

# HOW TO IMMIGRATE TO THE USA

DOING BUSINESS IN AMERICA



LARRY J. BEHAR, Attorney - at - Law

THE COMPLETE GUIDE

## TABLE OF CONTENTS

<b>HOW TO IMMIGRATE TO THE U.S.A.</b>	<b>3</b>
<b>DISCLAIMER</b>	<b>4</b>
<b>BIOGRAPHY</b>	<b>6</b>
<b>PREFACE</b>	<b>7</b>
<b>PART I: IMMIGRATION TO THE U.S.A.</b>	<b>9</b>
<b>SECTION A: TEMPORARY VISAS</b>	<b>10</b>
<b>CHAPTER 1: Classification of Temporary Visas</b>	11
<b>CHAPTER 2: Conditions for Eligibility</b>	15
A) The Intra-Corporate Transfer (L-1):	15
B) Specialized Qualifications (H-1,H-2a.H-2b):	16
C) The Work Permit	16
D) The Existence of a Family Link with an American Citizen	17
<b>CHAPTER 3: The Right to U.S. Immigration Status</b>	18
<b>CHAPTER 4: Understanding the L-1 Intra-Corporate Visa</b>	20
<b>CHAPTER 5: Business Visas</b>	22
A) The B-1 Visa for Business Visitors	22
B) The "H" Visa for Professionals	22
C) The E-1 and E-2 Visa for the Status of Importer/Exporter and Investor	23
D) The L1 Visa for Intra-Corporate Transfer	25
<b>CHAPTER 6: Do You Have the Exceptional Work Skills?</b>	26
<b>CHAPTER 7: Intra-Corporate Transfers</b>	28
<b>CHAPTER 8: The "E" Visa : <u>Now Worldwide</u></b>	30
<b>CHAPTER 9: Criteria of E-2 Investor Visa</b>	32
A) The E-2 Investment	33
B) The Delays	34
C) Proper Preparation	34
D) The Application of Free Trade Acts on Business Visas	34
<b>CHAPTER 10: Student Visas</b>	36
<b>CHAPTER 11: Appearing at a United States Consulate or Embassy</b>	37
<b>SECTION B: PERMANENT RESIDENCY AND CITIZENSHIP</b>	<b>40</b>
<b>CHAPTER 12: The American Immigrant Status</b>	41
<b>CHAPTER 13: The Entrepreneur Investor Conditional Permanent Residency Visa</b>	42
<b>CHAPTER 14: The Preferential Immigration System</b>	45
<b>CHAPTER 15: A Winning Formula for the "Green Card": Labor Certification</b>	46
Part one	46
Part two	47
<b>CHAPTER 16: Consular Procedures for Permanent Residency</b>	49
<b>CHAPTER 17: How to Choose the Right Immigration Office</b>	51
<b>CHAPTER 18: Permanent Residency: a Right or a Privilege?</b>	52
<b>CHAPTER 19: The Investment Converted into Permanent Residency</b>	54
<b>CHAPTER 20: American Citizenship</b>	55
<b>CHAPTER 21: Questions For The Naturalization Interview</b>	56
<b>SECTION C: MORE ON IMMIGRATION</b>	<b>62</b>
<b>CHAPTER 22: Attorney Ethics</b>	63
<b>CHAPTER 23: Do Not Try to Fool the Department of Immigration!</b>	65
<b>CHAPTER 24: Verification of Eligibility of Employees</b>	66

CHAPTER 25: The Risk of Deportation	68
CHAPTER 26: A Case of Immigration Fraud	69
CHAPTER 27: Criminal Convictions	70
CHAPTER 28: Are You an Illegal Alien?	72
CHAPTER 29: Questions Most Often Asked	75
<b>PART II: DOING BUSINESS IN AMERICA</b>	<b>77</b>
<b>SECTION A: BUYING OR SELLING REAL ESTATE IN AMERICA</b>	<b>78</b>
CHAPTER 30: When Buying U.S. Real Estate	79
CHAPTER 31: Practices and Customs of Real Estate Transactions	80
CHAPTER 32: Financial Obligations of the Seller and the Buyer in a Real Estate Transaction	82
CHAPTER 33: Applying for a Mortgage	85
CHAPTER 34: The Law of Mortgages	87
CHAPTER 35: The "Wraparound" Mortgage	89
CHAPTER 36: Closing a Sale of American Property while abroad	90
CHAPTER 37: Title Insurance: Necessity or Waste?	92
CHAPTER 38: Condominium or Cooperative?	94
CHAPTER 39: Is Time-Sharing for You?	95
CHAPTER 40: Characteristics of a Condominium Association	97
CHAPTER 41: Condominium Questions and Answers	98
CHAPTER 42: Condominium Conversion Is in Style	99
CHAPTER 43: The Purchase of a Mobile Home	100
CHAPTER 44: Restrictions on Mobile Home Parks	102
CHAPTER 45: Foreign Nationals: Beware of U.S. Tax Withholding!	104
<b>SECTION B: A SELF-DEFENCE GUIDE TO DOING BUSINESS IN AMERICA</b>	<b>106</b>
CHAPTER 46: Starting Your Own Business in America	107
CHAPTER 47: The Purchase of a Business	110
CHAPTER 48: A Real Estate Commercial Lease	112
CHAPTER 49: The U.S. Banking System	114
CHAPTER 50: Foreign Checks	116
CHAPTER 51: The Loss of Money by Default	117
CHAPTER 52: The Tax Rule of 183 Days	119
CHAPTER 53: The State Corporation	120
<b>SECTION C. THE LAW AND YOU IN AMERICA</b>	<b>122</b>
CHAPTER 54: Survival Driving in America	123
CHAPTER 55: The Fundamentals of Insurance	125
CHAPTER 56: The Practice of Law	127
CHAPTER 57: The Structure of State Government	128
CHAPTER 58: A Foreign Judgment in America	130
CHAPTER 59: Do You Need a Will?	131
CHAPTER 60: Divorce - American Style	132
CHAPTER 61: American Law (as decided by the U.S. Supreme Court)	134
<b>APPENDIX</b>	<b>140</b>
APPENDIX I: Important Dates in American History	141
APPENDIX II: Selected U.S. Embassies and Consulates	145
APPENDIX III: Directory of Immigration and Naturalization Service Offices	146
<b>ADVERTISING</b>	<b>147</b>

# **How to Immigrate to the USA**

...followed by

## **Doing Business in America**

**\*\*\*\* 2012 EDITION \*\*\*\***

Larry J. Behar  
Attorney-at-Law

**NOTICE AND DISCLAIMER**

This book is intended for the private and personal enjoyment of the reader. It is not intended as a legal guide to securing United States immigration status. You must consult your professional advisors to accomplish this purpose. The statements and opinions of the author are strictly his and are not intended to constitute legal advice. Each situation and case is different and therefore requires individual attention.

## **DEDICATION**

In memory of my mother Lilianeu Behar

**BIOGRAPHY**

Attorney Larry J. Behar was born in Cairo, Egypt, and immigrated to Canada at the age of eight. After earning a Bachelor of Arts degree at McGill University, he was also conferred a civil law degree from the University of Montreal.

Attracted by professional opportunities in America and the warm southern weather, he continued his studies in common law at Nova Southeastern University in Ft. Lauderdale, Florida. Having earned his American degree, he established a law firm in Ft. Lauderdale fully equipped to advise English, French, and Spanish speaking clients on the subject of American law, concentrating in U.S. immigration and real estate law.

## PREFACE

In reading this book, you might get the impression that it was published by the United States Chamber of Commerce; however, written by an attorney. This book was written for you, the hopeful foreigner.

Within this book, you will find all the details about immigrating and doing business in the United States. It contains almost everything you will need to know and acquire in order to stay in America. It was written to erase the myths, which have permeated throughout the years that America was not accessible, or worse, only accessible. This book will light your way!

When I opened office in Ft. Lauderdale in 1979, my staff and I established two important guidelines - only to work on positive, feasible files and to enjoy practicing in this fascinating profession. Until now, these standards have been maintained, and surpassed. I have derived a great deal of personal satisfaction and challenge in the fields of U.S. immigration and real estate law. This book is for everyone who believes in America - a nation built and pioneered on by immigrants.

The production of this book has been made possible thanks to the contribution of many people. I would like to thank Mr. Gerard Vermette, a well-known entertainer from Montréal, Canada, and Mr. Richard Tremblay, director of Metro police Ascot/Lennoxville, Québec, Canada, who both originally inspired me to put the book together.

I would also like to underline the participation of my friend Jean-Michel Boutin, an international tax expert, who died tragically at the age of 35. He was a man of great value who cannot be forgotten.

I would like to thank the team from my law firm, Armande Monas, Irene Crawford, Rachel Vermette and Avon Calatchi who have helped me a great deal with the presentation, copy, spelling and endless drafts.

Sincere thanks to my contributing authors Daniel Provencher (Insurance) and to Bruce Taylor who donated valuable advice being a published author himself. A special thanks goes to my Spanish language publisher, Carlos Civita, who single handedly revamped major parts of my book to make it more readable, enjoyable and thorough and to Pedro Vargas, my editor, who persisted in ensuring the low cost of the book to make it accessible to as many persons as possible. It takes dedicated people such as these to make America a welcoming destination.

These tributes would not be complete without a heartfelt appreciation to my father Joseph Behar and to my brother Robin Behar who encouraged me to pursue my career in America. Thanks to them, I have been able to study law in the United States and help people around the world. Without them, this book would never have been possible.

Finally, a great big thank you to all my immigrant clients with whom I have grown over the years. They have brought joy and hope to my team and I.

Hope to see you soon in America



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**PART I: IMMIGRATION TO THE U.S.A.**

***SECTION A: TEMPORARY VISAS***

## CHAPTER 1: Classification of Temporary Visas

Foreign nationals who seek to temporarily stay in the United States and intend to maintain their residence in their home country may, under varying conditions and requirements, apply for temporary ("non-immigrant") visas at a U.S. embassy or consulate. Preferably in their home country, such visa statuses may also be obtained from the Department of Immigration and Naturalization Service within the United States. Do not forget that the consular official begins with a presumption that every applicant is an "intending immigrant" (i.e. he wishes to permanently live in the U.S.). The applicant has the burden of proof to demonstrate that the stay will be temporary.

<b><i>Classification:</i></b>	<b><i>Type of Visa</i></b>	<b><i>Duration or Extensions</i></b>
<b>A-1, A-2, and A-3</b>	Diplomatic - official or employee of a foreign government with family and servants.	Renewal during the period of service to a foreign government.
<b>B-1</b>	Temporary visitor on a business trip; accompanying employers; medical visits to U.S.	6 months with intervals, possibility of extensions.
<b>B-2</b>	Temporary visitor on a vacation.	Valid up to one year; extensions allowed in certain cases.
<b>C-1</b>	Foreign traveler in transit.	In transit - maximum of 29 days.
<b>D</b>	People working on a crew of a sailing vessel or an airplane.	Temporary stay with maximum of 29 days.
<b>E-1</b>	Business people benefiting from import/export, technology or services from their home country with the United States; applies to spouse and children.	1-5 years with intervals and unlimited extensions as long as the business exists (duration depends upon reciprocity with home country).
<b>E-2</b>	investors or specialized employees of investors benefiting from commercial U.S. investments, with spouse and children.	1-5 years with intervals; unlimited extensions as long as the business exists in U.S..
<b>F-1</b>	Students of any age.	For length of studies as determined by the school and so long as finances of student are sufficient for education and living purposes. New rules allow off campus employment in work unrelated to course of study after one

year of study. Two practical training periods of six months each are also available upon completion of course of study.

<b>F-2</b>	Spouse or children of students.	Length of F-1 student's stay.
<b>G-1, G-2, G-3, G-4 and G-5</b>	Member is recognized by foreign government as foreign diplomats.	Length of functions.

