal custody, which means that both parents share the right to make decisions about a child's upbringing.

"**Legal Guardian"** is a person -- other than the child's parent -- who is granted the legal right to care for and make certain decisions for a child by court order or another process accepted by the state. For example, some states allow a parent to name a guardian through signing a document without court involvement. Other states require a petition to be filed for guardianship and place duties on the guardian, such as regular reporting to the court on the child's well-being.

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"Visitation" or **"Parenting Time"** is a legal right granted by the court that gives a parent or others the right to spend periods of time with the child. A person granted visitation rights may not have the right to make major decisions about the child's wellbeing or upbringing depending on what the court orders. Once a court determines visitation rights, all parents and custodians are bound by the court's order. Visitation rights often can only be changed by a new court order.

Visitation rules may vary by state. Below are some examples of visitation rules:

- ***California:*** *In California, courts have the discretion to grant reasonable visitation rights to anyone who has an interest in a child's welfare, provided that it would be in the best interest of the child. This may include a parent, pursuant to a custody order. It also may include a child's grandparents or, if one of the child's parents is deceased, the children, siblings, parents and grandparents of the deceased parent.*
- ***New York:*** *In addition to provisions for visitation by parents and grandparents, New York law contains a procedure for brothers and sisters of minor children to petition the court for visitation rights.*
- ***Texas:*** *In Texas, grandparents and other relatives, in addition to people caring for a child including foster parents, may seek visitation rights, although it can be challenging because the court typically will prioritize the parent's wishes for their child's upbringing*

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Who Can Seek Custody or Guardianship and How Does a Court Determine It?

Typically, children born during their parents' marriage are considered jointly in the custody of both parents unless a court orders otherwise. That means either parent can make legal decisions for the child or care for the child without a court order. Where there is no court order to the contrary and the other parent is available to care for the child, the parent facing deportation may not need to take any steps to provide for custody of the child.

Typically, if the parents were not married when the child was born, the mother may choose the child's last name. The child may take the mother's last name, father's last name or a hyphenated double last name or even a different last name from both parents on the birth certificate. In instances where the mother has been granted sole custody rights in a divorce or other legal proceeding, then she is typically the sole custodian of the child. However, it is not always the case that the mother is the sole custodian. For example, if a father is not named on the birth certificate, but there has been a court determination of paternity and/or the father has always been regularly involved in the child's life, a court may determine that the father has equal custody rights. Some states, however, limit custody rights of unmarried fathers. If both parents are named on the child's birth certificate, then they both will be joint custodians in many states.

If the parents are divorcing or previously divorced, then child custody rights are usually determined in the divorce documents. As explained below, a court can change these custody rights.

The child's parents, other adult family members, or other adult individuals designated by a child's parents may be able to initiate child custody proceedings in court. Family members who can initiate a custody proceeding may include siblings, grandparents, aunts, uncles or cousins, depending on state law. Other people who have cared for the child may be permitted to seek custody rights as well. In some states, but not all, courts will not grant custody to a third party (non-parent) over the parents' objections unless the parents are found unable to care for the child.

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Note: A custody order may be the easiest or only way for parents to ensure visitation rights after deportation, although a judge in a child welfare proceeding could also order visits.

Selecting a temporary guardian for your child in the event of an unforeseen circumstance typically does not put your parental rights at risk. In many states, a parent may revoke a temporary guardianship at any time and select someone else as the child's temporary guardian by completing and notarizing a new guardianship designation form.

The "Best Interests of the Child" Standard

Regardless of who seeks custody of a child, a court will determine custody (and visitation rights) by using the "best interests of the child" standard. The "best interest" of the child typically will be the most important factor in the determination of custody. In determining the best interests of the child, the court may consider:

- The preference of the child, considered in light of the child's age and understanding;
- The physical, emotional or educational needs of the child;
- The length of time that the child has lived in a certain environment and the likely effect a change will have on the child;
- The age, sex, background or other relevant characteristics of the child;
- The likelihood of harm that may be suffered by the child;
- The capability and willingness of the parent, or other person asking for custody, to meet the child's needs and to put the child's needs before his or her own; and
- The moral fitness of the person asking for custody.

Under most state laws, a request for custody must be filed in the child's "home state." The "home state" is the state where the child lived for at least six consecutive months before the child custody proceeding. If the person seeking custody is not the legal or biological parent of the child and lives in the same state as the child, the request for custody can be filed in the county where they live or where the child resides.

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How Does a Court Establish Legal Guardianship?

Each state has a specific procedure for petitioning a court to have a legal guardian appointed for a minor child. Generally, these procedures are described in detail in the state's domestic/family relations statutes or in the state's probate statutes. The person interested in becoming guardian often must file a petition with the appropriate court. Then, the court will set a date for a hearing and decide whether it would be in the best interest of the child to have this person appointed as the child's legal guardian.

When someone who is not the child's legal or biological parent asks to be appointed as the child's legal guardian, it is helpful to have a sworn affidavit from both parents stating that the parents' wish to have the person appointed as the legal guardian of their child. If there is only one parent listed on the child's birth certificate, that parent alone will sign the sworn affidavit. If both parents are on the child's birth certificate, or if the parents previously divorced and were granted joint legal or physical custody, then both parents should provide such an affidavit. Without the affidavit from both parents, it is likely that courts would require a showing of a serious attempt to locate the missing parent and that obtaining the affidavit would be practically impossible.

In addition to having a formal court process to have a guardian appointed, some states permit a parent to designate a temporary guardian, as discussed below, who can make medical and school decisions for the child and, in some cases, travel with the child. Because not all states recognize this type of authorization and some limit the amount of time and circumstances where it can be used, it is important to check with a local legal expert before attempting this kind of an arrangement.

When Will a Court Determine Custody or Guardianship?

The time it takes, from start to finish, for a court to determine custody or guardianship is highly variable and may take anywhere from several months to over a year. Many factors will affect the amount of time a custody or guardianship case will take before the court makes its final decision. These factors include, among other things, whether the custody or guardianship petition is contested, the specific procedure for determining custody or guardianship in the jurisdiction, and how busy the court is.

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Planning Child Custody Arrangements Before Detention or Deportation

If you believe you are at risk of being detained or deported by immigration officials or otherwise separated from your children for an uncertain period of time for another reason (e.g., arrest, medical incapacity), establishing a plan to have someone care for your child early will allow you to preserve parental rights where possible and prevent the children from entering foster care.

Because parental rights may be very limited once you are detained or deported, it is best to establish these plans in advance and carefully discuss them with your children, your spouse, other parents, relatives, and any other people who may be involved in caring for your children in your absence.

Parents at risk for detention, deportation, or other sudden separation from their children may take the following preparatory steps.

1. Identify people who will take care of the children

If you may be detained, deported, or otherwise unable to take care of your children, it is important to find a person that you trust to act as a caretaker that can take on the responsibility of caring for the children.

You should first identify people who may currently have legal custody. As explained above, where parents share joint custody of the children, the other parent can step in to make legal decisions for a child, especially if they are not at risk of detention/deportation.

If another parent or person with legal custody is unable to take care of your child, or such person does not exist, you should identify another caretaker. Depending on the state, the caretaker may not need to have valid immigration status of the caretaker's own to serve as your child's guardian or custodian. Always check state-specific forms and guidelines, as these policies may be subject to change.

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Tip: You should be sure that the designated caretaker is someone you fully trust. You should also be sure to carefully consider and discuss various points when choosing a caretaker, such as the person's physical and financial capacity to care for children over a long and indefinite amount of time, other people in the household that will have regular contact with the children, and any special medical or other needs the children might have.

2. Prepare temporary guardianship arrangements, if applicable

Formalizing caretaker and temporary guardianship arrangements will grant the other person the proper legal authority to quickly step in and act on behalf of your children. Verbal agreements usually are not enough to grant another person legal authority to make certain decisions for your child.

Tip: A caregiver who already is the child's legal guardian does not need to seek legal custody through the courts, but should always determine how to exercise his or her existing rights as a legal guardian.

Other Reasons to Formalize Guardianship Plans Include the Following:

- Some health insurance companies will not insure a child that is living with a caretaker who is not the child's parent or legal guardian;
- Many schools require that a child enroll through the child's parent or legal guardian or their current caregiver. The current caregiver could enroll the child in school if the child would be homeless if they did not live with the current caregiver (some states permit the use of a "school affidavit," which allows another person to enroll the child in school);
- A caregiver generally cannot obtain medical care for a child without the signature of the child's parent or legal guardian or a court order;
- A child may not obtain a U.S. passport without the consent of the child's parents or legal guardian; and
- Courts may decline to grant legal guardian status to someone other than a parent without some indication that the parents desire to grant guardianship power to others.

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What is a Temporary Guardian and How Can a Temporary Guardian Care for Someone's Children?

If a detained individual is the sole custodian of a child, or if the non-detained custodian is also unable to care for the child, he or she should consider appointing a "temporary" guardian to temporarily care for the child if permitted by the state in which the child resides. Temporary guardianship is a legal arrangement that grants an individual the authority to care for a child for a limited period of time when the child's parents are unable to do so. The person appointed as a temporary guardian should be a person that the parent completely trusts to care for the child.

An individual may appoint a guardian by filling out and notarizing the applicable guardian designation form for that state, where the state permits it. This document authorizes who may care for the child and make important decisions for the child, such as:

- Decisions about medical and dental care;
- Decisions about education and any special needs; and
- Decisions about travel.

The name of the form and information needed to complete a temporary guardianship varies by state. In some states, it is possible to place the designation of guardian on file with the court. For example, in Florida, parents may sign a written statement in which they name a "preneed" guardian for their child. The parents then file the statement with the court for the county in which they reside. If something happens to the parents and the child needs a guardian, the court will pull the parents' statement from the court's files and consider it in the guardianship proceeding. The parents' statement is considered a "rebuttable presumption" that the person named in the statement should be the guardian. This means that the court would assume and appoint that person as guardian unless it was proven otherwise and that the person is not qualified to be the guardian.

Completing guardianship forms may be different from the court custody process, depending on the state law. Depending on the state, notarized guardianship forms may or may not be legally binding. The legal weight given to a notarized guardianship form is determined on a state-by-state basis, so the guardianship may or may not be recognized if a child is taken to another state.

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In states that do not recognize the parents' ability to designate a temporary guardian for the child, parents who want to grant legal rights to the caregiver in advance of their detention/deportation will need to consider other options. These options could include seeking to have the caregiver granted custodial rights by filing a petition for custody which the parent can support. Parents should weigh their options carefully and consult with local legal assistance because granting custodial rights to another person in anticipation of deportation may cause parents to lose legal rights over their children if they are not deported.

A court is not required to honor any temporary guardian form if it becomes necessary to appoint a permanent guardian for the child. Although the temporary guardian form is one factor the court generally will consider where recognized, the court's final decision will be based on the child's best interests. Accordingly, a parent should think carefully about whom to name as guardian in the document. Selecting someone a court will consider fit to care for the child will increase the chances that the court will follow the parent's request.

Custody Orders and Consent Decrees

When planning for potential deportation, you should also review any existing child custody orders to determine whether any changes need to be made. Because the process of changing custody orders can take months, you should consider starting that process as soon as possible, if appropriate.

You may also consider obtaining custody consent decrees from a court or appropriate authority in advance where recognized by state law. Typically, the custody consent decree gives physical custody to the caregiver but allows parents to retain legal custody of the children. It may also establish visitation arrangements.

As with any process that involves the courts, many undocumented parents may be reluctant to attend court proceedings. This may limit their ability to provide legal protection to their children and their caregiver in advance in states which do not recognize informal arrangements, such as privately prepared guardianship designations.

Other potential challenges that could arise when planning child custody arrangements include documents that require the signature of both parents. You should also keep in mind that granting someone other than the parent custody of the child gives the custodian in loco parentis (in place of the parent) standing. This means that the custodian of the child has standing to petition for custody or to oppose custody challenges that

may arise in the future. So if the custodian does not agree to return the child to the parent or does not agree to enter into a new custody agreement, a court will decide who has custody. It is advisable to consult with a lawyer before entering into any custody agreements.

Formal custody arrangements, as explained above, may be made after a person is detained or ordered deported. After you are detained or deported, caregivers, guardians or others with standing can file for legal and/or physical custody of your children. Going through formal custody proceedings in advance of detention or deportation may cause you to lose certain parental rights unnecessarily, but it may be the only way to ensure that a caregiver is designated in advance and has legal authorization to care for and make necessary decisions for your children. Therefore, you should carefully consider your options and consult state-specific information before making any decisions that would involve the potential to diminish their parental rights.

Caregiver Authorization Affidavit

You also may consider naming a caregiver for your children using a Caregiver Authorization Affidavit. A Caregiver Authorization Affidavit is a form which allows you to name a caregiver and to grant that caregiver the ability to make healthcare and education decisions on the child's behalf when you are not present. A Caregiver Authorization Affidavit does not give the caregiver legal custody of your child and it does not affect your parental rights—the parents maintain custody and control of the child. A Caregiver Authorization Affidavit is not enforceable by a court and does not need to be filed with a court. However, a Caregiver Authorization Affidavit does need to be filed with the child's school, medical providers, or institutions where the caregiver is authorized to make decisions. The procedures for these affidavits vary by state, education district, and medical provider.

Important Legal Documents and Other Papers

It is important to be organized and to know where to find all legal documents relevant to the care of a child and to make sure all documents are up to date.

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Tip: Families should keep all legal documents and any other important papers in a safe location. Parents and custodians should also inform others, including older children, of where to find the documents in case they are detained or otherwise unable to care for the child.

Tip: Parents and custodians should keep all original copies of all documents and only provide copies to immigration officials.

The following are examples of essential legal documents to prepare or gather, with more information on each type of document below:

- Child's birth certificate and social security card;
- Child's passport;
- Emergency contact forms;
- Current custody orders, guardian designations, and other consent/authorization forms;
- Last will and testament with guardian provisions; and
- Child's school and medical records.

Child's birth certificate and social security card

If your child was born in the United States, they should have a U.S. birth certificate and a social security card. Instructions on how to obtain a birth certificate can be found at: https://www.cdc.gov/nchs/w2w/index.htm.

Social security card applications can be found at: www.ssa.gov/online/ss-5.pdf

Tip: You should review your child's birth certificate to make sure that all the information is correct and nothing is missing. Whoever is named on a birth certificate is assumed to have custodial rights in many states. Therefore, if you are at risk for getting detained and you are the only parent listed on the birth certificate, you should consider amending the birth certificate to add the name of the other parent, if applicable. This process is simpler and likely less expensive than having custody determined through court orders.

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Child's passport

If your child is not a U.S. citizen and does not have a passport, you can contact the consulate of the country where the child is a citizen to determine how to apply for a passport for the child.

If your child was born in the United States and does not have a valid U.S. passport, you should consider obtaining one for them as soon as possible. If you are deported and choose to have your child remain in the United States, they will need a passport to visit you in your home county.

Passport applications for minors are available at: http://travel.state.gov/passport/get/minors/minors_834.html. Keep in mind, the U.S. Passport office has strict rules for who may and may not get passports for minor children. The passport application for a minor child must be submitted at a U.S. Post Office by both parents of the minor child. The only exceptions are:

(i) if there is only one parent named on the child's birth certificate,

(ii) if there is a court order granting sole legal and physical custody to one parent,

(iii) if the parent has a special notarized letter, called a "Notarized Statement of Consent or Special Circumstances" (DS-3053), from the other parent who consents to getting a passport for the child,

(iv) if one of the child's parents has died, or

(v) if there is a court order naming a legal guardian for the child.

During the application process, you will be asked to show proof that the child is a U.S. citizen, which can be shown by presenting the child's U.S. birth certificate. You must also present proof that you are the custodian of the child either by presenting the child's U.S. birth certificate or a court custody order.

If one parent has died, the surviving parent may present the death certificate to show that he or she is now the sole custodian of the child. The surviving parent will also be asked to provide his or her own valid picture identification.

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Tip: Child passport applications must be completed in person. If you try to obtain a passport for your child while detained, you must complete and notarize the Notarized Statement of Consent or Special Circumstances (DS-3053) form, available here: http://travel.state.gov/passport/forms/ds3053/ds3053_846.html. If a detained parent does not have sole custody and the other non-detained parent is unavailable, the non-detained parent must also fill out the DC-3053. If a non-detained parent is available, he/she can accompany the child to apply for a passport with the notarized DS-3053 form. The detained parent does not have sole custody of the child when the non-detained parent is named on the child's birth certificate or was granted legal or physical custody by a court order.

Many countries allow children born in the U.S. to have dual citizenship, which may make it easier for the children to travel between the U.S. and the country of the deported parent. You can contact the consulate of their home country for more information.

Current custody orders and guardian designations

As discussed above, you may be able to sign a form that names someone to serve as the temporary guardian of the child if you are unable to care for them. If you sign this form, you should keep the original with the other important papers. You should also give a copy of the form to the person named in the document as the temporary guardian.

Last Will and Testament with guardian provisions

Although the focus of this chapter has been on child custody issues arising during a deportation proceeding, it is also extremely important that you plan for the care of your child upon your death. This is essential if the non-detained parent is not alive or has no custody rights.

In a Last Will and Testament, an individual says who should receive his or her property upon death. A Last Will and Testament may also name someone to care for any minor children upon the parent's death. If an individual is married and shares physical custody with a spouse, the guardian named in the Will does not take care of the children unless both spouses have died. Alternatively, if an individual is the sole custodian, the guardian may be able to take over care of the children as soon as the individual passes away.

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After the parent's death, the person named as guardian in the Will may need to petition the appropriate court to be formally appointed as guardian. The Will may serve as a guide for the court as it decides who should be appointed as the child's guardian. However, the court's final decision typically will be based on the best interests of the child. The requirements for a valid Will vary on a state-by-state basis; therefore, it is advisable to consult with a lawyer to make sure that the document is prepared properly.

Standby Guardianships and Power of Attorney

Where permitted, parents may also choose to grant another person a power of attorney or standby guardianship. These agreements allow another person to care for children and make medical or school decisions only when a specific event takes place in the future (e.g., detention or deportation). The procedures needed to establish a power of attorney or standby guardianship vary by state. Once granted, powers of attorney or standby guardianships may be revoked at any time by the parent, where permitted by state law.

Emergency contacts

You should prepare an emergency contact list that includes multiple ways to contact critical family members, schools, childcare and healthcare providers, coaches (etc.) and the family's support network. Share the list with key contacts and keep one with you.

Medical and school records

Keep each child's medical and current school records organized and accessible for your emergency contacts. Be sure to include contact information for all medical, dental, and behavioral health care providers – including counselors and specialists. Request a current immunization record from your pediatrician and clearly document any current medications, allergies and treatment plans for each child. Note the location of current medications and be sure that they are clearly labeled with the correct frequency and dosage. If your child has supplemental services, individualized education plans (IEPs) or accommodations plans (504s) at school, gather the most current copies in one place.

In general:

- Discuss custody plans to prepare entire family; and
- Seek additional legal or other help where needed.

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Protecting Parental Rights During Detention

This section discusses how parents can protect their rights if they are picked up by U.S. Immigration and Customs Enforcement ("ICE"), separated from their children, and facing time in detention with the possibility of being deported.

Parental rights are the rights that you have as a parent to make decisions about the wellbeing of your children, including who cares for them and who they live with. Remember: even if ICE is trying to deport you, you still have the right to make these decisions for your children. It does not matter if the children are not U.S. citizens—parents still have parental rights.

Even if you are detained, you can still advocate strongly for yourself as the parent of your children, particularly if being reunited with, or at least maintaining a relationship with, your children is your ultimate goal.

Steps Parents Can Take If Detained

If you are detained, you likely will want to

(1) ensure that your children are taken care of, and

(2) limit their time in detention.

This section focuses on what parents can do for their children, and does not address how parents can fight their own immigration cases. For that question, you should review a resource specific to that topic and consult with an immigration attorney.

Prepare for a Potential Stop by ICE

In preparation for a potential stop by ICE, regardless of whether your children are with you at the time, you should keep copies or photos of important documentation with them or on your phone that shows you have children, especially if the children are U.S. citizens. Examples of this documentation include:

- The child's birth certificate on a phone;
- Evidence that the child is a DACA recipient, if applicable; and
- The child's medical or education records.

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Currently, ICE is more likely to release people they have detained if there is evidence that the person is not a flight risk and not a danger to their community. Having kids may show this.

If you are stopped by ICE, regardless of whether your children are with you at the time, it is very important that you inform ICE that:

- You have children who need your care;
- Request not to be detained by ICE, and advise that you will comply with ICE's requests; and
- You need to make a phone call to a caretaker or other emergency contact to arrange care for your children.

If parents have their children with them when they are detained

If you have your children with you when ICE detains you, you should tell the ICE officers that you need to make a phone call immediately so that a caretaker can come take care of your children before a child welfare agency takes them into custody.

ICE should allow you to make such a call to your designated caretaker or emergency contact so that you can tell that person that (1) you are in ICE custody, and (2) alert that person to follow any emergency plans you have prepared in advance, or follow instructions that you give to them at that time.

If ICE refuses to allow you to make a phone call, you should tell the officer(s) over and over again that you must place a call to arrange plans for your children so that the children are not taken into custody by a child welfare agency. Even if ICE still detains you, you should continue to communicate these things to every ICE officer encountered during your detention.

If children are NOT with their parents when their parents are detained

If children are not with you at the time you are detained by ICE, you should tell the ICE officer(s) immediately that you have children, and that you need to make a phone call to ensure your children are safe and taken care of.

It is likely that you may spend at least a day or maybe a few days in an ICE facility while ICE decides what to do about your case. You may have very limited access to a phone, and ICE may not tell you anything about what will happen to you. If you are not released,

you may be taken to an immigration detention center. If this happens, it is still possible but less likely that ICE may release you. At the very least, you may spend anywhere between a few days or multiple weeks in detention.

What Happens if No One Picks Up Children When Their Parents Are Detained?

If you are unable to reach a designated caretaker or some other trusted friend or relative who is able to take care of your children right away, in most states, a state or local child welfare agency will take custody of your children. Each state and many localities (e.g., city or county) have child welfare agencies. These agencies have names like "Child Protective Services," or the "Department of Children and Families." You can consult a telephone directory or search on Google to determine which agency may have taken or is seeking to take custody of your children if you are not contacted by the agency directly.

If you are facing detention and have already chosen a caretaker, it is important that the caretaker contact the local agency immediately in order to seek to have the agency place the children in their care. The more time that passes after a parent's detention, the harder it may be for someone other than the parent to be granted access to care for their children, and the less likely it is that the care of the children will remain a private matter between the parent and a designated caregiver. Therefore, it is important to keep trying to contact a caregiver or other friend/relative until you are able to reach someone.

You should keep in mind that any caretaker, as well as adults living in the same household of the caretaker, may be subject to a criminal background check as well as a check of child abuse registries. Having a past criminal offense could disqualify someone from taking custody of children, even if you have expressly chosen a specific person as a caretaker.

If no caregiver comes forward or is identified, the agency may begin a child welfare proceeding to determine where a child will live.

Child welfare proceedings

Once an agency takes custody of a child, the agency may try to identify a relative or friend willing to take care of the child. However, if an agency has taken a child into custody and cannot locate someone to care for the child, the agency will likely try to place the child in foster care. A foster parent is someone who has been trained and is licensed to care for children whose parents are unavailable or unable to care for them. Sometimes older children may be placed in a group home, which is a home where several older children live together with one or more trained adults who supervise and care for them.

If a child welfare agency takes custody of a child and is unable to find a known caregiver immediately, it will typically file a petition shortly after taking custody of the child. This begins what is called a "neglect proceeding," or "child welfare proceeding," although the name can be different depending on what state the child is in.

- The purpose of a neglect proceeding is to determine where a child will live, and it is held before the court (usually a family court or juvenile court), although the process will differ depending on the state it is in.
- As the parent, you may have the right to have an attorney appointed by the court to represent you during the neglect proceeding.
- It is also possible that the child will get an attorney or other form of guardian to represent his or her interests.
- The agency will likely also assign a caseworker, who will report to the judge handling a child's case about the parent and the child. A caseworker generally has the power to make recommendations about what should happen to a child, so it is important to maintain good relationships with your caseworkers, and frequently communicate, so that the caseworker knows your wishes for the children they represent.

Under different circumstances, the court handling a child's case would notify the child's parent of all the hearings, and the parent could participate in the court process. If a parent is detained, courts may issue a "writ" to bring that parent to the court or if there are concerns of security or public safety, make provisions for the parent to participate in the hearing remotely. However, if the court does not know that the parent has been detained, it may not send notice of a court hearing to the correct address. Additionally, it

may be difficult to participate in the hearing if a parent is detained in a different state from where the court is located.[1]

Note that the hearing will still take place even if a parent does not receive a notice about the hearing, or if the parent cannot attend the hearing. If a parent misses a hearing, even if the reasons are beyond their control, the court will make a decision about a child without the parent being there to tell the court their wishes. That is why it is important for parents to do everything possible to communicate with the court, caseworker and their attorney, as well as their children, while child welfare proceedings are going on.

Seeing Children While Parents Are Detained

ICE must accommodate regular visits between a parent who is detained and the parent's minor children. It should not matter if the child does not have a Social Security Number or is not a U.S. Citizen, although adults may have to provide their date of birth and Social Security number, and be approved by ICE prior to the visit. If the parent is detained in a facility where there is not a provision for contact visits by minor children, ICE must arrange for a contact visit between a detained parent and their minor child within the first 30 days of the parent's detention and if the detained parent requests it. After the first 30 days of a parent's detention in a facility without a provision for contact visits by minor children, ICE must consider a detained parent's request for a transfer to a facility that allows contact visits with minor children. If the transfer is not approved, ICE must allow monthly visits between the detained parent and their minor children. If in-person visits between a detained parent and their children are not practicable, ICE may allow virtual or teleconference visits.

However, if there is an ongoing child welfare proceeding, whether or not a child can visit a parent in a detention facility will likely be up to a judge handling the case. The decision may be based on what the judge believes is in the child's best interests. For instance, for some children, seeing a parent in a detention facility could be difficult. If parents want their children to visit them, they should tell their attorney and/or caseworker, if they have one. Keep in mind that visitation by phone is another option that a court could order. Even if parents cannot visit, they can write letters to their children to keep in touch.

[1] According to U.S. Immigration and Customs Enforcement Fact Sheet for Child Welfare & Guardianship Stakeholders: The Parental Interests Directive (PID) allows Covered Individuals to make in-person appearances in family court or child welfare proceedings when required to maintain or regain custody of minor child(ren) or incapacitated adult(s) (dependents). If transport presents security and/or public safety concerns, or negatively impacts mission needs, facility staff will identify alternative means of participation, such as telephonic or video or standard teleconferencing, when technologically feasible. In addition to court participation, ICE will facilitate remote participation in court or child welfare mandated services, programs, or trainings.

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How Parents Who Have Been Detained Can Take Steps to Protect Their Parental Rights

You must play an active role in protecting your rights as a parent, even while you are detained and possibly face deportation. Here are some specific steps that you can take:

Stay involved with your children

It is very important to do everything you can to stay as involved as possible in your children's lives, including making decisions about any medical or educational issues. It should be clear to everyone involved in your case that you are actively involved in caring for your children, even from detention. You should call your children regularly, as well as write letters to them. Communication with caseworkers is also important, along with making a strong effort to see your children even while detained.

You should let people know where you are

If you are detained, you need to make sure that as many people as possible know where you are and how to contact you. You should make every effort to contact a designated caretaker, relatives, and friends, and be sure to tell such persons to provide your location to any court or agency that may have a role in deciding who gets custody of your children. If a caseworker is assigned to you on behalf of the court, you should make sure the caseworker understands your situation and that you are detained.

Useful information that you can communicate includes:

- Your alien number ("A Number") that will be assigned to you;
- The name of your deportation officer; and
- The name and location of the facility where you are being detained, along with a phone number to make sure you receive notices about court hearings.

The ICE Online Detainee Locator System may also be used to locate a person currently detained in ICE custody, or who was released from ICE custody for any reason within the last 60 days.

