

# Housing Advocates' Handbook: Working with Homeowners Facing Possible Detention or Deportation





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# Housing Advocates' Handbook: Working with Homeowners Facing Possible Detention or Deportation

This handbook is designed to provide information and practical guidance for housing counselors, attorneys and other housing advocates working with homeowners who are at risk of detention and/or deportation in connection with their actual or perceived immigration status. The handbook will be most useful before detention or deportation occurs, but Section VI includes some information about how to navigate cases when the homeowner is already absent.

Please note: This handbook does not provide individual legal advice for any specific homeowner or their family; instead, it is meant to help advocates and their clients identify issues that need to be addressed. Where possible, homeowners should consult a lawyer for information about the state and local laws that apply to their property, advice on their best course of action and assistance preparing legal documents.

**Legal Aid:**

<https://www.lawhelp.org/find-help>

<https://www.lsc.gov/grants/our-grantees>

**Private attorneys:**

<https://www.consumeradvocates.org/findanattorney/>

County Bar associations generally have referral services.

[Find your local Bar association here.](#)

**Basic self-help legal resources with sample documents:**

<https://lawhelpinteractive.org/>

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# 1. Options for the Home

As you begin the discussion with your client, it will be helpful to understand the various options they will need to consider.

## ***If your client wants to keep the home, there are a few possible arrangements to consider:***

- Keep ownership as it is and prepare a power of attorney (POA) giving a trusted person the authority to act on behalf of the owner with respect to the home.

**Pros:** Homeowner can revoke a POA if necessary; allows the family to continue living in the home; preserves existing and future equity; and involves less paperwork and logistical issues than other home retention options.

**Cons:** The POA may act against the homeowner's interest; remaining members of the household will need to continue paying the mortgage, taxes, insurance and other home-related expenses to avoid foreclosure; and the mortgage servicer may require additional authorization from the homeowner, especially if the mortgage becomes delinquent.

- Keep ownership as it is and rent the property out to keep the property occupied and cover the mortgage and other home-related expenses. Appoint a POA and, if needed, hire a **reputable property manager**.

**Pros:** Homeowner can revoke a POA if necessary; preserves existing and future equity even if the family is not in a position to keep the mortgage and other home-related expenses current; and reduces the risk that the home will sit vacant.

**Cons:** The POA or property manager may act against the homeowner's interest; mortgage servicer may require additional authorization from the homeowner, especially if the mortgage becomes delinquent; landlord-tenant disputes may arise and be difficult to resolve if the homeowner is unavailable; and the family may not be able to move back into the home quickly or easily due to tenant holdovers or tenants' rights. Transfer ownership interest in the property to a spouse or close relative.

- Transfer ownership interest in the property to a spouse or close relative.

**Pros:** Depending on the relationship, the new owner may qualify as a "successor-in-interest" for purposes of dealing with the mortgage servicer; and a person who is on title to the property may have an easier time handling matters related to the home — such as accessing assistance from disaster relief programs — than someone who is appointed as the POA.

### **Key Steps to Finding a Reputable Property Manager:**

#### **Verify licenses & credentials:**

Ensure the manager has a valid, active license (for renting/leasing).

#### **Check reviews:**

Look for companies with a high volume of positive feedback, but watch out for potentially fake or incentivized reviews.

#### **Interview Candidates:**

Ask specific questions about management fees; vacancy rates; and maintenance.

#### **Watch out for red flags,**

such as unwillingness to provide references from current clients; poor communication; or unusually low fees that may indicate hidden costs or poor service.

**Cons:** Transferring ownership to a young adult or other person with little or no experience with homeownership can be very risky, so it is important to educate any potential transferee, for example by having them work with a housing counselor; once ownership is transferred, there is no guarantee the original owner will be able to regain ownership; new owner may act against the original owner's interests; certain transfers of ownership can trigger a lender to call the whole balance of the mortgage due; certain transfers of ownership can trigger increases in property or income taxes owed, so it is critical to assess those potential impacts before making any transfer; depending on the type of loan and the relationship of the homeowner to the new owner, the lender may not allow the new owner who is not a named borrower to assume the mortgage; and requires substantial paperwork and recording of documents with the county.