The following describes the "H" category changes since October 1, 1991:

<b><i>Classification:</i></b>	<b><i>Type of Visa</i></b>	<b><i>Duration or Extensions</i></b>
<b>H-1A</b>	For foreign nurses now requiring attestation by employer for each facility that there is a need for such employment at a particular worksite.	The Secretary of Labor may waive this requirement at his discretion.
<b>H-1B</b>	For applicants coming to the United States to perform services in a specialty occupation and with respect to whom a labor condition application has been filed and approved ("specialty occupation": one which requires theoretical and practical application of highly specialized skills as a minimum for entry into the occupation in the United States, i.e. state licensure, bachelor's or higher degree in the specialty, or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through responsible positions related thereto).	<u>Duration of three years initially with extension possible for three additional years with same or different employer. Annual quota limits.</u>
<b>H-2A</b>	For applicants coming temporarily to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.	
<b>H-2B</b>	For applicants who are	

	coming temporarily to the U.S. to perform other temporary nonagricultural services or labor.	
<b>H-3</b>	Foreign applicants who are seeking specialized training.	One year intervals.
<b>H-4</b>	Spouses and minor children of 'H' visa beneficiaries.	
<b>I</b>	Foreign journalist with spouse and children.	One year.
<b>J-1</b>	Visitors for an exchange program.	Up to one year; supplementary restrictions depending upon type of exchange program.
<b>J-3</b>	Spouse or children of a visitor under an exchange program.	Same as principal J1 beneficiary.
<b>K-1</b>	Foreign fiancée or fiancée of an American citizen.	Applicant has 90 days in which to get married.
<b>K-2</b>	Children of a foreign fiancée or fiancée of an American citizen.	Same as K1.
<b>L-1</b>	Manager, executive or specialized employee transferred to a related American company (affiliate, branch, subsidiary, joint venture).	One to three years with intervals; extensions up to seven years.
<b>L-2</b>	Spouse and children of a transferred employee.	Same as for L1.
<b>M-1</b>	For students wishing to seek a vocational education in a technology institution.	For course of studies.
<b>O-1</b>	for applicants of extraordinary ability in sciences, arts, education, business or athletics sustained by national or international acclaim or with regard to motion picture and television productions which will substantially benefit prospectively the United States and will work in area of ability.	<u>Duration of three years initially with extensions available. No labor certification attestation required.</u>
<b>O-2</b>	For applicants seeking to accompany an O1 applicant who are integral to the	<u>Duration same as O-1.</u>

	performance and have critical skills and experience with the O1 alien.	
<b>O-3</b>	For spouses and children of O1 and O2 aliens.	For the course of the event but not exceeding ten years.
<b>P-1</b>	For internationally recognized athletes and entertainers having a foreign residency.	
<b>P-2</b>	For athletes and entertainers seeking entry under the reciprocal exchange program.	
<b>P-3</b>	For artists and entertainers seeking to enter under a program that is culturally unique.	
<b>P-4</b>	For spouses and children of P1, P2 or P3 aliens.	For the course of the event with a maximum of five years.
<b>Q</b>	For participants in an international exchange program providing practical training, employment and the sharing of history, culture and tradition of the alien's country.	For a maximum of fifteen months.
<b>R</b>	For aliens who for the preceding two years have been members of a religious denomination having a bona fides non profit religious organization in the United States.	Maximum period of five years. <u>Initially granted for period of three years. Canadians apply at border.</u>

## **CHAPTER 2: Conditions for Eligibility**

American history shows us that a great number of foreign nationals have immigrated to the United States over the last two hundred years. More and more immigrants are headed towards America, where they wish to live. Many of them have already spent vacations here.

The primary objective of an immigrant is to obtain the green card, or "pink" card which it has become today. This is proof of permanent rights and obligations similar to those of an American citizen, except the right to vote. Moreover, those who become American citizens after a five year residence do not automatically lose their foreign citizenship unless they have officially made a request to do so, or unless their government precludes a dual nationality.

Not every applicant who wants to immigrate is accepted. That person must satisfy a number of eligibility conditions which are clearly defined in order to obtain the status of immigrant or non-immigrant. This status gives its holder the right to live and to work in the United States for an indefinite period of time.

We will analyze the criteria, as well as the new developments which relate to this subject. Generally, there are four methods by which to enter into the United States to work. They are:

- A) The L-1 visa known as the intracorporate transfer.
- B) The H visa and the E-2 Visa (as discussed further).
- C) The work permit.
- D) The existence of a family relationship with an American citizen.

### **A) The Intra-Corporate Transfer (L-1):**

The possibility of obtaining temporary immigration status by intracorporate transfer is subject to the existence of two corporations: one American corporation, and the other (a foreign one). The American corporation requires the temporary services of an employee of the foreign corporation and allows him/her to obtain thus the status of American intercompany transferee. There are a number of conditions however that must be satisfied:

1. The foreign company must have been in business in the foreign country during a minimum period of one year before the request is made for immigration. A foreign corporation which is not active in its home country will not satisfy this prerequisite.
2. The transferring employee must have actively held for a minimum period of one year, the position of executive, manager, or specialist in a particular field within the foreign corporation.
3. The foreign corporation must continue its operations in the foreign country once the transfer has taken place.
4. The American company can be created solely with the purpose of facilitating the immigration of an employee of the foreign corporation as long as it has the intention of doing business in the United States via an American corporation. The creation of an American subsidiary, branch office, affiliate, or 50/50 joint venture by



the foreign corporation would meet the requirements of an L-1 visa.

In order to apply, it is necessary to fill in the proper application forms supplied by the U.S. Department of Immigration and to enclose the necessary documents such as incorporation papers, financial statements etc., which would prove that the conditions have been met. The L-1 visa applicable to intracorporate transfer (non-immigrant) can normally be obtained within a six months period following the application. This visa lasts for three years and can be subsequently renewed (one year only if it is a start-up operation).

There is a restriction to this intracorporate transfer however. The law specifies that an employee transferred from a foreign country to the United States must have been employed in the American subsidiary for a period of at least one year before applying for revision of status with the intention of obtaining a permanent residence. This restriction also applies to the American company which must have been in business during at least one year. If the foreign employee does not apply for permanent residence, the L-1 visa can be renewed for a maximum period of seven years. The renewals of the L-1 visa or other visas is left to the discretion of immigration department officials.

### **B) Specialized Qualifications (H-1,H-2a.H-2b):**

An immigrant with outstanding qualifications, higher education, or an international reputation which can contribute to the enrichment of the American society, can obtain the permission to work temporarily to the United States.

In certain fields such as medicine, the applicant will be required to pass examinations. In the fields of arts or sports once the applicant has proven to be well known and to be a person of high integrity, temporary immigration status may be granted.

As far as the time required between the application and the granting of non-immigrant status, it will vary with each case. The H visa is renewable but only allows the right to work and temporarily live in the United States for a period of three years, maximum of six years. The Employment-based preference which we will analyze later, allows a permanent residence in the United States.

The law may require a person to have a diploma in order to apply, or this applicant must have a worldwide reputation and be able to prove fame by showing prizes, articles written about said person, or other proof of renown in his or her field or work.

### **C) The Work Permit**

The worker who is not admissible using the above visas can, in certain cases, temporarily enter the United States thanks to a work permit (labor certification). The American government does not grant a work permit to a foreigner unless local employment recruitment requirements for a given job have been met.

Certain jobs are privileged with regard to others depending upon the time of year and geographical areas. The numbers of job openings, as well as the dates of granting the visa

are determining factors.

For example, if there is a lack of chefs in a particular region of the United States, there are good chances that a foreigner having such a specialty can obtain a labor certification for that region. This will allow him or her to later obtain a green card.

Some professions are automatically accepted. This is the case of physiotherapists because the Immigration Department has determined that there is a lack of American professionals in that field. This is no longer the case for dietitians who were needed a few years ago. However certain doctors and nurses are now admitted without much difficulty.

In most cases, in order to retain a work permit, a potential American employer must sponsor the foreigner and prove that the job was first offered to American citizens having the same qualifications, but who are not ready, willing or available to accept the position.

#### **D) The Existence of a Family link with an American Citizen**

For purposes of immigration, the American government has established a classification based on the degree of family relationship existing between an American citizen and an applicant. The visas granted based on these rules during a given year are for the most part based on the degree of family relationships and on a maximum number of visas per year. One should note that there is no quota as far as admission of minor children and of the spouse of an American citizen, as long as the birth or the marriages are legitimate.

One must take into account the need for a family link between parents, brothers or sisters who are Americans. Aunts, uncles, cousins, are not considered to be close relatives.

Marriage with an American citizen in order to obtain a conditional permanent residence is concerned, it is important to note that the Immigration Department has proven to be tougher and tougher in its requirements. Due to the considerable increase in the number of fraud cases in this field, since the month of November 1986, the "Marriage Fraud Act" allows an inquiry into such potentially fraudulent marriages. In order for the conditional aspect of a case to overcome, the marriage must be proven to have been bona\_fide (real) from inception.

### CHAPTER 3: The Right to U.S. Immigration Status

The U.S. immigration law is neither logical nor precise because the immigration department must adjust to changing political and economic pressures occurring internationally. Moreover, there are always new developments in this field. Examples will be provided about several cases which required litigation and how they were settled. They illustrate the situation as it presents itself now in the U.S..

Let us take the case of Maria. During eight years, she worked as an administrative assistant of a company. She speaks English, Spanish, Portuguese and French fluently. Having applied for an H-1 visa, the official responsible for her file turned down her application on the basis that her professional reputation had not been sufficiently well established in order to receive a visa. The Appeals Court reversed the official's decision alleging that her long experience and her qualifications, as compared to those of others, were sufficient in order to grant her an H-1 visa.

Let us now study the case of a couple which was going to be deported following a decision by the Appeals Court. The woman was pregnant and the child was born after the trial. The birth of the child, although it did not represent a decisive fact, allowed the judge to reconsider the decision rendered and to decide to re-open the procedures for further consideration.

At the age of sixteen Anna came to the United States as a tourist from her home country having a B-2 visa. Thirty-six days after her arrival, she decided to study in the United States. Being only sixteen years old she went to the Department of Immigration in order to fill in an I-20 (and I-506) application form in order to transform her visa from tourist to student F-1. The official decided that because her application had been made so quickly after she had entered the United States she had the *pre-conceived intention* to become a student as soon as she arrived to the U.S. When an appeal was made, the district director decided that she had no pre-conceived intention because of her age, the duration of her stay (36 days) and encouragement from her family. So she was able to obtain her visa and pursue her studies.

Mr. Zett was the beneficiary of an L-1 intracompany visa. The court decided that the foreign company making the request did not necessarily need to conclude international transactions, did not require exclusive and absolute control of the subsidiary nor had a high proportion of properties and management in common with shareholders. From a visa perspective the beneficiary is eligible to be considered for an L-1 visa as long as he or she is employed by the foreign company even though he or she may have shares in both the U.S. and foreign companies which are by law considered to be separate legal entities.

In a case involving the L-1 visa the beneficiary was sent to the U.S. by a foreign company. While being employed by the U.S. company and with its knowledge, he pursued specialized courses in the United States. During weekends he established an office at his home in order to take care of company contracts during his spare time. At the end of his studies, the company decided to keep him in the United States and requested an L-1 visa for him. The official decided that because of the fact that he was present in the United States for his studies, he had therefore not been employed during the past year by the company which was applying; in consequence he was not eligible for the visa. This decision was reversed by the regional commissioner who alleged that these studies for specialization did not constitute an

interruption of his employment by the company which had the intention of establishing its head office in the United States.

## CHAPTER 4: Understanding the L-1 Intra-Corporate Visa

How many times have you listened to advice from people who, in good faith, wanted to help you but misled you in trying to obtain a visa or work permit to the United States?

We will show you that it is not necessary to be misled by utilizing the typical example of an L-1 visa, intracorporate transfer, favoring companies, associations, and all other legal entities which are constituted in a country other than the U.S. and who establish ties with the U.S..

A foreign general contractor who had been in his business for a long time, decided to settle in the United States following a slowdown of the market in his home country.

After obtaining his visa, his company must continue to function abroad for a reasonable period of time, that is to say that no matter what its charter (federal or provincial) it must continue its activities.

On arrival to the United States, this entrepreneur creates a company having the same (or similar) functions as the foreign company, which becomes the parent company; as long as the operations of this new company are not illegal he will be able to constitute it and to manage it.

Since, he has interests both abroad and in the United States, he will have to travel often and the L-1 visa applied for by the foreign company to transfer him to the parent company in the U.S. will allow him to do so. He will have the possibility of living more than 183 consecutive days per year in the U.S.. This limit is imposed on non-Americans (special attention should be paid to the tax aspect of this situation since you may involuntarily become a tax resident of the United States by the duration and status of your stay in America). This visa is valid for a period of one to three years with a possibility for renewal up to seven years. Consequently, if the presence of this applicant is necessary for the management of the American company he will be able to stay in the United States in order to work. He will not however be able to work for another company.

If at the end of the first year (or any time thereafter) he decides to become a permanent resident of the United States and that the U.S. operation is proved viable he will, thanks to his multinational executive or managerial status, be able to have his status changed from non-immigrant to immigrant. The waiting period is approximately three years unless that person has exceptional talents. He will be able to continue working for the company during that period.

The L-1 visa applications are prepared in the intended jurisdiction of operations, and then sent to the Regional Adjudication Center for INS analysis. One must allow approximately six months in obtaining approval. That is normally the time required to complete a file, and have it studied. If the individual is in the United States, his tourist visa can be changed to an L-1 visa. If he is abroad, his visa is sent by the Immigration and Naturalization Service to the embassy or to the consulate of the city in which the parent company is established. In some countries, approval of the request is sent to a designated point of entry.

Our entrepreneur, enthusiastic as he is, worries because the company has not made any

profits in the past year and has not declared them. He must know that the immigration department is interested in knowing about profits of the foreign company its sales and the number of employees. In order to satisfy its requirements, the foreign company must have generated 'respectable' sales figures of over \$150,000.

NOTE: The word "residence" has several implications as far as foreign and American laws are concerned. By entering the United States with an L-1 visa, a person is considered to be non-resident by the immigration department. If that person establishes sufficient links with the American community (purchase of a house, children in an American school, sale of assets abroad) it is then possible for that person to become an American "resident" for tax purposes.