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Contact your state or local child welfare agency and verify the location of your children

If you think your children are not with a friend or family member and the children might be in the custody of a state or local agency, you should talk to your deportation officer and ask to contact the agency right away. It can be hard for agencies to locate a parent who is detained, so contacting the agency directly is very important. Many agencies have a hotline that parents can call.

When calling, you should:

- Give your full name and identify yourself as the parent;
- Give all children's full names and dates of birth;
- Explain that you are in immigration detention and believe that your children may be in the agency's custody;
- Be clear that this is an emergency situation, and that you need to know if the agency has an open case so they can contact your children right away;
- Give the name and contact information for the children's designated caretaker, if you have one or, if you do not have a one, then the name and contact information for another trusted friend or relative who you think will be willing and able to take care of your children;
- Give your alien number and the name and address of the detention center where you are located; and
- Find out if a case number is available for your child's case.

If you cannot call the agency yourself, the designated caretaker or a relative or friend should call on your behalf and provide all the same information described above.

Request a lawyer

You should consider having a lawyer to represent you at hearings during their detention. If you cannot afford a lawyer, you may be able to request that a lawyer be provided for you. The court may ask for information about income and any property you may own. You should be prepared to provide such information. In addition to lawyers provided by the court, you may be able to talk to non-profit legal aid providers who provide legal services for free.

Once you have a lawyer, you should stay in contact with them. If your lawyer does not answer when you call, you should always leave a message. You should always write down the date and time that you called your lawyer, and note whether you left a message.

You should make sure the officials handling your deportation case know about your custody concerns

You should also tell your deportation officer and the immigration judge overseeing your case that your child is in or may be placed in foster care, and your wishes for how your child should be cared for if you are deported. You should do your best to make sure that the officials handling your deportation case are aware of the situation and that it is documented in the court's record.

Request an interpreter

If your native language is not English, you can request to be provided with an interpreter at any hearings regarding your children.

You should contact their consulate

Your consulate may be able to provide you with information or possibly advocate on your behalf.

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Options for Parents Facing Deportation

You may have to decide whether to bring your children to your home country or to leave the children in the United States. This is a difficult decision, and the outcome may depend on several factors, including who has custody of the children and, if more than one person has custody, whether they agree on where the child should live.

Bringing a Child with You Upon Deportation

Many factors affect whether a parent can bring a child with them upon deportation. First and foremost, if a parent is in detention and wishes to bring a child with them after deportation, they should make sure the deportation officer and immigration judge know this. The parent's next steps depend on whether the child is in foster care or under the custody of another person and whether the child has appropriate documentation to travel.

Foster care

If your child is in foster care, read the section above on "Child Welfare Proceedings." You should make sure that the family court judge, case worker, child's case worker and any other official or attorney involved in the child welfare case or any immigration case knows that you wish to bring your child with you upon deportation. You should also ask to be reunited with your child at the airport before leaving the country.

Shared custody or visitation rights

If you share legal custody of the child, your ability to bring the child out of the United States may depend on whether you can obtain either the other parent's or a court's permission. If the other parent agrees that the child can go with you, both parents should consider writing this agreement down and notarizing your signatures. You should keep a copy of this written document in a safe place and take the letter with you while traveling.

If the other parent does not want the child to leave the United States, you may need to get a court order allowing the child to be taken out of the country. Since the likely outcome of the case will depend on many factors, you should contact a family law attorney for help.

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Children traveling on airlines

Some airlines require special documentation for a minor child traveling with only one custodial parent. You should contact the airline for details on what may be needed to travel alone with the child. You may need to show one of the following:

(a) a notarized letter of permission from the child's other parent;
(b) a court order showing that you are the sole custodian; or
(c) the child's birth certificate showing that you are the sole custodian.

In addition, if you are travelling internationally, you will need to show the child's passport. *(For information on how to obtain a child's passport, please read the "Child's Passport" section above.)* If the child was born in the U.S., you should make sure that the child has important documents like a birth certificate, social security card and passport before leaving the country with your child. The destination country may impose additional requirements. A list of embassies and entry requirements can be obtained through the Department of State website or by calling the embassy in question. Contact information for U.S. Embassies is available here: https://www.usembassy.gov/.

Note: An airline's documentation requirements for minor children also apply if the child is travelling with a guardian. In addition to the child's identification documents, the guardian will likely need to show either: (a) a court order granting that person legal guardianship; or (b) a notarized letter signed by the parents that give the guardian permission to travel with the child, often referred to as a "parental consent letter." The U.S. Customs and Border Protection Agency recommends that a parental consent letter is in English and notarized, is less than one-year old, and includes the following information:

- *Who*
- *What*
- *Where*
- *When*
- *Why*
- *Contact information for the absent parent(s)*

Whether a child is allowed to travel alone depends on the child's age and the airline. Under no circumstance can a child under the age of five travel alone. For children between the ages of five and eighteen, contact the airline for details on the airline's rules regarding child passengers. The child may be able to fly alone only on certain flights, under certain circumstances, if they have a notarized letter from the child's legal custodian.

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Reuniting child with deported parent after deportation

If you obtained a temporary guardian for your child before deportation, the guardian may be able to assist the child with obtaining the necessary paperwork to travel out of the country and meet you. For more information on temporary guardians and their ability to act as a legal custodian, please read the "What is a Temporary Guardian?" section above. However, the temporary guardian may have no obligation to do so if they choose not to assist the child in relocating.

Keeping the Child in the U.S. when a Parent is Deported

Minor children need a legal custodian to make decisions on matters such as medical care, education and travel decisions. For this reason, a parent facing deportation that wants his or her child to stay in the U.S. should seek to have a guardian or other legal custodian appointed for the child.

Changing custody of a child after a custodial parent is deported

If a parent wants to change a custody order after deportation, they may need to go through the U.S. court system. If both parents are outside of the United States, someone inside the country could petition to be appointed as guardian, and the absent parent(s) could consent. If only one parent is outside of the United States, they can agree to give custody to the other parent in the United States. To do so, the parent in the United States can file a modification action with the court, and the absent parent can then consent to the modification action from outside of the United States.

Emancipation of an older child

Some states also permit older children (generally over the age of 16) to become emancipated. An emancipated child has the right to make their own decisions about education, medical treatment, travel, and legal matters—i.e., the decisions that a parent or guardian would otherwise make until the child becomes an adult. Thus, emancipation may provide a way for an older child to live on their own, rather than in state custody, upon the detention or deportation of the child's parents. To become emancipated, a child may need to file a petition in family court that explains why emancipation is in their best interest and shows they are financially independent. Because emancipation will generally terminate parental rights, the parents and child should consider this option carefully. They should also consider talking to an attorney, as the law and process for emancipation varies from state to state.

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Barriers an Immigrant Family May Face in Court

Immigrant families dealing with family issues in court may face several difficulties. Some of these potential obstacles are discussed below.

Finding an Interpreter and/or a Translator

In some cases, one of the greatest challenges in ensuring the proper care of a child is effective communication with authorities like case workers or a judge. If you do not speak English, it is important to find someone to interpret and/or translate documents.

Some states will provide interpretation and translation services for parents that are dealing with child services or the court system. For example, some California courts will provide interpreters for hearings involving Child Support Services in family law cases. Whether the state provides interpretation and translation services or not, you should consider finding your own interpreter or translator now, so the information is readily available in case an emergency arises. If you are having difficulty finding someone to interpret and/or translate, it may be possible to find an interpreter/translator through a community or religious organization that provides outreach to immigrants.

Finding Legal Service Providers or Other Family Law Advocates

In every state there are organizations that provide free legal services to low-income individuals, but their eligibility guidelines vary. In addition, immigrants may face barriers in obtaining access to legal and other assistance in some areas of the country. For example, some legal service providers clearly state on their websites and in their promotional materials that they will not help undocumented immigrants due to federal regulatory requirements. However, in some cases, there are exceptions for immigrants who are victims of domestic violence. Accordingly, in approaching a legal service provider, you should ask whether they require proof of legal residence.

In some cities there are organizations that focus specifically on legal issues for immigrants. If you are unable to pay for a lawyer it may be possible to find an attorney or representative through these organizations. Typically, it is not a legal requirement for a parent to have a lawyer during a family court proceeding, but it is strongly recommended to work with a lawyer if possible, especially when weighing your options to protect your children if you are detained or deported.

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Unfavorable Immigrant Policies in Custody Hearings

Immigration status may be taken into account when a court is considering the best interests of a child. It is possible that a court will consider a potential guardian's undocumented immigration status as a factor against the child's best interests and may refuse to grant custody to that individual. You should be mindful of this problem when determining whom to name as the child's guardian or who may be seeking custody of the child.

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2. Assets and Benefits of Minor Children

Immigrants may hold, in a capacity as a "custodian" or "trustee," assets for a child who is a U.S. citizen ("citizen child") in the hopes that the citizen child will have a greater ability to protect the assets under U.S. law. Immigrants may also hold significant assets in their own name that they desire to leave to their citizen child upon deportation. This section highlights certain issues related to the protection of assets for the benefit of a citizen child (or children) and provides general guidance, including:

The Effect of Deportation on Your Child's Assets and General Considerations for Protecting Those Assets ➤ Specific Considerations for Protecting Certain Common Assets ➤ Unclaimed Property Laws ➤ Checklist: Assets and Benefits of Minor Children

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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The Effect of Deportation on Your Child's Assets and General Considerations for Protecting Those Assets

Generally, minor children (those under 18 years of age, depending on state laws) cannot own property because they are not old enough to enter into legal contracts. Therefore, property in a minor's possession is typically owned by a parent. Deportation of a parent can thus disrupt the child's possession or use of the property, including access to a bank account, vehicle, home, and other personal property. While you should consider granting power of attorney to a trusted individual who will remain in the U.S. to handle financial matters in case of deportation, you might also consider transferring assets for the benefit of the citizen child. Similarly, if you currently hold property for the benefit of your minor child, you should consider transferring custodianship or trusteeship to an individual who will remain in the U.S. in case you are deported. When assets are currently held in trust for the citizen child and the trustee is not subject to deportation, action may not be needed.

The Uniform Transfers to Minors Act

Every state has adopted some form of the Uniform Transfers to Minors Act (UTMA). The UTMA permits the transfer of a wide variety of property—including real or personal and tangible or intangible property—to a custodian for the benefit of a minor.

Transfers under the UTMA are irrevocable and leave the donor with no legal or equitable rights in the property. The owner transfers "legal title" of the property to an adult (custodian) while the minor retains "equitable title." Equitable title means that the child gets the benefits of the property but cannot sell or mortgage the property until becoming a legal adult.

The custodian has broad powers regarding the use of the assets for the child. For example, the custodian may use the funds toward the child's rent, utilities, car payments and repair bills, activities, and spending money, in addition to expenses such as education and medical care. However, the custodian has a fiduciary duty to the child to manage the funds as "would be observed by a prudent person dealing with property of another." Accordingly, the custodian can be personally responsible for losses of the child's property if found to have acted imprudently. The child generally has a right of accounting, which requires the custodian to document what has happened to the child's

property. Most state laws hold that an account under UTMA must be turned over to the child when they turn 21. In some states, this can be extended to age 25.

UTMA agreements are popular because they can be made with a simple writing, can appoint additional adults as substitute custodians, and generally do not require an attorney. However, in order for the state Transfers to Minors Act (TMA) to apply to a transfer, the agreement must explicitly state that the agreement is made pursuant to the state TMA. Assets may be identified by general description, but property not included in the document or inadequately identified will not be transferred.

As a general rule, custodial accounts under the TMA should not be used for significant gifts or for a series of gifts that will grow over time. UTMA accounts do not guarantee that funds will be used for a specific purpose and the entire amount of the account will be transferred to the child for uninhibited use at the age of maturity. Also, when a significant amount of assets—more than a few thousand dollars—are transferred in a TMA agreement, courts may intervene to create a trust for management of the assets. Courts may require investment of assets for return at a later time, or create a "blocked" account that permits withdrawals only by a court order.

Trusts, Guardianships, and Conservatorships

State law also provides for the creation of more formal arrangements for the management of assets, including: trusts; co-signed accounts or title documents; guardianships; or conservatorships. These arrangements are generally more appropriate for assets of significant value or when more complex schemes are desired to protect property from transferring to your citizen child immediately upon their reaching the age of maturity (generally, 21), or by creating special restrictions that assets be used for a specific purpose (e.g., education).

When the Departing Parent is the Custodian or Trustee

If you are facing deportation and are the custodian or trustee of your child's property, and your child is remaining behind in the U.S., you should have an alternate custodian named to control and protect the assets. If an alternate custodian was named in the original document, they may simply step into the role of custodian. In California, if the child has reached the age of 14, the child may appoint a new custodian who is a member of the minor's family. Other states may have similar or additional rules. For other situations, the court may need to approve the new custodian or trustee, depending on the assets and the nature of the trust or custodial property.

If your child is leaving the U.S. with you and you are the trustee of their property, you should confer with an attorney experienced in this area before cashing-out the assets and taking them out of the country. As the trustee or custodian, you are obligated to protect the assets for your child, and the specific requirements for protection will vary depending on the specifics of the original arrangement. The specific rules of states may vary.

Restrictions on Transfer

Other laws, such as those governing the transfer of securities or investments, may require additional action for a transfer to be effective and enforceable. In an effort to protect the greatest amount of property, you should aim to include all potential property in a transfer, knowing that some transfers may be affected by other laws.

Taxes

Generally, special tax rules apply to assets held by minors. In some circumstances a minor will be taxed at the parent's or guardian's tax rate, and in other circumstances, special exclusions and tax rates may apply. If the minor's assets produce an income or a capital gain over a certain amount, taxes must be paid. Moreover, tax rates change regularly.

Personal Liability

The transfer of some property (e.g., real estate and motor vehicles) may create personal liability. For example, personal injury claims may be made against the owner of a motor vehicle or property even when the owner is a minor.

Emancipation

Emancipation is the legal process through which a minor, typically not less than the age of 16, can petition a court to be legally recognized as an adult. An emancipated minor may fully own property and enter into legally binding contracts. Because of the gravity of the order, the minor must demonstrate that they are sufficiently mature to manage their own financial and health-related affairs. If your citizen child is supported by family and friends who will remain in the U.S., emancipation may not be needed. However, in some cases, emancipation avoids the use of a custodian to transfer property or create a trust.

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Specific Considerations for Protecting Certain Common Assets

The following provides specific considerations for protecting certain common assets. This is not an exhaustive list, and you should make an inventory of all possible assets, not just those listed below, and attempt to determine how each asset will be handled if you are deported. If possible, you should consult an attorney for guidance on state-specific property laws.

Personal Property

Your child may acquire other valuable personal property, such as jewelry, computers, electronics, and other consumer products. Legally, this type of property is typically owned by you as the child's parent or guardian. Although personal property may be owned by a minor in some circumstances, a minor generally is not old enough to enter into legal contracts relating to the property or to exercise all of the rights associated with owning the property. The UTMA allows transfer of most all personal property to a custodian for the benefit of the child. When considering what property to include in a transfer under the UTMA or in connection with the creation of a trust, you should think broadly about all assets and personal property including cell phones and gifts, payroll, or other prepaid cards. Property not described will not be transferred.

Bank Accounts

Banks and other financial institutions (such as credit unions) may be chartered under state or federal law. Accordingly, laws regarding account ownership vary among financial institutions. Generally speaking, however, if you are a joint account holder with your citizen child and you face deportation, you should consider modifying the account or transferring the funds to an account that allows another trusted adult to serve as a custodian. The institution will likely have a special form used to adjust ownership.

In many instances, bank accounts for minors reflect the UTMA. Accounts are held by "(the adult) as custodian for (the minor) under the (applicable state) Uniform Transfers to Minors Act." Once opened, the account immediately becomes the property of the minor and cannot be undone. The account is automatically transferred to the minor upon reaching adulthood, and a custodian may use the proceeds of the account only for the benefit of the minor.

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Credit Cards

Generally, U.S. credit card companies do not issue credit cards to minors as primary account holders. However, credit card companies may issue credit cards to minors as authorized users on an adult's account, when the adult is responsible for paying all debts incurred on the account. Transfer of the account is likely prohibited by the adult's cardmember agreement. If you are deported, your child's continued use of your credit card can have negative consequences if any incurred debts are not paid. If you want your child to have access to credit, they should become an authorized user on your account (if keeping your credit card account open) or the account of another adult. See Chapter 5 on Credit Cards, Prepaid Cards, and Debit Cards for more information on what to do with your credit card account if deported.

Motor Vehicles

State laws vary on the age at which a person can legally own a motor vehicle. Generally, a minor cannot be the sole owner. Some states allow minors to register a car at the age of 16, while others require a parent or guardian to sign (e.g., the registration or car loan) on behalf of a minor. Insurance companies may also restrict when a minor may qualify for insurance coverage. If you are facing deportation and are currently the co-signer on your child's car registration, car loan, or insurance policy, you should have a different adult serve as the adult co-signer.

Real Property (Land, House, or Condo)

Ownership of land, a house, or a condominium is governed by state law. In many states, a minor may own this property but cannot directly purchase, sell or make contracts relating to the property—this must be done indirectly through a trust, guardianship or conservatorship. If you are facing deportation and are the trustee, guardian, or conservator of your child's property, you should consider transferring the title to another adult for the benefit of the minor.

Lawsuit Settlements, Investment, and Inheritance

If a minor is the recipient of property or money from a legal judgment, a guardian or conservator is usually appointed to receive and manage those assets on behalf of the minor. Similarly, minors generally cannot own or manage stocks, bonds, mutual funds, annuities, life insurance policies, patents, or royalties. If a minor receives property or money due to inheritance, the assets will either be placed in trust (for the benefit of the minor) or a court may supervise the administration of the assets. If you are facing

deportation and are the guardian or conservator for any of these assets on behalf of your child, you should appoint a new guardian or conservator to assume that role.

Child Support and Custody Orders

Family courts—which deal with issues such as divorce, custody, and child support—operate separately from immigration courts. In most cases, there is no communication between family and immigration courts. Therefore, a family court order will not automatically be modified upon a parent's deportation. If a family court order will be affected by deportation—including custody or child support—you must petition the court that created the order for modification. Child custody and related issues are discussed in more detail in Chapter 1 of this guide.

Maintenance of child support payments can be a complicated problem depending on whether the obligee (person receiving money) or obligor (person owing money) is deported, whether the citizen child accompanies the deported parent, and whether the destination country recognizes a foreign child support order.

If you are receiving child support and face deportation, and your citizen child will remain in the U.S., you should immediately petition the family court for modification of the order to ensure that your child will continue to receive support through a new guardian. If you have full custody of your citizen child and want them to accompany you outside of the U.S., you must typically receive permission from the court.

Numerous countries have reciprocal child support agreements with the United States, including: Australia, Brazil, Canada, Czech Republic, Ecuador, El Salvador, Finland, Honduras, Hungary, Ireland, Israel, Netherlands, Nicaragua, Norway, Philippines, Poland, Portugal, Slovak Republic, Switzerland, and The United Kingdom of Great Britain and Northern Ireland. If a parent owing child support money is deported to one of these countries, a U.S. child support order can be enforced in the foreign court. Also, if the child lives in one of these countries, the foreign court may issue an order enforceable against a parent owing child support money who remains in the U.S.

Education Savings Plans

An education savings plan is different from a regular bank account set up for saving for school. Depending on the type of plan, special transfer rules may apply.

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Education Savings Accounts (ESAs)

An Education Savings Account, also called a Coverdell Education Savings Account, is considered an asset of the minor's parent or guardian. For a minor leaving the country with the deported parent, the account may generally be "liquidated" – that is, turned to cash – if this is not specifically prohibited by the account creation conditions, but penalties or taxes may be owed. The funds may be used for non-educational purposes, but there may be an associated penalty. For a minor child remaining in the country, care should be taken to ensure that a remaining parent or guardian is aware of the account. A financial consultant from the firm hosting the account should be able to ensure a smooth transition of account control.

529 Savings Plans

In contrast to the Coverdell ESA, a 529 plan remains in the control of the party creating the account. Because of this, the funds may not be considered an asset of either the minor or the minor's guardian, and the funds may become unavailable to the minor unexpectedly if the controlling party decides to remove them or change the beneficiary of the 529 plan. If a 529 plan designating the minor exists, a parent facing deportation or another parent or guardian may wish to discuss the minor's future educational plans with the party who created the 529 savings plan. If it is the parent being deported who created the 529 plan, such parent may wish to name a successor owner of the plan, recognizing that the successor owner has the ability to redirect the funds away from the minor. This may allow the minor to know if they may rely on the funds in the future despite any changed circumstances.

Government Benefits

A citizen child may be receiving benefits, grants, or financial aid from federal, state, county, and/or local governmental programs. Eligibility for these programs might be adversely affected by the deportation of a parent or guardian. Parents who are immigrants should investigate whether eligibility for the programs is conditional and whether action is necessary to maintain eligibility upon the parent's deportation. Parents should also investigate whether their citizen child may qualify for assistance through other programs, including those that provide benefits to "unaccompanied" youths or minors. Where possible, a description for obtaining or maintaining these benefits should be provided to the citizen child and/or a guardian or custodian. A guardian may need to apply to become a representative payee of a minor.

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Unclaimed Property Laws

Unclaimed property laws, also known as “escheat” laws, require financial institutions to report when personal property (for example, money) has been abandoned or unclaimed after a period of time under state law—often five years. Before assets can be considered abandoned, the institution must make a diligent effort to try to locate the owner. After the property is abandoned, the state keeps record of the asset and the owner may make a claim to retrieve the property. The National Association of Unclaimed Property Administrators maintains databases to search for unclaimed property and state law may have special restrictions. Diligently drafted agreements and up-to-date records (as well as making sure that bank accounts and other types of financial accounts are not closed due to inactivity) may prevent the loss of these assets, though citizen children, custodians, and those with power of attorney should be aware that escheated property may be retrieved if later discovered.

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Checklist: Assets and Benefits of Minor Children

Property held by a minor is generally governed by state law. Where possible, consult a lawyer for advice on state-specific property laws and your individual best course of action.

- ☐ If you currently hold assets as custodian in the name of your minor child who is a U.S. citizen, consider transfer of the custodianship to a trusted individual who will remain in the U.S. should you be deported.
- ☐ Create a list of all available assets not currently protected that may be transferred or otherwise protected for the benefit of your minor child (including real and personal, tangible and intangible property). Where practicable, consider consolidating assets for easier management and transfer.
- ☐ Draft an agreement for the transfer of the identified assets to a custodian for the minor under the Uniform Transfers to Minors Act (UTMA) to be executed immediately or, at a minimum, before deportation (including during detention, if needed).
- ☐ If in possession of significant or unique assets (including real estate), consult a lawyer to consider the formation of a trust, guardianship, or conservatorship for the benefit of your minor child with a trustee who will remain in the U.S.
- ☐ Investigate whether any government benefits your minor child receives may be affected by your deportation, whether your child may qualify for additional benefits upon your deportation, and leave instructions for your minor child and/or your child's guardian for maintaining and/or obtaining these benefits.
- ☐ If possible, ensure all bank accounts are jointly-held by your minor child and a custodian whom you trust and who will remain in the U.S. to ensure your citizen child has continued access.

- ☐ Consider granting power of attorney to someone who will remain in the U.S. to handle the disposition of any other assets in your absence.
- ☐ If your minor child is leaving the country with you during deportation, a professional with expertise should be consulted to determine if and how your child's assets may be sold and taken out of the country with him or her.
- ☐ You and your child may request an accounting from any custodian or trustee managing your child's assets in order to ensure that the assets are safe and are being managed appropriately.

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3. Managing the Psychological Aspects of Deportation and Child Custody

Family is the building block of a healthy society and the environment where children develop their sense of security and belonging. Many immigrants, perhaps like yourself, come to the U.S. to give their children a better life and future than the one possible in their homeland. Deportation can shatter your family's hard earned sense of security and stability in the U.S. This is most likely a tremendously difficult time for you as an individual, and as a parent, as well as for your child, because it disrupts whatever sense of safety you have managed to build.

When safety and security are lost, it can generate significant amounts of stress, which can be particularly toxic for children, and their developing brains and bodies. This is especially significant, and detrimental, when it involves separation from primary caretakers (i.e. parents). Children need a safe and secure environment to thrive physically, emotionally, socially and academically. Stress, especially when it is chronic and in the early years, has a negative impact on a child's healthy development, and its consequences can last a lifetime. Having conversations to address your child's worry, in the case of deportation, can help alleviate their stress, and potentially ameliorate its negative impact.

Why Talking About Deportation is So Stressful ➤ Why it is Important to Talk About Deportation ➤ Ways of Monitoring Stress to Allow for Conversations ➤ Children of Different Ages Will Have Different Reactions and Concerns ➤ Strategies for Having Conversations with Children About Deportation ➤ How to Cope With Deportation By Helping Your Children Feel Safe ➤ Mental Health Resources

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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Why Talking about Deportation is So Stressful

Stressful events interfere with our ability to think. As human beings, we have an automatic response to moments when we feel scared or under threat. When we are very stressed, our natural tendency is to take flight, fight, freeze or faint. In many situations, when there is an immediate threat, this is very helpful for survival. In other situations, like the threat of deportation, when stress is not momentary but can last for long periods, it is important to find ways to reduce stress. Because the topic of deportation is very stressful, and elicits intense fear, it will take an active effort to think and plan, in order to reduce some of its negative impact.

In the past, many immigrants have managed the fear and stress of potential deportation by avoiding conversations about the topic altogether. Some people may have chosen not to speak about their immigration status at all, in order to feel safer and protected from being targeted. Others have not spoken about deportation because it brings up memories that are too painful. Talking about one's immigration status can be emotionally challenging, but it may be beneficial if done with trusted friends or colleagues. Nonetheless, it may stir up fears of deportation and fears of losing the connection with loved ones, if forced to leave. It may also bring to mind the difficult journey to come to the U.S., all that was sacrificed, as well as the life and people left behind, or who might now be left behind. Conversations about immigration status or deportation may also be particularly overwhelming if the initial reason for migrating was to flee physical (or emotional) violence. It is hard to be close to painful feelings.

Why it is Important to Talk About Deportation

Despite our natural tendency to do the opposite, having conversations about our fears, in emotionally sensitive ways, can actually reduce stress. When we are stressed, having the support and love of those around us can help us feel better. In talking to each other we feel connected and this can help reduce stress. Children are very sensitive to what goes on around them. Think of them as emotional sponges that can soak up tensions. Even if emotionally charged topics like the fear of deportation are not discussed, many children are perceptive enough to pick up on the tension and fear and will be affected. It can be beneficial to help children find ways to talk about their feelings so they will feel less burdened. If families can talk about deportation together, children and parents can feel less alone, if faced with the process.

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Ways of Monitoring Stress to Allow for Conversations

Our brain and body tell us when we are stressed. Here are some of the ways you might notice you are stressed:

- Difficulty thinking
- Difficulty planning
- Difficulty remembering
- Rapid heartbeat
- Shortness of breath
- Sweaty palms
- Dry mouth
- Muscular tension
- Butterflies in stomach or upset stomach

It is important to listen to one's body to be able to manage one's stress before taking on difficult conversations. It can be helpful to try to recognize one's own feelings before and during conversations with your children. Listening to our body's response can be a way of knowing about difficult feelings, or at least offer some clues about feelings that are less accessible. When you are stressed, it might be helpful to practice deep breathing, take a slow walk, listen to comforting music or share your feelings with another supporting adult, as a means to find your way back to a calmer state. It is important that as parent(s) a part of your focus is on your own emotional wellbeing, so you can take care of your children, and remain attentive to their needs. A child needs the comfort of their parent(s) or primary caretakers, but your feelings and emotional wellbeing is important too. If you have ever been on an airplane you may remember that in case of an emergency, adults should put the oxygen mask on themselves first so they can take care of their children. When parents are able to manage their own stress successfully, they are then better able to listen and be open to their children's worries.