Ownership transfers that do not trigger a lender to call the mortgage due include transfers: to a child or spouse; to a joint owner by right of survivorship; to a spouse as part of a divorce or separation agreement; and to a revocable (living) trust as long as the borrower is and remains the beneficiary.

***If your client does not plan to keep the home, the options are:***

- Sell on the open market if there is equity.

**Pros:** Provides cash from the sale proceeds to cover other necessary expenses; avoids ongoing complications of managing a residential property remotely or through a power of attorney; and relieves the family of the financial burden of paying the mortgage and other homeownership-related expenses.

**Cons:** Some predatory real estate professional or other actor could take advantage of the owner's situation and push for a quick sale at a below-market price; therefore, it is critical to carefully screen realtors before signing a listing agreement.

- Try to work out either a short sale or a deed-in-lieu with the mortgage servicer if the house is underwater.

**Pros:** Relieves the owner and the family of the ongoing financial burden of a property with no equity; and avoids foreclosure.

**Cons:** Depending on state law and the type of loan, the homeowner could still end up owing money on the house; and short sales and deeds-in-lieu can have a negative impact on the borrower's credit and the ability to obtain home loans in the future.

If the owner stops paying the mortgage, the lender will likely foreclose on the property. Be sure to advise clients about their state's foreclosure process and timeline. In addition, you should advise clients on the negative consequences of foreclosure to all borrowers on the note, including a severe drop in credit score and listing on a credit report for up to seven years. If there is equity, the homeowner should arrange for someone to claim any post-foreclosure surplus. If the house is underwater, provide information about whether they will owe the lender a post-foreclosure deficiency.

## 2. Relevant Information and Documents

As discussed in Section I, there are several different options available to a homeowner who believes they may become unavailable to handle matters related to the home due to immigration-related detention or deportation. The appropriate option for any given family will depend on several factors, so it is important to start by collecting key information and documents from the homeowner.

### Key Information and Where to Find It

Information needed	Where to find the information
Goals for the home	Discuss the goals with the client.
Who owns the home? Are there co-owners?	The Grant Deed shows who is on title to the property and how it is co-owned if there is more than one owner.
Who is named as borrower on any home loans?	Look at recent mortgage statements, original mortgage or deed of trust or original loan agreement (the note).
Payment status of any home loans	Look at recent mortgage statements, delinquency letters, court filings or recorded documents relating to foreclosure.
Type of loan	The Consumer Financial Protection Bureau has <a href="#">information</a> about how to determine what type of loan a borrower has.
Fair market value of the home	Get the opinion of a real estate broker or pay for an appraisal to determine the fair market value of the home. You can also look at online real estate sites like Zillow or Redfin, but note that the accuracy of its estimates may not take into account unique property features or renovations. All valuations should take into account the condition of the home.
Household financial picture	Discuss with the client the full financial picture of the household. Be sure to ask whether any household members who are not named borrowers contribute to mortgage payments or other housing expenses. Also ask about the family's ability to keep up with mortgage payments and other expenses if the homeowner is unavailable and unable to contribute.
Level of risk of detention/deportation	Discuss with the client the level of risk they face. While this is a very sensitive subject, this information can be helpful in determining the best course of action. It will also be useful for the client to consider the immigration status of household or family members who might be in a position to assist with managing the property in the owner's absence.
Is there someone who could assume (take over) the home loan if permitted by the lender?	If a loan assumption is under consideration, it will be important to determine whether it is permitted and whether the person who might assume the loan can qualify based on credit score, income and immigration status, given increased restrictions.

Housing advocates should not independently assess immigration risk, but should discuss with the client how possible detention or deportation could affect homeownership planning. Generally speaking, undocumented immigrants and those with temporary or precarious immigration status (such as DACA or Temporary Protected Status) face a higher risk of detention and removal than those with more permanent forms of lawful status (such as green card holders). Individuals with outstanding orders of removal or deportation face the greatest risk.