## **CHAPTER 5: Business Visas**

The United States and foreign countries have attempted to facilitate investments and exchanges, as well as professional commercial services between business people who are American and qualified foreign nationals. This allows them to cross international borders with a greater degree of frequency and legal authority.

Four visa categories have been established relative to such movement:

1. The B1 visa for business visitors;
2. The H visa for professionals;
3. The E1 and E2 visa for importers/exporters and investors;
4. The L1 visa for intracorporate transfers;

In order to be able to use one of these temporary visas within their framework, it is imperative that applicants be business people. The agreements define a business person to be one who is involved in the trade of goods or services, or who is an active investor. The principal objective of the immigration status is to ease travel for business people, be they American or foreigners, between reciprocal countries on the condition that they do not intend to establish a permanent residence in the U.S.A.

### **A) The B-1 Visa for Business Visitors**

In order to be able to enter in the United States temporarily, a business visitor must declare the specific reasons for his visit and should be included in one of the seven professional categories. They are the following:

- research and design;
- business expansion;
- manufacturing and production;
- marketing;
- sales;
- distribution;
- active sales service;
- general services such as: management, financial services, public relations, advertising and tourism.

Professionals and people, who do business without being paid in the United States, will have to acquire a B-1 visa at the American Consulate in their home country. Moreover, a person can enter the United States with a B1 visa for the purpose of after sales service on equipment or machinery bought in a foreign country. This will apply for the life of the guaranty or service agreement. The business visitors not listed above with a B1 visa will be equally admitted without another visa for as long as they can prove at the border, that they come temporarily to the United States to do legitimate business, to attend a conference, or for any other legitimate business reason and as long as they are not paid a salary while in the United States.

### **B) The "H" Visa for Professionals**

More than forty professionals are listed as being deemed "professional", such as:

- Computer system analysts,
- Engineers,
- Accountants,
- Dentists,
- College, university or seminar professors,
- Scientists,
- Architects,
- Lawyers,
- Nurses,
- Medical, laboratory or clinical technicians.

Athletes are no longer on this list as they have their own P category.

The H visa allows these professionals to enter into the United States pursuant to consular application. However they have the right to be employed by an American company and to be remunerated in the United States.

Although we define a "professional" as being a person holding a university diploma, this diploma is not required for all professionals who can substitute experience and notoriety therefore. Conversely for others, such as librarians, a master's degree is required. In the case of professionals in hotel administration and journalism, a bachelor's degree is required as well as three years' experience in order to enter the United States. Doctors are only eligible as H1 candidates in the fields of clinical teaching or research but are not allowed to practice (i.e. no direct patient care).

### **C) The E-1 and E-2 Visa for the Status of Importer/Exporter and Investor**

The "E" visa will allow foreign citizens of designated countries to be eligible for the status of the E visa as importer, exporter or investor. In order to qualify as importer/exporter (E1) in the United States, a business person will have to trade goods or services and be able to manage the company. At the present time, E1 visas are defined as the trading of goods and particular services such as banking services, financial services and within the airline industry. However, the trading of goods and services has recently been extended with no specific restrictions as to type of goods or services, including the transfer of technology. An individual can benefit from a non-immigrant E1 visa if:

1. He (or his company) are foreign nationals or a foreign corporate entity has at least 50% stock interest in the U.S. company.
2. He comes to the United States in order to transact multiple transactions (50% or more of gross volume of the U.S. company) between his home country and the United States;
3. He is involved in administrative operations or has specialized qualifications which are essential to the operations of the U.S. employer;
4. He leaves the United States upon expiration of his visa.

In order to qualify for an E2 investor visa, the investor must develop and manage the operations of a company in which he has invested or is in the process of investing a "sizeable" amount of money. An E2 visa can be issued if it has been ascertained by the U.S. Consulate that:



1. This person is a foreign national or that his U.S. company has 50% or more foreign shareholders;
2. The U.S. company in which he has invested, will invest or has already invested a "sizeable" amount of money (generally greater than \$100,000 of risk capital) in a real commercial business in the United States;
3. That person has been appointed to administer the company or possesses specific qualifications which are essential to the functioning of the company;
4. His investment is not his only source of income;
5. His investment is real or is imminently in the process of becoming a reality;
6. That person will leave the United States upon expiration of his visa (generally up to 5 years).

Importer/exporter or investor visas can be obtained in any American Consulate or Embassy in the world, normally in the country of the last residence of the applicant. The E visa can be delivered to companies belonging to one individual investor or to multinationals. It is equally available for key personnel of companies which meet the investor requirements. Its approval time can vary, usually no greater than four months if there are no complications.

The E visas are generally issued for periods of 5 years and can be renewed indefinitely with Consular or State Department approval or revalidation. They can be extended in the U.S. for 2 years by applying to the Immigration Service in the area where the head office of the company is located. The importers, exporters and investors can live in the United States as long as they maintain their eligibility according to the requirements of the treaties.

## DESIGNATED BENEFICIARY COUNTRIES

### LIST OF E-1/E-2 TREATY VISA COUNTRIES JANUARY 1999

E-1 ONLY	E-2 ONLY	BOTH
Bolivia	Armenia	Argentina
Brunei (Borneo)	Bangladesh	Australia
Denmark	Bulgaria	Austria
Greece	Cameroon	Belgium
Israel	The Congo	Canada
	Czech Republic	China (Taiwan)
	Ecuador	Colombia
	Egypt	Costa Rica
	Georgia	Estonia
	Grenada	Ethiopia
	Jamaica	Finland
	Kazakhstan	France
	Kyrgyzstan	Germany
	Latvia	Honduras
	Moldova	Iran
	Mongolia	Ireland
	Morocco	Italy
	Panama	Japan
	Poland	Korea
	Romania	Liberia
	Senegal	Luxembourg
	Slovak Republic	Mexico
	Sri Lanka	Netherlands
	Trinidad & Tobago	Norway

Tunisia  
Ukraine  
Zaire

Oman  
Pakistan  
Paraguay  
Philippines  
Spain  
Suriname  
Sweden  
Switzerland  
Thailand  
Togo  
Turkey  
United Kingdom  
Yugoslavia

Permanent residency, through use of the E-2 visa, is available only under very narrow circumstances and should be analyzed carefully before proceeding.

#### **D) The L1 Visa for Intra-Corporate Transfer**

When a foreign company wishes to transfer to its American subsidiary, affiliate or joint venture, an executive, manager, or an employee having specialized knowledge and having been employed by the company during no less than one year preceding the application, it can do so after having obtained the consent of the Department of Immigration. It is necessary however that the American subsidiary, affiliate, joint venture, or branch office be created and that the foreign mother company holds 51% of shares or that shares be split 50%-50% with dual veto power between the foreign and U.S. companies.

## CHAPTER 6: Do You Have the Exceptional Work Skills?

The philosophy of the American government as far as admission is concerned, is that it must protect the American worker. Only those who can contribute to the national economy, to the cultural interest, or to the well-being of the U.S. have the right to work in the United States. We are not referencing exceptional cases of refugees who are forced to flee their countries for political or economic reasons.

The "H" category, now redefined in the Immigration Act of 1990 as the "Employment Based First, Second, or Third Category". We know that those who wish to immigrate permanently to the United States must obtain a "Green Card", which is essential in order to have the right to such permanent residency and to work. Let us now look at options which give immigrants the lawful "right to work".

The difference between the "H" visa and the "Employment Based Preference" is that the latter gives the right to permanent American residency whereas the "H" visa is temporary and is only valid for three years with a possibility of renewal for an additional two years. This means that if you wish to work in the United States and you possess the required qualifications, you are eligible for an "H" visa as long as you retain your residence abroad. The "Employment Based Preference" indicates a permanent relocation to the new U.S. residency.

The qualifications for the two categories vary greatly. An "H" visa requires *recognized talents* whereas the "Employment Preference" requires *exceptional talents* which are out of the ordinary and which must be recognized by specialists in the profession. For example, a singer who is well known in her city would be a possible candidate for an "H" visa, but unless she has had sustained fame nationally or internationally she may not be able to obtain an "Employment Based Preference" to become a permanent resident.

Frequently in the field of immigration, interpretations are not always consistent. The same candidate for a visa may be simultaneously eligible for an "H" and/or for "Employment Based Preference".

How can one prove that one has exceptional qualities? By producing a file full of diplomas, certificates of competency, affidavits of specialists, articles from newspapers, and any documentation attesting to the expertise of the individual, the applicant is arming himself for positive reply. Those who work in the artistic fields must present proof of publicity, advertising and especially engagement contracts.

In the case of union disputes or a strike, a certificate obtained ahead of time from the Department of Immigration will be postponed to a future date if the holder is not in the United States yet. It is the union which must decide to accept a non-American wishing to exercise a job which is controlled by the union; the labor certificate will only become valid if the union grants its consent.

The "Employment Based Preference" requires the offer to the foreigner of an existing job. This offer can be made by a third party, by the individual himself if he has hired an American employee and maintains a going enterprise, or by the agent of a foreign artist. A labor

certification is not required for the H category since it is a temporary visa (see exceptions noted in chapter one). Note, however, that a *labor certification attestation (LCA)* is required for the H1 visa.

The H visa has two major advantages. First, it allows the immediate family and support staff to accompany the beneficiary. It also allows you to hold on to the tax advantages of your country of origin in certain circumstances where you maintain direct, consistent and permanent ties to your home country. Note that there have been numerous changes to the immigration statute in connection with visas for those in the entertainment field and you are encouraged to review Chapter One for this purpose.

## CHAPTER 7: Intra-Corporate Transfers

The most frequently asked question in the field of immigration law is about the time required in order to obtain a visa. Delays are generally normal and expected. But since the United States has become a springboard to four continents, the requirements have considerably increased. Immigration officials can have a difficult time being up-to-date with their files. This is the case of most U.S. immigration offices nationwide although the implementation of computer service has helped streamline their operation in recent years.

There is however a visa that one can obtain rather rapidly if one satisfies certain conditions. Are you the executive or manager of a foreign corporation, or do you have specialized knowledge? If this is the case, you may be able to qualify for the L1A visa. This visa applies to the intracorporate transfer, which allows an American subsidiary, branch, parent, affiliate or joint venture to require the services of an employee of the foreign company in order to help develop the existing or new American company. It is a visa which is issued from one to three years initially. It may be extended every year up to a maximum period of seven years, the latter two years being for cases of extreme emergency.

What are the advantages of this visa? First, a decision can be obtained relatively quickly, usually within a two month period if the parent company has existed for longer than one year and that the transferred person has been employed in the foreign company during at least one preceding year. Then, if, after one year of employment in the U.S., this person wishes to become an American resident, he may apply without having to obtain a labor certification. The subsequent residency procedure can take up to three years.

Now what are some of the disadvantages? The parent company must continue its operations in the foreign country. This means that the company must have sufficient resources to continue operating outside of the United States and keep its employees, offices, tax reports and all the other ordinary expenses of an operating business. Today the restrictions for obtaining such a visa are such that generally large corporation can use it. The word "large" is open to interpretation depending on sales, profits and number of employees.

It is important to remember that the parent company must be real and not fictitious and must be able to demonstrate its operations. A foreign company created solely for visa purposes is not acceptable. However the creation of the foreign company as a subsidiary of the U.S. company is acceptable because the L1 visa will be issued as long as the company has the intention or has already taken preliminary steps to doing business in the American market.

The question one asks oneself most often on the subject of the L1 visa is the following: "In the case of the president of the parent company, can he be transferred to his American subsidiary?" The answer is yes. Let us take the case of a contractor who has a business in a foreign country. His company abroad may have a federal or provincial charter. From now on he wishes to diversify his construction operations in America. He will keep his company active in the foreign country and be sent by the head office in order to undertake the necessary procedures in for business development in America. In the case of a high level executive, his responsibilities will encompass contract negotiations, legal matters, establishing working relationships, accounting for reports to the foreign company and supervision of lower level executives and employees, although presumably not on a day-to-day basis, which is the

function of a top manager.

What are the essential documents required in order to be eligible for an L1 visa? In addition to the forms provided by the Immigration Department (I-129L), it will be necessary to prove the existence and longevity of the foreign company as well as the American one by using articles of incorporation, financial statements and other.

Once the L1 visa has been approved it is necessary to complete consular procedures. With the stamp entered into your passport, the beneficiary presents it to the immigration officer at the border who will give you an I-94 arrival/departure card. This small white form allows you to enter and leave the country at will during the complete period for which the visa is specified.

Most nationals must apply for the L-1 Visa stamp at the U.S. consulate or embassy in their home country before entering the U.S. Although the Immigration Service may approve a petition within the U.S., the State Department (i.e. Consulate/Embassy) has the authority to deny issuance of the visa if they believe that your initial intent is to become an immigrant to the U.S. or if there are other local circumstances which may cloud your issuance.

The holder of this visa, since he or she is considered a non-immigrant, continues to pay taxes in his country of origin, even if he receives fees from the American corporation. However, it is preferable to consult an accountant specialized in tax laws of both countries. In most circumstances, persons staying greater than three months in the U.S. may trigger U.S. tax consequences.