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Children of Different Ages Will Have Different Reactions and Concerns

Young children may not be able to put their questions or feelings into words. However, silence and behavior are forms of communication. A baseline principle that might be helpful to keep in mind as you think and talk about this in your families is that there is no such thing as non-communication. We are always communicating whether in words, behavior or silence. Have you ever heard the phrase, "silence is a powerful statement?" Even not saying something verbally can be making a powerful point. Along these same lines, babies, children and adults are communicating all the time. We just need to learn how to be sensitive to the message. But the important message here is that there might actually be a message that warrants attention.

Some Behaviors to Look for In Young Children

- **Increased restlessness at bedtime or naptime:** Bedtime for children can be a time when many fears creep into their thoughts. They can also come up in the form of nightmares. For young children, nightmares of monsters, loss and separation, can be a way of expressing what they can't quite come to terms with, or what they are afraid of. Toddlers for example, might be very unnerved with a bad dream, and need the comfort of a parent or trusted caretaker to fall back asleep, because the lines between dreams and reality are still a little blurry. Do you remember what it felt like to wake up in the middle of a bad dream? It is likely you realized quickly where you were, and that it was a dream, and then hopefully you fell back asleep. Children struggle with this, because they still need their parent(s) for comfort and reality testing.
- **Fussiness or tantrums:** Children at very young ages can become fussy and have more tantrums. It can be their way of telling you of their distress, that they are nervous too, and that they need you to help them calm down.
- **Themes of sadness and loss** in drawings and pretend play.

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Some Behaviors to Look for In Older Children at Home and at School

Children might be:

- Withdrawn;
- Distractible;
- Angry; or
- Sad.

You may find that they are:

- Demonstrating poor school performance, or seeming less motivated in general;
- Less social and having more conflicts with peers;
- Refusing to go to school, resulting in absenteeism;
- Conveying physical complaints: stomach aches, headaches etc; or
- Having sleep problems and nightmares.

All of these behaviors are examples of ways that children communicate that they are stressed and perhaps overwhelmed. When parents can address their children's stress, it can help them be calm and their behavior can improve.

What to Look for In Teenagers

Teenagers may feel the burden of increasing responsibilities. They may feel not yet ready or able to take on parental roles and responsibilities. Sometimes when people feel afraid or overwhelmed it is expressed as anger. It may be too difficult for them to feel sad and afraid. Anger can help people feel strong and empowered. It is important to recognize that when teenagers are angry the root is often fear, or sadness.

Parents should also look for changes in their teenager. Are there big changes in how their teenager behaved at home or performed at school? These changes may be a sign that the teenager is stressed and something needs to be addressed.

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Strategies for Having Conversations with Children About Deportation

Stress about deportation affects everyone. Even if your family is not facing the threat of deportation, you may be living in a community where others are. Your children may be affected by what is happening to other children around them, many of whom may be their friends. Children may be sad about friends who have left, afraid of losing more friends, and afraid that what is happening to their friends might also happen to them. It is important for you as a parent to listen and be open to what your child is feeling. It is natural to be sad and afraid at times. Having space to express feelings can help your children cope. Ignoring or bottling up feelings may seem useful in the short run, but in the long run, keeping feelings in may lead to outbursts or more negative behaviors. It is important to try to resist the tendency to bottle up feelings, and instead strive to find a safe outlet for them, like putting them into words.

Here are a few tips to help make these conversations less stressful:

- **Listen attentively.** A guiding principle for all conversations is to listen sensitively and thoughtfully to your child's questions and concerns. Don't dismiss their worry, listen to it.
- **Seek an appropriate setting.** When having a conversation it is important to have a quiet space, without interruptions and with adequate time, so you don't feel pressured or rushed. Depending upon the ages of your children, it might be helpful to have all family members present.
- **Be prepared.** Before beginning a conversation, have a plan in mind for what would happen if your family faced deportation. It is comforting to children to feel that their parents are in control and have a plan to take care of them.
- **Keep it simple**. If your children have questions, it is best to answer simply. Provide enough information to address their concerns, but not too much that they would be overwhelmed. This may involve a big effort on your part, if you are feeling very overwhelmed, which is also within reason. This may also be a difficult time for you.

- **Make a stress meter**. As a way to gauge your family's stress, it might be helpful for each member to make a stress meter where green is calm, yellow is slightly stressed and red is very stressed. Older children might prefer a scale of 1-10. Think of it like a speedometer on a car that goes from soft soothing colors to strong colors or 1-10. The meter could be hung on the child's bedroom door or above the bed. You can let your child know that you will comfort them when you see the sign that they are stressed. This can help you as parent(s) by building a simple bridge that keeps you connected to your child's experience. It may equally help them signal to you when they need your presence to feel better.

How to Cope with Deportation by Helping Your Children Feel Safe

Regardless if your plan is for your children to remain in the U.S. or go with you to your native country, the goal is to keep relationships alive. How can we bridge the gaps that physical separation creates? Throughout our lives human beings need to have the continuity of relationships to help us feel secure. Deportation can shatter the physical closeness of a family.

Here are a few strategies that can bring you closer and help your family feel connected if you are deported and your children remain in the U.S.:

- Older children should know what the plan for the family's care will be if you are deported and they remain in the U.S. It is important to tell them the basics. Where will they live? Will they go to the same school? How will they reach their parents? Who will be taking care of them? It is important to maintain a sense of predictability in times of great fear and stress. Having a plan makes your children feel cared for. If you know what will happen and have a plan, it reduces stress and makes it less overwhelming.

- Audio messages can be a way for a child to feel that they are not alone by hearing a parent's voice whenever they need to. The message should be uplifting and soothing. Think of a message that is meant to be comforting when your child or adolescent is distressed. For example, parents can sing a lullaby for a younger child, read a story, tell a joke or give an inspiring message to a teenager.

- Telephone and video conference. If possible, it is important to have regular and frequent times to talk.
- Create a photo book or scrapbook of times shared together.
- Encourage the child to write letters, draw pictures or send photos to the parent who can share with the child on live video showing that they received it. This might be a very tangible way for the child to feel that he or she is reaching parents across the border.
- If finances permit, the children might visit their parents for vacations or summers.

If your child is accompanying you to your country of origin, you will need strategies for helping you and your child cope with the huge transition and loss of life in the U.S.

It is possible that you will not know the details of where you will be living. However, it is important to convey as much information as you can about your country to your child. It would be helpful to convey even general information about your homeland and culture. Making as much as you can known and predictable will help children feel calm, safe and secure.

If your children will be accompanying you, they will be leaving behind their home, their school, their friends and their country. They might need to learn a new language. There will be huge changes ahead. Your goal is to help them manage the change and to help them cope with the losses they are suffering. These will be challenging times and it is important to listen with eyes and ears. You can help them with strategies for keeping in touch with their friends in the U.S.. Families who are deported often feel stigmatized. Families and children may have challenges being accepted in their new home by other children and local residents. If your entire family leaves the U.S., the strategies mentioned above for listening and having conversations will help you maintain connections and face challenges together.

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Mental Health Resources

Immediate Help

National Hotlines and Crisis Support

- National Suicide Prevention Lifeline: Call or Text 988. Also available in Spanish.
- National Alliance on Mental Health: Call 1-800-950-6264 or Text NAMI to 741741
- Crisis Text Line: Text HOME to 741741
- LGBT National Hotline: 1-888-843-4564
- The Trevor Lifeline: 1-800-565-8860. Also available in Spanish.
- Trans Lifeline: 1-888-843-4564
- BIPOC Blackline: Call or Text 1-800-604-5841
- National DV Hotline: Call 1-800-799-7233 or Text LOVEIS to 22522
- National Sexual Assault Hotline: 1-800-656-4673
- National Child Abuse Hotline: Call or Text 1-800-422-4453
- The Eldercare Locator: 1-800-677-1116

Other Mental Health Resources

- Immigrants Rising Undocu-Immigrant Mental Health Toolkit
- United We Dream UndocuHealth Toolkit
- Coping with DACA and Immigration-Related Stress
- American Academy of Pediatrics Immigrant Child Health Toolkit
- Together for Wellness Digital Toolkit
- Our House Grief Support Resources for Every Griever
- National Domestic Violence Hotline: Abuse in Immigrant Communities

More resources, including mental health therapist directories and free national support groups, available at: Mental Health Resources for Undocumented People

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Checklist: Managing The Psychological Aspects Of Deportation And Child Custody

- ☐ Learn to recognize signs of stress
- ☐ Practices strategies for managing stress
- ☐ Be aware of the needs of children of different age groups
- ☐ Recognize signs of stress in your children
- ☐ Know strategies for helping children reduce stress
- ☐ Listen sensitively and thoughtfully to your child's questions and concerns
- ☐ Create a safe space for the conversations to occur
- ☐ Have a safe outlet for feelings
- ☐ Answer questions simply
- ☐ Know your plan if deportation affects your family
- ☐ Share your plan with your children
- ☐ Learn strategies to maintain connection with your children after deportation
- ☐ Listening and having conversations will help your child manage loss and change if they leave the U.S. with you

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4. Managing, Accessing and Closing a Bank Account

There are many ways to keep your hard-earned money if you are deported. There is no need to withdraw your full account and keep it at home or carry it with you. You may lose your money this way or it may be stolen. This section provides suggestions to address the following issues:

Keeping Your Account Open ➤ Managing Your Account, Yourself ➤ Creating a Joint Bank Account ➤ Granting a Financial or Limited Power of Attorney ➤ Closing Your Bank Account ➤ Safety Deposit Boxes ➤ Checklist: Managing, Accessing and Closing a Bank Account

You don't have to lose your money because you are being deported. Call your bank and make sure you know all of your options before making decisions about your bank account. Be sure to update your bank with all of your information, including any new addresses or contact details.

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Keeping Your Account Open

You may want to keep your account open if you have ongoing financial obligations in the U.S. such as a mortgage, children or family to care for, or a pension. If you will be transferring money to your international accounts, be mindful of fees that you may be charged. For example, to transfer money between your U.S. account and international account, you may be charged fees for both sending and receiving the funds, which can get costly.

If you want to keep your account open you have a few options in how to manage the account from your home country. You can:

- Manage the account yourself;
- Create a joint bank account; or
- Grant a financial or limited power of attorney so that the appointed person can manage the account on your behalf.

Note: A financial or limited power of attorney specifies the actions another person may take on your behalf. It differs from a custodial power of attorney that permits another person to care for your child; or a general power of attorney that allows another individual to handle all your personal business.

Managing Your Account, Yourself

When you manage your account, the account stays in your complete control. To make this possible, banks often have local branches or ATMs abroad. You also may be able to manage your account via telephone, online banking, or third-party smartphone applications (e.g., digital wallets). Digital wallet apps may allow you to transfer your money between the U.S. and other countries more easily. Make sure to ask your bank what the best way is to manage your account abroad.

In addition, while maintaining your account, never share your personal information like your identification numbers or account numbers with anyone or any business that you do not trust. Also, you should frequently change your passwords to any online bank accounts and make sure that the passwords are strong. If you do notice fraudulent activity, notify your bank as soon as possible.

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Be careful of:

- Situations where you would have to come into a bank;
- Two-step verification processes that require access to your U.S. devices that you no longer have;
- Not being able to access your money using online banking if you do not have internet access;
- Using certain banks that may have limitations for you to access your account internationally;
- The account becoming inactive;
- Fees that can accrue when money exchanges happen from abroad. Foreign transaction fees can deplete an account;
- Fraudulent transactions that were not made or authorized by you;
- Scams and other criminal schemes that could be used to gain access to your account;
- Banks possibly flagging your account for fraud or money laundering suspicion;
- Accessing online banking services over unsecured public Wi-Fi networks; and
- Scams claiming to offer services that sound too good to be true. Always, verify such offers with official sources.

Make sure to discuss all of these concerns with your bank in order to avoid any potential problems and reduce the likelihood of fraudulent activity.

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Creating a Joint Bank Account

Adding someone to your account will give them the power to manage the account in full. They will also legally own everything in the account. For that reason, you should choose a person who is very close to you and whom you trust. You may either add someone to the account you already have open or open a new joint account. This can be done in-person or, in some cases, online. The person you choose to add to your account may be required to provide their personal information to the bank electronically or in-person.

Your bank may also provide an option to allow you to add a trusted person to your account, not as a full joint owner, but with more limited rights. In such a case, the added person may have less power over your account and money than a joint owner would and can only take limited actions. Contact your bank for additional details about creating a joint account or adding a person to an account in a more limited capacity to ensure you understand your options and the access rights you would be giving.

Be aware that:

- The other person has full access to your money and may be able to use or withdraw any of it;
- The account could be taken by the other person's creditors; and
- If you die, the other person may get all of the money.

Granting a Financial or Limited Power of Attorney

You can choose a person you trust and give them a financial or limited power of attorney. This will allow the appointed person to manage the account on your behalf. You can learn more in the Power of Attorney section (Chapter 10).

Some banks do not allow for powers of attorney. Check with your bank.

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Closing Your Bank Account

You may want to close your account if you don't have any financial obligations in the U.S. and you need easy access to the money in your home country. Even if you withdraw all the money in your account before leaving the U.S., you may still want to formally close your account so you are not charged any fees for keeping your account open.

To close your account, find out the procedures for your bank. Many banks will let you close your account in person at a branch location, on the phone, or by mail. A few banks will even let you close your account online. There may be special procedures if you have a joint account. If you are closing your account from abroad, you will have to write a letter with specific information to your local branch. Make sure all of your checks and automatic payments have cleared before closing the account. You may be prevented from closing your checking account if you have a negative balance.

To get your money you will have to choose between a check or transfer or, if permitted by the bank, having your money loaded onto a prepaid card that you can carry which may be safer than cash. Check to make sure that you are able to deposit a foreign check into a bank account in your home country and be aware of any relevant fees or requirements for processing international checks. For example, see Condusef's recommendations for depositing international checks in México and other tips for sending money to México. If you choose a check, you will have to carry the check to your home country. When you are there, you can deposit it in your home country account, but it may take 40-60 days to clear. For a bank draft and wire transfer you will already need an account in the home country. See Chapter 14 on Taking Money Across the Border for more tips.

Tip: Be extremely careful of security concerns like fraud or robbery when traveling with cash or a check, even if it is written in your name.

Safety Deposit Boxes

If you want to keep your safety deposit box open you will have to add another person to the account as a joint renter, or choose a deputy who can access the safety deposit box. Some banks will not allow you to use a general power of attorney to give another person access to your safety deposit box. If you want to close your box, make sure to do so before leaving for your home country.

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Checklist: Managing, Accessing and Closing a Bank Account

- ☐ Decide whether to close your bank account(s) or leave them open.
- ☐ **If you want to keep your bank account open**, decide whether it is best to manage your account from abroad or if it would be easier, open a joint account with someone you trust. You may also consider giving someone you trust a financial or limited power of attorney to manage your account on your behalf.
    - ☐ *If you want to manage your bank account yourself, find out if you can access your account abroad either through local branches, ATMs, telephone or Internet. Make sure you also ask what fees there may be, how to avoid being flagged for fraud, and how to avoid letting the account become inactive.*
    - ☐ *If you are going to open a joint account, pick someone you trust and go to the bank together and add that person to your account.*
    - ☐ *If you are going to grant a financial or limited power of attorney, ask the bank if it has special requirements for accepting a power of attorney.*
- ☐ **If you want to close your bank account**, contact the bank to find out the bank's procedures for closing an account. If you are closing your account from abroad, you will most likely have to send a signed letter with specific information.
    - ☐ Before closing your account, it is best to open your new one if you can.
    - ☐ Make sure all checks and automatic payments have cleared the account.

- ☐ Transfer any recurring payments to your new account if you have one.
- ☐ Decide how you want the remaining balance in your bank account transferred to you. Most banks allow either check, bank draft or wire transfer to your home country. You can appoint a financial or limited power of attorney to help with this process.
- ☐ Be extra cautious of fraud or robbery if traveling with physical cash or a check.

☐ **If you rent a safety deposit box at a bank and want to keep it open**, consider either:

- ☐ Adding another person to the account as a joint renter; or
- ☐ Appointing a deputy who can access the safety deposit box. Some banks will not recognize a power of attorney because of the confidential nature of safety deposit boxes. A power of attorney should specifically grant the right to access a safety deposit box *(see Chapter 9 on Powers of Attorney)*.

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5. Credit Cards, Prepaid And Debit Cards

In the face of deportation, you can take steps to manage credit cards, prepaid cards, and debit cards. This section addresses these topics:

First Steps: Gather Important Information ➤ Credit Cards ➤ Prepaid Cards ➤ Debit Cards ➤ Checklist: Credit Cards, Prepaid and Debit Cards

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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First Steps: Gather Important Information

Before you begin, take a few moments to gather key documents and record important information about your cards. Keep this on your person or retain it in a secure electronic file, but do not share this information, including any passwords, PIN numbers, or other access information, with others. Write down:

- Brand name on card;
- Card network for the card (e.g., Visa, Mastercard, etc.)
- Name of bank that works with the card company;
- Account number;
- Security code;
- Date of expiration; and
- Contact information for both the bank and card company

Credit Cards

What is a Credit Card?

A credit card gives the credit card holder access to a revolving line of credit. Buying something with a credit card or using a credit card to get cash is borrowing money against the line of credit. The credit card holder can borrow an amount up to the credit card limit. To keep the line of credit open, the credit card holder must make at least minimum monthly payments against any accrued debt. However, if you only make the minimum monthly payment, your credit card company will likely impose relatively large interest charges on any outstanding balances. Some credit cards also require you to pay other service charges and fees as well, including fees for making minimum monthly payments late.

What Will Happen to Your Credit Card After You Leave the Country?

You likely need a U.S. address to maintain your U.S. credit card; however, some credit card companies may allow you to open an account in the new country connected to your previous U.S. account. You should notify your credit card company of any change in address and check with the company for options. If the credit card has rewards, you should contact the credit card company to understand how best to redeem the rewards

you have already earned. You may also want to stop any recurring payments being charged to the credit card if they no longer will apply.

What Will Happen if You Try to Use Your Credit Card Outside the U.S.?

You may be able to use your credit card outside the U.S. For certain types of credit cards, the credit card company may charge a foreign transaction fee to use a credit card outside the U.S. These fees may mount up. You should also be aware of the exchange rate used by the credit card company in processing the transaction. You should check with your credit card company for details.

What is Credit Card Debt?

Credit card debt is the total amount borrowed against the line of credit plus any accrued interest and other fees, including fees for late payments. In some cases, the accrued interest and fees may exceed the line of credit. You can minimize interest and other fees by paying off as much of your balance as possible every month on time.

What Happens to Credit Card Debt After You Leave the Country?

Credit card debt exists regardless of where you live. The obligation to repay the debt does not disappear when a person leaves the country. If you miss a credit card payment, you will likely incur fees and penalties on your debt. Once the debt reaches a certain level without receiving payment, the credit card company may cancel your credit card and sell the debt to a debt collector. Debt collectors have a limited time during which they can sue debtors for nonpayment of credit card bills. Such time limits differ by state and are set by each state's statute of limitations. The credit card company may also report missed or late payments to credit bureaus, such as Experian and TransUnion, which could have a negative effect on your credit rating in the U.S.

Tip: Even if you do not use the credit card, you should still periodically monitor the activity on your credit card for fraud. You should contact the credit card company immediately if you see any charges on your credit card that you did not make or authorize.

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What Should You Do to Pay Your Credit Card Debt?

For Supervised Immigrants

If you have some time before you must leave the United States, you should (1) contact each of your credit card companies, (2) tell each company about your situation, and (3) provide a forwarding address in your home country in a letter sent with a certified return receipt requested. Additionally, to the extent available, you should download the smartphone application associated with the credit card and enroll in electronic delivery and payment options. This reduces the chance that you will miss a credit card payment.

For Detained Immigrants

If you are a Detained Immigrant, you may not have enough time during the transition from one location to another to inform your credit card companies that you are leaving. This increases the risk that you will miss payments, which likely will result in fees and penalties on your debt. If you are subject to immediate removal from the United States, you should enroll in electronic delivery and payment options, and download the smartphone application of your credit card company that you can use to contact the company and make payments. Upon arriving in your home country, you should contact the credit card company and, if necessary, send in any payments that are owed or discuss other payment and debt relief options that the credit card company may offer.

What Happens if You Don't Pay Your Credit Card Debt?

If you don't pay your credit card debt, you may incur late fees and accrue additional interest on the card each month, which could significantly increase the amount of your debt. Additionally, the credit card company may penalize you in other ways, including by increasing the interest rate on your credit card. The credit card company may also sell the debt to a debt collector for collection. Failure to pay credit card debt may also hurt your credit rating in the United States. Your credit rating probably won't affect you in your home country, but it may complicate your finances if you ever return to the United States. For example, a lower credit rating or negative information on a credit report could affect your ability to obtain another credit card, receive a loan, purchase a car, or obtain housing.

Note that if you obtained a secured credit card by putting down money as a deposit for the credit card, you may also lose that money.

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What Happens if Your Credit Card Debt is Sold to a Debt Collector?

The debt collector may contact you to arrange payment of the debt. However, U.S. federal laws prevent debt collectors from engaging in certain tactics when attempting to collect debt, such as harassment or contacting you at an unusual time or place. You should be aware of your rights and of acceptable debt collection practices.

See, e.g., https://www.consumerfinance.gov/consumer-tools/debt-collection/ for more information.

International debt collection may be impractical for many debts, but your debt does not go away because you have relocated to another country. The debt collector may also sue you in state court to pay for the debt, which should not be ignored. While a person cannot go to jail solely for failing to pay credit card debt, failure to appear for court or to adhere to a court order could result in jail time.

Prepaid Cards

What is a Prepaid Card?

A prepaid card is like a credit card that the cardholder pays in advance. Traditionally, the cardholder loads money onto the prepaid card, then spends that money to buy things or withdraw cash. These cards usually require a PIN number. In some cases, money can be loaded onto prepaid cards directly from a paycheck or bank account. The money normally can be recovered if the prepaid card is lost or stolen. Unlike credit cards, there are no interest payments, but there may be fees associated with setting up, loading, using, and maintaining prepaid cards. These fees may mount up.

Can You Use Your Prepaid Card Outside the U.S.?

Some prepaid cards can be used outside the U.S. Indeed, some prepaid cards are intended to be used outside the U.S. (e.g., by American tourists). You should check with your prepaid card company for information on whether or not your prepaid card can be used outside the U.S. and, if so, what fees and limitations apply.

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What Should You Do With Your Prepaid Card Before Leaving the Country?

You should check to see whether or not your prepaid card can be used in your destination country. If not, you should consider alternatives, including spending or withdrawing the money on the prepaid card prior to leaving the U.S. or the card expiring. You may also want to stop any recurring transfers to or from the prepaid card that are no longer applicable. You should also confirm whether there are any overdraft features turned on for the prepaid card and turn them off to avoid potential overdraft fees. If needed, you may contact the prepaid card company to check the amount left on your card or receive card statements.

You should generally monitor your prepaid account and card transactions on a periodic basis to make sure that your card is not being used to make fraudulent charges. You should contact the prepaid card company immediately if you identify any charges to your card that you did not make or authorize.

What Should You Do if Your Prepaid Card is Stolen or Confiscated?

If the prepaid card is stolen or confiscated, you should immediately contact the prepaid card company to recover the funds on the prepaid cards.

Debit Cards

What is a Debit Card?

A debit card is a payment card that is linked to a bank account. The cardholder puts money in the bank account, then spends that money to buy things or withdraw cash. In some cases, the cardholder can attempt to withdraw more than the amount in the bank account. These excess withdrawals or attempts to withdraw excess funds may be subject to overdraft or insufficient funds fees. These fees may mount up. Debit cards often require cardholders to create and use PIN numbers to use the card or withdraw funds from the bank account.

Can You Use Your Debit Card Outside the U.S.?

Some debit cards can be used outside the U.S. You should check with your bank for information on whether or not your debit card can be used outside the U.S. and, if so, what fees and limitations apply (e.g., foreign transaction and currency conversion fees).

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There may be additional fees for withdrawing cash using the debit card, including ATM and currency exchange fees.

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What Should You Do with Your Debit Card Before Leaving the Country?

Since a debit card is linked to a bank account in the U.S., you should decide whether or not to close the bank account associated with the debit card before leaving the country. If you close the bank account, then the debit card will no longer work and should be discarded. If you haven't transferred the remaining balance to another bank account before closing it, the bank will generally send you a physical check with the amount of your balance to the address on file with the bank. You should make sure you can receive mail at the address on file before leaving the country, or otherwise should contact the bank to have the check mailed to a different location. If you keep the bank account, then you should check with your bank for information on whether or not your debit card can be used outside the U.S. and, if so, what fees and limitations apply.

If available, you should also download any smartphone applications associated with the debit card and enroll in electronic notification delivery options. You should generally monitor your bank account and debit card transactions on a periodic basis to make sure that your card is not being used to make fraudulent charges. You should contact the bank immediately if you identify any charges to your card that you did not make or authorize.

If the debit card has rewards, you should contact the bank to understand how best to redeem the rewards you have already earned. You may also want to stop any recurring payments being charged to the debit card if they no longer will apply.

What Should You Do if Your Debit Card is Stolen or Confiscated?

If your debit card is stolen or confiscated, you should report the theft or loss to your bank as soon as possible.

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Checklist: Credit Cards, Prepaid and Debit Cards

- ☐ Prepare a list of your credit cards, prepaid cards, and debit cards. For each, include the phone number, address, and other contact information for the issuing bank or company. **Do not share this information with others.**
- ☐ Call each card issuer and let them know about the departure.

Card nickname (e.g., Visa, Mastercard, Bank card)	**Last four digits on account**	**Type** (credit, prepaid, debit)	**Customer service phone number**	**Notes**

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6. Managing Outstanding Short-Term Service Contracts and Related Bills

This chapter will help you to: (a) get your short-term service contracts and related bills in order, and (b) decide whether and how to terminate these contracts.

Examples of Short-Term Service Contracts ➤ Initial Action Items ➤ Terminating a Contract ➤ Checklist: Short-Term Service Contracts and Related Bills

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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Examples of Short-Term Service Contracts

Common examples of the many different kinds of short-term service contracts are listed below to help you identify contracts you may have.

- Phone and internet plans
- Digital subscriptions such as streaming, music, news, and gaming
- Utilities such as gas, electric, water, trash, and recycling
- Others such as food delivery and gym memberships

Initial Action Items

First, collect the information in one place. As you collect contracts and bills, remember, if you do not understand something, ask someone for help or contact the provider with questions (and/or to see if they can provide the contract in your preferred language). When contacting the provider, its recommended to start with their website, then use email/chat, and as needed/available, call them by phone or go to the store. Be sure to save emails and notes. Consider sharing the information with a trusted person in the U.S. who may be able to help you after you leave.

Compile Your Contracts and Related Documents

- Make a list that includes details such as: the service, provider name and contact information, accountholder name and account number, amount owed, due date(s) (or payment frequency), whether autopay is set up, termination date, and space for notes. Keep the list updated.
- Put the list and a copy of each contract in a file (physical and/or electronic).
- Include a copy of the last bill and receipt of the last payment made for each contract.

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Does the Provider Offer Services in the Country Where You Are Going?

If "yes," coordinate with the provider to ensure coverage is transferred under the contract.

Note: this likely only applies to some services such as phone and internet plans.

Can You Put Another Person on the Account Who Can Take Action?

If "yes":

1. Talk to the person you want to add;
2. Ensure they understand and consent;
3. Provide them the relevant documents and information discussed above under "Compile Your Contracts;" and
4. Provide them specific (and ideally written) instructions about how/when to access the account and assist in your absence. Follow the instructions in the contract to add another person.

If "no," or unclear, contact the provider.

Note: don't forget to evaluate the potential liability of adding another person.

Does the Contract Have a Termination Section?

If "yes," see if there is an early termination fee and specific information on how to terminate. Add the information to your list.

If "no" or unclear, contact the provider. See below for additional information.

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Terminating a Contract

Most service contracts will include information about termination. This is often found in a section "Terms of Service," or "Termination," or "Cancellation." If you cannot find the termination section or the language is unclear, contact the provider.

