

Buying U.S. Real Estate When Your Child Studies in America

Protecting Your Loved Ones and Your Assets

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Buying U.S. Real Estate When Your Child Studies in America

Protecting Your Loved Ones and Your Assets

In my 20+ years as an estate planning attorney, I've found that most families – and perhaps especially nonresident aliens (NRAs) – want straight talk when it comes to legal and financial matters. So in this guide, I try to dispense with legalese and give you exactly what the title says.

Too many parents “fly in the dark” when it comes to securing the financial future of their loved ones. And as someone who works on estate tax and probate issues with NRA families, I hear heart breaking stories of families having to pay dearly during painful times, just because they never found a trusted advisor to ensure they keep all the assets they deserve.

In this guide I give examples of nonresident aliens from several countries to illustrate key questions, issues and choices such families often face. The examples are made up, but if your situation is anything like a family in my examples, you need the help of an experienced international estate planning attorney.

Unfortunately, with the way that most international estate planning lawyers present themselves to the world, it seems like we're all the same. In reality, each lawyer does have certain qualifications. Some might be experts at tax law, or in working with corporations or with debt collection, or a whole variety of different things...but are they really providing what you, the family person, wants and needs?

I hope this free guide and checklist opens your eyes to the importance of setting up your plan. Choosing the right lawyer takes an investment of time and money, and it is a wise investment. The consequences of a poorly executed plan are awful in both the short and long term.

We can set up documentation, write any complex agreements, and take other steps to help protect you. But you need to take the first step: contacting us.

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Risks and Rewards of Buying U.S. Real Estate as a Non Resident Alien

Trend: More NRAs Purchasing in College Areas

The June 29, 2011 article "U.S. is Top Choice for Real Estate Investors," in Generation America, has some interesting facts and figures from a survey was conducted by the National Association of Realtors as part of its 2011 Profile of International Home Buying Activity. Among the survey's findings (paraphrasing): real estate in the U.S. is the top destination for foreign buyers; the number of foreign exchange students at U.S. colleges and universities has increased the demand for real estate by foreign buyers; and some foreign families are purchasing U.S. properties in college areas so their child has a place to live. The president of the National Association of Realtors observes that, "the U.S. has always been a desirable place to own property and make profitable investments. In recent years, we have seen more and more foreign buyers coming here to take advantage of low prices and plentiful inventory."

Why Putting Off Estate Planning Is Especially Risky for NRAs

No one likes to think about dying someday. Some people even consider it bad luck to discuss death. But family members who have come to the United States from elsewhere may find U.S. tax law quite different than what they were used to.

It's important to set aside our emotions and consider a key fact: **Federal estate and gift tax laws impose onerous restrictions on non-citizens** (even if you have a "green card"). Consider:

- Outright gifts during your lifetime to a non-U.S. citizen spouse – including making him or her joint owner of certain assets – can trigger gift tax problems immediately.
- A non-resident non-citizen with no green card who bought a \$1.5 million house with cash, intending to leave it to one of his children through a will or trust could trigger an estate tax of \$495,000. With advice from the right expert, she could avoid that tax bill.
- Likewise, gifts at death to a non-citizen spouse may not qualify for the "unlimited marital deduction." Your unsuspecting widow or widower may be forced to pay hundreds of thousands of dollars in estate taxes shortly after your death.
- If an investor buys a \$1.5 million property in U.S. and dies owning it without ever having put it in a trust, the probate cost alone could be as much as \$28,000. If that investor also happens to be a non-resident alien, the estate taxes could be \$495,000.

Even if your estate is modest, the tax effects of poor planning on NRAs can be devastating.

Do I Need an Accountant or An Attorney?

Accountants know a lot about keeping track of your money, but estate planning isn't their primary job. By working with an attorney experienced in international estate planning law, you can get all your questions answered and gain peace of mind that your loved ones will not face a snarl of tax issues down the road.

If you own property outside of the United States, it's even more important to have a network of experts to call upon when you have an issue. Not all countries recognize trusts and other tools that work here. To reduce or eliminate tax liability, you may need to choose an appropriate ownership structure. (Keep in mind that the net tax savings will vary depending on the ownership structure as well as individual circumstances.) Ownership structures include:

- Individual
- Pass through entity (limited liability company or partnership)
- U.S. corporation
- Foreign corporation
- Foreign trust
- Real estate holding company

Not all of these structures will avoid U.S. estate and gift tax liability and some provide better income tax benefits than others. It is important that you seek competent legal advice before you purchase US real property (or as soon afterward as possible). The following examples help illustrate this point.