## **CHAPTER 8: The "E" Visa: World wide application !**

The citizens of Argentina, Bolivia, Colombia, Costa Rica, Spain as well as over forty other countries are eligible for an E visa classification.

The E visa is equivalent to an import-export (E-1) or investor visa (E-2) granted to people from such countries. In order to obtain this special visa, one must satisfy certain conditions:

- the company or individual must be of foreign nationality;
- the applicant must have invested or be in the process of investing in a business in the United States;
- the business must be real, active and commercial.

If the United States has signed agreements with certain countries with whom businesses can be of U.S. national interest, then it grants certain privileges for immigration purposes to the nationals of those countries.

Moreover, the business involved, usually a corporation must be sizeable and the investment must not just cover the cost of operations. The person who is at its head must have qualities required to develop this business and manage its employees. The beneficiary of the visa must have the intention to return to his country of origin when the investment is terminated or when the visa has expired. The delegates of the business must occupy administrative positions or have specific specialized functions.

The nationality of the applicant or of the company applying is of primary importance. If two foreign companies are merged and they each hold 50 percent of the shares of a new company, it will be necessary to determine through managerial definition which one actually controls the foreign group formed by the merger.

What type of investment is necessary in order to be able to benefit from such a visa? In keeping with the law, the investment, if it entails commercial risks, can be made in virtually any field. The person investing in machinery, personnel or a business runs a risk, and by this fact is eligible to an E type visa. However an investor who deposits his money at the bank and collects interest does not take any "risks" since his investment is deemed passive thus he cannot benefit from such a visa. The same applies to the purchase of vacant land, unless the applicant wishes to invest in a developing real estate project. The differences are subtle, therefore it is recommended that current advice is received from U.S. Consul or attorney.

In this context, the business must be one which renders services or one which buys and sells products. The investment must be proportionate or relative to the business itself; that is to say one must take into consideration the total value of the business and the investment. The initial cash investment must be approximately one half of the total investment for a small business requiring approximately \$100,000.00 or more. Approval of the visa remains at the discretion of the official.

Although the applicant need not prove his intention to return to his country of origin, if there exists a doubt in the mind of the official that the applicant will not return, he will refuse the issuance of the visa. In consular proceedings, the applicant does not enjoy the benefit of the doubt.

The visa which we have just described is the E2 visa established in order to encourage foreign investment in the United States. There also exists an E1 visa which applies to applications for commerce and navigation between the United States and a foreign country which has signed an agreement for trade and which is part of the exclusive list where one finds more than 40 countries and constantly changing!

Let us take for example the case of France. If a French national wishes to trade in large measures in the fields of banking, tourism, insurance, transport, communications or advertising, he must request an E1 visa at the American Consulate. The beneficiary of this status can renew this visa in the United States indefinitely as long as he has no intention of abandoning his residence abroad.

There are two ways one can obtain this visa classification. If already in the United States, you can complete a change of status (I-506) within the U.S., however you will not be able to travel freely. If you are abroad you must apply at the closest American Consulate or Embassy in your home jurisdiction.

Ironically, the U.S. does not have a Convention of Commerce and Navigation with some of the world's important trading countries such as Brazil. For nationals of excluded countries, proper planning should be considered to review other possible visa alternatives.



## CHAPTER 9: Criteria of E-2 Investor Visa

Section 10 1 (A) (15) (E) (ii) of the *Foreign Affairs Manual*, the bible for attorneys in matters of immigration law, establishes eight major criteria for an E-2 visa to be accepted. The omission of one of these criteria can jeopardize the application approval:

1. The business in question must belong to a national of a country having a commercial agreement with the United States for instance, Colombia, Argentina or Bolivia. The business does not need to be a corporation since individuals or other legal entities can make the request as long as the applicant possesses an "adequate" nationality. However we always recommend the formation of a U.S. corporation since the individual will be protected from certain personal civil liability and the investment will be considered to be long-term and not one for quick profit. This means that the investment will contribute to the U.S. national economy. If the applicant has two nationalities, he can choose the one which is on the list of designated countries.
2. The applicant will or has invested in a business. Proof that you have signed contracts or made financial commitments is enough to begin to justify your case. It is preferable however to have already finalized the investment which will prove that you are an even more serious candidate.
3. The business in question must be real, operating and commercial, i.e. the business must require the attention and participation of the applicant. The purchase of shares of a partnership is not considered to be an investment since it is passive and can be supervised from afar. However, note that the purchase of several partnerships with the purpose of reselling can be considered as an investment and can qualify for the E2 visa. The principal criteria in determining an investment is the "risk" factor. If you cannot identify this risk, your investment will not qualify. It is equally important to note that the opinion of an officer at the embassy or consulate will have to be taken into consideration because what you consider to be an investment that is risk oriented may not seem to be that to the official in question. There is a lot of room for consular interpretation.
4. The investment in question must be considered important. Importance is subject to interpretation according to the nature of the business, its total value and consular precedents. For example an investment of one half million dollars in a business worth \$500,000 is important, whereas the same amount in a business worth 2 million dollars is less important. You must understand that each consulate or embassy has its own criteria. Those of your home country have priority. Although there exists no minimum investment according to the regulations of the law, it is implicitly recognized that the investment should be greater than \$100,000 in cash. An amount less than that will be considered but proof must be supplied that it will create employment for several Americans.
5. The investment must be made with the objective to generate revenue. The visa will not be granted to the individual who has liquidated his assets in his country of origin to invest in the United States in order to establish himself permanently. The applicant must show solid ties to his country of origin. The law does not require a declaration of return to the country of origin, but the applicant who does not do so is regarded with suspicion.

6. The investor must be able to develop and freely direct the business, i.e. he possesses the experience and skills necessary so as to ensure the success of the business. In the case of a corporation, the investor must be a majority shareholder and be able to make the final decision. We recommend to our clients that they constitute a capital with the purpose of meeting miscellaneous expenses (for example transport and unexpected expenses) Even if this amount is kept in a bank account, it can be added to the initial amount of the investment since it will contribute to the ultimate success of the venture.
7. The applicant must have the intention of leaving the United States at the end of his investment, if he sells or if he experiences a loss. He may be able to invest again in order to extend his visa, even in a different business. Since these visas are granted on the basis of a business agreement between the United States and another country, the duration of the visa varies according to the country. For Argentina it is 5 years long; for Bolivia, 5 years; and for Costa Rica, 1 year. These variations in length are the result of political negotiations. Even if the duration of the visa is limited, it is legally possible to obtain this visa for extended periods of time as long as you can prove that the investment exists, that it is viable and that all the other conditions of the visa have been met.
8. The employee status derived from the nationality of the principal investor applies equally to a key employee who is uniquely qualified and required for the success of the project.

### **A) The E-2 Investment**

Commercial buildings, machinery, inventory, equipment, are considered to be good investments. Close scrutiny is given to fake organizations, stocks or undeveloped land. One must be realistic in order to receive a positive answer.

American authorities evaluate the "relativity" or the "proportionality" of the investment in relation to the value of the business and the amount required in order to make a return on investment. For example, an investment of \$200,000 is considered serious in the restaurant field but perhaps not in the automotive industry.

Although decisions are based on immigration laws of the United States, they are often arbitrarily interpreted. It is therefore important to complete fully one's file in order to receive a positive answer. The authorities only pay attention to applications which are considered to be complete.

It is also most important to coordinate the application between the client and his legal advisor. In most cases the applicant will want to retain the freedom to travel between the United States and his country of origin for business and/or for pleasure. There is no appeal on decisions from the Embassy or Consulate. But one should recognize that American immigration officials encourage foreign investors in order to promote the development of the American business and employment market.

Some investors arrive in the United States equipped with another visa and then apply for an "E2" visa. It is then the Department of Immigration, which has jurisdiction within the region where the investment has been made, who will take the file in hand.

## **B) The Delays**

You can present your temporary visa application anywhere around the world. It is necessary to warn the consul ahead of time of your arrival if you do not want to prejudice your file. A pre-certification system is in effect, by which the file is sent to the consulate in question to allow an officer a first analysis. If the request is founded but there lacks some information, the officer will be pleased to cooperate in order to complete the file. Of course if a fraud is identified, the officer will immediately reject the application.

We know why people want to invest in the United States. But we cannot explain why some countries are not "admissible" partners even if their history show close links to the United States. We believe that the unification of the European Common Market will force the United States to allow a greater number of countries to invest in their territories as is evidenced by the growing relationship with its immediate neighbor to the south, Mexico.

You can apply personally without the help of a legal advisor. If your application is refused, you must not forget that your *second* application will most likely be examined by the same official and that an attorney will then be essential to the success of the application by demonstrating your legal position, historical precedents, case law and emphasizing statutes by which both the State Department and the applicant are governed.

## **C) Proper Preparation**

Your file must be complete and you must be ready for an oral interview. Make sure that you take the following precautions:

- a) always have your passport of your country of origin handy. Do not wait for the last minute in order to renew it when the expiry date gets closer;
- b) have in your file two passport size photographs;
- c) have a detailed resume as well as copies of your diplomas, if any;
- d) keep papers which prove your ties to your country of origin (birth certificate, driver's license, social insurance and credit cards);
- e) maintain your positive attitude. You must show complete confidence in your file and equally a frank respect for the officers you will meet. These people have heavy responsibilities and deserve your respect and patience.

## **D) The Application of Free Trade Acts on Business Visas**

Every year, 300 million visitors come to America. They often visualize this territory and their home country as one market. The free-trade agreements are detailed Acts whose goals are to eliminate trade barriers between two or more countries over a period of time. Thus, there will be important repercussions in the field of immigration:

1. A businessman can now travel on a B-1 visa with the objective of producing, marketing, selling, distributing or offering an after-sales service. He cannot receive a salary but his expenses can be reimbursed by an American source. It is important to note that there exist longer stays for the execution of service contracts. The stay for the visa has been extended from six months to one year, and the members of the immediate family can be admitted for the same periods.

2. The E1 visa can equally serve to exchange services (legal, accounting, etc). The consular expenses are presently quite low.
3. The L1 visa has been reorganized and it can still be used by an employee wishing to work in an American branch or subsidiary of the foreign head office. Make sure you allow two hours, at least, before entering the U.S. for approval procedures at the border.
4. Professionals such as insurance or computer experts and management consultants can work in the United States often using experience to replace a formal university degree.

A commission made up of representatives of two treaty countries meets regularly in order to hear the arguments and solve problem cases.

## CHAPTER 10: Student Visas

For those among you (any age) who wish to undertake or continue studies in the United States, there exists a student visa called the "F1". This visa is issued by the Department of Immigration for those who come to study for at least 15 hours per week in an educational institution (i.e. a college, a university, a high school or other approved by the Department of Immigration).

If the student wishes to study any other course than the English language, he will have to have a sufficiently good knowledge of the English language in order to undertake those studies.

Today the F1 visa is issued for the *duration of the studies* and not for one year at a time as was the case before. It is necessary that the school be recognized by the Attorney General of the United States for being an institution having sufficiently high standards of education.

What should be done to work temporarily in the U.S. with an F1 visa? If the job in question does not displace an American or if this job is part of the studies, the student must apply to the Department of Immigration in order to obtain a permission to temporarily work or consult a school international student adviser. These conditions must be solely linked to employment on the campus of the institution, however new regulations will allow off-campus employment.

The only valid reason accepted by the government to work off the campus is total financial disaster. A student cannot work more than 20 hours a week during a school year. If a student works without authorization during his studies he runs the risk of being asked to leave the country because this is considered to be a violation of the student status.

What happens in the case of a student who is married or has a child? Upon presentation of the certificate of marriage (as far as the spouse is concerned) or the certificate of birth (for the child) one can obtain an F2 visa in order for them to accompany the student to the United States. A change in marital status or the birth of children will not legally increase the student's chances for work authorization in the U.S. except potentially in cases of emergencies or economic desperation.

## **CHAPTER 11: Appearing at a United States Consulate or Embassy**

There are few experiences in life which are more intimidating and fatiguing than appearing before a United States official to secure a non-immigrant visa. These officials are taught from the beginning that each applicant must be presumed to be an immigrant and that the burden is on the applicant to prove otherwise.

Although many strategies can be utilized to persuade the officer that you, as the applicant, are not intending to become a resident of the United States, you must rely on his or her judgment and know that their decision is final and mostly not reversible. In only extreme cases of arbitrary decisions can officer's decision be questioned.

You must also know that you have only one opportunity to make a positive impression. If you are not equipped with the right documentation and utilize the correct procedures to be viewed in the best light, then future applications will be much more difficult.