Each contract is different. Often you can terminate through your online account, but sometimes you have to appear in person or call customer service. Sometimes there is a termination fee, or a deposit refund, or other considerations. Check each contract to determine the process and considerations.

When time is limited, contact providers to determine if you can add another person who can help manage your account. If "yes," try to do so right away.

If you are not able to add another person to manage the account and there is insufficient time, you should contact the provider and give your new contact information.

Example of Termination and Transfer Provisions

Sample Verizon Mobile Customer Agreement.

A sample Verizon Mobile Customer Agreement allows users to terminate/cancel service through their online account. The sample below also explains possible results of termination, based on factors such as how soon after accepting the agreement the user terminates, if the user returns certain equipment on time, and the type of payment plan. The termination provision from a sample Verizon agreement:

> *"You can cancel a line of Service within 30 days of accepting this Agreement as long as you return, within the applicable return period, any equipment you purchased from us or one of our authorized retailers in connection with your acceptance of this Agreement, but you'll still have to pay for your Service through that date. If you financed your device with Verizon and cancel your Service(s) after 30 days, your outstanding balance may immediately become due. Canceling service may also impact promotions associated with that line(s). You may manage your Service at any time at Verizon.com. If you signed up for Prepaid Service, no refunds will be granted after 30 days or if your account has been activated. See verizon.com/support/return-policy/ for complete details and information on returning your equipment."*

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The sample Verizon agreement also includes a separate section about transferring the agreement or service to another person:

> *"Can I have someone else manage all or a portion of my [. . .] account? No problem – just tell us by phone, in person, or in writing . . ."*

What Happens if You Don't Pay the Bills or Terminate the Contract?

Each contract has its own terms but generally you will continue to be responsible for the contract and unpaid amounts. There may also be additional fees and charges for unpaid bills. Depending on the state and provider, sometimes the provider can suspend service (but you may still be responsible to pay). Many of these contracts automatically renew unless terminated. Some switch to month-to-month arrangements. Be sure to review each contract.

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Checklist: Short-Term Service Contracts and Related Bills

☐ Compile the following:

- List of contracts
    - *Include details such as: the service, provider name and contact information, accountholder name and account number, amount owed, due date(s) (or payment frequency), whether autopay is setup, termination date, and space for notes. Keep the list updated.*
- Copy of each contract.
- Copy of the last bill and receipt of the last payment made for each contract.
- Consider sharing the compiled folder with a trusted person in the U.S. who may be able to help you after you leave.

☐ Review each contract and/or coordinate with the provider to find answers to the following questions:

- Does the provider offer services in the country where you are going?
- Can you put another person on the account who can take action? If "yes," did you add someone? Who?
- In the case of a phone/mobile plan, are you able to transfer your current phone number? If "yes," have you taken the steps necessary to ensure the transfer can occur? If "no," do you have a new phone number that will work once you're outside the U.S.? Have you shared this with providers?
- What are the steps needed to terminate each contract? Are there fees or other considerations associated with termination?
- Did you send the information to a trusted person in the U.S.?

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7. Payday and Other Short-Term Loans

Payday and other short-term debts, such as car title loans, do not go away. However, you can manage debt by prioritizing which debts are paid first, discontinuing automatic repayments and potentially working out a payment arrangement with the lender that you can afford. This section will address these topics:

What Happens to Your Loan Debt After You Leave the Country? ➤ How to Prioritize the Repayment of Debt ➤ Working With the Lender to Extend Payments for the Loan and/or Negotiate the Repayment Amount ➤ Protecting Accounts from Automatic Withdrawals or Garnishment ➤ It May Not Be Legal for the Debt to Be Collected ➤ Checklist: Payday and Other Short Term Loans

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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What Happens to Your Loan Debt After You Leave the Country?

The debt for a payday loan (sometimes also called cash advance loans) and other short-term loans exists regardless of where you live. The obligation to repay the debt does not disappear when a person leaves the country. If you miss a loan payment, you will likely incur fees and penalties on your debt. A lender may or may not try to collect this debt depending on the existence of collateral or co-signers and the borrower's location.

Loans Will Continue to Accrue Interest and Fees

The effective annual percentage rate (APR) on payday and other short-term loans is far greater than most other forms of debt, such as credit card debt. Payday loans often have an effective APR of 400% to 600% or higher. By comparison, APRs on credit cards can range from about 12% to 30%. Some states have rules related to how much interest a payday lender can charge; however, other states, such as Texas, allow payday lenders to charge unlimited interest and fees for nonpayment.

The Lender May Seek to Recover the Unpaid Debt

Debt collectors have a limited time during which they can sue debtors for nonpayment (see below under "The debt may no longer be legal"). If a lender sues you in a United States court and wins a favorable judgment against you (which can happen even without you present, in which case it is called a "default judgment"), it will only be able to enforce the judgment in a country outside of the United States if that country has an agreement with the United States that U.S. judgments are enforceable in that country.

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How to Prioritize the Repayment of Debt

The National Consumer Law Center advises debtors to prioritize their debts and decide which bills they must pay first, usually household expenses (home, apartment, food and medicine), cell phone and other utilities, car and appliances such as refrigerator or washing machine.

These are some of the key steps they recommend:

- Always pay family necessities and housing-related bills;
- Pay the minimum required to keep essential utility services;
- Pay car loans if a car is essential for your work and family;[2]
- Pay child support debts and income taxes;
- Do not move a debt up in priority because the creditor threatens to sue you or continually calls your home; and
- Some debts may not be legally binding. See below under "It may not be legal for the debt to be collected."

Working with the Lender to Extend Payments for the Loan and/or Negotiate the Repayment Amount

You may be able to make an alternative payment arrangement directly with the lender, such as an extended payment period or change in repayment amount. Any new terms agreed with the lender should be in writing and you and your representative should keep track of all communications with the lender, including notes about interactions in person or over the phone. You should also keep any emails or letters received from the lender and the lender's contact information. You may also be able to get more time to repay a payday loan without being charged extra fees through an Extended Payment Plan (EPP), if permitted by state law.[3]

[2] In the case of a car title loan which you cannot pay off, you can either find someone willing to buy the car and use that money to pay off the loan, or just turn the car in to the lender, especially if the debt is more than the value of the vehicle.

[3] EPPs are offered by payday lenders that are members of the Consumer Financial Services Association of America (CFSA). Under an EPP, a customer may pay the transaction balance in four equal payments coinciding with the periodic payment dates. You can find out whether a payday lender is a member of the CFSA through this website: http://cfsaa.com/about-cfsa/2017-cfsa-corporate-members.aspx. There is no charge to enter into an EPP.

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Protecting Accounts from Automatic Withdrawals or Garnishment

Payday Loans Tied to Bank Accounts

You can withdraw your permission to the lender to take money from your bank account. Some payday and other short-term loans require a written Automated Clearing House (ACH) authorization, which gives the lender permission to electronically take money from the customer's checking or savings account when payment is due. Cancellation or revocation of an ACH authorization will prevent such withdrawals from being made from your account or stop payment on checks. However, it will not prevent the lender from applying fees and penalties on overdue payments or from seeking civil remedies. For example, if you gave the lender a post-dated check and there is not enough money in the account to pay the check when the lender submits it to the bank, the lender will charge you fees and penalties and the bank may charge an overdraft fee.

Garnishment and Default Judgements

Garnishment is a court order that allows creditors to take repayment directly from a debtor's paycheck or bank account. Garnishment varies significantly from state to state, so risks are higher for someone with assets who is in a more permissive garnishment state. The likelihood that a court will order a garnishment against you is higher if there is a default judgment. If the debt is taken to court for collection and you have granted someone your power of attorney, that person may engage a lawyer for you and make legal decisions on your behalf to avoid a default judgment (but unless the person is a lawyer s/he cannot represent you in court).

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It May Not Be Legal for the Debt to Be Collected

Debt collectors have a limited time during which they can sue debtors for nonpayment. Such time limits differ by state and are set by each state's statute of limitations. For example, in Texas, after four years the debt is time-barred and the debtor can no longer pursue a court judgment for collections. In some states where there is a 36% or lower rate cap in place and the loan is online, the loan could be illegal and thus not be required to be repaid because legally it is not collectible. Other states have limits on rollovers or other protections that may apply and allow you to stop payment. A local lawyer can provide more information.

The Military Lending Act (MLA) is a Federal law that provides special protections for active duty servicemembers, like capping interest rates and fees on many loan products. The MLA prevents a servicemember from being charged an interest rate more than a 36 percent Military APR, which includes certain fees, on most types of consumer loans. The MLA applies to active-duty servicemembers, including those on active Guard or active Reserve duty, and covered dependents. Payday loans are covered under MLA.

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Checklist: Payday and Other Short-Term Loans

Your debt is not discharged after you leave the country. *Payday and other short-term debt do not go away. But you can manage debt by discontinuing automatic repayment and working out something you can afford. It is important to prioritize how you want to spend your money.*

- ☐ If you have time before leaving the country, you should contact your lenders, notify them of the situation and provide a forwarding address in your home country. Be sure to contact them both by phone and by mail, and send your notification by certified mail, return receipt requested.

- ☐ If you are subject to immediate deportation, you should keep a record of each of your lender's contact information accessible and, if you can, send a payment to the lender upon arriving in your home country. You should also attempt to contact the lender after being deported to provide an updated mailing address.

- ☐ If you have granted a lender an ACH authorization to allow them to automatically withdraw money from your bank account, you may want to cancel the authorization.

- ☐ You may be eligible for an Extended Payment Plan (EPP) for your loan, if your loan meets certain requirements described above. You may also be able to work with your lender to extend your payment schedule or renegotiate your payment amount. Any changes to your loan should be in writing

- ☐ You cannot be arrested solely for failing to repay a payday loan. However, if you are sued or a court judgment has been entered against you and you ignore a court order to appear, a judge may issue a warrant for your arrest.

- ☐ Beware of scams. Do not share sensitive information, including account information or credit card numbers, with people you do not know. Fraudsters may pose as law firms or debt collectors to attempt to collect the debt.

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8. Insurance

This chapter describes how to approach issues related to your insurance policies in the event of detention or deportation, including the options for handling current policies, factors to consider when choosing a path and how to plan ahead.

What Types of Insurance Policies Do You Have? ➤ What Information Should You Gather About Each Insurance Policy? ➤ What Happens to Your Insurance Policies if You are Detained or Deported? ➤ What Else Should You Consider When Deciding the Fate of Your Insurance Policy?

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What Types of Insurance Policies Do You Have?

If you have an insurance policy of any kind, it is important to decide how the policy will be handled if you are detained or deported. The first step in this process is to determine what types of insurance policies you and your family have in force.

Common kinds of insurance policies:

- Health insurance, which may be covered by your employer or purchased individually;
- Car insurance, if you own, lease, or operate a car;
- Homeowner's insurance, if you own a residence;
- Renter's insurance, if you rent their residence;
- Insurance on a business, if you own one;
- Life insurance, which may be covered by an employer or purchased individually; or
- Other forms of liability insurance.

You should familiarize yourself with the benefits received under your insurance policies, and what you would forgo in the event of change in status or cancellation of the policy.

Keep in mind that each type of insurance and each insurance carrier is different. The factors to consider and the strategy for handling each policy could depend on the insurance company's rules and protocols.

If You Have Health Insurance Through the Affordable Care Act ("ACA")

Lawfully present immigrants are eligible to use the Health Insurance Marketplace, but undocumented immigrants are not. If a change in immigration status means you are no longer lawfully present in the U.S., you are also no longer eligible for coverage under the ACA or for any other premium tax credits or savings on Marketplace plans that you receive. Marketplace recommends reporting any change in citizenship or immigration status to your insurance provider as soon as possible, however, each insurer will have

different reporting requirements, policies on grace periods and consequences for failure to report. For more information, contact the Marketplace at 1-800-318-2596.

What Information Should You Gather About Each Insurance Policy?

The best way for you to manage insurance policies is simply to plan ahead.

Create a Master List

You should identify your insurance carriers and brokers and make a list containing contact information (phone number, address, email address) for each. For example, if you have car insurance through Geico, you should include the Geico customer service number as well as the contact information for the specific agent, if any.

You should distribute this list to your family or household members and keep a copy in an accessible location and another copy on your person (e.g., cell phone, wallet, or in a secure email account). This helps to ensure access to such information if required to leave the U.S. on short notice.

Gather Information and Review Insurance Plans

You should locate and review all insurance plan documents, whether in hard copy or online and also contact your insurance company to gather any missing information or ask any outstanding questions.

You should obtain, at minimum, the following information

- Method and requirements for termination or transfer of the insurance policy;
- Policy on reimbursement for coverage not used;
- Consequences of early termination, or termination generally;
- Consequences of non-payment of premiums;
- Necessity of reporting a change in immigration status;
- Ability to revive plan upon return to U.S.;

- Consequences of transfer or cancellation to other individuals covered under the policy; and
- Whether the premiums are being drafted from a bank account.

Answers to the above questions will allow you to make an educated decision about whether to cancel, continue, or transfer the plan in the event of detention or deportation.

What Happens to Your Insurance Policies if You Are Detained or Deported?

Once you have gathered the requisite information, you can devise a plan to handle a detention or deportation scenario. Generally, you have three options: (1) cancel the policy, (2) continue the policy, or (3) transfer the policy to another individual. Keep in mind that depending on the insurer's rules, one or more of these options may not be available for an insurance policy.

Cancellation

If you decide to terminate the policy, you may do so by following your carrier's procedure for cancellation. Certain carriers require notice in advance of termination, and may have a waiting period before termination will take effect. Carriers may also specify the format for providing such notice (by email, in writing, by phone). If the provider does not specify format, it is best to give notice in all three ways.

Some insurance policies may terminate automatically upon failure to pay the premium. Others may remain in place but accrue large balances from missed payments and late fees. It is crucial that you take these factors into account when deciding on a path forward. In certain cases, automatic termination may be the simplest option; in others, default on payment can generate unexpected liability.

Transfer

If it is an option, you may decide to transfer the plan to another family member or beneficiary. Again, look to the carrier's procedure for guidance and associated cost.

Continuation

If you want to keep the insurance policy in the face of detention or deportation, and such continuation is not prohibited by the insurance carrier, you can do so in several ways.

If already deported, you may continue to utilize the plan remotely. Having a copy of all policy documents and complete contact information is key. Alternatively, you may appoint another individual or grant an individual power of attorney to operate the plan on your behalf. You should prepare and provide in advance to the appointed individual explicit instructions on how the insurance policy should be managed.

If this feature is available and you are set on continuation, you may have the option of setting up automatic payment for the amounts due on the policy, or paying amounts owed on the policy in advance. Consider these decisions carefully as some may be irreversible.

Most importantly, you should find out whether you are still eligible to receive the benefits of your insurance policy during detention or following deportation. Most likely, benefits will not be available to you if you are no longer living in the U.S., and may not be available to you even upon return.

What Else Should You Consider When Deciding the Fate of An Insurance Policy?

Deciding how to handle insurance policies in the event of detention or deportation is a decision that cannot be made without careful consideration of your personal circumstance. Attention to personal factors is just as important as the dictates of an insurance policy. Below are the sorts of things that everyone should consider.

Practicality

If considering continuation of an insurance policy, you should consider whether it is practical to maintain the policy remotely. If your home country lacks reliable internet or cell service, and you do not anticipate regular access to these features, it may make more sense to cancel or appoint another individual in the U.S. to exercise control.

Liability

You should compare the cost of cancelling the policy with the potential liability associated with continuation. Cost of cancellation should be relatively straightforward once details of the policy have been gathered and reviewed. On the other hand, liability associated with continuation of an insurance policy can be more uncertain. For example,

if you keep a car title and insurance plan despite detention or deportation and there is an accident involving your vehicle, you may be subject to liability.

Impact on Others

You should consider the impact on individuals covered by an insurance policy, other than yourself, when deciding whether to continue, transfer, or cancel the policy. For instance, if a relative or dependent covered by an insurance policy would be unable to obtain such a policy (due to immigration status or otherwise), continuing the policy despite the added risk or cost to you may be worthwhile.

Similarly, you should consider whether failure to pay insurance premiums or erroneous continuation of an insurance policy would create liability for or cause harm to family members that remain in the U.S. Careful review of the insurance policy documents and conversations with your insurance broker should provide clarity on consequences of this nature.

Impact on Immigration Status

If removal proceedings are pending or anticipated, you should consider how the handling of insurance policies will affect such proceedings. Likewise, if you plan to return to the U.S., this weighs in favor of complying strictly with all regulations and procedures outlined by your insurance company. It also may provide an incentive to maintain an insurance policy, if permitted.

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Checklist: Insurance

Deciding how to manage your insurance policies is an important and complex process. Rules and procedures specific to your insurance carriers will provide the steps required to properly cancel, continue, or transfer a policy. Consult with your insurance companies in advance so that you are fully aware of your options, and create a detailed plan that can be implemented if you are detained or deported.

☐ Figure out what types of insurance policies you have, and make a list of the contact information of all insurance providers.

- *Include telephone numbers, email addresses, and mailing addresses. Consider keeping this information with you or in an accessible place. Give the information to a relative or close friend.*
- *Consider granting powers of attorney in case of deportation.*
- *Common types of policies include: health insurance, car insurance, homeowner's insurance, renter's insurance, business insurance, life insurance and liability insurance.*

☐ Gather and review your insurance policy documents. If you do not have all the information you need, contact your insurance provider and ask them questions.

- *Be sure you know: the method and requirements for cancelling or transferring your policy; the consequences of cancellation; the consequences of failure to pay on time or at all; whether you can be reimbursed for benefits not used; whether you are required to report a change in your immigration status; and the consequences to other people covered by your policy.*

☐ Consider how your choice (to cancel, continue, or transfer your insurance policy) will impact you and the people you care about.

- *Factors to keep in mind: liability associated with continuing or early termination of your policy; ability to maintain your policy remotely; impact on other beneficiaries of policy; potential negative impact on your removal proceedings; impact on family members remaining in the U.S.; and whether you intend to return to the U.S., if deported.*
- *Talk to your relatives and, if possible, your attorney about these issues.*

☐ Decide how you plan to handle your insurance policies if you are detained or deported. Generally, your options will be to cancel, continue, or transfer your policy.

- *The pros and cons of each option will depend on the policies and procedures of your insurance carrier, as well as your personal priorities and circumstances.*
- *Familiarize yourself with the basic process for each, and the consequences that may result.*

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9. Powers of Attorney

A “power of attorney” (POA) is a powerful tool available to you to help manage your property in the face of deportation. Because a POA can be an invaluable first step in protecting assets, we provide an in-depth discussion of the tool. This section answers the questions:

What Is a “Power of Attorney” (POA)? ➤ What Does a POA Look Like? ➤ Why Would Someone Facing Deportation Grant a POA? ➤ How Should You Choose the Kind of POA to Grant? ➤ How Should You Choose an Agent? ➤ How Long Does a POA Last, and Can It Be Changed? ➤ How Do You Draft a POA?

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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What Is a Power of Attorney (POA)?

A power of attorney (POA) is a written document that allows a person (who will be called the "principal" in the POA) to choose someone else (who will be called the "agent" in the POA) to act on his or her behalf with respect to finances, business, or a child's care. A POA is especially useful for people facing deportation or detention who simply may not have the time to get everything done before leaving the country or getting detained. For example, a POA can give an agent the power to sign checks from your bank account, make decisions about your child's schooling and healthcare, or use your money to buy or sell major items like a car.

While the term "power of attorney" might sound like something related to an attorney, such as an immigration attorney, it is not. It is simply a legal term used for the document that gives one person the legal right to act on behalf of another. Neither person needs to be an attorney. However, consulting with an attorney, where possible, can help you ensure the POA is effective and that the powers granted by the POA match your wishes.

What Does a POA Look Like?

Generally, a POA starts with a paragraph identifying the state and county where you are when you are signing the form, giving the names of the principal and the agent. The next paragraph is usually a list of possible powers a principal can give an agent. You will check off all the powers you would like the agent to have. Again, these can range from authority over your bank account to authority to make decisions regarding your child's health or education. The last paragraph typically explains whether the POA takes effect immediately or upon the occurrence of some event in the future. Finally, there are signature lines for the principal and the agent, as well as a place for a notary public or witnesses to sign.

This is a very general description of what a POA looks like. The requirements in each state differ, so before trying to write one, search the internet for a sample POA from your state or consult a local lawyer. Some sample state POA forms, current as of the time this manual was written, are provided at the end of this chapter. There are a number of websites that prepare the appropriate state form for you for a fee, for example: www.totallegal.com ($20) or www.legalzoom.com (starting at $39), or https://bluenotary.us (ranges from $20- $100). As discussed below, your bank may have its own POA form to cover banking transactions or access to a safety deposit box. Additionally, as discussed in the following section, many states have their own "statutory"

POA forms that you can use. Finally, organizations such as Legal Aid, local Bar Associations or Voluntary Legal Services organizations may have sample POAs that can be used as a model or may be able to draft a POA at no cost.

Why Would Someone Facing Deportation Grant A POA?

A POA can be a useful tool for someone wishing to settle their affairs before or after being deported. The first thing you may wish to do when facing deportation is to grant a POA to a trusted family member or other person that will be staying behind in the United States. If you are detained and awaiting deportation, it can be very difficult to sell a house, end a rental agreement or access a safety deposit box. With a POA, a trusted friend or family member can act on your behalf in these matters with full legal authority.

POAs can be used to accomplish many things. For example, a health care power of attorney can be created appointing an agent to act for you if you are injured or too ill to make decisions for yourself. POAs can also be used to provide for the care and education of children or to handle almost any financial or business issue, such as banking, gaining access to safety deposit boxes, entering into contracts, filing tax returns or settling legal claims.

How Should You Choose the Kind of POA To Grant?

You have to make several decisions about what kind of POA to use. First, you should decide whether the POA should grant the agent "general" authority or "special"/"limited" authority. Then you must decide when the POA will become effective: immediately or only if a particular triggering or "springing" event occurs. As explained later, you also need to decide how long the POA will last. There are advantages and disadvantages to different choices.

The "General" POA

A "general" POA gives an agent a wide range of powers, essentially enabling the agent to do almost anything on behalf of the principal. However, even with such broad powers, there are some things that an agent with a general POA cannot do. For example, an agent acting under a general POA cannot take oaths, go through marriage ceremonies, sign wills or, in some circumstances, access a safety deposit box on your behalf.

A general POA is not necessary, or even recommended, for most people who face deportation. However, it can be useful if you do not have much time before being deported and need to sell a business or have access to money when you get to your home country.

The "Special" Or "Limited" POA

A "special" or "limited" POA allows an agent to do only the specific acts listed in the POA document. It can be used for a wide range of activities. For example, a special POA can give an agent authority to access a bank account, sell a home or car, ship personal property to another country, or care for minor children.

Although this type of POA is called "limited," in many instances it can actually be more useful and effective than a general POA. Banks, doctors or school officials may be more likely to accept limited POAs because the acts that the agent can undertake are clearly specified, giving a clearer idea of the your intent. This type of document is therefore considered more trustworthy.

The General Rule: POA Effective Immediately

Generally, a POA becomes effective as soon as it is signed.

The Springing POA: POA Effective in The Future

In many states, a general, special, or limited POA can be written as a "springing" POA that becomes effective only after a certain event occurs. These types of POA are sometimes used for sick people who want the POA to become effective only if they become too sick to make decisions. In the immigration context, a springing POA might be used to make the POA effective only if you are detained or deported.

A springing power of attorney may be a good option if you want to ensure that a potential agent cannot take action on your behalf unless a specific condition occurs. It has the advantage of ensuring that an agent cannot use a POA to influence or coerce you before the triggering condition occurs.

However, there are disadvantages to using a springing a POA:

1. Under a regular, non-springing POA, the agent is required to execute your wishes, so a trustworthy agent should not take action using a general POA under any circumstances that do not match your wishes. If you feel you

cannot trust a potential agent to act in accordance with your wishes under a general POA, you should consider naming a different agent.

2. Second, many institutions may be unwilling to accept a springing POA as a matter of policy, because they are not accustomed to seeing this type of document, or because they feel they cannot adequately verify that the triggering event has occurred.

3. Third, in the immigration context, a springing POA may be difficult to use in circumstances where your incapacity may not be permanent, such as if you are detained but not yet deported.

If you wish to use a springing power of attorney, the POA should be very clear about what the triggering event is, and how the agent will prove that it has occurred.

- Some state POA forms may have a "special instructions" or "agent's certification" section that can be used to explain the triggering event and how the agent must prove it.

- One option could be to state that the POA becomes effective if the principal (you) is deported from the United States, and that this must be proven by having a specific person swear to that fact before a notary public. For example, the designated person would write "I [name] declare that [yours name] has been deported." Then, if you are deported, that person would then sign and date the piece of paper and attach it to the power of attorney. The POA would be effective as of that date.

- Some states may also require specific language to make effective the declaration that a springing event has occurred. For example, California requires the statement: "I certify (or declare) under penalty of perjury that the foregoing is true and correct."[4]

Remember, however, that many institutions may be hesitant to honor a springing POA, so making the required proof of triggering more official may help make the POA more effective. Consider consulting an attorney to identify types of formal proof that may be available to show that deportation or another triggering event has occurred, then stating, in the POA, that the proof must be attached to the POA in order to be effective.

[4] Cal. Prob. Code § 4129(b) (West, Westlaw through Ch. 4 of 2017 Reg. Sess.).

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How Should You Choose an Agent?

It is very important to choose the right agent. POAs can be abused, especially if you are detained or have been deported and cannot monitor the agent's actions.

An agent must be a legal adult (18, 19 or 21 years old) depending on the state), but otherwise you have a very wide range of choices when picking agents for a POA. It is not necessary that the agent speaks English or has any kind of educational qualifications. It is also not necessary to include the agent's contact information or proof of identity when drafting the POA (though for practical purposes it may be useful to include the agent's address on the document).

When choosing an agent, you should consider:

- A person who resides in the same state where the POA will be used, since different states may have different requirements for writing a valid POA;
- A person who can be trusted to act wisely and in accordance with your wishes;
- A person willing to expend the time and effort necessary to manage your financial assets;
- A person who is comfortable dealing with banks and other financial institutions and who has a basic understanding of financial issues; and
- A person who has the necessary documentation to be in the United States legally or who will not otherwise be subject to detention or deportation in the near future, if possible.

Note: You should take caution in choosing a spouse or intimate partner as your agent. Especially in abusive relationships, the parties' interests often become quickly opposed if there is a divorce or breakup. Many service providers have seen immigration status used as a means of control and coercion by abusive partners.

It is possible to draft several different POAs and to choose different agents to do specific things. For example, you could write one POA naming your business partner as agent and give that business partner the power to sell your interest in the business or to run the business on your behalf. You could then also write a second POA naming, for example, your sister and brother-in-law as agents to take care of your minor children.

In some states, it is also possible to draft a POA that names more than one agent. Unless the POA specifies that the agents are authorized to do different things or otherwise do not have to act jointly, this will mean that both agents must authorize any action under the POA. This can ensure that no single agent can use or abuse the POA, but can also make it difficult to use the POA by requiring the presence of two people for any action.

If you have bank accounts or other property in several states, it may be necessary to write a POA for different agents who reside in each of those states.[5]

A NOTE TO AGENTS

It is possible that a third party (like a bank or a school) will refuse to honor a POA, regardless of its legality or specificity. If an agent encounters this type of problem, they should contact a lawyer for advice. The agent may be able to bring a lawsuit against the third party to enforce the POA. While the rules surrounding such lawsuits vary from state to state, the case would likely focus on whether the third party is acting reasonably or unreasonably. To avoid these issues, entities with whom you do business may have approved forms for your use.

Additionally, to protect the agent's personal assets, you may want to write in the POA that if the agent has to bring a lawsuit to enforce the POA, the attorney's fees will be paid from your money.

- An agent will need to use the original POA, and you should keep a copy for your records.
- An agent is legally obligated to act in the principal's best interests. Among other duties:
    - An agent must keep his or her money separate from the principal's money;
    - An agent must not stand to profit from any transaction where they are acting as the principal's agent;
    - An agent must not give or transfer the principal's money or property to the agent, unless the POA specifically allows the agent to do this; and
    - An agent should keep clear records of his or her activities as agent under a POA.

