

A barista in a green patterned shirt and grey apron is pouring coffee into a cup. The background shows a busy cafe with other staff and customers. The text is overlaid on the right side of the image.

Asset Protection for Immigrant Entrepreneurs

Democracy at Work Institute
Lawyers Committee for Civil Rights



Purpose

This presentation provides general legal information relevant to asset protection and estate planning focused on immigrant entrepreneurs.

This presentation does not serve as a substitute for legal advice from a licensed attorney.

Co-Sponsors



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Contents

Intro: Why Asset Protection Aspects

- LLCs and other legal business entities for protecting assets [7 mins]
- Power of Attorney [20 mins]
 - Q&A
- Revocable Trusts [30 mins]
 - Q&A

Maintenance and Dissolution of Assets [40 mins]

- Dissolving Businesses/Ownership Interests
- Bank accounts and cash transfers
- Liabilities
- Real Estate, Vehicles and other Valuables
- Paying Taxes

Review

Additional Resources





Why asset protection

Things Happen! | Have a Plan



- **When:**
 - You possess property or anything valuable that takes time to access or liquidate
 - Applies to business and personal property
- **Why:**
 - Trump Administration has broadly expanded people subject to immigration enforcement
 - Any immigrant non-citizen who has interacted with the criminal justice system and/or is undocumented is at risk for deportation
 - Get best value if selling assets
 - Peace of mind in case of emergencies, an unforeseen event, or when you want to move on from your business



Have A Plan | How

- Know what to do and how to protect your assets
- Find support that you may need
- Have a checklist
- Consider a Power of Attorney or setting up a revocable trust
- What to watch out for
- Other resources



Aspects of asset protection

Aspects of Asset protection

- Legal entities
- Power of Attorney
- Revocable Trusts
- Maintenance/Dissolution of Assets



Why create a legal entity?



- Formalize ownership
- Separate and protect personal assets from business assets
- Limited Liability Shield
- Tax Issues



Legal entities include:

Corporations

Limited Liability
Company

Cooperatives



Power of Attorney (POA) Important Resources we will be referring to



- The Appleseed Guide:
 - Protecting Assets and Child Custody in the Face of Deportation
<http://www.appleseednetwork.org/deportationmanual/>
- The LCCR Guide (California specific)
 - [*Contingency Planning for Immigrant Business Owners in California*](#)
- The California Uniform Statutory Power of Attorney Form
 - [Link available here](#)
 - (modified version included in the LCCR Guide)





Power of Attorney (POA)

- A person (“the principal”) chooses a **trusted** person (“the agent”) to act on their behalf for finances, business, or a child’s care.
 - The agent has full legal authority.
 - No need to be an attorney to give or receive power of attorney
- Use a POA to efficiently settle affairs in a worst case scenario.





The Agent

- Legally obligated to act in the principal's best interests.
- Must be a legal adult (18 years or older in California).
- Not necessary to be English speaking or have educational qualifications.
- *Not necessary to be an attorney.*

Finding an Agent

- Someone reliable and who can be trusted
- May not want to use your spouse or intimate partner.
- Who resides in the same state where the POA will be used.
- Who is a U.S. legal resident or citizen or not otherwise subject to detention or deportation in the near future.



POA Example: California

- Uniform Statutory Form Power of Attorney



Exhibit A

UNIFORM STATUTORY FORM POWER OF ATTORNEY (California Probate Code Section 4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA [PROBATE CODE SECTIONS 4400-4465](#)). THE POWERS LISTED IN THIS DOCUMENT DO NOT INCLUDE ALL POWERS THAT ARE AVAILABLE UNDER THE PROBATE CODE. ADDITIONAL POWERS AVAILABLE UNDER THE PROBATE CODE MAY BE ADDED BY SPECIFICALLY LISTING THEM UNDER THE SPECIAL INSTRUCTIONS SECTION OF THIS DOCUMENT. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

ALL POWERS CONFERRED UPON THE AGENT in this UNIFORM STATUTORY FORM POWER OF ATTORNEY shall also function completely as a DURABLE POWER OF ATTORNEY within all circumstances set forth herein:

I, *[Name of business owner, i.e. Betty Businessowner]* _____, (PRINCIPAL) APPOINT:

 [Name of Agent, i.e. Frank Friend] _____ (NAME)

 [Frank Friend's address] _____ (ADDRESS)

 [Frank Friend's phone number] _____ (PHONE NUMBER[s])



Power of Attorney: Other States

- An individual facing detention or deportation may not have the time or resources to make valid POAs for several states.
- If so, an option is to execute one POA that complies with the strictest requirements for POAs in the U.S., which include:
 - the business owner's signature and the date
 - the signatures of two witnesses
 - signature of a notary public
 - acknowledgements by the agent(s).