There are some items of legal concern which you must address and some of common sense. With regard to the first, ensure that you bring with you, in duplicate, the following documents:

1. Form OF-156: this is the standard consular application form which is brief but gives the officer sufficient information to make a first impression. Remember, the officer has a very short period of time to make that impression so be sure that each box is complete, truthful and precise. After having seen hundreds of applicants you can be sure the officer can spot a fraudulent application or one that is based on half truths. Never, never lie, mislead or misrepresent to an officer. You will not get a second chance to apply for a visa.
2. Photograph: you will be required to supply a passport size photograph, preferably in color, along with the OF-156. Make sure you bring at least two in the event that one is lost, misplaced or otherwise. This applies to any person making an application, including minor children.
3. Documents to prove foreign residency: officers are trained to look for situations where there are questions in the intent of the applicant to return to their home country. Therefore, it is essential that the following documents, brought in photocopied duplicate, are included in the presentation to the officer. Although there are never any guarantees or magic formulae for which to secure a visa, the following list will at least be persuasive in your favor and shift the burden of proof from you to the officer:
  - a) return airline ticket showing absences that are not too long from the home country;
  - b) valid passport showing that the passport is valid for a period of not less than six months;
  - c) proof of property owned in the home country showing that you have an intent not to abandon it;
  - d) list of family members in the home country showing that you do not have an intent of abandoning the family;
  - e) job letter from your employer or from you own company, if self employed, showing that you are on a temporary leave of absence, the position which you hold in the company and the number of years with such company;
  - f) bank statement indicating funds available in the home country, which will not be

- abandoned;
- g) title to your house, apartment, automobile or anything else valuable which you will be leaving behind in the home country;
- h) a copy of your travel itinerary showing how and when you plan to return to the home country;
- i) a police certificate, if required, to show that you have no criminal record;
- j) the filing fee for the visa in the local currency or U.S. dollars (this varies depending on the visa and country).

With these documents in hand, at least you stand a chance of having the visa issued rather than being summarily denied. Most officers are sympathetic to well organized applicants, since it makes everyone's life easier.

There are also many items that should be taken care of which are common sense but which people often forget. For example, always be on time. If the U.S. Consulate or Embassy has arranged an appointment at a certain date and time, make sure you are there. American traditions of punctuality enter here and you are expected to adhere to them. If you do not have a fixed appointment, which is the majority of the time, make sure you arrive once the doors open at the Consulate as there is usually a limited number of people who may apply per day.

Your personal appearance is also important. Although you do not have to be rich to apply, wear clean clothes and have a clean personal appearance and healthy disposition before going into the meeting. You have to be very alert as the time allocated to your matter will be very brief, therefore do not waste it. Gentlemen should wear ties and jackets and ladies should wear skirts or dresses if local customs allow.

Never argue the case with the officer until he is making his final decision. Try to persuade with documents and common sense. If you have a good case and are well equipped there should be no reason for a denial. American justice requires that the officer base his decision on law, not only his personal evaluation.

Answer questions asked directly by the officer and no more. Do not engage into a long conversation other than the matter at hand. Do not try to distract the officer, answer in precise short answers unless he or she requests further elaboration.

Always carry your driver's license and other identification with your picture other than your passport. You will wish to demonstrate that you are a member of the local community attached to local roots.

Do not be nervous and always be truthful in your information. Try to be as relaxed as possible as it will be a long day usually. Bring some reading material to allow the day to go faster. Food and drinks are not permitted nor any metal objects within the Embassy or Consulate. Try to smile occasionally and make sure you understand the questions before answering. Chances are that your answers, no matter how trivial, will be recorded by the officer on the OF-156 form.

Do not bring children or family members who are not applying for a visa. This can be very disturbing to the operations of the Embassy or Consulate and the officers will not look favorably upon this imposition. Bring an interpreter should you need one, although the

interviewing officer is deemed to understand the principal language of your country.

When the decision by the officer has been made, you will be requested to be seated. Some Embassies or Consulates will issue the visa the same day. Others will require that you return to pick up the passport the following day. Simply remember that the officers and foreign service nationals who act as clerks for the U.S. Government State Department are human beings and may make mistakes. Therefore, it is vital that you verify the stamp placed into the passport to ensure that it was fully inserted on a blank page, that the visa period has been written in, and that no stray remarks are inserted which may complicate your entry into the United States.

Once the visa has been properly issued and that you have paid the fee, the immigration officer at the border point has his or her discretion to allow you to enter the United States. Therefore, it is recommended that you travel with your duplicate set of documents showing that you are still maintaining your foreign residency. If the entry becomes very difficult and the officer arbitrarily denies your entrance to the United States, have the supervisor of the denying officer communicate with the Embassy or Consulate to correct the situation.

Hopefully these suggestions will make this difficult application phase a little easier and more pleasant. Good planning is essential for success.



***SECTION B: PERMANENT RESIDENCY AND CITIZENSHIP***

## **CHAPTER 12: The American Immigrant Status**

Many people wishing to live in America consult an attorney in order to know if they already have an immigrant status or how to obtain one. An immigrant status allows an individual to live more than six months per year in the United States and the right to work there as well as to pay taxes.

In order to know if you qualify for permanent residency, you should ask yourself a few questions.

First, where were you born? If you were born in the United States, chances are good that you are a U.S. citizen. If you are a national of another country you may enjoy dual nationality (as long as you have not officially renounced your citizenship with that country or the United States).

Was your spouse born in the United States? If that is the case you can obtain residency so long as your marriage is legitimate. However, in case of a divorce or of death of a spouse during the application procedures, you may lose your rights to the petition immediately. In case of marriage, a divorce during the first two years of the marriage can provoke a revocation of your residency privileges! This rule applies to Permanent Residents who are holders of a conditional "green" card.

If your parents, mother or father, are American Citizens, you are eligible for the first or third family based preference depending on your marital status. This means that either parent will be able to apply using form I-130 for their single son or daughter (1st preference) or married children (3rd preference) as well as their spouses and their own minor children.

If you have a brother or a sister who is an American Citizen, you are eligible for the family based fourth preference. Today, however, there is a particularly long waiting period!

A son or daughter of an American Citizen, aged more than 21, can apply for his or her parents without too much difficulty. Consequently, if there exists blood ties with a father, a mother, a brother or a sister, your chances are good of obtaining an immigrant status. That does not apply to uncles, aunts, cousins, nieces and nephews unless there has been a formal adoption of the child below the age of sixteen.

If you wish to immigrate to the United States and you have no parental link with an American Citizen or with a Permanent Resident, what should you do? If you own a business or a legal entity (corporation, association, company or non-profit organization) you may be able to qualify for the intracorporate transfer which we have discussed earlier. If you do not have a business but you possess exceptional or professional qualities, you can request an H1b visa or an employment based preference of which we have already spoken.

If none of these situations lend themselves to your case, you can try to find an American employer who will be responsible for approaching the Department of Labor and then the Department of Immigration to secure permanent residency for you through labor certification.

## CHAPTER 13: The Entrepreneur Investor Conditional Permanent Residency Visa

With the American economy in disarray in the early 1990s and the advent of a new immigration statute, Congressional legislators thought that the introduction of an employment-generating conditional permanent residency preference would be a boon to foreign investors. Were they surprised? Not only has there been a sparse reaction to the existence of these 10,000 annual visas but even fewer have been approved due to the strict requirements and analysis by the Department of Immigration.

The reluctant world community reaction to this visa category has been based on the conditional status of the visa and the heavy financial commitment required before making application. Thus, the basic premise is an active investment of one million dollars (\$1,000,000.00) into a new commercial enterprise during a period of eighteen months (prior, during and after filing the application), all of which must be invested prior to the second anniversary of the issuance of the conditional status. The applicant must have invested or actively be in the process of investing said capital but there are no restrictions as to nationality of the applicant. A personal residence will not qualify as an investment.

In addition, the enterprise must generate not less than ten jobs for United States nationals, i.e. U.S. citizens or lawful permanent residents, who are not immediate family members. The enterprise must be a true commercial enterprise with all the business risks attached to it. Between the eighteenth and twenty-fourth months, the Department of Immigration will review the file and determine if in fact the applicant investor has met all the conditions and thus, issue unrestricted permanent residency. You can understand the concern of the foreign investor who has made the investment and then has to return to the Immigration Service for a second review!

Of the ten thousand visa numbers available (only 470 were applied for in the first eight months of 1992 for this fifth employment based preference), seven thousand visas are allocated for major metropolitan areas where the investment will be located and three thousand are located in *targeted* areas which are deemed to be rural (population less than 20,000) or in metropolitan areas where there is high unemployment, 150% of the national average. The Department of Labor is issuing lists within each state for the targeted areas which sometimes can comprise entire counties and some unlikely unemployment areas, so verify with the Department of Labor before committing to the location. No labor certification is required for the entrepreneur investor.

One of the advantages of situating in a targeted area is that the financial threshold is less than in the non-targeted areas, i.e. the entrepreneur investor would only be required to invest half a million dollars (\$500,000.00) in the investment during the time period as the non-targeted investment. Thus, an entrepreneur could conceivably commence with \$250,000.00 and add to the investment over the eighteen months. In addition, the investment must somehow benefit the U.S. economy.

There is still a debate with regard to the number of full-time (35-40 hours per week) employees required for the targeted areas. Logic would have it that since the investment requires only half of the initial capital of a non-targeted area that the U.S. employee requirement should be the same, i.e. only five U.S. nationals. Unfortunately, this is not

the case which the statutes reflect at this writing, i.e. ten employees during the two year period would still be required in the targeted area. The INS does not have an objection to job sharing, i.e. dividing a 35-40 hour week of one job between two U.S. nationals.

A person contemplating such a visa should also understand that the word invest comprises basically cash and no long term debt financing with an unrelated party wherein the liability of the individual may be at risk. The *capital* to be contributed can take the form of cash, equipment, inventory or other tangible property and indebtedness secured by assets owned by the investor, all to be valued in U.S. dollars.

Fortunately, the capital, as so defined above, can be acquired by any lawfully traceable means such as profits, gifts, inheritance. Note that the Department of Immigration will seek evidence of the source of the investment so be prepared to document the file fully. All qualified investments must have been made after November 29, 1990, whether they consist of the creation of a new enterprise or the acquisition of an existing one.

The commercial enterprise may be formed as a sole proprietorship, partnership (either limited or general), holding company, joint venture, corporation, business trust or other public or privately owned entity. Thus, for example, a limited partnership may own a large commercial enterprise and have multiple investors so long as the employment and investment criteria are met.

In evaluating the eligibility of the application, the Department of Immigration (not the foreign Embassy or Consulate) must also conclude that the applicant will be involved in the management on a day-to-day basis or through policy decisions. He or she must not have any judgments from any court in or out of the United States within the fifteen years prior to the application.

A comprehensive business plan showing the dates of the investment and hiring of the employees in addition to the general business activities is essential. Although the actual form is numbered 1-526, it is the supporting documents to the case which will determine its success. Do not be misled into thinking that merely money can buy your way into America.

The congressional motivation to creating a conditional versus unrestricted permanent residency category was to identify fraudulent applications and allow the INS a second look at the enterprise to determine if it was meeting the statutory conditions. In the event that the investor has, within ninety days of the second anniversary, not applied for the lifting of the conditional status, not appeared at the final interview or met the full conditions of the entrepreneurship, the conditional residency can be terminated and the applicant placed into deportation proceedings.

Let's look at an example of an ostensibly qualifiable application:

Mr. Z is a mainland Chinese national. He and his four associates are contemplating the acquisition of a five million dollar hotel in a good area but wherein the employment is 150% above the national average. A limited partnership is formed for the purpose of the acquisition and to facilitate their visa applications. The hotel currently hires twenty five employees. Can Mr. Z and his limited partners qualify?

In principle, there is a basis for the qualifications of the applicants. However, they will have to be extremely careful to monitor their situation during the two year period of time after which they have filed their applications. First, all the partners should invest at least half of their investment in cash to show their good faith, i.e. \$250,000.00 each. There should be job descriptions for each partner to show their involvement and commitment to the project. They should prepare and place into motion an organizational chart whereby the remaining twenty five employees will be hired prior to the second anniversary. Note that employees can be hired and fired during this period of time. The law does not require that the same employees hired initially be retained for the second review by the Department of Immigration. Make sure all the issues mentioned in this article are met to ensure a successful result!

## CHAPTER 14: The Preferential Immigration System

The American system of permanent immigration is restrictive and sometimes illogical. Never try to solve an immigration problem by using reason or logic. The system will compel you to deal with American government employees as well as various political forces.

When the immigration system was created, the government, with the backing of the people, decided that it would use reunification of the family as its basis. That is to say that close relatives should be able to live together in the same country, America.

Let us analyze the possibilities. There exist categories without quota, or no limits as far as the number of people admitted into the United States. That is the case with parents and spouses of American Citizens. They are part of a category called "non preference", i.e. without quota. Foreign spouses will have the right to enter the United States at all times and with few difficulties as long as the marriage is legitimate... But beware of fraudulent marriages! The parents (father or mother) of an American citizen equally benefit from non-quota status.

The "preferential system" is established as a mechanism to the link which exists between the petitioner (American or lawful permanent resident) and the foreign beneficiary. Certain countries, such as Mexico, have their own numerical limitations. Since October 1, 1991, the system was established with a worldwide numerical limitation of 700,000 for fiscal years 1992 to 1994, with a drop to 675,000 visas thereafter as follows:

### **FAMILY SPONSORED PREFERENCES:**

**First Preference:** The unmarried children of an American citizen who are over 21 years old are eligible in the category called "1st Preference"; the annual limit is 23,400 visas. The children who are under 21 are subject to a non-preferential system which does not have any quota.