[5] Please also review the "How do you draft a POA?" section below for information on how to draft a POA granting authority to an agent that will be valid in most, if not all, of the states where it may be used.

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How Long Does a POA Last, and Can It Be Changed?

You may see a POA referred to as a "durable" power of attorney. Most POAs are "durable," meaning that the POA is effective even after the principal becomes "incapacitated"—unable to act on his or her own behalf. For this reason, a durable POA may be especially important for those who are facing the possibility of deportation. In most states, the POA must say that it is durable to have this effect; however, in a strong minority of states, if the POA is silent on the issue, it will be deemed to be durable. For example, California, New York, Arizona, and Florida are in the majority of states that require durability to be explicitly stated, while Nevada, Colorado, Pennsylvania, and New Mexico are in the minority.

A POA generally lasts until it is revoked in writing or until the principal dies (or for a POA that is not durable, until the principal becomes incapacitated). In some circumstances, a POA may terminate earlier. For example, in some states, a POA that designates the principal's spouse as an agent may terminate if the couple divorces.

A principal can also specify in the POA that it ends on a certain date or upon the happening of a certain event. A POA with a set ending point may be considered more trustworthy than one without an ending point. However, if you decide to put a time limit on your POA, you should be sure to give your agent enough time to finish everything that needs to be done.

On the other hand, one disadvantage to having a POA with no ending point is that POAs can be difficult to cancel. You can cancel a POA by signing a separate piece of paper that says the POA is cancelled, sending a copy of the paper to the agent and to anyone (such as a bank) that had dealings with the agent, and physically taking back the original POA and all copies that have been given to anyone. Despite your best efforts, it may be hard to tell everyone that a POA has been cancelled, and this can lead to unwanted results. For example, if your property gets sold after the POA has been cancelled, but neither the buyer nor the buyer's creditor was aware of the cancellation, it will be difficult to get the property back.

You can change a POA (for example to give an agent a new task or to take away one of the agent's tasks) by canceling the original POA and making a new one. This can be done with one document, as long as the new POA says that all previous POAs are cancelled. Many statutory form POAs already contain this language. Statutory form POAs are discussed in further detail in the following section. However, for the same reasons that it is hard to cancel a POA, it is also hard to change POAs. It is hard to know whether anyone is still relying on the original POA, so, it is important that all recipients of the original POA receive notice of the cancellation or new POA. Also, as noted in the next section, modifying or cancelling a POA while detained can be especially challenging, so when crafting a POA it is important to consider your current situation and wishes, as well as how those could change in the future.

If you want to amend the POA from your home country, you should review the section below about drafting POAs after deportation. In addition to following these rules, once the new POA is created, you should have your agent in the United States collect and destroy all copies of the original POA to avoid any confusion.

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How Do You Draft A POA?

For Non-Detained Immigrants

Different states have different rules for how to properly execute a POA. In general, a POA must always be in writing, and may have to be witnessed by one or more persons, notarized or recorded at the county courthouse, depending on where, and for what purpose, the POA is being used.

Some states, such as New York, have a "statutory form," which is a model POA form written in a statute created by the state legislature.[6] These forms often contain instructions on exactly what actions are required to make the POA valid. Statutory form POAs are often widely recognized and accepted at banks and other institutions within the state.

If you have particular bank accounts (or other accounts) that you want the agent to be able to access, you should look online or contact the institution to determine whether it has a particular POA form for customer use. Although banks and other institutions should honor other POA forms that are valid, the easiest way to make sure that an institution will honor a POA may be to use any specific forms that it suggests.

As noted above, if you have property in several states, it may be valuable to have separate POAs executed according to the rules of each relevant state. However, if you are facing deportation, you may not have the time or resources to make valid POAs for several states. In those circumstances, you may want to execute one POA that complies with the strictest requirements for POAs in the United States. This would require your signature and the date, the signatures of two witnesses, the signature of a notary public and acknowledgements by the agent(s).

For special POAs, the document should be as detailed as possible. For example, the POA should list all relevant bank account numbers over which the agent may have control, as well as the name of the bank(s) and the addresses of your local United States branch. If the POA gives the agent authority to sell a house or car, the property for sale should be described in detail, including any identifying marks or numbers, such as serial and

[6] Statutory form POAs for several states can be found at the end of this chapter. These forms are valid as of March 2025. For subsequent years, try running searches on the Internet for "statutory form power of attorney" and the relevant state.

registration numbers. Other terms, such as a minimum-selling price, that are important to you should also be included.

Note: People who wish to use a POA to carry out real estate transactions almost always need to "record" or "file" the POA with the local clerk or land records office, and should check local requirements.

For Detained Immigrants

It is possible for you to prepare POAs while in detention, though it may be difficult to have the documents properly witnessed and notarized. If you are detained, it is advised to contact a lawyer to help with this process, preferably one familiar with the regulations of the detention center where you are being held (e.g., visiting hours, rules regarding making telephone calls and mailing letters and other details about how a detention center is staffed and organized). If an attorney's help is not available, one option is to hire a notary who agrees to come to the detention facility. Such notaries can usually be found on the Internet by searching for "notary" and "prison" or "detention." During visiting hours, a notary, agents and any witnesses can work with you to execute the POA forms.

For Deported Immigrants: The "Apostille" Process

It is also possible to prepare or amend a valid POA after deportation. The most straightforward way to do so is for you or a notary public (or similar official in your home country) to draft the POA, have the notary notarize the POA, and then have the POA "apostilled."

An "apostille" is a way to authenticate or legalize documents so that they will be honored in another country. The process is recognized by every country, including the United States, that has signed the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of 1961 (the 'Convention'). Thus, a document, like a POA, that has been properly apostilled in Mexico will be recognized in the United States. To get a document apostilled, you must take it to one of the designated people in your home country for signature. The link below provides information about where to find those individuals in several countries:
https://www.hcch.net/en/instruments/conventions/authorities1/?cid=41

Sample apostille forms in several languages are available online here:
https://www.hcch.net/en/publications-and-studies/details4/?pid=3198&dtid=28

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If the POA and any accompanying documents, including the apostille, are not in English, it is recommended that an English translation be attached. If possible, the translation should be certified as true and correct. Generally, this can be done by having the translator sign a statement that they believe the translation is accurate and complete, then getting the statement notarized by a Notary Public. This signed, notarized statement, sometimes called a "Certificate of Accuracy," should be attached to the POA and the translation.

If you are deported to a country that is not a signatory to the Convention, such as China,[7] Jamaica, Canada, Vietnam, or most of the Middle East, you should seek the advice of local lawyers or the local United States embassy or consulate about how to properly authenticate locally notarized POAs so that they will be valid in the United States.

[7] While China is not a signatory to the Convention, the Convention does apply in the special administrative regions of Hong Kong and Macau.

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Checklist: Powers of Attorney

- ☐ Consider whether you want the POA to be **"general"** or **"special"/ "limited."** You can grant a general power of attorney to one agent who can handle all of your matters, but you may want to grant separate powers of attorneys to different people for different purposes. For example, you might grant a power of attorney to your aunt to make decisions regarding your children and a separate one to your brother to handle financial matters such as managing your bank account or selling your car.

- ☐ Consider whether you want the POA to take effect immediately, or to become effective at some point in the future (a "springing" POA).

- ☐ Be careful in choosing an agent, especially if he or she will have access to your bank account. You should consider the following criteria:

  - ➔ A person who resides in the same state where the POA will be used, since different states may have different requirements for writing a valid POA;
  - ➔ A person who can be trusted to act wisely and in accordance with your wishes;
  - ➔ A person willing to expend the time and effort necessary to manage your financial assets;
  - ➔ A person who is comfortable dealing with banks and other financial institutions and who has a basic understanding of financial issues; and
  - ➔ A person who has the necessary documentation to be in the United States legally or who will not otherwise be subject to detention or deportation in the near future, if possible.

- ☐ Make a list of all of the financial matters you would need an agent to help you handle.

- ☐ Write the document authorizing the power of attorney. Consider the following when writing it:
  - ➔ Determine how long the power of attorney should last. Different states have different rules on how long POAs last if it is not explicitly stated in the document, so you should make sure to make your intentions clear;
  - ➔ Try to provide as many details about the assets as possible. For example, list the names of the banks, the account numbers, the car registration numbers and the locations of assets; and
  - ➔ Find out the legal requirements for a power of attorney in your state. If you have already left the U.S., a power of attorney can be drafted from abroad; however, this may require an authentication process depending on which country it is drafted in.
- ☐ Give the original power of attorney to the agent you have chosen (perhaps several signed copies). Keep a copy of your records.
- ☐ Circulate the POA to all third parties who you think would need to rely on it. This is to provide notice to those who will be impacted by the POA. Keep a list of the parties to whom the POA was circulated, as any change to or cancellation of the POA would need to be circulated to them.
- ☐ Ask the agent to keep clear records of all the actions he or she takes as your agent under the power of attorney. If another person refuses to accept your agent's power of attorney, contact a lawyer.
- ☐ When making any changes to or cancelling a POA, make sure you use certified mail or some other method that provides a record of receipt.

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Powers of Attorney by State

State	Document	Hyperlink
Alabama	Durable Power of Attorney	Durable Power of Attorney
Alaska	Durable Power of Attorney	Durable Power of Attorney
Arizona	Power of Attorney	Power of Attorney
California	Uniform Statutory Power of Attorney	Uniform Statutory Power of Attorney
Colorado	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Connecticut	Statutory Long Form Power Of Attorney	Statutory Long Form Power Of Attorney
Connecticut	Statutory Short Form Power Of Attorney	Statutory Short Form Power Of Attorney
Delaware	Durable Personal Power of Attorney	Durable Personal Power of Attorney
District of Columbia	Statutory Power of Attorney	Statutory Power of Attorney
Florida	Durable Power of Attorney	Durable Power of Attorney
Georgia	Financial Power of Attorney	Financial Power of Attorney
Idaho	Durable Power of Attorney for Financial Affairs	Durable Power of Attorney for Financial Affairs
Illinois	Statutory Short Form Power of Attorney for Property	Statutory Short Form Power of Attorney for Property
Iowa	Statutory Power of Attorney	Statutory Power of Attorney
Kansas	General Durable Power of Attorney	General Durable Power of Attorney
Louisiana	Durable Power of Attorney	Durable Power of Attorney
Maryland	Statutory Form Personal Financial Power of Attorney	Statutory Form Personal Financial Power of Attorney

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Maryland	Statutory Form Limited Power of Attorney	Statutory Form Limited Power of Attorney
Michigan	Durable Power of Attorney for Finances	Durable Power of Attorney for Finances
Minnesota	Statutory Short Form General Power of Attorney	Statutory Short Form General Power of Attorney
Montana	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Nebraska	Power of Attorney	Power of Attorney
Nevada	Statutory Form Power of Attorney	Statutory Form Power of Attorney
New Mexico	Statutory Power of Attorney	Statutory Power of Attorney
New York	Statutory Short Form Power Of Attorney	Statutory Short Form Power Of Attorney
North Carolina	Statutory Short Form of Power of Attorney	Statutory Short Form of Power of Attorney
North Dakota	General Durable Power of Attorney	General Durable Power of Attorney
Ohio	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Oklahoma	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Rhode Island	Statutory Short Form Power of Attorney	Statutory Short Form Power of Attorney
Texas	Statutory Durable Power of Attorney	Statutory Durable Power of Attorney
Utah	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Vermont	General Power of Attorney Financial Affairs	General Power of Attorney Financial Affairs
Washington	Durable Power of Attorney for Finances	Durable Power of Attorney for Finances
West Virginia	Statutory Form Power of Attorney	Statutory Form Power of Attorney
West Virginia	Durable Power of Attorney	Durable Power of Attorney

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Wisconsin	Statutory Power of Attorney for Finances and Property	Statutory Power of Attorney for Finances and Property

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10. Owned Real Property

In the face of deportation, if you own real property you must make decisions on what to do with this property and how to manage loans which may be owed for this property. This section will address some of the choices and more important decisions to be made. Transfers of real property are complicated.

Do You Own Real Property? ➤ Should You Keep, Sell or Gift your Real Property? ➤ What If There is a Co-Owner? ➤ Do You Have a Loan and Mortgage (or Deed of Trust) on the Property? ➤ How Can You Get Professional Help with Handling Property? ➤ What Can You Do To Protect Your Property Against Trespassers? ➤ Checklist: Owned Real Property

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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Do You Own Real Property?

This could be a home, an apartment, a business location or any other owned land or building.

Should You Keep, Sell or Gift Your Real Property?

You will need to decide what to do with your real property if you are deported. You must carefully consider:

(i) what the law and any loan or mortgage documents (if applicable) require,

(ii) if there are taxes or other financial concerns related to the property, and

(iii) what would be the best decision for you and your family.

Keeping Your Property

You can retain ownership of your real property even if you are deported. However, if you are deported, you should make arrangements for the property to be managed and you must make sure that all loans, taxes and other expenses related to your property are paid. If possible, it may be a good idea to designate a person who you trust to live on the property and make any necessary payments owed for the property. In some areas, a real estate broker may be able to coordinate management (or rental of) the property. This is also a good way to protect your property against trespassers.

If there is a co-owner, you should talk to the co-owner before making any decision regarding the property. If the co-owner is not at risk of deportation, you may consider having them manage the property and be responsible for making any payments related to the property in your absence.

Selling or Gifting Your Property

If you cannot or don't want to retain ownership, you can sell or gift the property to a co-owner or someone else.

With respect to these options, if you borrowed money through a loan to purchase your property and there is a mortgage (or deed of trust) on the property, the lender must be consulted on all actions and transfers. In almost all circumstances the lender must consent to any transfers. See section below on loans and mortgages.

A sale or gift of the property or your interest in the property may result in taxes that must be paid by sellers and by givers and receivers of gifts. A professional tax advisor should be consulted in advance so that you know which method of transfer is more beneficial to you and the receiver of a gift.

Limited Power of Attorney

In either case, if time is an issue (and even if it is not), it may be necessary or desirable to prepare a limited power of attorney giving a trusted person (such as a co-owner, attorney, realtor or other) authority to sell the real property or otherwise work with lenders and manage the property. An attorney or realtor should be consulted in preparing a power of attorney to make sure it complies with state requirements and is limited to only the authority needed to transfer the real property, work with lenders and/or manage the property. See Chapter 9 on Powers of Attorney for more details.

What If There Is a Co-Owner?

If there is a co-owner, it is a good idea to include the co-owner in any decision regarding the property and a transfer of your interest. Depending on how the property is co-owned, different laws will apply to how your interest can be transferred. An attorney or real estate professional should be consulted to make sure any transfer is done properly.

If the co-owner is not at risk for deportation, you may consider transferring your entire interest in the property to such co-owner or otherwise giving the co-owner a right (by limited power of attorney) to act on your behalf with respect to the property and any related loans.

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Do You Have a Loan and Mortgage (or Deed of Trust) on Your Property?

If you borrowed money through a loan to purchase your property and there is a mortgage (or deed of trust) on the property, you should consult the lender before you transfer your ownership interest in the property. In almost all situations the lender must consent to or at least be notified before any transfer in the ownership interest. See section below on loans and mortgages.

Under all circumstances, you are responsible to pay the lender the full amount of the loan.

- If you continue to own the property, you must continue to make all your regular payments to the lender.
- If you sell or transfer the property, you will need to pay the lender the full amount of the loan and any other charges due under the loan documents.

Consequences of Non-Payment

If you do not make these payments to the lender, the loan will be in default and the lender can take action to possess and sell the real property. This is known as a foreclosure by the lender. There may be some protections under certain state laws. A real estate attorney or other real estate professional in your local area should know the laws that apply. If you think there is a chance you will not be able to repay your loan, you should reach out for help in your state to understand the full risks.

Forfeiting a Property with a Loan

If your property is worth less than the loan payoff and you can't make the payments, you might consider giving the property to the lender. You may still owe the lender the remaining amount of the payoff unless the lender agrees otherwise.

Selling a Property with a Loan

If the value of the property is worth more than the loan, you may be able to sell the property. You would then pay the lender from the sale and keep any remaining funds.

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Other Considerations for Handling Properties with Loans

- Unpaid property taxes must be paid;
- If there is a co-owner, they will likely need to consent to any actions that affect the loan and mortgage;
- A limited power of attorney can be given to someone so that they can work with the lender and take steps to avoid a foreclosure; and
- If possible, speak with your lender to try and put a feasible payment plan in place. Document and keep copies of all communications between you and the lender.
- Update the lender with any changes to your contact information.
- Know your rights. Speak with an attorney about what rights you have under the loan agreement or mortgage documents.

How Can You Get Professional Help with Handling Property?

Transfers of real property are complicated. It can be done by a trusted person to whom you grant a limited power of attorney. You will need the assistance of a lawyer and/or real estate broker. Do not try to sell real property by yourself unless you are a professional. Personal references are always a good source of finding a professional. If you or your family and friends do not know of anyone, below are some examples of links and resources.

- Visit the National Association of Realtors' Member Realtor Directory (https://directories.apps.realtor/?type=member)
- An easy way to find a real estate lawyer is to log onto an industry website, such as https://www.lawyers.com/, which lists real estate attorneys. In addition, you can call your local bar association, title insurers, mortgage lenders, or escrow agents for referrals.
- In many areas, various organizations provide free legal services to individuals and families who meet certain requirements. In New York City, Housing Conservation Coordinators (https://www.hcc-nyc.org/); in Texas https://txtenants.org/; in California (https://www.lawhelpca.org/issues/housing/homeownership) provide these

services. You should contact these or similar organizations and ask if you can benefit from free legal services related to housing and if the organizations serve immigrants. Many assistance programs are available only to United States citizens, but regardless of your legal status, you should still check if you qualify for any such programs.

What Can You Do To Protect Your Property Against Trespassers?

If no one occupies your property, you must take steps to prevent trespassers and unwanted individuals from entering the property.

- If the property remains unoccupied, trespassers may claim that you abandoned your property and as a result, they may have a right to live on your property.

Preventing Trespassers

You should make sure that your property remains locked . It is a good idea to place locks on all of the doors and to place “No Trespassing” signs on your property. You may want to also install a security system that can alert you if someone enters your property while you are not there. If possible, it may also be a good idea to designate a person who you trust to manage or live on the property. Also consider informing neighbors to monitor the property.

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Checklist: Owned Real Property

Real property is generally governed by city, county and state law. Where possible, consult a lawyer for advice on the property laws that affect your property and what would be your individual best course of action.

- ☐ If you are a co-owner of real property, consider transferring your ownership interest to the other co-owner of the real property or granting them a limited power of attorney to act on your behalf.
- ☐ If there is a mortgage or deed of trust on the property, consult your lender before transferring any interest in your real property.
- ☐ Notify your lender if you intend to sell or transfer any interest in the real property.
- ☐ Coordinate with the co-owner of the property to maintain the real property and to make payments of any loan, mortgage or property taxes in your absence.
- ☐ Consider having someone you trust maintain the real property if there is no co-owner or co-owner isn't available.
- ☐ Consider granting limited power of attorney to someone who will remain in the U.S. to make payments of any loan, mortgage or property taxes in your absence.

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11. Cars, Car Loans, And Car Leases

If you are being deported, you can sell your car, give it up, or take it with you. It depends on whether you own your car, lease your car or if you own your car and have a car loan. This section provides suggestions to address the following issues:

What Can You Do With Your Car If You're Being Deported? ➤ What Can You Do If You Own Your Car Outright? ➤ What Can You Do If You Have a Car Loan? ➤ What Can You Do If You Lease Your Car? ➤ Selling Your Car ➤ Surrendering Your Car to a Lender ➤ Insurance and Registration ➤ Exporting Your Car ➤ Checklist: Cars, Car Loans, and Car Leases

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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What Can You Do With Your Car If You're Being Deported?

It depends on whether you own or lease your car. If you own your car, it also depends on whether or not you have a car loan.

What Can You Do If You Own Your Car?

If you own your car, you can sell it or export it. Exporting a car can be complicated, so it may be simpler to sell your car in the U.S. and buy a new car in your destination country. Please see below for more information about selling or exporting your car.

What Can You Do If You Have a Car Loan?

If you have a car loan, you should start by reviewing your loan documents. Depending on what they say, you may be able to:

- Pay off the loan and export your car;
- Sell your car and pay off the loan with proceeds;
- Sell your car to someone who is willing to assume the loan (lender will have to approve); or
- Surrender your car to the lender.

Please see below for more information on selling or exporting your car.

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What Can You Do If You Lease Your Car?

If you lease your car, you should start by reviewing your lease. Depending on what it says, you may be able to:

- Terminate and pay off the lease (and surrender the vehicle to the lease finance company);
- Transfer or sell the lease to someone else (e.g., using online or other services);
- Sell your car and pay off the lease (if your car is worth more than the total buyout for the car and all remaining lease payments, you can sell your car and pay off the lease at the same time.); or
- Buy your car and pay off the lease.

See below for more information on the above options.

Terminate and Pay off the Lease (and surrender the vehicle to the lease finance company)

- Call the lease finance company listed on your monthly statement and ask for the total amount to pay off and terminate the lease. You should also ask for the total amount if you want to sell the car and terminate the lease (see "Selling Your Car" section below).
- If you decide to pay the termination amount (without selling the car), then ask for instructions on where to bring the car.
- If you don't have enough money to pay the termination amount (and one of the other options below is not available), you will need to work out a payment plan with the lease finance company. Make sure that you have this in writing.
- You may be able to negotiate any penalties if you explain your situation to the leasing company.

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Transferring / Selling a Lease

- You may not transfer a lease without permission from the lease finance company. If you find someone who wants to take over your lease, you must get approval from and work directly with your lease finance company.
- There are online sites where people can post ads. These sites aren't regulated so you should be careful when using.

Sell the Car and Pay off the Lease

- See the "Selling Your Car" section below.

Buy the Car and Pay off the Lease

- If you want to purchase and keep your car, then call the finance company listed on your monthly statement and ask for the total amount to buy the car and terminate the lease. Coordinate payment and transfer of title with the finance company.
- If you do this, you will need to complete the transfer of title and registration into your name and also work through any export requirements as noted in this chapter.

If another person is obligated on the lease, you should tell that person about your situation. They will need to be part of any decision you make.

See online websites or other resources for more information on ending your lease early. While we do not endorse particular businesses, we believe it is important to point immigrants who may not have made similar transactions to examples of services. Some examples are:

- http://www.jdpower.com/cars/articles/tips-advice/how-end-your-lease-early
- https://www.moneyunder30.com/get-out-of-a-car-lease-early

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Selling Your Car

Before selling your car, find out how much your car is worth using the Kelley Blue Book (http://www.kbb.com) or another resource. If your car is leased, then you should call the finance company listed on your monthly statement and ask for the total amount to buy the car and terminate the lease. Decide the lowest price that you would accept for your car.

If you still owe money on the car, compare the value of your car to the amount left on your loan. If your car is worth more than the loan and you have enough money to pay off the loan, you can pay off the loan, then sell your car. If you do not have enough money to pay off the car loan before finding a buyer, you can use the buyer's payment to pay off the loan and keep the difference as profit. You will have to get permission from your lender(s) to make the sale in order to transfer clear title to the buyer. If the car is worth less than the loan, consider surrendering the car to the lender instead of selling it. In this case, you will still owe the lender any amount remaining on the loan unless you work out a deal with the lender. Make sure to receive a document evidencing all transactions and any new deal made with a lender.

You can sell your car to another person using online or paper classified advertisements, word-of-mouth, or other available services. You can also sell your car to the original dealer or another certified dealer who sells or leases the type of car you currently have. You may also sell your vehicle to a used-car dealership. In some cases, choosing to work with an experienced dealer can be easier.

If you lease your car, it may be easiest to sell your car to the original dealer or another certified dealer who leases the same brand of car. Specifically, you would:

- Call the lease finance company listed on your monthly statement and ask for the total amount to buy the car and terminate the lease (the "Buyout/Termination Amount").
- Go in person with your car to the original dealership where you leased the car or any other certified dealership which leases the same brand of car. Tell them you want to get out of your lease and ask if they would want to purchase the car for equal to or more than the Buyout/Termination Amount.
- If yes, then they can work directly with the lease finance company to purchase the car and pay off the lease.

- This can usually be done within 2-3 business days.
- If the purchase price is more than the Buyout/Termination Amount, the purchaser will give you the difference.

Before allowing a potential buyer to test drive the car, make sure that your insurance policy covers test drives.

Put the sale terms in writing and get the payment from the buyer in cash or a certified check to limit the chances of fraud before giving the keys or transferring the title to the buyer.

File the necessary forms for transferring title and for sales tax purposes.

If you don't have time to sell your car before you leave, you could give a limited Power of Attorney (POA) to a trusted friend and ask the friend to sell the car for you. You will have to give your friend the signed vehicle title to give to a buyer.

See these websites for more information on selling your car:

- https://www.kbb.com/car-advice/how-to-sell-a-car-10-steps-for-success
- https://www.carfax.com/guides/selling/private-party-sale
- https://www.edmunds.com/sell-car/10-steps-to-selling-your-car.html

Surrendering Your Car to a Lender

If you have a car loan, you can surrender your car to your lender (you will be liable for any deficiency unless you work out a deal with the lender). Check your loan documents for details. You may be able to negotiate any fees for defaulting on your car loan if you explain your situation to the lender.

Insurance and Registration

If you sell or surrender your car, you will need to cancel your car insurance and registration and take your license plates to the Department of Motor Vehicles. You may have to take the registration sticker and inspection sticker off the car too.

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Exporting Your Car

To export your car, you have to meet exportation requirements in the United States and importation requirements in your destination country.

U.S. Exportation Requirements

If you want to export your car, you'll have to hire a U.S. agent (a Freight Forwarder, Broker, etc.) to file export information with U.S. Customs on your behalf. This information includes the original Certificate of Title for your car or a Certified Copy of the Certificate of Title and two complete copies of the original Certificate of Title or the Certified Copy. Your agent will have to file this information at least three days before you plan to export your car.

If the title to your car shows that there is a lien on your car, you will have to show that the lien has been removed or provide a signed and dated writing from the lienholder (on their letterhead) which states:

(i) that the car may be exported,

(ii) the contact information of the lienholder, and

(iii) the Vehicle Identification Number (VIN). A lien is a legal document that permits the lender to repossess your car if you fail to make payments.

See online websites or other resources for more information on exporting your car. While we do not endorse particular businesses or services, we believe it is important to point immigrants who may not have made similar transactions to sources of information. Some examples are:

- Exporting a Vehicle | CBP

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Mexican Importation Requirements

Importing a car to Mexico is relatively complicated. The requirements depend on your car's age and Vehicle Identification Number (VIN). Consider hiring a Mexican Customs Broker Agency to import your car for you.

See online websites or other resources for more information on importing your car to Mexico. While we do not endorse particular businesses or services, we believe it is important to point people who may not have made similar transactions to sources of information. Some examples are:

- How to Bring a Foreign-Plated Car Into Mexico

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Checklist: Cars, Car Loans, and Car Leases

- ☐ Find out if you own your car, lease your car or if you own your car but have a car loan.
- ☐ If you own your car, you may sell it or export it. Exportation can be complicated, so it may be easier for you to sell your car and buy a new car in your destination country.
- ☐ If you lease your car, you can terminate and pay off your lease, surrender your car to the leasing company, sell the lease to someone else or sell your car and pay off the lease.
- ☐ If you own your car but have a car loan, you may pay off the loan and export your car to your destination country, surrender your car to the lender, sell your car and pay off the loan with the proceeds, or sell your car to someone who is willing to assume the loan (but the lender will have to approve).
- ☐ If you sell or surrender your car, cancel your car insurance and registration and take your license plates to the Department of Motor Vehicles.
- ☐ Whether you own or lease your car consider checking with your original car dealer or another certified car dealer to see what they can do.

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12. Ending a Residential Lease

Deportation can cause many concerns about living and rental situations. This section outlines the basic things to consider about your residential lease if you may be facing deportation.

The most important things to keep in mind are understanding your residential lease and speaking to your landlord.