Example 1: The Sasaki's Learn the Risks of Online Legal Forms

Hiro Sasaki, 19, will be a freshman at Stanford this fall (Class of 2015). Hiro's parents, Emiko and Dai Sasaki of Tokyo, are looking to purchase a place for Hiro to live. They want to do everything they can to help him succeed, and that means providing a study environment free of the distractions common in a dormitory.

The Sasaki's identify a townhouse in Palo Alto listed for \$675,000. It's close enough for Hiro to bike to campus. Dai pays the listing price in cash, putting the title in his name.

Dai reads online about the importance of having a revocable living trust in the U.S. Dai has seen those online legal programs where it is possible to purchase do-it-yourself-forms. To Dai it seems like a good option. He uses a do-it-yourself form to establish the trust.

Unfortunately, while a revocable living trust is useful for avoiding probate, it does not lower his tax liability. Dai still has only a \$60,000 exemption. So if something happened to Dai, his family will have a **massive estate tax bill** – in the neighborhood of \$142,800.

The online legal program where Dai purchased his form wouldn't "know" about the unique circumstances he is in. And despite diligently completing the form he downloaded, he is about where he started off with respect to his tax liability.

A minor car accident in Tokyo gets Dai thinking again. He realizes he has not protected his loved ones from a massive tax bill, should anything happen. He finds a Bay Area attorney experienced in international estate planning, and gets a sound plan in place.

Takeaway: A stack of forms can't "know" the nuances of your situation. Work with an attorney experienced in international estate planning to craft a plan that fits your unique circumstances.



If something happened to Emiko and Dai Sasaki, their son Hiro, a student at Stanford, could face a tax bill of \$142,800. When Dai learns this, he hires an attorney and creates a tax-saving plan. To stay current, Dai stays in touch with her as long as they own real estate in the U.S.

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If the Francos don't coordinate estate planning between the U.S. and France, their daughters won't receive a fair and balanced distribution of assets as intended.

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Example 2: The Francos Receive Help Coordinating Estate Planning Between Countries

The Francos, of the Paris suburb Neuilly-sur-Seine, have two daughters. Genevieve is a junior at University of San Francisco (USF) and lives in a second home that her parents own in Burlingame.

The whole international estate planning concept is different and new for the Francos. And for the first couple of years that Genevieve is stateside, they do not draw up an estate plan.

In France, there is a forced heirship system, meaning "who gets what" is based on rigid rules. For example, if you are married, your spouse gets a specific percentage of your estate. So in France, it is often not necessary to have a will because the law stipulates who receives which assets at age 18 and in what proportions.

The parents don't intend for their daughters to **receive inheritances of different values**. They expect distributions to be balanced the way it is under French law – so that if Genevieve gets the house in Burlingame, her sister gets assets of equal value. But as things stand, Genevieve would get about 20% of her parents' assets, while her sister would receive about 80%.

Fortunately, the Francos' neighbors, who also have property in the Bay Area, refer the Francos to an international estate planning attorney. The attorney advises the Francos that they need to pay attention to the applicable laws, both domestic and foreign, that apply to the Francos' situation. She works with the Francos via phone and email, and then mails the appropriate documents for them to sign.

Takeaway: You may not leave the legacy you wanted to leave if you do not do proper planning. Work with a knowledgeable estate planning attorney to create a sound plan.

Example 3: Emergency Room Doctors Promptly Update the Laus on Their Son's Condition

Meet the Lau family of Hong Kong. Their son Kim is studying at CALMAT (California University of Management and Technology). One day, while biking with friends in the Palo Alto Hills, he gets injured. He is taken to the Emergency Room and admitted.

Fortunately, Kim's parents had retained a respected international estate planning attorney in the Santa Clara area. That attorney had helped the Laus to get a Health Care Directive and Healthcare Authorization Form on file, just in case they needed to communicate about Kim with health professionals.

Most parents with children going to college – whether NRA or U.S. parents -- don't think they **won't be able to get information about their child from doctors** in an emergency. It is shocking when it happens.

Because of healthcare privacy regulations in the United States, if the Laus hadn't had a Health Care Directive and Healthcare Authorization Form on file, they probably would have had to fly to San Francisco to get any information first hand.

Because of the Health Insurance Privacy and Protection Act (HIPPA), medical personnel want something written that gives them permission to make disclosures. Otherwise the hospital can be fined \$10,000 per unauthorized disclosure.