General vs. Limited POA

- General POA
- Limited POA



INITIAL:

- _____ (A) Real property transactions.
- _____ (B) Tangible personal property transactions.
- _____ (C) Stock and bond transactions.
- _____ (D) Commodity and option transactions.
- _____ (E) Banking and other financial institution transactions.
- (F) Business operating transactions.
- _____ (G) Insurance and annuity transactions.
- _____ (H) Estate, trust, and other beneficiary transactions.
- _____ (I) Claims and litigation.
- _____ (J) Personal and family maintenance.
- _____ (K) Benefits from the Social Security Administration, Medicare, Medicaid, or other governmental programs, or civil or military service.
- _____ (L) Retirement plan transactions.
- _____ (M) Tax matters.
- BB** (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).



TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL:

-
- _____ (A) Real property transactions.
 - _____ (B) Tangible personal property transactions.
 - _____ (C) Stock and bond transactions.
 - _____ (D) Commodity and option transactions.
 - _____ (E) Banking and other financial institution transactions.
 - BB (F) Business operating transactions.
 - _____ (G) Insurance and annuity transactions.
 - _____ (H) Estate, trust, and other beneficiary transactions.
 - _____ (I) Claims and litigation.



Activation of POA

- Can be effective **immediately** or
- Can be effective in the **future** (“Springing”)
 - example: POA activated only if deported

- In order to avoid the possibility of confusion later on, we recommend that you make the POA active immediately.



SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

This powers granted my agent herein shall only be effective if I am detained or deported by U.S. immigration authorities, proof of which requires a declaration under penalty of perjury by my agent that I have been detained or deported; and the presentation of one of the following documents:

If I am deported: issuance of a Final Order of Removal by an Immigration Judge; OR issuance of any of the following by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement: Expedited Order of Removal; Administrative Order of Removal; or Reinstatement of Existing Order of Removal.

If I am detained: documentation on U.S. Immigration and Customs Enforcement's online detainee locator that I am currently detained. The online detainee locator is available at this url:

<https://locator.ice.gov/odls/homePage.do>; OR any other documentation from U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement establishing that I have been detained.

This Power of Attorney will continue to be effective only for as long as I am detained or deported.

The attached Appendix A provides instructions, including information about my bank accounts and other property, and is incorporated into this Power of Attorney.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.



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DECLARATION OF FRANK FRIEND, AGENT

I, FRANK FRIEND, declare that BETTY BUSINESSOWNER has been

 DETAINED; or

 DEPORTED.

I certify under penalty of perjury that the foregoing is true and correct.

Date: _____

Frank Friend

In order to demonstrate BETTY BUSINESSOWNER'S condition of deportation, I have attached:

 a copy of BETTY BUSINESSOWNER'S Issuance of a Final Order of Removal by an Immigration Judge;

 a copy of BETTY BUSINESSOWNER'S Issuance of Expedited Order of Removal;

 a copy of BETTY BUSINESSOWNER'S Administrative Order of Removal; OR

BETTY BUSINESSOWNER'S B...



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Appendix A
INSTRUCTIONS FROM
BETTY BUSINESSOWNER, (principal), TO FRANK FRIEND, (agent)



I, BETTY BUSINESSOWNER, grant FRANK FRIEND the authority to access the following bank accounts:

1. Bank of America account number XXXX, [LOCAL BRANCH ADDRESS]
2. Wells Fargo Bank account number XXXX, [LOCAL BRANCH ADDRESS]

I, BETTY BUSINESSOWNER, grant FRANK FRIEND the authority to sell the following business equipment under the following conditions:

1. [BRAND NAME] commercial oven, serial number XXXX, registration number XXXX.
Must sell for at least \$4,000. Oven has a small dent on right-hand side of front door.

Date: _____

Betty Businessowner



Durability of the POA

- Durable POA
 - Lasts even when the principal becomes incapacitated (i.e. mentally incapable of making decisions)
 - May not be advisable for immigrant business owners.
- The sample form is not a durable POA. It has an end point.

PROTECTION OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ESTABLISHING THAT I HAVE BEEN DETAINED.