Understanding a Residential Lease ➤ Terminating a Residential Lease ➤ Right to Enter ➤ Continuing a Lease ➤ Checklist: Residential Leases

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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Understanding a Residential Lease

The most important step in transitioning from or out of a residential lease agreement is understanding the lease terms and agreements. As a precaution, it is best if you learn about your lease terms and agreements before being detained or deported.

If the lease is a written lease, the terms of the lease govern termination and the recovery of personal property at the leased location.

If the lease is not in writing, then the state, county and city statutes will govern the landlord-tenant relationship.

If your lease is not in writing, you may want to consult with an attorney. There are many organizations that provide tenant-landlord legal advice. For example, you can:

- Reach out to local law schools and ask if they have free housing clinics; or
- Reach out to organizations such as the Housing Rights Center or the Legal Aid Society and ask where you can get free legal advice.

Remember, even if these organizations cannot help you themselves, they may be able to point you in the right direction. You do not have to try and understand everything on your own!

Terminating a Residential Lease

If you live alone, or if everyone in your household will be moving out, you will likely want to end your lease. Your written lease or local law will regulate how to properly end your lease. Most leases require that you give your landlord a minimum of 30 days' prior notice that you will be terminating your lease. This notice will likely need to be in writing. Depending on your arrangement, you may need to give your landlord more or less notice.

If the term of the lease has not run out or ended, it is possible that you will be responsible for finding a new tenant or paying the remainder owed on the leased term.

Make sure you discuss your situation with your landlord as early as possible.

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Be aware that if the tenant/renter does not give proper notice to the landlord regarding termination of the lease, and/or if an individual refuses to pay rent when it is next due, the landlord may take the following steps:

1. Demand payment from any tenant signer, co-signers or guarantors on the lease;
2. Start the eviction process by filing a request for payment and eviction with the local applicable court, which will include serving the renters with notice of a hearing, and the related court processes;
3. Eviction of the tenant/renter; and
4. Obtaining a judgement against the tenant/renter (and any guarantor not providing payments due) for rent and obligations past due, which can have a negative impact on the renter's, co-signer's, and guarantor's credit history and reporting.

If it is possible that you may not personally be available to make arrangements to terminate or revise your lease with your landlord, appoint a trusted legal representative to make these arrangements on your behalf.

Right to Enter

The circumstances and process by which you end your lease may determine your right to enter the property later to claim your belongings or retrieve mail. If you are providing notice to terminate the lease you should plan to have all items removed by the last day covered by your rent payment. If you are facing eviction due to non-payment of rent, be aware that written notices from your landlord or the courts may stipulate specific deadlines, and be sure to review such documents and notices carefully and seek legal help if needed.

If you do not remove your personal belongings within a reasonable time, you may owe the landlord for expenses associated with storing or disposing of that property. Do not assume that you will be allowed to enter the property after your lease is terminated.

Whenever possible, try to get all agreements with your landlord documented in writing.

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To avoid complications down the line, you should make arrangements for the safekeeping of your personal items. For example, you can arrange for a trusted person to have keys so someone can remove personal property within a reasonable amount of time, if you are detained or deported. Submit a change of address form with the post office as early as possible so that you can forward your mail – do not expect your landlord to hold or forward your mail for you.

Continuing a Lease

You may want to continue your lease, especially if you have family members or friends living in the residence who are staying in the U.S. In this scenario, there are a few options:

- **You can continue the original lease.** This often will require the landlord's consent because you will no longer occupy the space.
- **You can terminate the lease,** and the remaining occupants can start a new lease with the landlord's permission.
- **You can assign or sublet the lease.** Be aware that traditionally, when a lease is sublet the individual who originally signed the lease with the landlord directly will still be ultimately responsible for the payments. In addition, subletting is prohibited under many statutes and written leases, and can lead to eviction of the sublessor.
- **Planning ahead.** If it is possible that you may not personally be available to make arrangements to terminate or revise your lease with your landlord, appoint a trusted legal representative to make these arrangements on your behalf.

In all continuing lease scenarios, open and honest communication with the landlord is key.

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Checklist: Residential Leases

- ☐ Find out if you have a written lease. If so, your lease is governed by that document. If not, your lease is governed by the local law.
- ☐ Coordinate your going-forward plan relative to the lease with any co-signers on the lease, and any guarantors on the lease, as each of these parties will have obligations under the lease, as well as with any other persons living at the leased location.
- ☐ If it is possible that you may not personally be available to make arrangements to terminate or revise your lease with your landlord, appoint a trusted legal representative to make these arrangements on your behalf.
- ☐ If you want to terminate your lease, find out how much notice you are obligated to give your landlord, whether you will have to pay the remaining rent due under your lease, and how much time you will have to retrieve your personal belongings from the leased location.
- ☐ Reach out to local organizations and law schools if you need legal advice.
- ☐ Arrange for a trusted person to have keys to ensure that someone is able to remove your personal property if you are detained or deported. Remember that you have the right to enter your home to remove your property within a reasonable time, likely three days or less, after a lease is terminated. If you fail to remove property within a reasonable time you may owe the landlord for expenses associated with storing or disposing of the property.
- ☐ If you have friends or family members who wish to continue your lease you have three options:
  - ➔ Continue the original lease with the landlord's consent;
  - ➔ End the original lease and enter into a new lease with the landlord's consent; or

- ➔ "Succeed" the lease through an assignment or sublease from you. Check your lease terms regarding subleases and assignments.

☐ Update your mailing address with the US Postal Service from your old address to a new address.

- ➔ See, generally: https://moversguide.usps.com

☐ Contact any billing parties to update your mailing address, and contact utility services to end any applicable utility services if they are no longer needed at the leased location.

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13. Handling Valuables

This section describes how to approach issues related to your valuable personal property in the event of detention or deportation, including potential confiscation or destruction of property, options for handling property still in possession, factors to consider when choosing a path, and how to plan ahead.

This section targets Preparing Immigrants, but contains useful information for Detained and Supervised Immigrants as well. It addresses the following questions:

What is Valuable Personal Property? ➤ What Types of Valuable Personal Property Do You Have? ➤ Planning in Advance – What Are the Options? ➤ Other Factors to Consider ➤ What Happens to Your Property if You Are Detained? ➤ Avoiding or Mitigating the Risk of Loss ➤ How Can You Get Your Possessions or Property Back? ➤ Checklist for Handling Valuables

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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What Is Valuable Personal Property?

Any of your possessions that are worth money or that you would be disappointed to lose can be considered valuable personal property, and should be assessed in accordance with this chapter.

What Types of Valuable Personal Property Do You Have?

If you have valuables of any kind, it is important to decide how those valuables will be handled in the event that they are detained or deported. The first step in this process is to determine what types of valuable personal property you or your family have..

Common Kinds of Valuable Personal Property

- Electronics, machinery and appliances;
- Jewelry and clothing;
- Furniture and art;
- Identification (license, ID card, passport, birth certificate); or
- Family heirlooms, photographs and sentimental items.

Keep in mind that each type of property is different, and the factors to consider and the strategy for handling the valuables may differ as well.

Planning in Advance – What Are the Options?

Once you have a grasp on what valuable personal property you own, devise a plan to handle a detention or deportation scenario. Generally, you have four main options:

(1) sell the property;

(2) transfer the property to another person, either temporarily, or permanently as a gift;

(3) ship the property to their home country; or

(4) store the property in the U.S., either in a storage unit or safety deposit box. Keep in mind that depending on the type and size of the property, one or more of these options may not be available.

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Sale

1. ***Determine the price***

If you decide to sell the property, first you should determine the appropriate price for the property. If you know the original price of the property, you can use that as a starting point and discount for any damage to the property or time that has passed. Otherwise, if you have access to the internet, you should search for similar items of property (for example, on second-hand websites like ebay.com, craigslist.com, Facebook Marketplace, or other similar commerce sites; businesses shown as examples only with no endorsement) to determine how much to charge.

2. ***Determine how you will sell the property***

Next, you should sell the property through any number of methods. Some examples include

- a privately negotiated sale;
- through an online second-hand sale or auction website; or
- to a reputable buyer or broker of used goods (such as a pawn or consignment shop).

At completion of the sale, you should document the terms of the sale. A simple document containing the following information will be handy in case of future disputes regarding the sale:

(1) a description of the item;

(2) the date;

(3) the agreed upon price;

(4) the printed names and signatures of the buyer and the seller; and

(5) a quick statement that the buyer has had a chance to inspect the property and is satisfied with the condition, and/or that the property is being sold "as is" and with no warranties by the seller.

3. Consider how to accept payment

Form of payment is another important consideration. To protect against fraud, consider avoiding accepting personal checks. Personal checks may be written from a bank account that does not have enough money to cover the amount of the check. It is best to receive payment in cash, a bank certified check, or money order. Electronic payment applications (such as Venmo and Zelle) are also often quick and secure ways to receive payment, however you should consider whether you will have continued access to the application used once outside the United States, and ensure that you will have access to the financial infrastructure necessary to convert a digital cash payment into currency that is usable or that can be deposited into a bank account you will be able to continue to access.

Transfer

If you want to transfer the property to another person, you have two options – you can give the property to another person on a permanent basis as a gift, or you can transfer the property to another person temporarily, with the expectation that it will be returned upon request in the future.

If you seek to transfer the property to your minor child, you should consider transferring the property to another adult or setting up a formal transfer pursuant to certain statutes that allow assets and property to be held in an adult custodian's name for the benefit of a minor. This is discussed in more detail in Chapter 2, Assets and Benefits of Minor Children.

If participating in a temporary transfer, it is best to create a document reflecting the agreement between the parties (transferring only physical possession, not ownership, and only temporarily), signed and dated by all participants.

Storage

For small items like jewelry, identification and documents, you may want to store them in a safety deposit box at a reputable bank. The cost for a safety deposit box varies depending on size, and rent for such a space is charged annually. For larger items like furniture, art, or machinery, you should consider obtaining a storage unit.

Storage options make the most sense for immigrants who plan to return to the U.S. or who have family members or relatives who will use the items soon. It does not make sense to store items for long periods of time given the associated cost. Additionally,

before storing valuable property in a safety deposit box or storage unit, you should ensure they understand the terms of the agreement, in particular as it relates to duration, cost, method and frequency of payment, ability to authorize a third party to retrieve the property on your behalf, and consequences for failure to make payments under the agreement or to retrieve the property at the end of the agreement's term. For more information, see Chapter 4, Managing, Accessing and Closing a Bank Account – Safety Deposit Boxes.

Outsource

You can appoint an individual with "limited" or "special" power of attorney to take any of the actions described above. For more information, see Chapter 9, Powers of Attorney.

Other Factors to Consider

Deciding how to handle valuable personal property in the event of detention or deportation is a decision that cannot be made without careful consideration of your personal circumstance. Below are the sorts of things that you should consider:

Value vs. Cost

You should consider the value of the item in comparison to the cost of shipment or storage. For example, it would not be economical to store or ship a large item of little value, because cost of storage or shipment depends on size and weight of the item.

Availability

Consider shipping only items not available in your home country, rather than incurring the additional cost of shipment for items you could purchase again in your home country following deportation. Similarly, if the item is widely available in the U.S., it may make more sense to sell in the U.S., and then repurchase in your home country, rather than incur the interim cost of storage.

Financing

If you still owe money on an item, you should review all documents and loan agreement relating to the loan to be sure you understand the consequences of non-payment and your options for sale of the item or termination of the financing arrangement.

It may be necessary to repay the remaining amount owed on the item of property prior to sale, or there may be requirements associated with returning the property to the lender. You can contact the company that provided the financing if you have questions.

Tax Considerations

It is possible that the sale, purchase, or transfer of an item of personal property can result in tax liability or benefit. If you are dealing with a high-value item, consider consulting a tax professional.

Impact on Others

You should consider the impact on other individuals using the item of personal property when deciding whether to sell, store, transfer, or ship the property. For instance, if a relative or dependent lives in the home and uses the furniture or appliances, it may be most cost- and time-efficient to transfer the items to them rather than sell and replace the property.

Similarly, you should consider whether failure to pay money owed on an item of personal property could cause harm to family members that remain in the U.S. Careful review of the terms of any loan documents and agreements and conversations with any lenders or landlords should provide clarity on consequences of this nature.

Impact on Immigration Status

If removal proceedings are pending or anticipated, you should consider how your handling of property will affect such proceedings. Likewise, if you plan to return to the U.S., this weighs in favor of complying strictly with all regulations and acting fairly in the context of a sale.

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What Happens to Your Property if You Are Detained?

Confiscation or destruction of personal property is a risk if you are detained. It is common for people who are detained to have their belongings lost, destroyed, or stolen.

Even in the event that belongings are managed in accordance with proper protocols, the relevant government agencies (including U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the U.S. Marshals Service, and the Bureau of Prisons) all have different regulations regarding what belongings can follow a detainee along the chain of custody and how long personal possessions will be held for safekeeping.[8] Also, immigrants are often transferred between agencies, which increases the potential for lost or destroyed items.[9]

If you are carrying cash at the time that you are apprehended, that cash will be taken. Often, the cash is eventually returned in a form that may be unusable to you – either in the form of checks or money orders that cannot be cashed in your home country, or in the form of prepaid debit cards that may be difficult, confusing, expensive, or impossible to activate.

Avoiding or Mitigating the Risk of Loss

The best way to manage this risk is to know your rights and plan ahead.

Avoid Carrying Large Amounts of Cash

Aside from the obvious risk of loss, if you are deported with more than $10,000 in cash, you are required to file FinCEN Form 105 with the CBP.[10] Failure to report currency can result in a civil and even criminal charge and forfeiture of money in an amount to be determined by CBP or ICE officials. Additionally, immigration processing and detention facilities administered by ICE are directed to establish limits on whether, and if so, how much cash each detainee may keep in their personal possession while in detention. Any

[8] See U.S. Customs and Border Protection Directive: Short-Term Holding Facilities Handling, Storage, Transference, and/or Return of Detainee Personal Property (2024), available at: https://www.cbp.gov/sites/default/files/2024-08/cbp_directive_no._5240-010.pdf; See Inmate Personal Property, 28 CFR Part 553 Subpart B, available at: https://www.ecfr.gov/current/title-28/part-553/subpart-B; See U.S. CBP National Standards on Transport, Escort, Detention, and Search, available at: https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf; Additionally, see: https://www.americanimmigrationcouncil.org/research/deported-no-possessions

[9] Available at: https://www.vice.com/en_us/article/what-happens-to-your-stuff-when-you-get-deported

[10] Available at: https://www.fincen.gov/sites/default/files/shared/fin105_cmir.pdf

removal of cash from a detainee must be done in the presence of the detainee and at least two officers, and must be accompanied by an inventory and receipt. You should demand to receive a receipt documenting all funds confiscated while in detention and request return of all documented confiscated funds upon discharge.[11]

Make Arrangements for Handling of Valuables in Advance

Be sure you know where all your valuables are located, and keep a list of what valuables and property you have (in a secure place or on your phone or computer). Consider giving a trusted friend or family member, or someone with power of attorney, a copy of the list. A "special" or "limited" power of attorney will allow the agent to do specific acts listed; for example, to sell your couch or ship a box of jewelry to another country.

If you rent your home or apartment, review your lease for information on what the landlord can do if personal property is abandoned in the residence. It is best to arrange for a trusted person to have keys to ensure that someone can remove your personal property within a reasonable amount of time if you are detained or deported.

It may make sense to keep smaller valuable items in one or two places in the home, that way they are easily accessible for anyone handling personal property in the event of detention or deportation.

Know Your Rights

Property on your person

Once in custody, immigrants generally have 30 days to get their valuables back from CBP. Arrangements between the U.S. and Mexico provide that "all feasible steps" should be taken to return property to its owner when they are released. Despite lapses in procedure and performance, knowledge of the rules will allow you to advocate for yourself more effectively.

Property in your home

In general, tenants will not lose their property by failing to remove it after the termination of a lease. Tenants have the right to enter the premises to remove their property within a

[11] See current ICE Performance-Based National Detention Standards (2011) for funds and personal property, available at: https://www.ice.gov/doclib/detention-standards/2011/2-5.pdf; See current ICE National Detention Standards (NDS) for Non-Dedicated Facilities (2019) for funds and personal property, available at: https://www.ice.gov/doclib/dro/detention-standards/pdf/funds_and_personal_property.pdf; See current ICE Family Residential Standards (2020) for funds and personal property, available at: https://www.ice.gov/doclib/frs/2020/2.3_FundsPersonalProperty.pdf

reasonable time after a lease is terminated. Most often, tenants do not lose the right to their property even if they fail to remove it from the property within a reasonable time after the end of the lease; however, some locales hold that tenants may give up the right to recover their property by not removing it within a reasonable time.

How Can You Get Your Possessions or Property Back?

Make sure you know your options for retrieving your valuables if confiscated; that way, you can make an informed decision when confronted with a fast-moving situation.

By Mail

It may be advisable for you, if given the option, to mail certain personal property confiscated at the time they are taken into custody to a relative, friend, or attorney who can keep it in a safe place. Note, however, that you run the risk of being deported without those items, which will be especially problematic with respect to identification and money.

Pickup

If deported, CBP will not mail your leftover personal property anywhere. Leftover belongings can only be picked up by the owner or an individual with power of attorney.[12] It is wise to appoint a person with power of attorney in advance.

If you are unable to arrange for pickup of property, there are certain organizations that offer assistance in specific parts of the country. No More Deaths is one such organization.[13]

Petition

File a petition with Customs and Border Protection to get your possessions back. Recent changes require filing of the petition with CBP even if the confiscation took place through customs officials or through ICE officers.[14]

[12]Available at: https://www.vice.com/en_us/article/what-happens-to-your-stuff-when-you-get-deported
[13]Available at: https://nomoredeaths.org/en/
[14]Available at: https://ilw.com/articles/2010.0706-DuPont.shtm

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Theoretically, it should be possible to obtain the return of personal property and all or nearly all the funds seized by the government. It is crucial to a successful petition to show that the funds or assets were not used or obtained in the commission of a crime and that seizure of the funds would violate the excessive fines clause of the 8th Amendment to the U.S. Constitution.[15] Consult with an attorney regarding you petition.

[15]Available at: https://constitution.congress.gov/constitution/amendment-8

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Checklist: Handling Valuables

- ☐ Figure out what types of valuables you have, both in your home, car and on your person. This may include: electronics, jewelry, furniture, art, clothing, machinery, appliances, identification (license, ID card, passport, birth certificate), heirlooms, photographs or sentimental items.
- ☐ Understand that your property may be taken from you and destroyed.
  - ➔ Make arrangements in advance for the handling of valuables to minimize this risk.
  - ➔ Know your rights regarding property and cash on your person if you are detained.
  - ➔ If your belongings or cash are taken, you may petition to get them back by filing with Customs and Border Protection.
- ☐ Avoid carrying a lot of cash.
  - ➔ If you plan to carry more than $10,000 out of the U.S., you are required to report it.
  - ➔ Failure to report can result in civil or criminal penalty, or you could have the money taken away.
- ☐ Decide how you want your valuables handled if you are detained or deported.
  - ➔ Explore the following paths: shipping valuables to your home country; selling your valuables; transferring valuables (either by gift or on a temporary basis); storing valuables (in a safety deposit box or storage unit, depending on size).
  - ➔ Familiarize yourself with the basic process for each option, including the consequences that may result, and follow up that may be necessary.
  - ➔ Let your family or household members know about your plan. Provide clear, written instructions.
  - ➔ Consider appointing a person with limited power of attorney to implement your plan.

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☐ Know the pros and cons of each option, and how your choice will impact you and your family.

- Factors to keep in mind: value of item vs. cost of storage; availability of the item in home country; reliance of others remaining in the U.S. for the item; sentimental value of the item; tax consequences of transfer or sale; whether you still owe money on the item, including under any loans agreements or other agreements; whether you intend to return to the U.S., if deported.
- Talk to your relatives and, if possible, your attorney about these issues.
- The best strategy will depend on the type of item, as well as your personal circumstances.

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14. Taking Money Across the Border

Taking cash or things like cash (such as checks, money orders, etc.) across the border presents both legal and practical concerns. This section discusses these concerns, which are relevant to all people leaving the United States, both in the deportation context and otherwise. The section will answer these questions:

What Legal Obligations Do You Have When Taking Cash or Things Like Cash When Leaving the United States? ➤ What Practical Issues Should You Consider if You Are Facing Deportation? ➤ How Do You Find and Receive Your Unclaimed Assets?

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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What Legal Obligations Do You Have When Taking Cash or Things Like Cash When Leaving the United States?

There is no limit to how much cash you may take when leaving the country. However, if you take more than $10,000 in (i) cash, (ii) traveler's checks, (iii) checks that have not been made out to a specific person or (iv) money orders across the border at one time, he or she must fill out a form called "Report of International Transportation of Currency or Monetary Instruments"or FinCEN Form 105. This form may be obtained from a customs officer at the point of departure from the U.S. or online at FinCEN Form 105 | CMIR, U.S. Customs and Border Protection. If you do not make this declaration, the currency may be seized.

You do not need to report checks or money orders made payable to you if they have not been endorsed or do not include any restrictive endorsements. Although these checks are not required to be reported, you should consider reporting the checks to avoid any delays in crossing the border.

Is There a Cost to Filing This Form?

No. There is no cost for filing FinCen Form 105. The form may be obtained for free from the customs officers or customs website.

Is There a Duty or Tax on the Money Reported?

No. Customs does not charge taxes on cash or things like cash that must be reported in FinCEN Form 105.

What May Happen if the Cash or Money is Not Reported or Not Properly Reported?

If you do not report amounts greater than $10,000, then customs may seize the money. If the money is seized by customs, there is a risk that the money will not be returned to you. In some cases, especially if there is related criminal activity, there may be criminal penalties for failing to report the money.

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What Practical Issues Should You Consider if You Are Facing Deportation?

There are risks associated with transporting large amounts of cash or things like cash across the border or generally when leaving the country. Cash and checks are generally not retrievable if lost or stolen while traveling.

If you are facing deportation, you should consider carefully whether you are willing to take this risk. There may be other options for removing cash assets from the United States upon deportation.

For Preparing and Supervised Immigrants

Preparing and Supervised Immigrants who are able to go to the bank in person may request a bank draft made out to "payee." This is slightly safer than cash because the draft can be cancelled if lost or stolen. But the lost or stolen draft must be cancelled before another person finds the draft and cashes it, and it may be difficult to cancel the draft quickly if you have already been deported due to business hours, time differences, and other logistical barriers. Also, some banks charge fees to issue and cancel a bank draft, and banks in your home country may charge a fee to cash the draft.

For Detained Immigrants

If you have been detained and will not be released prior to deportation, it may be impossible to go to the bank in person. However, you can take certain steps so that you will have the cash when they arrive in their home country.

Withdrawing Cash While In Detention

If you are in detention and have cash in a bank account, you can withdraw that cash using a variety of methods. One option is for you to give your bank card to a trusted friend or family member and ask them to withdraw the cash. Later, this person can send the money to you via Western Union (or another similar service) once you reach your home country. See Chapter 15 on Remittance Transfers for more. Keep in mind that the individual withdrawing the money will need to know your PIN number to get the cash and will have access to all of your money.

Another option is to have the bank card itself mailed to a trusted friend or family member in your home country. You can then retrieve the card and withdraw the cash upon arrival.

Third, if you have a chance to set up a Power of Attorney, your agent can authorize a bank draft or wire transfer of the money to your account in your home country (assuming you have a bank account in your home country) or, alternatively, the agent can send a check or money order directly to you in your home country.

Withdrawing Cash Outside of the United States

As discussed above, a United States bank account is accessible in many foreign countries through ATMs. Whether this is a useful or reliable method for extracting cash will depend on your individual circumstance, including whether and to what extent ATMs are available. Note that this option also requires that you keep the United States bank account open after deportation. Nevertheless, in certain situations, this option may be best.

How Do You Find and Receive Your Unclaimed Assets?

You may have property in an account that has been unclaimed of which you have no knowledge. These assets may have come from various sources, and many times people are unaware of their existence. You can reclaim this property by contacting the unclaimed property office in your state, or you can go to https://www.usa.gov/unclaimed-money or https://www.unclaimed.org/ (sponsored by the National Association of Unclaimed Property Administrators) for instructions on doing a more general search that covers more than one jurisdiction.

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15. Remittance Transfer Consumer Rights

United States consumer protection law protects individuals who send remittance transfers from the United States to recipients in another country. This section discusses the details and applicability of these protections. This section answers the following questions:

What Remittance Transfers are Protected? ➤ What Protections Apply to Remittance Transfers? ➤ What if You Want to Cancel Your Remittance Transfer? ➤ What if There is a Problem with Your Remittance Transfer? ➤ What Else Should You Consider When Sending a Remittance Transfer?

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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What Remittance Transfers Are Protected?

A remittance is money sent by an individual in the United States to recipients abroad.

An individual who sends a remittance of $15 or more is protected by certain federal disclosure requirements imposed on most businesses that provide the remittance transfer service.

Not all businesses that provide remittance transfer services are covered by the law. Only companies that provide more than 500 remittance transfers per year ("remittance transfer providers") are required to comply with the law. Remittance transfer providers generally include money transmitter companies (such as Western Union), banks and credit unions, and many other types of financial services companies.

Remittance transfer providers that send remittances on behalf of customers are required to be regulated entities, either because they are banking organizations, or they are nonbank businesses that have state licenses as "money transmitters." Almost all states now license and regulate non bank money transmitters. For your protection, you should use only a regulated bank or a licensed money transmitter to send your remittance. In either case, you should research the remittance transfer provider before you send any money using them.

What Protections Apply to Remittance Transfers?

Under federal law, remittance transfer providers are required to provide clear and readily understandable written disclosures of certain information concerning your remittance transfer.

Before you pay to send a remittance, the remittance transfer provider must disclose to you the following information:

- The applicable exchange rate;
- Any fees and taxes that the remittance transfer provider collects from you;
- Any fees charged by any third parties involved in the transfer process, including the remittance transfer provider's agents or other companies involved in the transfer process;

- The total amount of money expected to be delivered (not including foreign taxes or certain fees charged to the recipient of the remittance); and
- A statement that additional foreign taxes and fees may apply.

Remittance transfer providers must also provide the following information after you pay to send the remittance:

- The date that the money will be available to the recipient;
- Instructions on your right to cancel the remittance;
- What to do in case there is an error with your remittance; and
- How to submit a complaint about your remittance.

In some cases, the remittance transfer provider may provide the above information in a single, combined disclosure. If they do so, all of the information must be provided to you before you agree to make the transfer, and the remittance transfer provider must also give you proof when the payment is made to the person you are sending the money to.

These disclosures must at least be provided in English. However, federal law also generally requires the remittance transfer provider to use your language on receipts and other disclosures if it uses your language in its advertising, sales, or marketing materials where you made the transfer, or if it made the transfer in your language.

What If You Want to Cancel Your Remittance Transfer?

After paying for a remittance, you have 30 minutes to cancel the transaction at no charge so long as your request has enough information so the remittance transfer provider can identify the transaction you want to cancel, and so long as the person to whom you sent the money hasn't received it yet.

After the request to cancel the transfer, the remittance transfer provider has three business days to refund your remittance and any fees or taxes if allowed by law.

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What If There is a Problem with Your Remittance Transfer?

Federal rules also protect you if the remittance transfer provider makes a mistake. Examples of mistakes include payment of the wrong amount, failure to deliver funds on time or to the right person, and failure to deliver the funds at all.

If you think there was a mistake or error with your remittance transfer, you should immediately contact the remittance transfer provider. You have 180 days from the date the money was supposed to be available to the person to whom you sent the money to notify the provider of the error. The remittance transfer provider then has 90 days from the date of your complaint to investigate your concern and determine if an error did in fact occur. If the remittance transfer provider investigates and determines an error has not occurred, the provider must tell you why.

If the remittance transfer provider determines that a certain type of error did occur, then the remittance transfer provider must either refund your money or re-send the remittance. If you do not receive a satisfactory response from the provider, you can submit a complaint to the United States' Consumer Financial Protection Bureau (CFPB). Complaints may be submitted online at: https://www.consumerfinance.gov/complaint/.

