PROTECTING ASSETS & CHILD CUSTODY IN THE FACE OF DEPORTATION

A GUIDE FOR PRACTITIONERS ASSISTING IMMIGRANT FAMILIES

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FOREWORD

Dear Friends,

Can you imagine being abruptly ejected from the United States — and leaving behind your home, your children, your job, your bank account, and everything else you’ve spent years to build? Can you imagine what your children would feel when they arrived home and you’re gone?

Deportation can be a cataclysm for families and communities, destroying decades of hard-earned assets and rupturing family development. But with advanced planning, immigrant families can prevent an enormous amount of this damage.

That’s why Appleseed is proud to present an updated version of its 2012 Manual, “Protecting Assets and Child Custody in the Face of Deportation.” This one-of-a-kind resource is designed for immigrants and those who work with them; the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times.

Appleseed’s Manual will help families develop plans in advance to deal with critical financial and family issues in the event of deportation, arrest, and other family emergencies. It will help immigrant families deal with child custody and related children’s issues, personal finances, assets and personal property, remittance payments, wages and benefits, business issues, and taxes. And it includes special guidance for family and children’s issues, including professional advice for parents to help their families deal with painful psychological issues, and for immigrant survivors of domestic violence and sexual assault.

Make no mistake: for vulnerable immigrant families, advance planning can make all the difference. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, or even impossible, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

We are grateful to our pro bono law firms, volunteer psychologists, translation companies, and more than 20 nonprofit partners across the country who wrote, researched, proofread, and translated this manual into Spanish. We could simply not have done it without you. Thank you so much to Adams and Reese LLP, the Asian Pacific Institute on Gender-based Violence, ASISTA, Ballard Spahr LLP, BGBG Abogados, Cooley LLP, Directum Translations, Hogan Lovells LLP, Mexico Appleseed, the Mexico
City Department of Labor, MomsRising/MamasConPoder, Norton Rose Fulbright, O’Melveny & Myers, The William Alanson White Institute Center for Public Mental Health, and White & Case for your commitment, careful drafting, and counsel during this process. We are also deeply grateful to the Annie E. Casey Foundation and the Ford Foundation for their support of these efforts.

Immigrants come to the United States to build a better future and to unite with family members. Most have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses and build personal assets. When they build better lives, they make our country stronger.

That’s why this Manual is a labor of love for all who worked on it. We are committed to fairness and compassion for the millions of immigrants living in our country. Our hope is that you can use this resource to help them build better lives.

Sincerely,

Annette LoVoi, Director, Financial Access and Asset Building, Appleseed
Disclaimers

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.

Appleseed recognizes and understands the legal term “alien,” used to describe any person born in another country to parents who are not American and who has not become a naturalized citizen, but is living or staying in the United States. However, throughout this Manual, we will primarily use the term “immigrant” in place of the term “alien” based on AP Stylebook guidance and the recommendations of our partners. The exception will be when citing laws, codes, or regulations that specifically use the term “alien.”
12. Owned Real Property

In the face of deportation, if you own real property you must decide what to do with this property and how to manage loans which may be owed for this property. Transfers of real property are complicated. This chapter addresses the following issues:

- Do You Own Real Property?
- What If There is a Co-Owner?
- What If There is a Loan, Mortgage or Deed on the Property?
- Should You Keep, Sell or Gift your Real Property?
- How Can You Get Professional Help with Handling Property?

Do You Own Real Property?

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

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 give the co-owner a right (by limited power of attorney) to act on your behalf with respect to the property and any related loans.

What If There Is a Loan, Mortgage or Deed on the Property?

If there is a loan for and mortgage (or deed of trust) on the property, the lender must be consulted prior to any transfer of interests or of the property.
In almost all circumstances the lender must consent to what is being done. See section below on loans and mortgages.

Should You Keep, Sell or Gift Your Real Property?

You will have choices to make on what to do with your real property. Each choice must be considered carefully to see (i) what is required to be done under the law and any mortgage documents (if applicable), (ii) if there are tax and other financial concerns, and (iii) what makes sense for you and your family.

Keeping Your Property

You can retain ownership of your real property even if you are deported. However, you must make arrangements for the property to be managed and all loans and taxes to be paid in your absence. Perhaps there is a trusted person who can rent out the property or live on the property and cover necessary payments.

If there is a co-owner, as said above, it is a good idea to include the co-owner in any decision regarding the property. If the co-owner is not at risk of deportation, you may consider having them take care of things 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 there is a loan for and mortgage 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 must be consulted in advance so that you know which method of transfer is more beneficial to you and the receiver of a gift.

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 (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.

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

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.

Other Considerations for Handling Properties with Loans

- Unpaid property taxes must be paid;
- If there is a co-owner, actions which affect the loan and mortgage will often require the cooperation and/or the consent of the co-owner;
- 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 plan in place. Keep copies of all communications with the lender and the lender’s contact information.

**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’ website (https://www.nar.realtor/), click Directories in the upper right corner and then click Find a Realtor.

• 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 (http://www.hcc-nyc.org/); in Texas http://www.txtenants.org/links.html; in California http://portal.hud.gov:80/hudportal/HUD?src=/states/california/homeownership/legalaid provide these services. Immigrants should contact these or similar organizations and ask if they 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 immigrants should still check if they qualify for any such programs.