This Power of Attorney will continue to be effective only for as long as I am detained or deported.



Terminating or Changing the POA

- Termination
 - Sign a revocation document and send copies to anyone who had the POA
- Changing
 - Create a new one saying that all previous POAs are cancelled.
 - Many statutory form POAs already contain this language





Third Party Forms

- Example: Banks may require a form POA.
 - If a third-party rejects your form you should contact a lawyer
 - Principal may have the right to bring a court action to enforce their own POA.
 - However it may be easier to just use their form.





For Detained Immigrants

- May be possible to prepare a POA while in detention, but difficult to properly witness and notarize.
- May need to contact a lawyer or have a notary visit the detention center.



For Deported Immigrants



- Apostille process
 - Can authenticate or legalize documents that can be honored in another country.
 - Can prepare or amend a valid POA after deportation through apostille process
 - More information on page 22 of Appleseed Guide.





Review Checklist for Power of Attorney

- List all financial matters you would need an agent to help you handle.
- Carefully choose an agent--a **trusted** person who will remain in the U.S.
- Give separate POAs to different people for different purposes
- Give the original POA to the agent. Keep a copy for your records.
- Ask the agent to keep clear records of all the actions taken under POA
- If another person refuses to accept your agent's POA, contact a lawyer



Power of Attorney



Q & A





Revocable trust | Why do it?

- Ensures **continuity** in business operations and asset ownership.
- Designates a trusted person (trustee) to carry out a contingency plan for owner's business in case of:
 - Detention
 - Deportation
 - Mental incapacity
 - Death



Revocable Trust

- Business owner retains right to modify or revoke trust while still living.
 - Can regain ownership and control of business from trustee if released from detention or returns to the U.S.
- Can be created by a single person or a married couple.
- Power of attorney can grant an agent the power to create a revocable trust.
- See template trust in [LCCR guide](#)



Example: Claudia Caféowner

- Runs café as sole proprietor.
- Two daughters: Mary and Patricia.
- Claudia wants Mary to take over café if Claudia is detained or deported.



Claudia Caféowner Sets Up Revocable Trust

- Claudia is the initial trustee.
- If Claudia is detained, deported, or mentally incapacitated
 - Mary becomes successor trustee and manages the café.
 - If Mary can't/won't do this, then Patricia becomes trustee.
- Claudia can amend or revoke trust at anytime while living.
 - If Claudia released from detention, returns to the US, or regains mental capacity, she can own and manage her café again.
- If Claudia dies, trust becomes permanent (irrevocable).
 - Distributes Claudia's café and other property to her daughters as specified in the trust document.

How Claudia Caféowner Sets Up Revocable Trust

- Writes and signs a trust document.
 - Trust becomes owner of Claudia's business assets.
 - Claudia still manages café initially.
- Claudia must transfer legal title (ownership) of all assets from herself to the trust, so that legal title is held by the trustee of the trust.
 - Transfer of business from Claudia to trust via simple assignment document.
 - Transfer of house from Claudia to trust via new deed recorded with county.

Revocable Trust

What is a trust?

Formal legal relationship in writing (“declaration of trust”) between:

- “Settlor” (original owner of property)
- “Trustee” (person responsible for care of property in owner’s absence)
- “Beneficiaries” (persons benefiting from the property in owner’s absence)

Metaphor: Virtual safe deposit box for property, with certain automatic protections.

Revocable trust

What is a revocable trust?

A trust where the settlor (original property owner) retains the right to modify or entirely revoke (cancel) the trust.

Metaphor: Virtual safe deposit box for property, with certain automatic protections. The property owner can change the box at any time while alive. They can also make it disappear to regain direct ownership of their property.

Revocable trust

How can a revocable trust be revoked?

- Check your state laws. Revocation differs per state
 - In California
 - Any way listed in the declaration of trust
 - Declaration may limit the methods of revocation.
 - If no limit in declaration, settlor may deliver written and signed revocation document to trustee.
 - Trustee needs to transfer title from trust back to settlor (original owner).

Revocable trust

Benefits

- Places business and other assets in the hands of a trusted person (trustee) if owner is detained, deported, mentally incapacitated or dies.
- Protections = automatic.
- Avoid probate court (in case of death of Business owner)

Downside

- Trusts can take significant time and money to maintain.
 - For example, may have to pay lawyer to set up and professional trustee to maintain.



Is a revocable trust right for you?

