

Asset Protection for Noncitizen Business Owners - Checklist for Key Financial Items¹

- Make a list of all of your assets (for example, your bank accounts, lease, car, home and business ownership) and make a list of key contacts for each in case you need to wind up your affairs.
- For each asset, develop a plan for how you want to deal with the asset in case you have to leave the United States. Some common assets and considerations are listed below:
 - Bank account: Think about whether you can access your bank account in your home country or if it would be easier to close your bank account. Follow the specific procedures that your bank requires.
 - Cash: To avoid problems with carrying cash across the border, try to plan ahead by finding a U.S. bank with ATM machines in foreign countries and find out the fees associated with accessing the account in the other country. (You might consider sending a duplicate ATM card to a trusted family member abroad as a backup measure to ensure you have access to funds.) Another option is to get a bank draft (a bank draft is a check from your bank that orders the bank in your home country to pay the person named on the check) from your bank that is made out to a specific person. Bank drafts can be advantageous since they can be canceled if lost.
 - Car: If you sell your car, remember to put the sale terms in writing, request that the buyer pay in cash or by certified check, file title and tax forms with the department of motor vehicles, and communicate the sale to your auto insurance carrier. If you still owe money on a car loan, make sure to get the loan payoff amount from your lender so you know the minimum amount of money you need to make the sale complete.
 - Residential lease: Understand the terms of your lease – know what your liability is for unpaid rent and whether you can assign or sublease to someone else. Be sure to remove personal property from the apartment within a reasonable period of time after you leave.
 - Home: Your home may be your most valuable asset, so it is important that the sale of your home complies with all laws. A real estate agent can be very helpful, and you should contact one if you are not familiar with the sales process. If you want to give your home to someone as a gift, you will need to (i) execute a deed; (ii) prepare the appropriate state and local tax forms; (iii) resolve mortgage issues; and (iv) register miscellaneous liabilities, such as utilities and insurance.
 - Business: Transferring or selling a business is a complex process that is set by local rules and regulations. Therefore, you should consult with local city, county, and state agencies for additional guidance on the process.

¹ This checklist was adapted by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area from *Protecting Assets and Child Custody in the Face of Deportation: A Guide for Practitioners Assisting Immigrant Families*, page 8, Appleseed Foundation 2009, available at: <http://www.aecf.org/m/resourcedoc/aecf-ProtectingAssetsAndChildCustodyInTheFaceOfDeportation-2009.pdf#page=8>.

- Social security and veterans benefits: If you are a wage-earner, and your dependents (for example, your children) are U.S. citizens, your dependents can continue to receive benefits. However, if your dependents do not have legal status in the U.S., they cannot receive benefits.
- If you run a business with other business partners, consider writing up an agreement together with your business partners detailing what will happen if you have to be absent from the business for an extended period of time. If your business partners are unaware of your undocumented status, you should not mention the words “detained” or “deported” or otherwise disclose your undocumented status, as this could enable your business partners to use your undocumented status as leverage against you.
- Consider whether you want to write a power of attorney (“POA”) to someone you trust. A POA is a legal document that allows another person to act on your behalf. You do not have to be an attorney to write one – you can use a standard legal form. You can use a POA to give someone you trust the power to handle your affairs for you if you are placed in detention or after you leave the U.S.
- Consider whether you want to write a revocable trust to safeguard your assets, including your business, as well your bank accounts and your home. A revocable trust is a legal document that designates a trusted person (trustee) to carry out a contingency plan for your business and other assets in case of detention, deportation, death or mental incapacity. After the trust is set up, you can revoke (cancel) it at any time while you are alive in order to regain ownership and control of your assets from the trustee, e.g., if you are released from detention or return to the U.S. after being deported. Revocable trusts can take considerable time and money to set up, so if you are only planning to write up a POA, consider including the power to create a revocable trust on your behalf in the POA document.
- Organize all relevant financial paperwork into one binder so that they are readily available should you need to wind up your affairs in a short amount of time. You should include documentation related to your bank account, car, apartment or house, insurance, taxes, business interest, loans and other outstanding debts.
- Notify your employer of your new address if you are detained or deported and ask your employer to send your last paycheck to that address. You have a right to receive your promised wages for any work that you do. It does not matter if you do not have work authorization or a social security number.
- If you have debt, you should contact your lender or credit card company to provide updated contact information or make arrangements to settle the debt. Most banks and credit card companies are multi-national and will try to collect the debt outside the U.S. if the debt is not paid.
- You may need to file a tax statement with the IRS before leaving the U.S. You should also be prepared to file a U.S. tax return for the year, even if you have left the country.