The Lau's attorney also advises that Kim's Advanced Health Care Directive should be updated after Kim has been at CALMAT a while – to list friends who could go to the hospital if need be.

Takeaway: You need your international estate planning attorney to know what's important, and help you get important documents like a Health Care Directive and Healthcare Authorization Form in place. Otherwise, you may find that you are lacking in preparation once a crisis is unfolding.



It's no time to learn about American healthcare privacy regulations when you are thousands of miles away from your child and frantic with worry. Work with an attorney to prepare written permissions – this makes it more likely that American medical personnel will promptly tell you your child's condition.

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If the lawyer you are talking to does not listen to the particulars of your circumstances, can't explain options without legalese, or is not crafting a plan for your unique circumstances, call one that will.

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Example 4: The Patels “Fire” Their Prepaid Legal Plan and Hire an Experienced Attorney

Jaya and Ajay Patel of Bangalore, whose daughter Kali is entering Menlo College, tried a prepaid legal plan to take care of estate planning issues. They wanted to minimize the tax bill Kali would face if something happened to Jaya and Ajay. But instead of sitting down to talk with an experienced, caring attorney; they found themselves in an environment more like the Department of Motor Vehicles (DMV). They stood in line behind other clients and were seen by harried paralegals trained in the basics of family law, bankruptcy, elder care, immigration law, and wills, trusts, and estates.

The Patels were left feeling cold. No one they spoke with seemed to relate to the Patels as a family -- with complex and sincere needs, worries, and goals.

The Patels were referred by other Menlo College parents to an international estate planning attorney in the area. This attorney approached the engagement with enthusiasm and professionalism, taking time to fully understand both parents' perspectives and gather complete financial information.

The attorney made sure the Patels were aware of beneficial tax options and created their international estate plan for the Patels' unique circumstances. She helped the Patels figure out who should be their trustee, who should make health decisions, and how to address complex family relationships. After agreement on the strategy, she prepared the paperwork needed to put the plan in action.

Takeaway: If a service or a professional is not listening or is not crafting a plan for your unique circumstances, find a caring, experienced international estate planning attorney to help you.

Example 5: Nonresident Alien Creates Estate Plan That Passes On Both Values and Valuables

Peter Vogel, a German citizen, bought a Victorian in Pacific Heights for \$2 million in 2008. His daughter Iris, who was born in the U.S., lived in the house while she worked her way through an undergraduate degree at UCSF. Now she is entering UC Hastings College of Law. She will keep living on one floor of the Pacific Heights home while Peter rents the rest.

Peter has worked hard for 20 years to amass his fortune, and he wants his daughter to study hard and work hard to succeed too. He wants to pass along his assets to his daughter and any eventual grandchildren, while also encouraging self-reliance. His real legacy, he hopes, is a child and grandchildren who are bright, driven, and resourceful – self-starters who think independently, support themselves, and hold themselves to high standards.

So Peter wants a little bit of his estate to go to Iris when she is more mature, most to go to the education of Iris' future children, and nothing to go to his American ex-wife.

He works with an estate planning attorney who develops an estate plan that honors his values in addition to minimizing estate, capital gains, and property taxes. The attorney knows to pay attention to the applicable laws, both domestic and foreign, that apply to Peter's situation. She goes through several years of tax returns to see how he is handling his finances now, what he paid for each of his properties, and what they are worth today. Peter's estate plan is structured so that his financial assets are protected, and his daughter and grandchildren won't get control of money until they are old enough to handle it. To Peter, the process has provided peace of mind that his plan expresses his deepest hopes for his loved ones and his legacy.

Takeaway: Too many estate planning professionals do not put values at the center of the process. Don't let that happen to you. Sound estate planning takes into account more than just obvious assets like cash and property.



A good international estate planning attorney will help structure a plan so that it reflects your core values.

Life – and estate planning – is more than cash.

Protect your loved ones and assets by examining your options now. Get started at calprobate.com

International Estate Planning In 3 Steps

I hope my examples convinced you that nonresident aliens need to do thoughtful estate planning to protect assets and transfer them to loved ones. Smart planning is essential because federal estate and gift tax laws impose onerous restrictions on non-citizens (even if the non-citizen has a “green card”). It doesn’t take as much time as you might think, and typically pays for itself by lowering your exposure to tax liability. It boils down to these three steps:

Step 1: Hire the best advisor

The first step is to pick the best advisor and commit to working with them. By retaining an experienced international estate planning attorney, you can get all your questions answered and gain peace of mind that your loved ones will not face a snarl of tax issues down the road. I hold a J.D., LLM-Tax, and have experience in international estate planning - a rare combination that can help you achieve peace of mind while minimizing tax liability.