Non-citizens with a criminal history may also face an elevated risk and should be encouraged to consult a qualified immigration attorney. Consider developing referral relationships with trusted local immigration attorneys and nonprofit immigration legal services providers. Low-cost or nonprofit immigration legal services can be located through the [National Immigration Legal Services Directory](#), and private immigration attorneys can be found through AILA's "[Find an Immigration Lawyer](#)" search.

## Key Documents and Where to Find Them

Document	Where to obtain if not already in client's records	Available without homeowner?
Grant Deed (most recent)	Obtain this from the County Recorder — online if available, otherwise in person at the Recorder's office.	Yes
Mortgage or Deed of Trust for each home loan	Obtain this from the County Recorder — online if available, otherwise in person at the Recorder's office.	Yes
Note (loan agreement)	Request the loan agreement from the mortgage servicer.	Yes, if named borrower has a POA or signed a third-party authorization with the servicer.
Recent mortgage statement	Request the statement from the mortgage servicer.	Yes, if named borrower has a POA or signed a third-party authorization with the servicer.
Property tax bill	Obtain this from the Treasurer/Tax Collector — online if available, otherwise in person at the Tax Collector's office.	Yes
Hazard insurance bills (for all home-related policies)	Check with the insurance company for copies of the policy and recent bills. If insurance premiums are escrowed, the annual escrow statement may include info about premiums.	Maybe — insurer might require third-party authorization from the homeowner.
POA (if there is one in place already)	If the homeowner got legal or other help to prepare the POA form, check with the law firm or organization. If not, it may be difficult to locate this document unless the homeowner can tell you the location.	Maybe, by the person named as authorized agent.

## 3. Mortgage Issues

If a homeowner may become unavailable, it is critical that they arrange in advance for someone to act on their behalf with respect to any mortgages on the home. Arranging for a POA should be enough to allow that person to communicate with the mortgage servicer and lender, but it is best to advise homeowners to obtain and complete a third-party authorization from the mortgage servicer as well.

Ensuring that someone else can communicate with the servicer will allow them to make payments, notify the servicer of changes to escrowed charges, submit [requests for information and notices of error](#) if there are problems with the loan, and obtain reinstatement quotes and payoff statements if needed. A power of attorney and an authorized third party should also be able to engage in loss mitigation with the servicer if the loan has become delinquent or if the owner's absence makes it impossible to continue making payments.

Although immigration detention or deportation of the named borrower may not give rise to [successor-in-interest rights and protections](#), it is still worth presenting the facts regarding a borrower's unavailability to sign documents such as loan modifications — perhaps with the assistance of their immigration attorney — to determine whether the loss mitigation process can go forward without participation of a named borrower.

Be sure to warn clients about potential scams targeting homeowners, especially those who are in financial distress, elderly or do not speak English.



## 4. Property Charges

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### ***Homeowners Insurance:***

Most mortgage lenders require borrowers to have homeowners insurance. One important but often overlooked step when a homeowner vacates or transfers ownership of a property is notifying the insurance company. Failing to do so can lead to unexpected complications and even coverage issues.

Homeowners insurance does not transfer to a new owner automatically — whether to a family member or a third-party buyer. Once the property is legally transferred, the new owner must secure a homeowners policy in their own name. The former owner's policy will then be canceled and any remaining unused premium may be refunded.

A home insurance policy must be updated to reflect the new ownership structure. If a homeowner fails to notify the insurance company, the insurer may not recognize the new owner as the properly insured entity in case of a claim. This could cause delays or even result in a denied claim, leaving the owner financially vulnerable.

The type of insurance coverage needed will change depending on who is living in the house and whether it is occupied, listed for sale or rented out.

Standard homeowners insurance policies do not cover flood damage. If the client's property has or requires flood insurance, a separate flood policy will also need to be addressed.

### ***Property Taxes:***

When property transfers from one person to another, the new owner will likely need to record a change of ownership form with the county or municipality so the change appears in the public record. Depending on the type of transfer, the property may be reassessed and the property tax amount adjusted. If a client is considering transferring title, you should help them determine whether the transfer is or is not exempt from reassessment. If it is not exempt, the property tax bill may go up. If the property taxes are escrowed, any anticipated increase should be reported to the mortgage servicer promptly.