Consider:

- Risk of detention/deportation of business owner.
- Value of business/other property to be protected.
- Business owner's time and ability to draft declaration of trust and manage trust.
- Need to ensure that business continues to operate and that funds are provided to dependents.



Revocable trust

What is needed to form a revocable trust?

- Check your state laws.
- In California:
 - Settlor (business owner) intends to form a trust.
 - A trustee is available in case of settlor's detention/deportation/mental incapacity/death ("successor trustee" - see below).
 - Trust will have beneficiaries.
 - Trust should be in writing
 - Ownership of property is transferred to the trust ("funding the trust").
 - Real property (e.g., a house) requires trust to be written. Trust may also be recorded with a county recorder where the real property is located.
 - In CA, trusts presumed to be revocable unless the trust clearly states it is not.

Revocable trust

Initial vs. successor trustee

- Business owner (“settlor”) forms the revocable trust and serves as initial trustee while alive and in the United States
 - → Transfers ownership (legal title) of business/other property to trust, so that trust becomes owner.
 - → Retains the same powers (e.g., abilities to manage, sell, invest the property).
- Declaration of trust must specify a “successor trustee” to serve if settlor is detained/deported/mentally incapacitated/dies.

Revocable trust

Criteria for successor trustee

- Should be:
 - Trusted person.
 - Able and willing to do work of managing trust (time, skills, capacity).
 - US citizen/legal permanent resident (green card holder).
 - Honors settlor's wishes.
 - Will work well with settlor and beneficiaries.
- Other option: professional trustee (bank's trust department or person licensed in CA as "Professional Fiduciary").
 - More expensive.
 - Bank may not be willing to manage small business.

Revocable trust

Who are the beneficiaries?

- Person(s) entitled to benefits of trust property upon triggering event (death of settlor).
 - Benefits from property include income from business and profits from sale of business.
- Must be an identifiable person or group of people.
 - Can't be too vague to identify.

Revocable trust

Transfer of property to the trust

- Procedures depend on type of property.
- Trust declaration includes list of property.
 - BUT as long as legal owner changed to trust, property belongs to trust - doesn't have to be in the schedule.
- Legal title to trust property should always be in trustee's name with date of trust.
 - E.g., "Claudia Cafeowner, Trustee of the Claudia Cafeowner Revocable Trust dated_____."

Revocable trust

Transfer of property to the trust

- Examples of transfer procedures in California (see Guide):
 - Business:
 - Carefully review business docs (balance sheet, assets, licenses/permits, governance docs, etc.). If necessary, get advice about restrictions & specific requirements for transfer.
 - Bank accounts:
 - Usually, can use bank or brokerage's own "Certification of Trust" form to transfer ownership to trust.
 - Sometimes required to open new account in name of trust.

Revocable trust

Transfer of property to the trust

- Examples using California law (see LCCR guide for more detail):
 - Real estate (e.g., home or condo)
 - Execute deed transferring title from owner to trust
 - Record deed with county where property is located.
 - **Caveat:** If property has mortgage, must notify lender about transfer and get assurance *in writing* that loan won't be "called" (full amount due on transfer).
 - Copyrights
 - Should be listed in schedule attached to declaration and assigned to trust in separate, notarized document.

Revocable trust

Non-citizen business owners: Special considerations

- Settlor needs SSN or ITIN to form a trust.
- If settlor deported, trust may be considered “foreign trust” by IRS unless successor trustee is a “US person” for tax purposes (US citizen, green card holder, or “tax resident”).
- Must define detention and deportation in declaration of trust.
 - Must specify which docs successor trustee uses to prove settlor’s detention/deportation (see LCCR guide for more details).

Revocable Trust



Q & A





Maintenance and dissolution of assets



Maintenance and Dissolution of Assets

Businesses/Ownership Interests
Bank accounts and cash transfers
Liabilities
Real Estate
Vehicles and other Valuables
Paying Taxes



Dissolving a business/business interest

Selling a business/share

- Business broker can help sell business
- Valuation
 - Consider: shares, bank accounts, debt, licenses, real estate and other property (equipment),
 - Can hire a professional to do this as well (especially with co-owners involved)
- If outstanding debts are valued more than business:
 - Can transfer all of the assets to an assignee (liquidator) who sells the assets and distributes the proceeds to creditors who file claims after being notified
 - other forms of debt discharge, e.g. cancellation of debt or bankruptcy

Co-owners



Issues to consider and list in any agreement if your co-owner(s) want to stay in business if you leave.