What Else Should You Consider When Sending a Remittance Transfer?

Ensure that you avoid common scams and fraud

Phishing Scams: Scammers will pose as legitimate companies or government agencies and request that you send them funds.

Fake Emergency Requests: Fraudsters may impersonate your family members and ask for urgent help.

The CFPB provides resources at the following link to help you identify and prevent common scams and fraud: https://www.consumerfinance.gov/consumer-tools/fraud/.

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Minimizing Fees and Costs

Compare Providers & Check Official Resources: Exchange rates may vary between providers, but there are tools to help you figure out whether you are getting a good deal. For example, online comparison tools like https://www.remitfinder.com/ show you fees and rates from various services before you decide which remittance transfer provider to use. You should also review official resources published by the country you are sending money before agreeing to a price. For example, El Banco de México publishes a resource where you can find an average of price quotes from foreign exchange providers at any given time: https://www.banxico.org.mx/tipcamb/main.do?page=tip&idioma=en.

Avoid Hidden Costs: Before you send a transfer, ask the remittance transfer provider if there are any additional fees, like cash pick-up charges. (Although, these should be disclosed up front).

Additional Tips for Safe and Informed Use

Double-Check Recipient Details: Errors in recipient names or account numbers can delay or cancel the transfer.

Understand Refund Policies: Ask about any refund options beyond those required by federal law before sending money.

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16. Collecting Unpaid Wages

Immigrants in the United States, both with and without work authorization, are legally entitled to overtime pay and the minimum wage. Despite these rights, immigrants working in the United States must often respond to employers' violations of labor law. In the face of deportation, you may need to take steps to recover your last paycheck. Often, simply sending an updated address to an employer will resolve this issue, but sometimes you may need to take further steps to protect your rights to a last paycheck. This section provides concrete advice for recovering a final paycheck during and after deportation. The section will answer these questions:

What Are Your Rights to Wages for Work You Perform? ➤ How Long Does an Employer Have to Pay the Last Paycheck? ➤ How Can You Get Your Last Paycheck if You Are Detained or Deported? ➤ What if the Employer Does Not Pay the Last Paycheck? ➤ What if There are Other Wage Problems Beyond the Last Paycheck? ➤ Sample Letter : Designating Method of Receiving Last Paycheck ➤ Sample Letter: Demand Letter for Wages Owed

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What Are Your Rights to Wages for Work You Perform?

As an employee in the United States, you have the right to be paid for the work that you have done regardless of your legal status. An employer cannot refuse to pay wages for work performed simply because an employee does not have a work permit or a social security number.

You also have the right to be paid for the work that you have done regardless of whether you have signed an employment contract with your employer because such rights are provided under federal and state wage and hour laws. If you have signed an employment contract with your employment, such contact may define the underlying wages to which you are entitled.

How Long Does an Employer Have to Pay the Last Check?

The amount of time within which an employer must pay a last paycheck is established by state laws and varies from state to state. The amount of time also depends on whether an employee is discharged (is fired or laid off) or leaves employment for another reason (such as quitting, detention or deportation). If an employee is discharged, most states require the employer to pay the last paycheck immediately or within a few days of discharge. In Texas, for example, an employer must pay a discharged employee by the sixth day after discharge. California requires an employer to pay a discharged employee immediately upon discharge. New York requires that a discharged employee be paid on the next regular payday.

If an employee leaves employment for another reason, such as detention or deportation, most states, including Texas and New York, require the employer to pay the last paycheck on the next regularly scheduled payday. California requires an employer to pay within 72 hours in this situation unless the employee has given 72 hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. New York and California laws also specifically provide that if requested by the employee, such wages shall be paid by mail to the designated address.

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A list of state final pay laws can be found at http://smallbusiness.findlaw.com/employment-law-and-human-resources/final-paycheck-laws-by-state.html. Please verify any information posted on the Web and consult a local lawyer with any legal questions.

How Can You Get Your Last Paycheck If You Are Detained or Deported?

If you have direct deposit set up, all payments should proceed as usual, as the detention or deportation would not affect the direct deposit process.

If you do not have direct deposit set up, most often, simply informing your employer of a change of address will be sufficient to receive a last paycheck. In addition to requesting the last paycheck be sent to the new address, if you are detained or deported, you can ask the employer to send the last paycheck to another person of your choice. You must make this designation in writing. There is a sample letter at the end of this chapter.

If you are detained or deported and you are unable to contact the employer personally, you may ask your emergency contact to reach out to the employer to provide information about the detention and request details regarding the final paycheck. An employee who anticipates the possibility of detention might consider proactively informing their employer and authorizing a trusted individual or individuals to manage employment-related communications on their behalf.

What If the Employer Does Not Pay the Last Paycheck?

If any employer does not pay the last paycheck, you may decide to send a letter demanding payment. There is a sample letter at the end of this chapter.

In addition to the demand letter, you may decide to make a complaint with the U.S. Department of Labor if your work affects interstate commerce (most work does). Complaints should be made to the nearest District Office of the U.S. Wage and Hour Division of the Department of Labor. A directory of Wage and Hour District Offices can be

found on the Department of Labor website at http://www.dol.gov/dol/location.htm. The Wage and Hour Division's toll-free help line can be reached at 1-866-487-9243.

You may also decide to file complaints with your state government. A list of state labor offices can be found on the Department of Labor website at https://www.dol.gov/whd/contacts/state_of.htm. There are often long delays in investigations by state labor offices.

The Consulado de Mexico in the area where the work was performed or where you lived in the United States may also be able to help.

Many nonprofit organizations provide support for immigrant workers.

Resources include:

- National Immigration Law Center: https://www.nilc.org
- National Employment Law Project: http://www.nelp.org
- Equal Justice Center: http://www.equaljusticecenter.org
- Texas RioGrande Legal Aid: http://www.trla.org

For Deported Immigrants in Mexico

Deported Mexican Immigrants can receive support for wage violations from the Centro de los Derechos del Migrante (http://www.cdmigrante.org/; toll-free from the United States at 1-855-234-9699 or toll free from Mexico at 01-800-590-1773) and Justice in Motion (https://www.justiceinmotion.org).

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What If There Are Other Wage Problems Beyond the Last Paycheck?

Many immigrants experience violation of their employment rights beyond nonpayment of the last paycheck. A complaint made to the U.S. Department of Labor or state government agencies can also include complaints about other labor law violations, including unpaid overtime, workers' compensation abuses and minimum wage violations.

Many of the groups listed above under "What If the Employer Does Not Pay the Last Paycheck?" can also assist in addressing other labor law violations.

Note: It is illegal for an employer to retaliate against an immigrant employee for demanding his or her rights.

Retaliation occurs when an employer fires an employee or takes any other type of adverse action against an employee for engaging in protected activity, including:

- inquiring about their pay, hours of work or other rights;
- asserting their worker rights;
- filing a complaint about their worker rights or
- cooperating in an investigation by the U.S. Wage and Hour Division of the Department of Labor.

Your employer cannot terminate your employment or take other adverse action against you for exercising your rights. If an employer retaliates against you, you may make a complaint with the U.S. Wage and Hour Division of the Department of Labor. Complaints should be made to the nearest District Office of the U.S. Wage and Hour Division of the Department of Labor. A directory of Wage and Hour District Offices can be found on the Department of Labor website at http://www.dol.gov/dol/location.htm. The Wage and Hour Division's toll-free help line can be reached at 1-866-487-9243.

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Sample Letter: Designating Method of Receiving Last Paycheck

Note: This sample letter conforms to Texas law. Check your state's laws to determine your employer's obligations to deliver paychecks to employees in the manners listed in this letter.

[Employer Name
Employer Address
City, State, Zip code]

[Date]

Dear [Employer],

Please deliver all of the remaining wages that I am owed to the following address:

[Worker's Name]
Care of [Relative's or Friend's Name
Address
City, State, Zip code]

--OR--

I hereby designate [Name of Relative or Friend] to receive all of the remaining wages that I am owed. Please deliver my wages to [Designee] in person at my regular place of work during working hours, no later than the next regularly scheduled payday.

I would also remind you that if an employee is discharged or leaves employment for another reason, the employee has a right to fair wages for work performed and the employer must pay the last paycheck no later than provided by applicable state law.[16]

Thank you for your assistance.
Sincerely,
[Signature
Employee Name]

[16] Most states require the employer to pay the last paycheck on the next regularly scheduled payday. Check your state's laws to determine your rights in your specific situation. A list of state final pay laws can be found at http://smallbusiness.findlaw.com/employment-employer/employment-employer-ending/employment-employer-ending-paycheck-final.html. Please verify any information posted on the Web and consult a local lawyer with any legal questions.

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Sample Letter: Demand Letter for Wages Owed

[Employer Name
Employer Address
City, State, Zip Code]

[Date]

Dear [Employer],

My name is [Employee's name] and I was employed by you from approximately [date] until [date]. I am owed [$ amount] for [type of work, i.e. – gardening, landscaping, hauling] work I performed for you at [location] from [date] until [date]. Due to your failure to pay me for the work that I performed for you, you are in breach of contract, and could be in violation of federal and state minimum wage laws.

I would prefer to resolve this dispute through friendly negotiation. To resolve this matter immediately, please send a check for money order for [$ amount] made payable to [Employee's Name] to: [Employee's Address]. If you have questions or would like to discuss this matter, please contact me immediately at: [Phone Number and/or Email Address].

If the [$ amount] owed for my work is not paid in full before [date], an administrative complaint and/or lawsuit may be filed and you could become liable for additional damages available under law and costs of suit.

I would also remind you that it is against the law to retaliate against me for assertion of my claims and any retaliatory action could result in the assessment of additional damages.

Sincerely,
[Signature
Employee Name]

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17. Social Security

Note: This section does not apply to immigrants who are undocumented.

For immigrants who are noncitizens, whether Preparing Immigrants or Supervised Immigrants in the face of Voluntary Departure, there are steps you can take to determine your eligibility for U.S. Social Security Benefits. The section is only relevant to a small subset of immigrants:either Insured Workers or dependents or survivors of Insured Workers. It addresses both the legal and practical considerations. “Insured Workers” are any individual immigrants who have a Social Security Number (SSN) and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances. This section will answer these questions:

Understanding Social Security – Basic Definitions ➤ Which Immigrants Are Eligible to Receive Social Security Benefits? ➤ What Should You Do if You Are Already Receiving Social Security Benefits Payments? ➤ Are Immigrants Facing Deportation Eligible for Social Security Benefits? ➤ My Social Security Benefits Have Been Suspended Since I Have Been in Detention, What Should I Do? ➤ What Happens to Social Security Benefits If You Are Deported? ➤ What Happens to Social Security Benefits If the Insured Worker is Deported but You Remain in the U.S.? ➤ What Should Preparing and Supervised Immigrants Do Before Leaving the U.S.? ➤ Checklist: Social Security

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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Understanding Social Security – Basic Definitions

"Dependents and Survivors Benefits" include: (i) Wife's / Husband's Insurance Benefits; (ii) Child's Insurance Benefits; (iii) Widow's / Widower's Insurance Benefits; (iv) Mother's and Father's Insurance Benefits; (v) Parent's Insurance Benefits; and (vi) Lump-Sum Death Payments.

"Insured Workers" are any individual immigrants who have a SSN and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances. Undocumented immigrants do not fall under this category.

"Preparing Immigrants" are immigrants who are in the process of immigrating to the U.S. and obtaining lawful immigrant status.

"Retirement Benefits" are Old-Age Insurance Benefits.

"Social Security Benefits" are the following U.S. Social Security Benefits: Retirement Benefits, Dependent and Survivor Benefits, Social Security Disability Benefits ("SSD Benefits"), or Supplemental Security Income Benefits ("SSI Benefits").

"SSA" is the abbreviation for the Social Security Administration.

"SSD Benefits" are Social Security Disability Benefits. The Social Security disability insurance program is designed to help people who can't work because they have a medical condition that's expected to last at least 1 year or result in death.

"SSI Benefits" are Supplemental Security Income Benefits. A federal income supplement program designed to help aged, blind, and persons with disabilities who have little or no income. Supplemental Security Income Benefits can never be received by dependents

."**SSN"** is the abbreviation for Social Security Number.

"Supervised Immigrants" are immigrants that are awaiting a court hearing or final deportation order. They are not detained and are allowed to walk free, live, and work in the U.S. under certain conditions.

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"Voluntary Departure" is an option that may be granted by either the Department of Homeland Security or an immigration court judge to immigrants facing deportation, often during removal proceedings, who meet the following requirements:

> *(i) Presence in the U.S. for at least 1 year immediately prior to the date notice to appear was served;*
>
> *(ii) Person of good moral character for at least 5 years immediately preceding application for voluntary departure;*
>
> *(iii) Not accused of an aggravated felony; and*
>
> *(iv) Not deportable for public safety or national security reasons. Immigrants granted Voluntary Departure are not deemed "deported" or "removed" and may be able to receive Retirement Benefits and SSD Benefits once back in Mexico.*

"Voluntary Return" is a type of departure that only takes place at the border and can only be granted by U.S. Customs and Border Protection officers through the completion of Form I-826. It is less formal than a voluntary departure, and occurs when an individual is detained at the border and offered a chance to "turn around" without a hearing.

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Which Noncitizens Are Eligible to Receive Social Security Benefits?

Note: Undocumented immigrants are not eligible to receive Social Security benefits either directly as a worker or as a dependent or survivor. The information below only applies to immigrants who are lawfully present in the U.S.

Insured Workers

Insured Workers are any individual immigrants who are authorized to work in the U.S. and therefore have a Social Security Number and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances.

If you are an Insured Worker, to be eligible to receive Social Security Benefits you must meet the following criteria:

- You can receive Retirement Benefits if you have worked and paid Social Security taxes for at least 10 years and have reached retirement age (at least 62 or between the full retirement ages of 66 and 67);
- You can receive Social Security Disability (SSD) Benefits if you have a disability, are not able to work, and typically worked at least 5 of the last 10 years;
    - If you are under the age of 24, you may be able to receive SSD Benefits with fewer years of work.

Additionally, you can receive Supplemental Security Income (SSI) Benefits if you meet the criteria to be considered a "qualified alien," have limited income and resources, and are either aged 65 or older, blind or have disabilities. You can learn more about SSI benefits for noncitizens and "qualified alien" requirements on the SSA website: https://www.ssa.gov/ssi/spotlights/spot-non-citizens.htm.

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Family Benefits & Dependents

If you are an Insured Worker, your dependents, for example your spouse or child, must meet the following criteria to be eligible to receive Social Security Benefits:

- Your spouse (including former) is age 62 or older;
- Your spouse is taking care of a child under 15 or a child with disabilities (Spouses who have never worked or have low earning get up to half of a retired worker's full benefit);
- Some valid non-marital legal relationships may be eligible;
- Children are eligible if they are unmarried, 17 years or under or ages 18-19 and in school full time who have not graduated high school; or
- Any child with a disability that developed at age 21 or younger is eligible.

Survivors

If you are a survivor of an Insured Worker, to be eligible to receive Social Security Benefits, you must meet the following criteria:

- If you are a surviving spouse, you are age 60 or older (or age 50-59 if with disability), you were married for at least 9 months before their death, and you did not remarry before age 60 (or age 50, if with disability);
- If the Insured Worker was your former spouse before their death, you must have been married for at least 10 years;
- Some valid non-marital legal relationships may be eligible;
- Children are eligible if they are 17 years or under or ages 18-19 and in school full time who have not graduated high school; or
- Any surviving children with a disability that developed at age 21 or younger.

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What Should You Do if You are Already Receiving Social Security Benefit Payments?

If you are an Insured Worker planning to stay in the U.S.

- Continue contributing to the Social Security Administration (SSA).
- Check with the SSA to see if you or any of your family members are eligible to apply for Social Security Benefits by answering a few questions on the SSA website at https://www.ssa.gov/prepare/check-eligibility-for-benefits. Have Social Security Numbers (SSNs) and birth certificates readily available.
- Inform your family members that they may be entitled to Dependent and Survivors Benefits if you pass away and confirm that they know how to apply for these benefits at https://www.ssa.gov/apply.

If you are an Insured Worker Considering a Voluntary Departure to Your Home Country

(Note: This is not the same as a grant of Voluntary Return which occurs only when someone is detained at the border and offered the chance to "turn around" by U.S. Customs & Border Patrol officers.)

You may continue receiving Social Security Benefits payments while you are outside the U.S. depending on the destination country.[17]

- Confirm with the SSA that payments can be sent to your destination country.
- Report any change of address promptly to avoid lost or delayed payments and mail. This includes:
    - Your new country, home address, and ZIP or postal code.
    - The names of all family members moving to the new address.
- If your destination country is eligible, once you are outside the U.S. you must:
    - Complete an annual questionnaire sent by the SSA between May and June; and

[17] For more information, see: https://www.ssa.gov/international/payments.html

- Report any changes such as:
  - Address changes.
  - Employment status.
  - Improvement in disability.
  - Marriage, divorce, annulment, or adoption.
  - A child leaving the care of a spouse.
  - If a child nearing age 18 is a full-time student or disabled.
  - Death.
  - Inability to manage funds.
  - Deportation or removal from the U.S.
  - Changes in parental circumstances.
  - Eligibility for a pension from work.

→ Consider signing up for direct deposit to avoid problems with lost checks.

Note: SSI Benefits can never be received if you are outside of the U.S. for more than 1 month.

If You Are a Dependent or Survivor Considering a Voluntary Departure to Your Home Country

You may continue receiving Social Security Benefits payments while outside the U.S. depending on your destination country. If the country is eligible, you must meet the following requirements to continue receiving benefits:

→ **Residency Requirement:** Show that you lived in the U.S. for at least five years.

→ **Family Relationship Requirement:** During those five years, the family relationship on which the benefits are based must have continued to exist.

Exception: If your entitlement is based on a worker who died during U.S. military service or as a result of a service-connected disease or injury.

Note: These requirements are automatically met for a child who has not lived in the U.S. for 5 years if the Insured Worker and other parent meet both requirements. However, Social Security Benefits will not be paid to a child that is adopted outside of the U.S. while they are residing outside of the U.S., even if they meet the residency requirement.

→ Complete the SSA's annual questionnaire and be sure to notify the SSA of any changes, as outlined above to stay in compliance.

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Are Immigrants Facing Deportation Eligible for Social Security Benefits?

If you are an immigrant who has qualified for Social Security Benefits in the past, but have since had your legal status revoked and face deportation, you may be eligible to make claims for Social Security Benefits only if you meet the following criteria:

- Lawfully admitted for permanent residence; and
- Granted non-citizen classification within the last 7 years through a withholding of deportation or removal.

If you are detained and are already receiving Social Security Benefits, the government may suspend your Social Security Benefits while you are in detention. Nevertheless, you may appeal a decision by the SSA to suspend your Social Security Benefits while you are in immigration detention. While you are in detention you should take the following steps:

1. Designate a trusted person to make copies of all letters you receive from the SSA.
2. Create a log of every communication with the SSA, the date of the communication, the content of it, and the follow up steps the SSA or you will make.
3. Add copies of your checks from the SSA to the log. Also, watch your bank account (or have the person you designated do it) if you are receiving direct deposit.
4. If the SSA sends a letter telling you that your Social Security Benefits have been suspended because you are in detention, you should be prepared to appeal. You will then follow the steps outlined below.

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My Social Security Benefits Have Been Suspended Since I Have Been in Detention, What Should I Do?

If the SSA sends a letter telling you that your Social Security Benefits have been suspended because you are in detention, you should be prepared to appeal. You should follow the steps outlined below:

1. The first step in the appeal process is a request for reconsideration. The request should be made in writing within 60 days of receipt of the original letter from the SSA suspending your Social Security Benefits. Try to have someone outside (not in detention) send it in, since mail in detention facilities can be unreliable.
2. You may fill out Form SSA-561 at https://www.ssa.gov/forms/ssa-561.html, which must include:
    - the name of the wage earner (you);
    - the Social Security Number of the wage earner (your SSN);
    - the type of decision on which you wish reconsideration (e.g., suspension of retirement benefits); and
    - why you disagree with the determination.
3. If your request for reconsideration has been denied, the next step is to request a hearing in front of an administrative judge.
4. The next step is to request a review of the decision by the Appeals Council.
5. The next step after that would be to request a hearing in the federal District Court.

At these stages, you will have to proceed "pro se" (on your own without a lawyer) unless you can afford a lawyer or can obtain the services of a free legal services agency. There is no filing fee at the administrative level. There is a filing fee at the District Court level, but you can file "in forma pauperis," which means the court will waive the filing fee.

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What Happens to Social Security Benefits If You Are Deported?

If You Are an Insured Worker and Are Deported

If you are a non-U.S. citizen Insured Worker, you cannot receive any Social Security Benefits for any month after the SSA receives notice of your deportation from the Secretary of the Department of Homeland Security or the Attorney General.

Exception: If you are later lawfully readmitted to the U.S. for permanent residence after being deported, any unpaid Social Security Benefits may become payable upon your readmission.

If You Are a Dependent Who Is Deported and the Insured Worker Is Not

If you are a dependent (such as a child or spouse) and are deported, but the Insured Worker is not deported, the Insured Worker may continue to receive Social Security benefits on your behalf. However, you will not receive these benefits directly.

Exception: If the Insured Worker is a non-citizen and leaves the U.S. for any part of a month, they will not receive Social Security benefits for that month.

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What Happens to Social Security Benefits If the Insured Worker Is Deported but You Remain in the U.S.?

If You Are a Dependent of the Deported Insured Worker:

If you are a dependent and the Insured Worker is deported but you remain in the U.S., you may continue receiving Retirement Benefits and SSD Benefits only if:

- You are a U.S. citizen; or
- You were lawfully present in the U.S. for the entire month.

However, if you are a dependent and a non-U.S. citizen, you are not entitled to receive any Social Security Benefits during any period where you are not present in the U.S.

If You Are a Survivor of the Insured Worker:

If you are a survivor and the Insured Worker was deported prior to their death but you remained in the U.S., you may continue receiving Retirement Benefits and SSD Benefits only if:

- You are a U.S. citizen; or
- You were lawfully present in the U.S. for the entire month.

If the Insured Worker died during or after the month the SSA receives notice of their deportation, you cannot receive a standard lump-sum death payment based on the Insured Worker's earnings unless the Insured Worker was lawfully readmitted for permanent residence after deportation or removal, but before death.

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What Should Preparing and Supervised Immigrants Do Before Leaving the U.S.?

If you are an Insured Worker with dependents, including both Preparing Immigrants and Supervised Immigrants, and you face the possibility of future removal from the U.S., you should take measures to obtain U.S. citizenship for your dependents.

- If your dependents cannot obtain U.S. citizenship, they should understand that if they leave the U.S. for any period after you are deported, they will waive their rights to Social Security Benefits while outside the country.

If you are an Insured Worker and your dependents are deported but you are not, you should arrange for the means to wire or otherwise transfer the benefits to your dependent to their home countries, if necessary.

If you are a Preparing or Supervised Immigrant and already received a notice of hearing on removal, consider asking for "Voluntary Departure".[18] Immigrants granted Voluntary Departure are not deemed "deported" or "removed" and may be able to receive Social Security Benefits once back in their home country.

To qualify for Voluntary Departure, the following criteria must be met:

(i) presence in the U.S. for at least 1 year prior to the date notice to appear was served;

(ii) person of good moral character for at least 5 years directly before applying for Voluntary Departure;

(iii) not accused of an aggravated felony;

(iv) not deportable for public safety or national security reasons; and

(v) established by clear and convincing evidence of having the means to depart the U.S. and the intention to do so.

[18] Immigrants granted Voluntary Departure have to pay for their own expenses to leave and post a bond. If they fail to leave within the specified timeframe. there is a large fine, the bond is lost, and the immigrant will face a 10-year bar to lawful re-entry.

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Checklist: Social Security

- ☐ Determine whether you are an Insured Worker. Insured Workers are any individual immigrants who have a Social Security Number and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances. Note that undocumented immigrants are not eligible for Social Security benefits.

- ☐ If you are an Insured Worker or the dependent or survivor of an Insured Worker and you are eligible to receive Social Security Benefits, to obtain those Social Security Benefits, you must apply (at the website www.socialsecurity.gov or in person) with the following documentation and information:[19]

  - ➔ Your SSN;
  - ➔ Your birth certificate;
  - ➔ Your W-2 forms or self-employment tax return for last year;
  - ➔ Your military discharge papers if you had military service;
  - ➔ Your spouse's birth certificate and SSN if they are applying for Social Security Benefits;
  - ➔ Your children's birth certificates and SSN, if you are applying on your children's behalf;
  - ➔ Proof of U.S. citizenship or lawful noncitizen status if you (or a spouse or child applying for Social Security Benefits) were not born in the U.S.; and
  - ➔ The name of your financial institution, the routing number, and your account number for direct deposit. If you don't have an account at a financial institution, or prefer to do so, you can sign up to get your Social Security Benefits on a prepaid card.

[19] If you disagree with a decision made on your claim, you can appeal it.

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KEY TAKEAWAYS

- Deportation of an immigrant Insured Worker or their dependents or survivors can affect Social Security Benefits.

- If you were an Insured Worker in the U.S. and received Social Security Benefits, your children and other dependents can continue receiving Social Security Benefits if they are U.S. citizens.

- If you were an Insured Worker in the U.S. and received Social Security Benefits and your dependents do not have legal status in the U.S., you and they should understand that they cannot receive Social Security Benefits for any month that they are outside the U.S. for any length of time.

- You will not be able to receive Social Security Benefits once the SSA is notified that you have been deported or removed. However, if you are lawfully admitted to the U.S. for permanent residence after being deported, any Social Security Benefits that were unpaid because of your deportation may be payable when you are readmitted.

- If you are an Insured Worker, a lump sum death payment cannot be made to your survivor on your record if you died after the SSA received notice of your removal and before you were thereafter lawfully admitted.

- If you receive Social Security Benefits as the dependent of an Insured Worker, and you are deported but the wage earner is not, the Insured Worker may continue to receive Social Security Benefits on your behalf (unless the Insured Worker is a noncitizen and leaves the U.S. for any part of a month, in which case the Insured Worker will not receive Social Security Benefits for that month), but you will not receive such Social Security Benefits directly.

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18. Veterans Benefits

Non-U.S. citizens who serve in the U.S. Armed Forces are entitled both to receive veterans benefits and to apply for expedited citizenship during active duty or after retirement. However, many veterans do not ultimately apply for and receive citizenship after being honorably discharged. If a non-U.S. citizen veteran is convicted and imprisoned for committing a felony, they could be subjected to removal (deportation) proceedings upon release from prison. This chapter discusses your rights as a non-U.S. citizen veteran to veterans benefits, and how deportation affects those benefits.

Non-Citizens are Eligible to Serve in the U.S Armed Forces ➤ Expedited Citizenship for Military Members and Their Families ➤ Veterans Benefits for Military Veterans, Dependents and Survivors ➤ Potential for Non-Citizen Veterans to be Deported ➤ Loss of Benefits Because of a Veteran's Felony Conviction and Imprisonment ➤ Veterans Benefits after Deportation

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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Non-Citizens are Eligible to Serve in the U.S. Armed Forces

To enlist in any branch of the U.S. military, you must either be a U.S. citizen or a legal permanent resident with a green card physically living in the United States. Non-citizens can only join the military as an enlisted member.

For enlistment purposes, citizens of the United States include citizens of Guam, Puerto Rico, the U.S. Virgin Islands, the Northern Marianas Islands, American Samoa, the Federated States of Micronesia, and the Republic of the Marshall Islands, as well as the 50 states.

There are also additional requirements for enlistment. You must also have a high school diploma or general equivalency diploma (GED) to enlist. You must also meet the age limit requirements for the branch you enlist in. Everyone enlisting in the military must also take the Armed Services Vocational Aptitude Battery (ASVAB) exam, and meet the physical and medical requirements for the branch you want to join.