## 5. Power of Attorney

A POA is a document in which one person (the principal) gives one or more persons the power to act on their behalf. These documents are accepted in all states, but rules and requirements about how to prepare them may differ from state to state. States typically provide standardized POA forms. A POA is often used to prepare for situations when a person may not be able to act on their own behalf due to absence, illness or other incapacity.

The person named in a POA to act on behalf of the principal is commonly called the “agent” or “attorney-in-fact.” With a valid POA, an agent can take any action permitted in the document. Often an agent must present the actual document to invoke the power. For example, an agent who signs documents to buy or sell real property on behalf of someone else must present the POA to the title company. A POA may be revoked, but most states require written notice of revocation to the person named to act as the agent.

For more general information about POAs for people at risk of detention or deportation, see [Chapter 9](#) of the Appleseed Network Deportation Manual, which includes a [state-by-state chart](#) with links to each state’s statutory POA form. The American Bar Association also has general [information about POAs](#).

The cost for preparing a POA varies widely depending on the client’s location, but it will likely be somewhere between \$250 and \$900. Some legal aid organizations or local bar associations may offer free or low-cost services related to POAs and estate planning. We recommend that housing counselors and other homeowner advocates identify those resources in their own service area so they can be ready with referrals when needed.

### ***What can an agent do under a POA?***

A POA defines the scope of an agent’s authority. The power granted may be limited to a particular asset or activity, such as transactions involving the family home, or it may be more general in its application. Some common responsibilities included in a financial POA include buying, selling, renting and managing property; signing leases and mortgages; executing deeds; and managing the principal’s other financial affairs. Keep in mind that certain responsibilities, such as managing the family home, may require additional authority, including access to the bank account the principal uses to pay the mortgage, property taxes, insurance and repairs.

The power granted may also be limited in time. It can be “durable,” meaning it lasts until the principal cancels it or passes away, or it can be temporary. For example, if you are buying or selling assets and do not wish to appear in person to close the transaction, you may appoint an agent to handle that particular transaction using a POA.

In addition to designating a power of attorney, homeowners may want to consider placing the home in a **revocable (“living”) trust** to allow a trusted person to act as trustee and manage the property in the owner’s absence. Attorneys who specialize in estates and trusts can assist with setting up a trust and transferring the home into the trust. We do not recommend that homeowners create a living trust without legal advice and guidance.

### ***When does a POA become effective?***

When preparing a POA, the principal has a choice about whether the agent will be able to act on the principal's behalf immediately or not. If the principal opts for a "springing" POA, the agent will not be able to act until a specified event occurs. Usually, a springing POA is triggered when the principal becomes incapacitated, often as confirmed in writing by a medical professional.

Some homeowners may want to specify that the POA will go into effect only if they are unavailable due to detention or deportation. Using a springing POA in this way can alleviate concerns that an agent might act prematurely or try to misuse the POA.

However, a springing POA can be difficult to use. In instances of detention or deportation, particularly given the many examples of people being disappeared without any information given to their families or attorneys, an agent trying to act under a springing POA may not be able to obtain usable evidence of what happened to the homeowner. As a result, financial institutions or title companies may be unwilling to allow the agent to act on behalf of the principal, which would defeat the purpose of having a POA in place.

## 6. What if the homeowner has already been detained or deported and cannot be contacted?



If a family seeks assistance after the homeowner on title to a property has already been detained or deported, it will be very challenging for them to transact business related to the home. When a homeowner passes away or gets divorced, there are standard legal rules and procedures available to ensure that a new owner can be identified and given the official rights of an owner to manage and control the property. When a homeowner is still living and on the property title, however, the only way for the family to get the authority they need to communicate with the mortgage servicer, change insurance coverage or sell the property is to get a court order giving them that authority. To do so, the family will need the assistance of an attorney with family law, probate or real estate expertise who can help them put together a request supported by factual evidence.