- Right of First Refusal
- Consent and Notification
- Change of Control





Bank accounts

Opening and maintaining a bank account

- International access
 - online banking, banking by phone, chip card technology
- Joint bank account
 - the person you add will also legally own everything in the account.
 - The account could be taken by the other person's creditors
 - if you die, the other person may get all of the money.
- Financial limited power of attorney
 - agent can manage the account on your behalf.
 - Some banks do not allow for powers of attorney. Check with your bank.



Bank Accounts

Closing a bank account

- If no financial obligations in the U.S. and need easy access to the money in your home country.
- Ensure that checks and automatic payments have cleared before closing the account.
- If closing account from abroad, you must write a letter with specific information to your local branch.
- Money will be given as a check, transfer or can be loaded onto a pre-paid card
 - For a bank draft and wire transfer you will already need an account in the home country.

Loan and Credit Card Debt

- Debt always exists and does not disappear when you leave the country
- Interest, fees and penalties will continue to accrue
- Alternative payment arrangements may be available with the lender, such as an extended payment period or change in repayment amount.
- Lender may seek to recover unpaid debt
 - Once the debt reaches a certain level, the credit card company may cancel the credit card, may sell your debt to a debt collector
 - if a lender sues in a U.S. court for nonpayment and wins , it can enforce the judgment abroad if there is an agreement with the U.S. to allow it.
 - can win even without your presence (default judgment)

Real Estate

Any owned land or building, e.g. a home, an apartment, a business location

Keeping Your Property

- Deportation does not affect property ownership
- Make arrangements (like power of attorney) for property management and payment of loans and taxes in your absence
- Must pay property taxes

Selling or Gifting Your Property

- if there is a loan/ mortgage, lender must consent to any transfers.
- May result in taxes that must be paid by sellers, and by givers and receivers of gifts.

Co-owner(s)

- If not at risk of deportation, you may consider having him or her take care of things in your absence.
- Consider transferring to co-owner(s) your entire interest in the property or otherwise give them a right (by limited power of attorney) to act on your behalf with respect to the property and any related loans.



Mortgages

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
- 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, then keep any remaining funds
- If you think will not be able to repay your loan, reach out for help in your state to understand the full risks and find out if there are any protections

Consequences of Non-Payment

- Loan will be in default and lender can foreclose on your property.





Vehicles and other valuables

- If you own your car outright, you can sell or export it.
 - Exporting can be complicated, may be simpler to sell your car in the U.S. and buy a new car in your destination country.
- If you have valuables, options include
 - selling
 - have representative (power of attorney) value and sell them
 - shipping to destination country
 - store them in the U.S. (safe deposit box or storage unit)





Paying Taxes

Are You a Resident or Non-resident Alien for Tax Filing Purposes?

- Usually, yes.
 - "Substantial presence" test. Most immigrants are classified as resident aliens for tax purposes and must file the standard form 1040.
 - In home country, may continue to be treated as resident aliens as long as the substantial presence test is satisfied.
- A resident alien must file a tax return if her or his income is above a certain level depending on filing status, age, and the type of income earned.
 - Even if an individual is not required to file taxes, they can file to receive a refund of any overpaid taxes or to receive tax credits such as the Earned Income Tax Credit.





Review | A plan is essential

Issues to consider

- Minor children or dependents
- Incorporation status
- Possessing property (personal or business), high-value possessions, bank accounts
 - loans, credit card debt and mortgages
 - receipt of government benefits (e.g. social security, disability)





Q & A





Resources

- [Contingency Planning for Immigrant Business Owners in California](#)
- [Protecting Assets and Child Custody in the Face of Deportation](#)
<http://www.appleseednetwork.org/deportationmanual/>
- [New York Statutory Short Form Power of Attorney](#)
<http://www.nysba.org/CustomTemplates/Content.aspx?id=6554>
- [New York Office of Children and Family Care Services Form 4940 \(designating guardianship\)](#) <http://www.ocfs.state.ny.us/main/Forms/kinship/OCFS-4940%20Designation%20of%20Person%20in%20Parental%20Relationship.pdf>
- [A Legal Overview of Business Ownership for Immigrant Entrepreneurs in MA \(good general overview\)](#) <https://harvardgazette.files.wordpress.com/2016/01/tlc-immigrant-entrepreneurs-overview.pdf>
- [Mission Asset Fund: Financial Emergency Action Plan for Immigrants](#)
<https://missionassetfund.org/financial-emergency-preparedness-guide/>



Thank you!

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