Step 2: Gather personal data and financial information

This is your international estate plan, so I’ll need to review your personal data and your financial information, and discuss a potential plan to meet your goals and objectives. I’ll need to learn about your family and how the various members handle money. I understand that this is sensitive information, something not always easy to talk about. I’m not shocked by any characters lurking in your family tree – we all have our fair share of them.

Step 3: Discuss goals and values

You have built up a large estate, and you probably have very specific wishes that you want someone to carry out. Before I can recommend any course of action, we need to meet in person so that I can learn about you, your values, what you are trying to accomplish and, maybe most importantly, what you want to avoid. Then I discuss a recommended strategy with you. When we are agreed on the strategy, I can set up documentation, write any complex agreements, and take other steps to help protect you.

Turn the page to see some of the questions I usually ask in a first meeting.

Worksheet

After I'm retained, here a few of the questions I usually ask clients. As mental preparation for the estate planning process, I suggest noting your thoughts on each question below:

Where is your primary residence?

Did you have any prior marriages?

Have you signed any pre- or post-marriage contracts?

Do you have an "umbrella" liability insurance policy?

If any children are under 18, have you decided who would be their guardians?

Is anyone else dependent on you for their support?

Do you have any business interests?

Have you ever filed a gift tax return and/or estate tax return?

Do you wish to leave money or assets to charitable or religious causes?

Do you wish to prevent anyone from receiving a portion of your estate?

Do you wish to make any provisions for pets?

How much is your primary residence worth? How much equity do you have in it?

What other properties do you own?

How much do you have in stocks, bonds, retirement plans, investment accounts?

What You Can Expect To Pay

Choosing the right lawyer takes an investment of time and money, and it is a wise investment.

Total fees for my services can vary quite a bit, depending on what kind of plan each client decides to implement. As nice as it would be to quote a precise number before we meet, it's not realistic. I can, however, give you some general idea of what to expect.

- Depending on the complexities of your situation (and whether you're married or single, have children who need to be protected, etc.), an experienced attorney's fees will be anywhere from \$2,000 to \$10,000. As a very rough rule of thumb, figure out your net worth and multiply by 0.10% to 0.25%. That usually approximates the complexity of your estate and the cost of planning for it properly. For example, if you have an estate worth \$3 million dollars, you should expect to pay between \$3,000 and \$7,500... A little less if your situation is really "plain vanilla"; a little more if it's complex.
- The typical retainer is one-half of the estimated fees, with the balance due when your documents are ready to sign. We make corrections and minor changes for up to 45 days after your documents have been signed, without further charge to you.
- I also offer consultation and services at \$410 an hour.

Weighing the cost of expert advice

Valuing a service might seem difficult. Remember, it's not a question of how many forms need to be filled out, but of expertise. It's the difference between going to a skilled surgeon for a life-saving operation, and going to someone fresh out of medical school. When you work with me, you are getting a personalized plan, not a cookie-cutter product. The details of your plan will mesh with the details of your life and of your family.

It's no time to cut corners

Your entire estate is on the line. You need someone who understands what you want. More importantly, you want someone who knows what you need and will give you the facts even when they may not be pleasant. We can explain ways to treat your children "fairly" even if you aren't treating them "equally" so they'll still want to share birthdays and special holidays together – as a family!

Take the First Step Now

I've shown you examples of nonresident aliens from several countries and the challenges they face. The examples are made up, but if your situation is anything like one of them, you need the help of an experienced international estate planning attorney.



My team and I can set up documentation, write any complex agreements, and take other steps to help protect you. But only you can take the very first step.

Too many parents of children studying in American “fly in the dark” when it comes to securing their loved ones’ financial future. I have heard so many heart breaking stories of families having to pay dearly during painful times because they lacked an adequate estate plan.

Don't let this happen to your family. Protect your assets and your loved ones by examining your options now. Call +1 650 325 8276 or [get started at our website](#).

Janet

Additional Resources



Choosing Your Bay Area Estate Planning Attorney

Compare Bay Area Estate Planning Attorneys: 6 Point Checklist, 4 Examples, 15 FAQs, Typical Fees, and More. Free at www.calprobate.com/resources

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International Estate Planning 2011

U.S. Gift Tax and Estate Tax Planning for Non-Residents and Non-Citizens. Do you own U.S. assets and a green card? Free at

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