Expedited Citizenship for Military Members and Their Families

Citizenship for Military Members

If you serve honorably in the U.S. military for at least one year at any time, you may be eligible to apply for naturalization under the Immigration and Naturalization Act Section 328. The benefits of naturalization through military service include waiver of the requirements that a non-citizen must be a permanent resident for 5 years, must be physically present in the U.S. for 30 months, and the requirement of the USCIS filing fee.

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To establish eligibility, you must:

- Be 18 years old or older;
- Have served honorably at any time in the U.S. armed forces for a period or periods totaling at least 1 year;
- Have submitted a completed Form N-426, Request for Certification of Military or Naval Service, at the time of filing your N-400, if you are currently serving, or a photocopy of your DD Form 214, Certificate of Release or Discharge from Active Duty, NGB Form 22, National Guard Report of Separation and Record of Service, or other official discharge document for all periods of service if you are not currently serving; demonstrate that if separated from service, you were separated under honorable conditions;
- Be a lawful permanent resident at the time of your naturalization interview;
- Meet certain residence and physical presence requirements;
- Demonstrate the ability to read, write and speak English, unless qualified for a waiver or exception;
- Demonstrate knowledge of U.S. history and government, unless excepted;
- Demonstrate good moral character for at least five years before filing your N-400 through the day you naturalize; and
- Demonstrate an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law, unless waived.

If you meet the requirements of Section 328 of the Immigration and Naturalization Act, you may apply for naturalization by filing Form N-400, Application for Naturalization.

You may also apply for naturalization under Section 329 of the Immigration and Naturalization Act if you are currently serving or previously served in the U.S. military during a period of hostilities. Under Section 329, some requirements may not apply or may be reduced.

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Many military installations have a designated U.S. Citizenship and Immigration Services liaison to help with the naturalization process. You may also complete your application by creating an online account and filing your Form N-400 online.

More information is available at:
https://www.uscis.gov/military/naturalization-through-military-service

Citizenship for Spouses and Children of Military Members

Spouses of U.S. service members may be eligible for expedited naturalization. Children of U.S. service members may also be eligible for naturalization or may be eligible to automatically acquire citizenship. Expedited naturalization is usually done when the spouse or children of a military member is accompanying the military member overseas.

Spouses

Spouses Living in the US

If you have been a lawful permanent resident for at least three years and have been married to and living with your U.S. citizen spouse for that time, you can apply for naturalization.

Expedited Naturalization for Spouses

Spouses of U.S. service members who are, or will be, stationed outside the United States may be eligible for expedited naturalization in the U.S under Section 319(b) of the Immigration and Nationality Act. To apply for naturalization, the spouse must:

- Be age 18 or older;
- Establish your spouse is a U.S. citizen who is, or will be, regularly stationed abroad as a U.S. service member for a period of one year or more;
- Be authorized to accompany your spouse abroad by your spouse's official orders;
- Be present in the U.S. at the time of naturalization;
- Declare in good faith upon naturalization an intent to reside abroad an intent to reside abroad with your U.S. citizen spouse and to reside in the U.S. immediately upon your spouse's termination of service abroad;

- Be able to read, write, and speak basic English;
- Have a basic knowledge of U.S. history and government (civics); and
- Have been, and continue to be, a person of good moral character, attached to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the U.S. during all relevant periods under the law.

Spouses Living Overseas

In some cases, spouses of U.S. military members can complete the naturalization process while living abroad. Under Section 319(e)(2) of the INA, a lawful permanent resident who is married to a U.S. service member can naturalize outside the United States without traveling to the U.S. To be eligible, the spouse must:

- Be the spouse of a U.S. service member who is stationed outside the United States in that capacity;
- Be authorized to accompany your spouse outside the United States by your spouse's official orders;
- Reside outside the United States in marital union with your spouse; and
- Meet the requirements of either section 316(a) or 319(a) of the INA at the time you file your naturalization application.

Children

Children Born in the U.S.

Children of U.S. service members may automatically acquire citizenship if they are born in the U.S.

Children Born Abroad

Children of U.S. service members who are born abroad may still acquire citizenship through the following processes:

- **At Birth:** A child can have automatic citizenship at birth if one or both parents are U.S. citizens when the child is born and if the parent meets the residence or physical presence requirements (including period of honorable service in the U.S. military).

- **Automatic Citizenship After Birth:** A child can have automatic citizenship after birth if: the child is a lawful permanent resident; at least one parent is a U.S. citizen; the child is residing in the legal and physical custody of the U.S. citizen parent; the U.S. citizen parent is stationed and residing outside the U.S. as a member of the U.S. military; and the child is residing with them outside the U.S. To obtain a Certificate of Citizenship, the child is required to come to the U.S. and complete the citizenship process in the U.S.
- **Children Born and Residing Outside the United States:** If the child did not automatically gain U.S. citizenship under other laws, the child can still gain citizenship if they: have at least one U.S. citizen parent; take the Oath of Allegiance before the age of 18; have a U.S. citizen parent or grandparent that meets the physical presence requirements; and reside outside the U.S. in the legal and physical custody of the parent, including with a U.S. military service member.

Family Members of Deceased Service Members

If your U.S. service member spouse or parent died as a result of their military service, you might be eligible for expedited naturalization. Generally, the spouse and children under age 21 and parents of a U.S. citizen who died during honorable military service can apply for citizenship right away. Requirements include:

- Being a lawful permanent resident;
- Meeting the general naturalization requirements except for the residence or physical presence requirements in the U.S.; and
- Having lived with your service member spouse at the time of death unless you lived apart because of circumstances beyond your control, such as the spouse's military service.

Family members who do not have lawful permanent resident status may apply for a green card as the immediate relative of the deceased service member. The petition must be filed within two years of the service member's death.

More information is available at:
https://www.uscis.gov/military/citizenship-for-military-family-members

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Veterans Benefits for Military Veterans, Dependents and Survivors

Special Veterans Benefits under the Social Security Administration (SSA)

Under certain circumstances, military veterans who served between 1957 and 2001 can be credited with designated special extra earnings for Social Security purposes. These extra earnings may help you qualify for Social Security or increase the amount of your Social Security benefit. Depending on the length and time frame of military service, some veterans may find that the benefit increase may be minimal. These special extra earnings are granted for periods of active duty or active duty for training. Special extra earnings are not granted for inactive duty training.

Disability benefits under the Social Security Administration (SSA)

Veterans may be eligible for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) in conjunction with, or as an alternative to, VA disability compensation. SSI/SSDI benefits do not require that the veteran's disability be linked to their military service, does not take into account a veteran's discharge status, and does not pay on a graduated scale. For SSI/SSDI, the Veteran needs to show:

1. Evidence of a physical or mental health condition, which results in functional impairments that limit their ability to work at a substantial gainful level; and

2. That the disabling condition has lasted, or is expected to last, for 12 months or end in death.

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SSA Expedited Processing for Veterans

The SSA provides expedited processing of disability claims filed by veterans who have a Department of Veterans Affairs Compensation rating of 100% Permanent and Total (P&T), or by veterans who develop a disability while on active military service on or after October 1, 2001.

To expedite the processing of your SSI/SSDI application for 100% P&T Claims, you must:

- Identify yourself as a "veteran rated 100% P&T" when you apply for benefits. If you apply in person or over the phone, tell the Social Security representative that you are a veteran rated 100% P&T. If you apply online, enter "Veteran 100% P&T" in the "Remarks" section of the application; and
- Provide Social Security with your Veterans Affairs notification letter, which verifies your rating.

To expedite the processing of your SSI/SSDI application through the Wounded Warriors program, you must inform the SSA that your injury occurred while on active duty. The injury does not need to have occurred during combat operations.

More information is available at: https://www.ssa.gov/people/veterans/index.html

Veterans Administration (VA)

The benefits include health care, disability compensation, special monthly compensation, allowances and grants (related to disability), vocational rehabilitation and employment (for disabled), pensions and education.

A thorough discussion and more information is available at:
https://department.va.gov/get-started/

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Potential for Non-Citizen Veterans to be Deported

Non-citizen veterans of military service may be subject to removal for a variety of reasons, including the commission of crimes worthy of imprisonment, engagement in terrorist activities, and failure to comply with visa requirements. Even nonviolent and misdemeanor crimes can result in mandatory deportation and lifetimes bars to reentry and naturalization in the U.S. In a 2024 article by the Military Times, about 94,000 veterans do not possess U.S. citizenship and are at risk of deportation.[20] For crimes that may result in a non-citizen being removed (deported), a thorough discussion can be found at:
https://www.nolo.com/legal-encyclopedia/crimes-that-will-make-immigrant-deportable.html

Loss of Benefits Because of a Felony Conviction and Imprisonment (Applies to All Veterans)

SSA Benefits

See, generally, https://www.ssa.gov/pubs/EN-05-10133.pdf

VA Benefits

Veterans may lose their VA benefits if they become incarcerated. For incarcerated veterans, a reduction or complete loss of benefits is determined by the crime committed and the resulting prison sentence, e.g. whether the offense was a felony or misdemeanor. Benefits commonly affected by a prison sentence include educational as well as disability entitlements. See, generally,
http://www.benefits.va.gov/persona/veteran-incarcerated.asp

VA Disability Compensation

VA disability compensation payments are reduced if a veteran is convicted of a felony and imprisoned for more than 60 days. Veterans rated 20 percent or more are limited to the 10 percent disability rate. For a veteran whose disability rating is 10 percent, the payment is reduced by one-half. These payments may be collected again following a

[20] See:
https://www.militarytimes.com/news/your-military/2024/04/15/deported-veterans-struggle-to-access-va-services-study-finds/

release from prison depending on the severity of the service-connected disability at that time.

VA Pension

Unlike disability compensation, a VA pension will be lost completely regardless of the crime committed and the accompanying sentence. Payments for VA pensions will stop on the 61st day of incarceration. These payments may be collected again following a release from prison, but only if all VA eligibility requirements are met again. If a veteran fails to notify the VA of their incarceration, they may lose all VA benefits until the overpayments they received while incarcerated are recovered.

VA Apportionment to Spouse or Children

Inmates who are not receiving their benefits in prison can opt to have the payments sent to their spouse, children, or parents if they are dependents of the inmate. To receive these benefits, the individual needs of the persons who will receive the benefit will need to be established. Apportionment is not available for veterans convicted of a felony. Whoever is to receive the benefit payments, must apply to get the money from the VA, because it will not be sent automatically.

VA Education Benefits

Veterans who are incarcerated for any crime that is not a felony crime can still receive monthly education benefits. If convicted for a felony offense, then a veteran may receive only partial education benefits.

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Veterans Benefits after Deportation

SSA Benefits

The deportation of a non-citizen veteran may result in non-payment of Special Veterans Benefits. Suspension of benefits begins the month after the month that the SSA receives notice of non-citizen veteran's removal or deportation from the Secretary of Homeland Security, DHS, the Attorney General, or the DOJ. Once the non-citizen veteran is subject to non-payment of benefits following their removal, payments cannot be reinstated until and unless they are granted lawful admission for permanent residence in the United States. Dependent or survivor benefits on a removed non-citizen veteran's record cannot be paid for any month in which:

- Benefits are or would have been suspended; and
- The dependent or survivor is a non-US citizen; and
- The dependent or survivor was outside the United States at any time during the month, even if the absence was only for part of a day.

See, generally, https://secure.ssa.gov/poms.nsf/lnx/0302635001.

VA Benefits

The removal of a non-citizen veteran should generally not affect his or her VA Benefits, but it will require compliance with additional procedures. The VA should treat the veteran just as it treats other veterans who are living abroad. See, generally, http://www.benefits.va.gov/persona/veteran-abroad.asp.

The Immigrant Military Members and Veterans Initiative

In 2021, the DHS and the VA began a collaboration called the Immigrant Military Members and Veterans Initiative (IMMVI) to assist veterans and their families with the return of and access to benefits for non-citizen veterans and their immediate family members. The online portal to access the benefits of this program and review resources provided by this initiative can be found at: https://www.dhs.gov/immvets

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19. Dissolving or Selling a Business

Selling or dissolving a business may pose many legal complexities depending on a number of factors, such as the form of business, whether the business is jointly owned and the need to address the tax matters and licenses associated with the business. For this reason, this is an area where professional legal support is often needed. This chapter highlights high level issues to consider.

What are Common Forms of Business Organizations? ➤ What are the Considerations When Selling or Dissolving a Sole Proprietorship? ➤ What are the Considerations When Selling a Jointly Owned Business? ➤ Checklist: Dissolving or Selling a Business

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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What are Common Forms of Business Organizations?

State and federal laws govern businesses, and outline various forms of business organizations. For the purposes of federal law, the most common types of business entities are: (1) the sole proprietorship; (2) the partnership; (3) the corporation; and (4) the limited liability company.

The majority of small businesses begin as sole proprietorships. As a result, this chapter is tailored to sole proprietorships. In a sole proprietorship the owner faces unlimited liability for all debts incurred by the business. On the upside, there is relatively little paperwork required in order to start and dissolve a sole proprietorship. Additionally, all income derived from the business flows directly to the owner and is reflected on the owner's personal tax returns. As a result sole proprietors may need to file several tax forms including but not limited to:

- Form 1040 (an Individual Income Tax Return);
- Schedule SE (Self-employment Tax);
- Form 4562 (Depreciation and Amortization);
- Form 8829 (Expenses for Business Use of Home; and
- Employment tax forms.

When facing potential deportation, you should check with a tax attorney or specialist to make sure they have filed the correct forms. Filing the wrong forms can be seen as tax evasion or fraud which are deportable offenses and which could affect future re-entry.

In a **partnership**, two or more individuals run and operate a business, and normally each partner has unlimited liability for the debts and obligations of the partnership. There are three types of partnerships: The general partnership, limited partnership and limited liability partnership. In a limited liability partnership, each individual partnership has a reduced amount of liability. Instead the limited liability partnership as a whole maintains liability.

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In contrast, a **corporation** is a business entity that has separate legal standing from its owners. The defining characteristic of a corporation is that it has limited liability for its owners – specifically, that its members are not personally liable for the debts and obligations of the corporation. This chapter does not focus on corporations because they are not common in the small business context, but it is still important to seek legal support when selling or dissolving a corporation.

A **limited liability company (LLC**) is a business structure whereby the members of the company cannot be held personally liable for the company's debts or liabilities. LLCs are essentially hybrid entities that combine the liability protection of a corporation and the tax characteristics of a partnership or sole proprietorship.

What are the Considerations When Selling or Dissolving a Sole Proprietorship?

You must take into account several considerations when you wish to sell or dissolve a sole proprietorship because all states and localities have different requirements for terminating sole proprietorships. Additionally, it is wise to check with an attorney familiar with the requirements of the Secretary of State, county, city and small business administration who knows the appropriate steps to take.

Dissolving a Sole Proprietorship

Dissolving an individual business as opposed to selling the business may be preferred when there are time constraints. Closing a sole proprietorship does not require negotiations or transfers. As a result it may be faster than selling a business. In either case, it is important to keep accurate records and set aside a reserve for unexpected debts, taxes and bills.

When dissolving a sole proprietorship, the owner must notify:

(1) Secretary of State;
(2) the county and city clerk's office;
(3) local, state and federal tax authorities;
(4) licensing entities and trade associations;
(5) creditors and suppliers;
(6) customers;
(7) employees;
(8) landlords and equipment lessors; and
(9) banks.

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However, unlike many other businesses there is no need to officially register the dissolution of a sole proprietorship.

Nonetheless, there is no shortage of tasks to complete before dissolution. Owners should complete all final orders, notify customers, and pay outstanding debts. It is just as important to cancel registration, permits licenses and business names. Employment and labor laws may also dictate how to notify, terminate and pay employees and file related tax paperwork.

Owners who are facing deportation should consider what assets they can sell after dissolving the business, such as equipment or merchandise. After selling assets, owners should close all business bank accounts and credit cards.

Selling a Sole Proprietorship

Selling a sole proprietorship is advantageous when time constraints are not present, when a buyer has already shown interest, or when the business has a particularly high valuation. The process for selling a sole proprietorship may be complicated and it is recommended that you obtain the advice of an attorney and business broker if you wish to sell your business.

You must first consider the valuation of your business taking into account the licenses, leases, and other assets of the business. As a procedural matter, you must reflect the sale on all tax forms. For federal purposes, you must document the sale on the Form 8594 (Asset Acquisition Statement). In some states, such as Texas, an individual can dissolve, and a new owner can register the business on sales tax forms. In Wisconsin, if the business name is not the new owner's full legal name, the new owner must file a "doing business as" application. There are many state specific variances.

If you have a mortgage or lease on the business property or on equipment used for the business, you should also transfer these to the new owner and obtain releases from the lenders and lessors. Failure to do so could result in you being responsible for payments or injuries long after you have left the country and are no longer running the business.

If the business is worth less than its debts, you might consider initiating a state law remedy usually called an "assignment for the benefit of creditors." This involves transferring all of the assets to an assignee (liquidator) who sells the assets and distributes the proceeds based on how much each creditor is owed to creditors who file

claims after being notified. In most cases, the assignee is a person or entity of the business owner's choosing, but they must be acceptable under state law and have the necessary qualifications. This process is most often used for businesses (corporations or limited liability companies) as state law typically will not provide an individual or sole proprietor with a "discharge" of their debts. While the owner still may have personal liability for any unpaid trust fund taxes, creditors may be less likely to pursue collection efforts.

What Are the Considerations When Selling a Jointly Owned Business?

In a jointly owned business or partnership, it is critical to have open dialogue with the co-owner. If one of the parties wants to remain in business, the parties should read their agreements and consider the co-owner's right of first refusal, consent or notification rights and change of control procedures.

Co-owner's Right of First Refusal

In general, a right of first refusal is the right of a person to buy something before the offer is made available to others. A right of first refusal is often stated in an agreement between the business owners. Thus, the parties will need to refer to their agreements. If your agreement with your co-owners contains a right of first refusal provision, you must offer to sell your share of the business to the co-owners before offering it to anyone else.

Co-owner's Consent and Notification

Even if the co-owners do not have, or decide not to pursue, a right of first refusal, they may still want to have some control over who gets your share of the business. Before selling your interest, you should check to see if the owners' agreement requires a seller to get consent from the other co-owners. The agreement may at least require you to tell the co-owners about the sale. If provisions like this exist in the contract, you must abide by them.

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Change of Control

Furthermore, if you and others jointly own the business and you wish to sell your share, you should determine whether any contracts related to the business require notification to anyone upon a "change of control." A change of control can occur when a business owner sells their portion of the business. For example, some contracts require that upon a change of control, a business owner, before selling his or her interest, notify the bank that loaned money to the business, the bank that holds the business' mortgage, or any entity that gave a license to the business. If your contract contains a change of control provision that is triggered by the sale of your interest, then you must abide by the terms of that provision.

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Checklist: Dissolving or Selling a Business

- ☐ Decide if you want to dissolve or sell your business. Depending on the type of business, dissolving your business may take less time.
- ☐ Once you know what you want to do with your business, it is best to hire an attorney as soon as possible to help you with the following steps.
- ☐ Determine what type of business you own:
  - ➔ Sole Proprietorship – single owner with full liability of costs incurred by the business.
  - ➔ Partnership – two or more individuals run and operate the business and each has full liability of costs incurred by the business.
  - ➔ Corporation – business entity that has separate legal standing from its owners.

Dissolving a Business (Sole Proprietorship)

- ☐ If dissolving a business, check requirements of your state, locality, and small business administration in order to determine what steps must be taken.
- ☐ Notify your:
  - ➔ Secretary of State;
  - ➔ County and City Clerk's office;
  - ➔ Local federal tax authorities;
  - ➔ Licensing entities and trade associations;
  - ➔ Creditors, insurers and suppliers; and
  - ➔ Customers.

- ☐ Pay all bills and debts;
- ☐ Abide by employment laws
- ☐ Keep records for tax purposes.

Selling a Sole Proprietorship

- ☐ It is best to first get the advice of an attorney and a business broker.
- ☐ You should consider how much your business is worth. To do this take into account the licenses, leases and other assets of the business etc.
- ☐ You must document the sale on the Form 8594 (Asset Acquisition Statement).
- ☐ There are probably state filing requirements as well.
- ☐ In the sale make sure to transfer all mortgages or leases on the business property or on equipment used for the business.

Selling a Jointly Owned Business

- ☐ You should speak to your co-owner early to determine if he or she wants to dissolve your company as well.
- ☐ If your co-owner wants to continue to own the company, look to the agreement to see if your contract has a right of first refusal, consent or notification rights, or what change of control procedures are necessary.
- ☐ If any of these terms are present you must abide by them.

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20. Tax Filing Issues

Filing taxes and receiving a tax refund (if you have overpaid taxes) is a necessary part of earning income in the United States. Under the "substantial presence" test, most immigrants are classified as resident aliens for tax purposes and must file the standard form 1040. This section answers the following questions:

Are You a "Resident Alien" or "Non-Resident Alien" for Tax Filing Purposes? ➤ Are You Required to File a Tax Return? Should You Anyway? ➤ What If Your Spouse is Deported and You Remain in the Country? ➤ When Do You Receive Your Tax Refund if One is Owed to You? ➤ What Are the Penalties for Failure to File Tax Returns? ➤ Where Can You Obtain the Necessary Forms to File Taxes? ➤ Checklist: Tax Filing Issues

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

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Are You a "Resident Alien" or Non-Resident Alien" for Tax Filing Purposes?

You must first determine whether you are a "resident alien" or "non-resident alien" for tax purposes in order to determine which forms to use and what income should be taxed. **"Resident aliens"** generally are taxed on their worldwide income, the same as U.S. citizens. However, a portion of income earned outside of the United States may be eligible for exclusion.[21] **"Non-resident aliens"** are taxed only on their income from sources within the United States and on certain income connected with the conduct of a trade or business in the United States.

Even if you are not a lawful permanent resident for immigration law purposes, you may, and probably often will, be considered a "resident alien" for tax purposes.

According to Section 7701(b) of the Internal Revenue Code (IRC), a "resident alien" is anyone who maintains a "substantial presence" in the United States, which requires:

1. 31 days of presence in the U.S. during the year in question, and
2. The sum of the number of days of presence during the year in question plus the two preceding years is at least 183 after weighting.
    a. To meet the second criteria, days from the present year are multiplied by one, days from the prior year are multiplied by one-third, and days from the second preceding year are multiplied by one-sixth, and then the resulting numbers are added.

Thus, immigrants living in the United States full time are probably considered "resident aliens" for tax purposes. "Resident aliens" are required to file Form 1040 while they are in the United States, and when back in their home country, may continue to be treated as "resident aliens" as long as the substantial presence test is satisfied.

[21] https://www.boundless.com/blog/immigrants-filing-taxes/

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Note: Filing taxes as a "non-resident alien" can affect your status as a permanent resident, as it can be used as a basis for the government to claim that you are a resident in another country and have abandoned your permanent residence in the United States. Likewise, paying taxes in another country could create the presumption that you also reside in that country.[22]

Are You Required to File a Tax Return? Should You Anyway?

If you are considered a "resident alien," you must file a tax return if your income is above a certain level. The amount varies depending on filing status, age, and the type of income earned. For example, for 2023, a married couple under age 65 generally was not required to file unless their joint income exceeded $27,700. However, self-employed individuals generally must file a tax return if their net income from self-employment was at least $400. Tax issues are covered by the Internal Revenue Code (IRC) and regulations. A "non-resident alien" engaged in a trade or business in the United States in a given tax year must file a tax return.

There are no special laws or regulations for immigrants facing deportation. Even if you are not required to file taxes, you may choose to file in order to receive a refund of any overpaid taxes or to receive tax credits such as the Earned Income Tax Credit.

What If Your Spouse is Deported and You Remain in the Country?

If your spouse is deported and they fail the "substantial presence" test, they will be considered a "non-resident alien" for tax purposes. If you continue to reside in the U.S., you may still file a joint return if your deported spouse chooses to be treated as a "resident alien" for tax purposes. In other words, even though your spouse is out of the country and no longer a resident of the United States, the spouse who remains in the country may choose to file as married filing jointly with the deported spouse. This may be beneficial to you as a resident because of the favorable tax treatment of a couple filing jointly.

If you file a joint return, however, the non-resident spouse must declare their foreign income on the U.S. tax return.

[22] https://citizenpath.com/us-taxes-immigration-consequences/

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When Do You Receive Your Tax Refund If One is Owed to You?

Refunds will not be paid at the time of your departure.

- "Resident aliens" must complete Form 1040 (or Form 1040-SR if 65 years of age or older) and will receive a refund if one is owed. To determine whether income earned outside of the United States may be excluded, "resident aliens" must complete Form 2555.
- If "non-resident aliens" are owed tax refunds, they must complete Form 1040NR at the end of the tax year to receive their refunds.

A claim for refund must be made within three years of the due date of the return or within two years from the time the tax was paid (whichever is later), or you lose your right to that refund. Once a tax return is submitted to the IRS reflecting that a refund is owed, the amount due is ordinarily paid within approximately 21 days, however payments sometimes take longer.

What Are the Penalties for Failure to File Tax Returns?

If you fail to file a tax return, you may be subject to civil and criminal penalties. While criminal penalties may not be enforceable once you have left the United States, civil penalties could potentially be enforceable on property you own that is left behind in the United States.

There are different civil penalties for filing late, fraud, paying the tax late, and accuracy problems. The civil penalty for filing late is based on the tax not paid by the due date. The penalty is usually 5% for each month or part of a month that a return is late, but not more than 25%. In addition, if you owe income tax, the IRS has ten years from the date the tax is assessed to collect the tax. But if you fail to file a tax return, the ten-year period for collection does not start running. In this case, the IRS has an indefinite time to collect the owed taxes. Failing to file tax returns also may have negative consequences should you seek to immigrate to the United States again in the future.

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Additionally, failure to file taxes when required may impact the naturalization process. Eligibility for naturalization requires demonstration of good moral character. Applications for naturalization ask specific questions about filing taxes. If U.S. Citizenship and Immigration Services (USCIS) believes that you have avoided your tax obligations in any way, it can deny the application based on the good moral character requirement.[23] In recent years advocates have reported closer scrutiny by USCIS of tax compliance.

Where Can You Obtain the Necessary Forms to File Taxes?

All necessary forms are available on the IRS website at www.irg.gov (Spanish language version: www.irs.gov/Spanish) for downloading and printing. Alternatively, you can request copies of forms by phone (1-800-829-1040). The IRS provides International Services by phone at (1-267-941-1000, not toll-free) or by mail at:

Internal Revenue Service
International Accounts
Philadelphia, PA 19255-0725

You can also contact the Taxpayer Advocate assigned to international taxpayers for help with tax problems.

By phone:
+15.15.56.46.827

By fax:
681-247-3158
304-707-9793

By email:
tas.international@irs.gov

Additional information about IRS services for international taxpayers is available at https://www.irs.gov/individuals/international-taxpayers.

[23] https://citizenpath.com/us-taxes-immigration-consequences/

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Checklist: Tax Filing Issues

Even if you are not a lawful permanent resident for immigration law purposes, you may be – and if you have lived in the U.S. for a long time, you probably are – a "resident alien" for tax law purposes.

- ☐ If you are a “resident alien” for tax law purposes, you should complete the Form 1040 (or Form 1040-SR if age 65 or older) at the end of the tax year as you would have if you were in the United States.
- ☐ If you are a “non-resident alien” for tax purposes, you should complete Form 1040NR at the end of the tax year in order to receive any refund for the year.
- ☐ A resident spouse can file his or her tax returns jointly with a deported spouse if the deported spouse chooses to be treated as a "resident alien"for tax purposes. In that case, the deported spouse must declare his or her worldwide income on the return.
- ☐ If you fail to file your appropriate tax forms, you may be subject to civil and criminal penalties. This may make it impossible for you to ever immigrate to the United States again.
- ☐ All necessary forms are available on the IRS website at www.irs.gov (Spanish language version: www.irs.gov/Spanish)

KEY TAKEAWAY

If you are deported, you may still have to, or may wish to, file a Form 1040 or 1040NR, as appropriate, at the end of the tax year. Filing a tax return will allow you to receive any overpaid taxes and any tax credits – such as the Earned Income Tax Credit – that you are owed.