**Second Preference:** The "2nd Preference" of which the annual quota is 114,200 people, render eligible for U.S. residency the spouse or the unmarried child of a U.S. permanent resident. A permanent resident is a holder of a "Green Card"; generally, he has all the rights of an American citizen except the right to vote.

**Third Preference:** The "3rd preference" allows American citizen parents to apply for the permanent residency of their married children and spouses. In this category the annual quota is 23,400.

**Fourth Preference:** The "4th Preference" is for alien brothers or sisters of American citizens. Only 65,000 visas per year are issued in this category.

Every month these figures change as a function of demand. You would be well advised to check with the Immigration Department as to which category relates to your case before undertaking steps which will require much energy and patience. Monthly priority dates are issued on the fifteenth of the preceding month which is affected.

## CHAPTER 15: A Winning Formula for the "Green Card": Labor Certification

### Part One

The United States is a nation of immigrants. The U.S. became its own nation in 1776, it can be concluded that it is still a young country full of potential and growth.

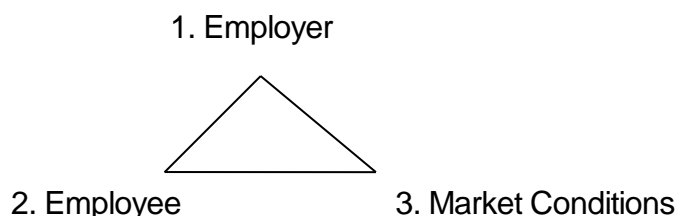
There are now more than seven hundred thousand permanent immigrants who enter the United States legally every year. Of those, half enter by the preferential system for which there is a quota; the rest is made up of refugees, relatives, or spouses of American Citizens.

One of the most popular methods for becoming an American Resident and which allows the foreign national to secure a Green Card, is to be sponsored by an American employer. The latter, if he can prove that there is a lack of qualified U.S. workers on the local market, can require the employment of a foreigner. This long and tedious procedure can generate good results if one analyses the requirements before undertaking it.

The employer can be a company, an individual, an association, or any other entity or individual American which in good faith requires the services of a foreigner for a particular position. The fact that delays can be long does not have anything to do with the chances of success. As long as the employer is located on American territory, that he or it is solvent, that he or it proves good faith need and an unsuccessful result in recruiting an American worker, it is sufficient to prove that he or it has the qualifications to be a sponsor.

The *employee* must, of course, be a foreigner, trained or experienced in the work offered by the American employer and wishing to immigrate permanently to the United States. It is recommended that there be no family link between the employer and the employee. If the employee is married, his spouse will automatically benefit from the same advantages.

### MAKING LABOR CERTIFICATION WORK:



To successfully execute a labor certification application, the conditions above must work in unison:

1. There must exist a U.S. employer willing to sponsor the foreign national;
2. The employee must be skilled and/or educated in the proposed position;
3. The market conditions for the proposed position must reflect low U.S. national response in a specific geographical market and under specific terms and conditions of employment.

It will be necessary to determine that the prospective job in a particular geographical area cannot be filled by Americans who are in the same field of work. So, before making an official application, the employer should run test advertisements in the newspapers in order to

evaluate the market. If the responses from the area are numerous, he cannot ask a foreign employee to fill the job in this category or in this geographical area. If he has few responses, he can assume that the job offer can withstand market demand. One can never precisely evaluate the job market, but response is a sufficient indicator to establish the chances of future success.

Many foreign employees fear that they would have to work for a sponsoring employer for life. That is not the case because nothing obliges the two parties to contract forever. Freedom is the basis of the American Constitution.

## **Part Two**

You live abroad and wish to come to the United States to live permanently. What do you do if you have no U.S. family ties. A U.S. employer must then apply for a work permit through the U.S. Department of Labor in the intended geographical area of employment before being able to immigrate and work in the United States.

The reason why this work permit exists is in order to protect the American labor market. Before obtaining a labor certificate, a foreigner will have to find a U.S. employer who will have to prove with documents that no American citizen or resident qualifies or is interested in taking up the offered job. In order to do that, he will have to run advertisements in newspapers post the job offer in his offices and file a job offer at the local office of the Department of Labor known as the Job Service.

If it is proven that the employer has in vain tried to find American citizens or residents to fill the position, the labor certification is generally granted. It is necessary however, that the job description not be too restrictive. The Department of Labor has drawn up special rules so that employers are unable to reject suitable American candidates without valid reasons. For example an application for a labor certificate will be rejected if the job offer requires a bilingual person who will work irregular hours unless solidly backed by documents requiring such qualifications.

The final decision to accept or reject an application for a labor certificate is the responsibility of the Federal Department of Labor. However, the Department of Labor of the state where the employer is situated plays an important role in the recommendation of the application. In fact, before the application is sent to the regional level, it must first be examined by state officials, who will add their recommendations and comments. It is therefore important that the application for the labor certificate be completed very carefully. Questions which are asked seem simple but if the answers lack precision, the Department of Labor will reject the application. If the difference between government recommendations and the employer requirements are great and if this gap cannot be justified as absolutely necessary for the job, the application will surely be rejected.

If the Labor Department refuses to issue the labor certificate which was requested, the U.S. employer can appeal the decision before a judge who will make the final decision. In case of a refusal, an employer can re-apply six months later.



**PREFERRED MEDICAL SPECIALTIES**  
**(FOR LABOR CERTIFICATION)**

AL	Allergy and Immunology
CR	Colon and Rectal Surgery
EM	Emergency Medicine
IN	Internal Medicine
NM	Nuclear Medicine
OP	Ophthalmology
OL	Otolaryngology
PL	Plastic Surgery
PS	Psychology and Neurology
SU	Surgery
UR	Urology
AN	Anesthesiology
DE	Dermatology
FP	Family Practice
NS	Neurological Surgery
OB	Obstetrics and Gynecology
OR	Orthopedic Surgery
PA	Physical Medicine and Rehabilitation
PR	Preventive Medicine
RA	Radiology
TH	Thoracic Surgery

## **CHAPTER 16: Consular Procedures for Permanent Residency**

The American government needs the services of an embassy and/or consulate in most countries of the world. If the United States does not legally recognize a country, or if it does not have good relations with it, then a consular office is established in the embassy or consulate of another country.

We all know that the embassy is the official residence of the U.S. Ambassador but his role as well as that of the consulate is much more than one of representation. His presence in a foreign country allows the U.S. government to keep an eye on political, economic, military and social interests of the United States.

In order to be able to establish an embassy and/or consulate of the United States in a foreign country, it must be in the national interest of the United States. The size of the foreign country may dictate the establishment of several consulates.

We will review the most important services of an embassy or a consulate, i.e. the issuance of the immigrant and non-immigrant visas.

The immigrant division is responsible for issuing visas which are granted on the basis of family relationship, a permanent job offer or another statutory reason (for example in the case of refugees). In order to obtain a visa, the procedure is the following: the beneficiary must supply along with the official immigration application,

- a detailed biography,
- fingerprints,
- photographs,
- a medical report stating any contagious diseases, if any, as well as
- a financial report

Without forgetting to include certificates of birth, marriage and divorce, military records, and passports before the final interview with the officer whose responsibility it is to issue a permanent visa.

As soon as the bureaucratic formalities have ended, the proposed immigrant is given a sealed envelope which he will have to present to an immigration officer at the U.S. border. The latter, having proof of approval by the embassy or consulate, will have to affix the stamp (I-551) which represents admission to American residency. By physically crossing the border on an official basis, the immigrant becomes an American lawful permanent resident.

The embassy or consulate requires that the official entry into the United States as an immigrant be made within four months following the final interview. This does not hinder the immigrant from temporarily returning to his country of origin in order to settle pending business as long as he intends to return permanently to the United States.

The visa services for temporary U.S. visitors at the embassy or consulate are much more discretionary. Arbitrary decisions are frequent and the experience of the officer plays an important role.

One assumes that the individual will reside temporarily in the United States and that he will then return to his country of origin. He enters only in order to visit, work temporarily, study, or benefit others from his experience in a specific field or represent his country for a specific purpose. The officer will therefore have to make sure that the individual really does have the intention to return to his country upon expiration of his visa. This can be proven by establishing links with his country of origin, family, assets, stable employment, and involvement in the foreign community. Despite this evidence, the officer has final authority to refuse to issue non-immigrant visas for economic, political, or other reasons. Further, the requirements for each application are different, e.g. the application for a tourist visa is not treated in the same manner as an application for an import-export visa (E-1).

Unless the applicant has a criminal record, the officer has the authority to reconsider an application if new facts have been presented or if the individual is not automatically excluded. The length of the visa can equally vary depending upon the recommendations that are made for that applicant.

The honesty and seriousness of the application play an important role in obtaining a visa and the consular officer has the authority of the final decision. One cannot appeal this decision unless one is able to prove extreme prejudice to the presiding consul general or ultimately to the Department of State in Washington D. C.

## CHAPTER 17: How to Choose the Right Immigration Office

You now know in which category you fit in order to apply for permanent residency. You must then determine in which office you will be able to obtain documents which will give you the right to live in the United States and to work there.

It is very simple. If you are already in the United States, you will be able to get them locally. If you are abroad you can go to the nearest American Consulate or Embassy.

Let us analyze both situations by taking concrete examples. In the first case, a young woman came to the United States as a tourist and fell in love with an American three months after she had arrived. They decided to get married. When she crossed the border, she had no intention of settling down in the United States. Since her original intention was honest and a reasonable amount of time had passed since she had first entered the country (no less than three months), she was able to complete an adjustment of status without leaving the United States.

If she applies through the local U.S. Immigration Office, she can submit her application to an official who will be able to give her a preliminary answer the same day ... after a long wait. This young lady must not have a serious criminal record, of course. It will also be necessary to submit a series of personal documents, fingerprints and X-rays. The wait for final interviews can be very long so you must be prepared for it.

Let us now take the case of a foreigner who received a labor certificate subsequent to an application made to the Department of Labor. He has to wait for a notice from the Department of Immigration who will ask him to present himself at one of the American Consulates or Embassy abroad. During his visit, he will be asked to supply reports from the police where he has resided more than six months since his 16th birthday, his photographs and all the necessary documents required for a permanent residency. He will also have to physically cross the border within the four months following the interview to receive the I-551 stamp confirming his U.S. permanent residency status.

Many are those who complain about delays. In the field of immigration, these delays surpass traditional norms, because although demand is very strong, the Department of Immigration does not benefit from a large budget. Moreover, the established quotas are often surpassed.

For example, a wait which is required of people who are on second preference (spouse or minor child of a Permanent Resident) can be longer than eighteen months. These quotas are reviewed every month by the Secretary of State and that office alone has control on the annual worldwide quota allocated by Congress.

## **CHAPTER 18: Permanent Residency: a Right or a Privilege?**

The immigrant who has obtained the status of Permanent Resident is very much concerned with keeping his Green Card. Unfortunately, too many people take for granted the advantages which this status brings.

One must remember that nationality or American citizenship is a right whereas the Permanent Residence is a privilege. Consequently, residence can under certain circumstances be revoked and is not granted for life if the conditions for its validity are violated.

Permanent residence when, it is granted, assumes that the holder intends to reside in the United States, to establish his home, work, and have other close links with this country. American law does not limit trips for residents but it does require that they return to the U.S. at least once a year.

In order to preserve the advantages of residence, the requirement to return once a year is not difficult to meet. Residents who return periodically to the United States and do not live there long enough, risk attracting the attention of the Department of Immigration. In fact, if an officer suspects and holds proof of your abandoning of residence, he has the right to seize the Green Card and cancel the residence status. It is then the burden of the individual to establish U.S. residency.

It is normal for the person who is subjected to a border inspection to feel intimidated. However the immigration officer attempts to carry it out in all fairness. He has approximately thirty seconds to make sure that you have the necessary requirements to maintain your residence status in the United States upon entry.

This kind of fraud is well known by all those who work in the field. It is not unusual for an individual to take two trips annually to the United States in order to maintain residency. The holder should be careful if he has not produced an income tax statement and if his only tie to the United States is the residency card. In fact, with more and more prevalent use of computers, the officer can easily trace the comings and goings of the person and put him or her in a very vulnerable position.

One must not belittle the importance of a verbal declaration to an Immigration Officer when one returns to the United States. It is an official declaration which can have serious legal consequences. If he has any suspicion, the officer can either allow you to enter the United States on condition of verification of residence or call in his superior in order to seize the card, or if you are in good standing, to welcome you back.

The attitudes of representatives of the American government differ according to the department to which they are linked and the education received. The Immigration Department is under the control of the Department of Justice whereas the consulates and embassies are under the authority of the Secretary of State.

If you expect to be absent from the United States for long periods, it would be preferable to obtain a reentry permit (I-131) which resembles a small passport that will be given to you

upon proof of your American residence and your intention to return to the country. This permit is essential to residents who leave for several months or years (maximum two years) in order to work abroad.

Suspicion of fraud is less likely of persons who have an American citizenship. In such a case, the burden of proof that there has been fraud in citizenship rests on the immigration officer.

