

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.

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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.

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.

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.

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.

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.