## 7. Checklist for Creating an Action Plan

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- What are the goals for the home in the event an owner is detained or deported (keep, transfer ownership, sell, or other):
  - Who owns the home?
    - If there are co-owners, what form of co-ownership?
  - What is the estimated fair market value of the home?
  - Is there a mortgage on the home?
    - If yes, how many loans are there on the home?
  - Who is named as borrower on the loan(s)?
  - What is the total outstanding balance of each loan?
  - What is the payment status of any home loans?
    - Current
    - Delinquent — include amount of arrears:
  - Who is the loan servicer?
  - What type of loan (GSE/FHA/VA/USDA/Private)?
  - What are the principal, interest, taxes, insurance and association dues (PITIA) costs?
    - Principal and interest:
    - Property taxes:
    - Homeowners insurance premiums:
    - Additional monthly property charges (e.g., condo or homeowners association dues):
  - Who lives in the home?
  - Is the home currently affordable for the household?
  - Will the home be affordable for the remaining household if an owner is detained or deported?
  - If applicable, is there a family member or other person the owner trusts to manage the property if the owner is detained or deported?
  - Does the owner have a POA and/or revocable trust prepared that designates a trusted person to manage the property if the owner is detained or deported?
  - Referrals needed (check all that apply):
    - Legal — POA/estate planning
    - Legal — Transfer of the property
    - Legal — Immigration matters
    - Legal — Other
    - Real estate broker — advice/sale
    - Property manager
    - Other:
  - Next steps:
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## 8. Appendix: Sample Scenarios

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### **Real life scenario #1:**

Sebastian Borrower has contacted you because he is worried he may be deported and wants to keep the home he purchased in the U.S. 10 years ago. Sebastian is the only owner of the home. Sebastian lives in the home with his son, Junior, aged 19, who is a U.S. citizen.

If Sebastian is deported, he wants his son to be able to remain in the home.

Sebastian has a job that pays him hourly and he expects to lose his job if he is away for more than a week. He has very little savings. Junior's maternal aunt, Auntie, lives in the same community and is willing to help support Junior if Sebastian is deported. Auntie has a green card. Junior is taking classes at a community college and earns about \$1,000 a month from a part-time job.

Sebastian's home is valued at \$225,000, and he owes \$155,000 on his mortgage. Sebastian's monthly principal and interest payment is \$950. In addition, he has to pay \$280 per month for property taxes and home insurance each month through an escrow charge included on his monthly mortgage statement. You check for other liens against the house, but the mortgage is the only one.

You will first need to discuss the family's financial situation with Sebastian and Junior. Can the following home expenses be covered if Sebastian is deported?

- Mortgage payments
- Property taxes
- Insurance
- Maintenance costs

Since Junior can't afford to maintain the home expenses with his income alone, could he supplement his income by increasing his work hours, renting out part of the house, and/or getting help from Auntie?

Rental option considerations:

- Who would act as property manager? Junior? Auntie?
- Can they handle tenant issues and disputes?

Help from Auntie considerations:

- How long could Auntie contribute to the home expenses?
- Will Auntie need to be paid back?

If Junior can cover the expenses, consider Options A and B below. If Junior cannot cover the expenses, there is a high risk of foreclosure, so Sebastian will need to consider selling the house (Option C below).

**Option A:**

Sebastian could remain as the owner of the home and prepare a POA. He would need to decide who to appoint as his agent under the POA. He could appoint either Auntie or Junior. To help Sebastian make the right decision, it would be important to explore with him whether Junior has the capacity to act as his agent given his young age or if he believes Auntie would be a better choice to act in his interest. Sebastian would also need to decide the scope of authority he wants to grant his POA and whether to use a springing POA or make it effective immediately.

If Sebastian decides a POA is best, you could refer him to a legal services organization for assistance and/or direct him to LawHelp Interactive.