To summarize, the status of American residency, no matter which legal vehicle through which it has been obtained, it constitutes a privilege which one should not abuse or take for granted.

## **CHAPTER 19: The Investment Converted into Permanent Residency**

On December 29, 1981, then American President Ronald Reagan, signed a Presidential decree stating that all holders of the status of investor-resident in the United States since 1978 could have this status changed to permanent resident. Consequently, all non-immigrants having invested \$40,000 into a United States enterprise prior to 1978 could take steps to officially obtain their permanent residency. It was the first time that such a privilege was granted and we encouraged those who were in the United States to take advantage of it. American newspapers did not publicize this decree to a great extent because the Department of Immigration was already overloaded with a large number of files.

Why do we talk about people who are "captive"? Simply put, those who had an investor status could live and work in the United States, but could not leave the country. In order to obtain an exit visa valid for 30 days, the only acceptable reason was a death in the family abroad. In other cases, Immigration officials had the task of accepting or refusing an exceptional request for exit.

For example, let us take the case of an investor whom we represented. This man had two sons who were getting married abroad within two weeks. It was necessary to exert a lot of pressure in order to convince the Department of Immigration to grant him the right to leave and prove that he was definitely going to attend these weddings and then return to the U.S.

What are the advantages of having the status of American Resident for these investors? From now on they will be able to travel freely without having to justify their comings and goings. They also will be able to apply for permanent residency immigration for the members of their immediate family living abroad. Moreover, they will be able to accumulate the required five years in order to obtain American citizenship.

Today, there are certain restricted conditions under which holders of E-visa classification can convert such nonimmigrant classification to permanent residency through the multinational executive or managerial status. The effort promoted by President Reagan is no longer in effect.

## CHAPTER 20: American Citizenship

Since its creation, the United States has been a land which has welcomed large numbers of foreigners wishing to settle down in all states. While having kept their language, culture, and heritage, many have become citizens of the United States. In certain circumstances, a foreign citizen taking up American citizenship, can keep his foreign citizenship and not lose the benefits from either one unless he formally renounces one.

We will see here the naturalization procedures for those who are not American by birth.

If you are an American resident, i.e. holder of a "Green Card", you will have to wait five years (less three month) from the date on the card which is the date you have been admitted as a resident in order to petition for naturalization. If you are married to an American citizen you will have to wait three years from the date of your initial residency admission.

The person requesting citizenship must satisfy the following conditions. Before applying, he will have to have resided physically in the United States for a period of no less than 36 months in the last five years of which the final three months must be uninterrupted in a designated State. He must prove continued residence from the beginning of his application until the day of the final interview with the Department of Immigration and Naturalization.

The procedures require approximately one year during which one can be absent temporarily. The criteria for admissibility are severe. Each application is exposed to a thorough investigation. If the Department of Immigration has already taken measures to deport the applicant, this may jeopardize the approval of the application and the applicant's U.S. residency. Moreover, it is necessary to prove one's basic knowledge of the English language U.S. history and of the functions of the United States government. Under the Immigration Act of 1990, persons over fifty years of age who have resided in the United States as lawful permanent residents more than twenty years or who are over fifty five years old and have resided in the United States greater than fifteen years are exempt from the English language requirement.

The applicant for citizenship must have a true intent to live permanently in the United States. If immediately after having received his American citizenship he elects to live elsewhere than the U.S., he *risks* having it revoked. It is equally essential to prove that the status of residency has not been obtained in a fraudulent manner. For example, if this status has been obtained by marriage to an American national and a divorce happened two months (in certain cases two years) later, the application for citizenship may not be taken seriously.

When the citizenship test has been passed, the new American will swear allegiance to the United States Constitution during an official ceremony in front of a U.S. Federal District Court Judge. Congratulations!



**CHAPTER 21: Questions For The Naturalization Interview**

For those readers who have been married to U.S. citizens for no less than three years or have been lawful permanent residents of the U.S. for no less than the last five years, you may be eligible for U.S. citizenship. The following chapter will assist you in the oral examination on the history and government of the United States. Know also the names and political titles of your state congressmen and senators.

**UNITED STATES CITIZENSHIP QUESTIONNAIRE**

1. What are the colors of our flag?
2. How many stars are there in our flag?
3. What color are the stars on our flag?
4. What do the stars on the flag mean?
5. How many stripes are there in the flag?
6. What color are the stripes?
7. What do the stripes on the flag mean?
8. How many states are there in the Union?
9. What is the 4th of July?
10. What is the date of Independence Day?
11. Independence from whom?
12. What country did we fight during the Revolutionary War?
13. Who was the first President of the United States?
14. Who is the President of the United States today?
15. Who is the Vice-President of the United States today?
16. Who elects the President of the United States?
17. Who becomes President of the United States if the President should die?
18. For how long do we elect the President?
19. What is the Constitution?
20. Can the Constitution be changed?
21. What do we call a change to the Constitution?
22. How many changes or amendments are there to the Constitution?
23. How many branches are there in our government?
24. What are the three branches of our government?
25. What is the legislative branch of our government?
26. Who makes the laws in the United States?
27. What is Congress?
28. What are the duties of Congress?
29. Who elects Congress?
30. How many senators are there in Congress?
31. Can you name the two senators from your state?
32. For how long do we elect each senator?
33. How many representatives are there in Congress?
34. For how long do we elect the representatives?
35. What is the executive branch of our government?
36. What is the judiciary branch of our government?
37. What are the duties of the Supreme Court?
38. What is the supreme law of the United States?

39. What is the Bill of Rights?
40. What is the capital of your state?
41. Who is the current governor of your state?
42. Who becomes President of the United States if the President and the Vice-President should die?
43. Who is the Chief Justice of the Supreme Court?
44. Can you name the thirteen original states?
45. Who said, "Give me liberty or give me death."?
46. Which countries were our enemies during World War II?
47. What are the 49th and 50th states of the Union?
48. How many terms can a President serve?
49. Who was Martin Luther King, Jr.?
50. Who is the head of your local government?
51. According to the Constitution, a person must meet certain requirements in order to become President. Name one of these requirements.
52. Why are there 100 Senators in the Senate?
53. Who selects the Supreme Court justices?
54. How many Supreme Court justices are there?
55. Why did the Pilgrims come to America?
56. What is the head executive of a state government called?
57. What is the head executive of a city government called?
58. What holiday was celebrated for the first time by the American colonists?
59. Who was the main writer of the Declaration of Independence?
60. When was the Declaration of Independence adopted?
61. What is the basic belief of the Declaration of Independence?
62. What is the national anthem of the United States?
63. Who wrote the Star Spangled Banner?
64. Where does freedom of speech come from?
65. What is the minimum voting age in the United States?
66. Who signs state bills into law?
67. What is the highest court in the United States?
68. Who was President during the Civil War?
69. What did the Emancipation Proclamation do?
70. What special group advises the President?
71. Which President is called the "Father of our country"?
72. What Immigration and Naturalization Service form is used to apply to become a naturalized citizen?
73. Who helped the Pilgrims in America?
74. What is the name of the ship that brought the Pilgrims to America?
75. What were the 13 original states of the U.S. called?
76. Name 3 rights or freedoms guaranteed by the Bill of Rights?
77. Who has the power to declare war?
78. What kind of government does the United States have?
79. Which President freed the slaves?
80. In what year was the Constitution written?
81. What are the first 10 amendments to the Constitution called?
82. Name one purpose of the United Nations?
83. Where does Congress meet?
84. Whose rights are guaranteed by the Constitution and the Bill of Rights?

85. What is the introduction to the Constitution called?
86. Name one benefit of being a citizen of the United States?
87. What is the most important right granted to U.S. citizens?
88. What is the United States Capitol?
89. What is the White House?
90. Where is the White House located?
91. What is the name of the President's official home?
92. Name one right guaranteed by the first amendment.
93. Who is the Commander in Chief of the U.S. military?
94. Which President was the first Commander in Chief of the U.S. military?
95. In what month do we vote for the President?
96. In what month is the new President inaugurated?
97. How many times may a Senator be re-elected?
98. How many times may a Congressman be re-elected?
99. What are the 2 major political parties in the U.S. today?
100. How many states are there in the United States?

### **UNITED STATES CITIZENSHIP QUESTIONNAIRE ANSWERS**

1. Red, White, and Blue
2. 50
3. White
4. One for each state in the union
5. 13
6. Red and White
7. They represent the original 13 states
8. 50
9. Independence Day
10. July 4th
11. England
12. England
13. George Washington
14. William Jefferson Clinton
15. Albert Gore, Jr.
16. The electoral college
17. Vice-President
18. Four years
19. The supreme law of the land
20. Yes
21. Amendments
22. 26
23. 3
24. Legislative, Executive, and Judiciary
25. Congress
26. Congress
27. The Senate and House of Representatives
28. To make laws
29. The people
30. 100

31. (insert local information)
32. 6 years
33. 435
34. 2 years
35. The President, cabinet, and departments under the cabinet members
36. The Supreme Court
37. To interpret laws
38. The Constitution
39. The first 10 amendments of the Constitution
40. (insert local information)
41. (insert local information)
42. Speaker of the House of Representatives
43. William Rehnquist
44. Connecticut, New Hampshire, New York, New Jersey, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, Rhode Island, and Maryland
45. Patrick Henry
46. Germany, Italy, and Japan
47. Hawaii and Alaska
48. 2
49. A civil rights leader
50. (insert local information)
51. He must be U.S. born
52. There are 2 for each of the 50 states
53. The President
54. 9
55. To escape political and religious persecution in England
56. The Governor
57. The Mayor
58. Thanksgiving Day
59. Thomas Jefferson
60. July 4, 1776
61. All men are created equal
62. The Star Spangled Banner
63. Francis Scott Key
64. The first amendment of the Constitution
65. 18
66. Governor of State
67. The Supreme Court
68. Abraham Lincoln
69. Freed the slaves from bondage
70. The Cabinet
71. George Washington
72. N-400
73. The Indians
74. The Mayflower
75. The Colonies
76. The right of freedom of speech, press, religion, peaceable assembly and requesting change of government.

The right to bear arms (the right to have weapons or own a gun, though subject to certain regulations).

The government may not quarter, or house, soldiers in the people's homes during peacetime without the people's consent.

The government may not search or take a person's property without a warrant.

A person may not be tried twice for the same crime and does not have to testify against him/herself.

A person charged with a crime still has some rights, such as the right to a trial and to have a lawyer.

The right to trial by jury in most cases.

Protects people against excessive or unreasonable fines or cruel and unusual punishment.

The people have rights other than those mentioned in the Constitution.

Any power not given to the federal government by the Constitution is a power of either the state or the people.

77. The Congress

78. Republican

79. Abraham Lincoln

80. 1787

81. The Bill of Rights

82. For countries to discuss and try to resolve world problems; to provide economic aid to many countries.

83. In the Capital in Washington, D.C.

84. Everyone (citizens and non-citizens living in the U.S.)

85. The Preamble

86. Obtain federal government jobs, travel with a U.S. passport; petition for close relatives to come to the U.S. to live.

87. The right to vote

88. The place where Congress meets

89. The President's official home

90. Washington, D.C. (1600 Pennsylvania Avenue, N.W.)

91. The White House

92. Freedom of: speech, press, religion, peaceable assembly, and, requesting change of government

93. The President

94. George Washington

95. November

96. January

97. There is no limit

98. There is no limit

99. Democratic and Republican

100. Fifty (50)

***SECTION C: MORE ON IMMIGRATION***

## CHAPTER 22: Attorney Ethics

The field of immigration law is complicated. In order to evaluate the responsibilities of the employer and of the employee, the government and all those who are involved in these procedures, as well as to interpret the laws, it is often necessary to call upon the services of a qualified attorney.

Within the framework of immigration law, an attorney must show a great deal of problem solving skills while avoiding the "to be party" to a fraud.

An attorney whose client has decided not to follow his advice can continue to represent that client as long as the behavior of the latter is not illegal. However he must not encourage nor help that client commit a criminal offense. If the lawyer is convinced that the documents are fraudulent or misleading, he must not present them.

Sometimes a client involves his attorney in a fraudulent act. In this case, the lawyer can advise the authorities of the crime. He or she is however the only judge of the decision to be made.

An attorney who knows that there has been a fraud committed while he was representing a client is not obligated to disclose this to government authorities but must cease to represent the client. If he continues to represent the client he is liable to be fined and imprisoned in the same manner as the client.

One often finds this situation in the case of fraudulent marriages. If it has been established that the marriage has been entered into with the sole intent to secure immigration benefits, the lawyer can refuse to represent the client or can withdraw from the case if he learns the truth later. An informed lawyer will know how to determine if the spouses live together simply for convenience's sake by studying factors such as education, culture, common bills and other joint matters of the two people.

In the case of a work permit it is important for the attorney to ensure that the employer and not the employee have filed the application to the Department of Labor. Moreover the employer has complete control over the application. They may cancel anytime if he no longer needs the services of the employee or if he has determined that there has been fraud by the latter and direct the attorney accordingly.