**Option B:**

Sebastian could also transfer ownership in the property to Junior. It is unlikely he could transfer the property to Auntie without the lender enforcing the “due-on-sale” clause in the mortgage since she is not a spouse, child or joint tenant. If Sebastian transfers the property to Junior, Junior could be treated as a “successor-in-interest” and deal directly with the mortgage servicer. As the successor, Junior might also be able to request a loan modification based on the reduced household income, but that would depend on what type of loan it is and whether Junior would be allowed to assume the loan as part of a modification. Sebastian and Junior would also need to consider whether there would be any change in property or income taxes owed because of the transfer and whether it matters that Junior might not qualify in the future for first-time homebuyer programs.

If Sebastian decides to transfer the property to Junior, he will need to prepare a Quit Claim Deed and other documents required in his jurisdiction and record the transfer in the public register.

**Option C:**

If Junior will not be able to cover the home expenses with Sebastian gone, Sebastian should consider selling the home. Sebastian has equity, so selling would likely be better for Junior’s long-term financial stability than letting it go into foreclosure. If Sebastian sells, he could possibly retain over \$50,000 in equity. If the house goes into foreclosure, a lot of that equity will get eaten up by foreclosure costs.

If Sebastian thinks that Junior is not ready to act as his POA or become a homeowner and is not comfortable having Auntie handle his affairs, he might want to consider selling the house even if the house might be affordable for Junior. He will have to consider Junior’s plans as well as the options for alternative housing for Junior.

If Sebastian decides to sell, he would need to get the home ready to sell and would need to engage a reputable real estate agent. It would also make sense to prepare a POA in case Sebastian is deported before the sale could be completed.

## ***Real life scenario #2***

Priya was recently detained by U.S. Immigration and Customs Enforcement (ICE). Her sister, Uma, who is a U.S. citizen, needs advice about what to do about Priya's house. Priya bought the house with her ex-husband, but she became the sole owner in the divorce four years ago. She has been making all the house payments since the divorce, but her ex-husband is still named as a borrower on the loan because the lender would not release him and Priya could not afford to refinance. They are on good terms, so he hasn't demanded that she get him off the loan. Priya has been taking care of her elderly mother at the house. Uma lives nearby in an apartment she rents.

Uma thinks Priya has some savings, but she does not have access to Priya's bank accounts. The mother does not have any income and is supported by her daughters and a son who lives overseas.

Priya's house is worth about \$310,000, and the mortgage balance is \$265,000. The monthly mortgage payment, including property taxes and home insurance, is \$1,800.

Uma has not been able to communicate with Priya since she was taken by ICE. Priya's lawyer thinks she has been taken to a detention center in Texas and is trying to establish contact.

A crucial first step in this situation is to determine whether it is possible to communicate with Priya.



If it is possible and Priya is willing, Uma should consider getting a POA prepared for Priya to sign so that Uma can manage Priya's financial affairs. Ideally, Priya's immigration attorney could help with the logistics, but that could be challenging. If it is possible to get Priya's input about what to do about the house, Uma should do what Priya wants to the extent feasible. Otherwise, Uma should use her best judgment in handling Priya's house and finances.

Uma could arrange to sell the house, but that would depend on whether there is another place for their mother to move. There is not a lot of equity available, so it is a judgment call.

Uma could also consider moving into the house with the mother and using Priya's savings and Uma's own funds to cover the home expenses.

If Uma needs to communicate with the mortgage servicer and encounters any problems, she could ask Priya's ex-husband — who is still a named borrower on the loan — to help by signing a third-party authorization or speaking with the servicer himself.

If it is not possible to contact Priya or get her to sign legal documents, Uma will not be able to sell the house because she doesn't have legal authority. To access Priya's bank accounts or sell the house, Uma would likely need to hire an attorney and petition a court for an order allowing her to manage Priya's affairs while she is unavailable. Keep in mind that the process could be long and costly, and there is no guarantee that the court would grant such an order.

Assuming the mortgage is current or can be brought current, another option is for Uma to move into the house with the mother and pay the mortgage and other home expenses on Priya's behalf if she and the brother can manage that financially. If she needs to communicate with the mortgage servicer, she might try to enlist the help of Priya's ex-husband as described above.