An attorney must also explain the "Dual intent" issue, one of the trickiest immigration law problems. It affects the employee although he holds a temporary visa or a request for permanent residence. After much thought, the Department of Immigration has proclaimed that such an intention is not contradictory to the law as long as it is mandatory to apply for a work permit. The employee must have the intention to leave the United States at the end of his temporary employment of which the maximum length is 5 years.

Many factors are disconcerting for the people involved. For example adjudications are not the same everywhere. The immigration officers are often novices with limited knowledge of communication between the Department of Labor and the Department of Immigration. It would seem that the importance of this double intention of having a temporary visa and a



request for permanent residence is based on the declaration of intent and not on the intention itself. Immigration law is complex and the attitude of governments towards immigrants is more tolerant than welcoming. That is why it is important to act prudently and to know where you are going.

## **CHAPTER 23: Do Not Try to Fool the Department of Immigration!**

One can illustrate this piece of advice by looking at a case which was recently judged in the U.S. Supreme Court. In Federenco vs the United States the decision proved also that time is not necessarily favorable to people who commit fraud.

Mr. Federenco was a guard in a Nazi concentration camp during the Second World War. In 1949, he immigrated to the United States where he produced faked declarations to an immigration official. Thirty-two years later, because of these declarations, the Supreme Court of the United States revoked his citizenship by claiming that his immigration visa had not been valid.

Honesty is most important in immigration applications. This is particularly true of fraudulent marriages. Often the case when foreigners tell me of their wish to marry an American in order to facilitate immigration formalities. In this case I advise them not to think of doing such a thing because their marriage would be considered illegal and fraudulent and could be used against them if they were to apply again. If the marriage ends before a period of two years, the Department of Immigration may consider this fraudulent and could revoke the conditional permanent residency from the foreigner.

## CHAPTER 24: Verification of Eligibility of Employees

With the creation of the Immigration Reform Control Act (IRCA) in 1986, the government entrusted American employers with the job of checking prospective employees' eligibility for a job position. This is a first in the history of the United States.

This law established two classifications of employees: those who are American citizens (by birth or naturalization) and those who are foreigners who qualify to work in the United States. It is the job of the Department of Immigration to educate people and to see that the law is enforced.

In order to avoid too many changes in the employment procedures which must be followed by employers, while enforcing base rules, the law requires that every employee in America, with a few exceptions, fill in a form (I-9) in which he declares that he can work and that he can present supporting evidence. The employer's mandate from the government is to:

- make sure the employees fill-in the I-9 form;
- check the eligibility documents, complete certain sections of the I-9 form;
- keep the form for at least three years of employment or one year after the departure of the employee who has had a job in the company for three years; and
- present the form to the Department of Immigration within three days of having received a notice.

Those who are exempted from this rule are employees who were hired before November 7, 1986 and who are still working for the same employer:

- domestic help who work sporadically;
- employees of an employment agency;
- independent contractors; and
- workers who are self-employed.

For the first time in the history of the United States, the federal government has the right to fine the employers who do not respect this law. The fines can amount to \$10,000 for a third infraction by the illegal employee. If the files are not up to date, the employer can be fined between \$100 and \$1,000 per employee.

Aside from these fines, the federal government now has the right to fine an employer \$3,000 per illegal employee and/or jail (for a period up to 6 months) those who regularly repeat the offense. Those who defraud by producing fraudulent documents or false testimonials are subject to imprisonment up to 5 years and/or a fine.

In order to prove his eligibility, an employee must supply one or more of the following:

- an American passport;
- a certificate of American citizenship;
- a certificate of naturalization;
- a foreign passport with the authorization to work;
- a permanent residency card with photo;

OR

- a driver's license from an American state *along with* a U.S. military card or another proof of identity;

AND

- a social security card allowing employment;
- an American birth certificate;
- a current authorization to work issued by the Department of Immigration.

It is equally important to take into account that the employer has a certain amount of discretion in establishing the good faith of the employee.

To conclude, the employer and the employee should conform to the new rules or they are leaving themselves open to serious legal consequences.

## CHAPTER 25: The Risk of Deportation

"It could never happen to me...!" I have often heard this phrase pronounced by a number of clients! And yet, deportation from the U.S. does exist... Especially if one takes into consideration that there are right now in the United States more than 10 million people without a work permit (i.e. they are illegal). Technically speaking, they have committed an immigration "crime".

An example for instance was a foreigner who had decided to tour the United States for a few months. Shortly after the expiration of his tourist visa, he was hired as a salesman at a florist shop whose clientele was mainly Spanish speaking. At the beginning, everything went well. But he made the mistake of bragging to fellow employees that he could work without a work certificate. He was reported to the Department of Immigration by a person who was envious of him.

In less than one hour, Immigration officials and the police arrested him at his place of work in front of clients and his boss. (The new law heavily fines employers who hire employees not having American citizenship or residency).

Not speaking any English, he was unable to defend himself. He was taken to an Immigration Detention Center, where he was kept for several days with refugees from Haiti and Cuba. This foreigner quickly understood the American judicial system after having been incarcerated with more than 400 people.

He had little choice. He could either, a) give the American government an amount of money sufficient so that he could be returned to his home country voluntarily or, b) supply bail which would have freed him for two to three weeks long enough to sell his furniture or, c) "fight the system" in which he was in no financial position to do.

Upon arrival in the detention center, he chose to return to his country immediately. After he gave it some thought, he decided to wait. In this case, the government does not change attitudes easily. This foreigner had to stay in prison until a judge was able to hear his case... One week later! This is the unfortunate reality! So when coming or deciding to live in the United States, do not take any risks which can work against you!

## CHAPTER 26: A Case of Immigration Fraud

In 1979, a Peruvian citizen, Juan, whose family, except for his parents, lived in Peru, decided to enter the United States without a visa. He crossed Central America then Mexico and entered the United States illegally through the Mexican border. Not having been subjected to an inspection or an interview, he went to Miami where his father lived in a permanent residency status.

He worked illegally from day to day then met an American, Carol, whom he married. He made no application to legalize his status. In 1981, he hired an immigration attorney who undertook the necessary measures which are always lengthy. The request by Carol for her husband was sent to the Bahamas because his case could not be adjusted in the United States. Meanwhile, she became pregnant. This event could have favored the application, but the couple decided to separate after two years of marriage.

Barely had the divorce proceedings begun, than Juan received a notice of deportation which mentioned no date. How had the Department of Immigration become aware of his case? It turns out that he had stolen \$10,000 worth of jewelry from his wife and she had filed a complaint!

After Carol had withdrawn her criminal complaint and Juan had spent 10 days in jail, he was freed with a bond and had to face possible deportation.

Juan met another American, Silvia, who was ready to marry and sponsor him. The government can grant him 15 days to leave the country if he does not receive his residence status or his notice of deportation before the divorce. But he cannot marry Silvia without having divorced Carol...

This is not fiction. It is a true story. Juan is facing a serious problem: he has a pregnant wife whom he has left, an American who wishes to marry him, a criminal file, an illegal job... And he has to face immigration deportation procedures!

What should he have done in order to avoid being in such a situation? His father who had an American residence could have filed for his single son by requesting a second preference application. In 1979, obtaining such a visa was a rapid procedure... Today there is an extensive delay.

If he manages to get a divorce and marry Silvia before the deportation trial, he could benefit from the judge's clemency that will allow him to stay in the United States but will condemn him to paying an alimony to Carol.

If the judge deports him, it will be necessary for Juan to get his divorce elsewhere than in the United States in order to marry Silvia. He will then have to take complicated measures in order to apply for a visa but based on his past, he will have a great deal of difficulties facing him. What choices!

## CHAPTER 27: Criminal Convictions

We have already discussed the difference between the "privilege" of being an American resident, and the "right" to become an American Citizen. No situation reflects these differences vividly as the possibility of the loss of a Green Card as a result of a criminal conviction.

There exists a close link between immigration and criminal laws in the United States. An admitted criminal, although there are advantages for him in certain cases, can be a catastrophe for his immigration status. A study of the laws of those two areas is therefore essential.

If a non-American holding a Green Card, is found guilty of a crime, the extreme consequence can be the immediate deportation to his country of origin. According to the extent of the crime in question, the acknowledgement of guilt, even if it has not been declared by a judgment of the Court, can be the cause of a deportation.

The obligation to inform the defendant of his immigration rights was the sole responsibility of the attorney until recently. The judge must now decide the immigrant status if the defendant is found guilty. But if the Attorney General gives the wrong information to the defendant as far as the consequences of his immigration status, the acknowledgement of guilt may be canceled. Thus, the rights of the individual are highly respected.

Let us note a fundamental difference: an American citizen, by birth or by naturalization, can rarely be deported, except where fraud is proven in the naturalization petition. In case of a grave situation, the only individuals who can be deported are holders of the Green Card, holders of a conditional residence, holders of a non-immigrant visa (tourists, students, or temporary workers), or persons not having any status in the United States.

It is important to note that without a formal conviction it is possible to avoid deportation if the defendant is "condemned" to a community service program, if he is a minor, or if his case is being appealed. It is equally important to note that a "withholding of adjudication" (i.e. you are not found guilty but are condemned for a certain period), constitutes for immigration purposes, a criminal conviction.

The criteria used by the Department of Immigration for determining the guilt of an individual in a criminal process are the following:

1. The person should have been guilty, should have declared his guilt, and should have admitted sufficiently the facts to determine his guilt;
2. The judge should have ordered a punishment or restriction;
3. A judgment of guilt can be ordered if the individual violates laws of order without other determination as to his guilt.

The crimes linked to drugs are without a doubt the most severely punished within the context of American law. In this case the individual can not only be deported but also reentry to the U.S. can be denied. Only cases of possession of 30 grams or less of marijuana may prevent deportation.

A person having lived 7 years in the United States and not having a judicial record can equally avoid deportation and prove his good will and the prejudice such a measure would cause his family. If the individual has already been involved with the law, he must have lived peacefully during ten years to avoid deportation.

A non-citizen having a dependence on drugs is subject to deportation. A criminal conviction is not necessary but a consensus of medical opinions and, most of all, admission by the individual, are essential.

Among the most serious acts related to drugs, let us mention the distribution (with profit or not), transfer and delivery constituting an act which was undertaken while fully conscious.

The name given to all persons who are not citizens of the United States is "aliens". The following aliens are subject to deportation.

1. A person convicted of unauthorized possession or transport of an automatic or semi-automatic gun or firearm;
2. A person convicted for prostitution or for soliciting;
3. A person who is clearly homosexual although this category is presently the subject of controversy;
4. Abusers of drugs or alcohol;
5. Gambling professionals or those who were convicted of two offenses or more;
6. Members of the communist party or those who are a threat to national security;
7. People who have defrauded immigration, that is, who have obtained a visa using false representation;
8. People who trade in illegal immigrants;
9. People who were condemned of a major crime;
10. People who received a sentence of one year or more.

It is important to note that the judge of the criminal procedures can make a recommendation against deportation and this will be considered by the Immigration Court if the defense has been properly made. A legal representation which is found to be weak, for example use of false evidence, can allow a conviction to be set aside.

U.S. immigration laws are very strict. It is important that the defendant and his attorney be informed and prepared.



## CHAPTER 28: Are You an Illegal Alien?

It is estimated that there exist between three to ten million illegal aliens who consider the United States their home. This ill-defined group has created a "third-class status" group in the United States. We presume that such people have no visa, no work authorization, no family who can sponsor them, and no evident means of becoming lawful permanent residents or citizens of the United States.

Is there any solution? Contrary to popular thought there are lawful alternatives available to those who would seek to help themselves. The procedures suggested below are carried out in conjunction with the Department of Labor and the Department of Immigration. It is virtually useless for an applicant to return to his home country to seek a correction, legalization or validation of his visa status as it will most certainly be denied. Immigrants, who have violated their visa status as issued by the State Department at U.S. Consulates or Embassies abroad, are considered to be *persona non grata*.

There are two ways which persons typically enter the U.S. - either with or without a visa. Those who entered with a visa, but whose visa has since expired have the following alternatives:

- A) Those who have some skills valuable to the U.S. job market may still, with the aide of a U.S. employer, seek a labor certification which will prove that there are no Americans who are ready, willing and available to perform a certain position at a market salary rate in a specified geographical location. The applicant must be aware of the risks involved - as a consequence of this application he may be deemed deportable and as such has exposure to arrest and either voluntary departure, which would be unlikely, or deportation, which will likely occur.  
There do not appear to be an overwhelming number of persons who take the initiative to follow this procedure as the fear of deportation is paralyzing. They would rather stay in a low-wage, illegal status and unfortunately, live in fear.
- B) Certain nationalities that have a special interest for the United States for a variety of political or humanitarian reason have been afforded special legislation. They are worth mentioning:
  - I. Cuban Nationals
  - II. Haitian Nationals
  - III. El Salvadorans
  - IV. Hondurans
  - V. Guatemalans
  - VI. Refugees from certain third world countries.
- C) In 1987, the United States granted amnesty to certain qualifying individuals who entered the U.S. prior to January 1, 1982 and who had remained in an illegal status since then. Certain other amnesty applicants qualified such as specialized agricultural workers. These programs are in the process of winding down and, barring some major political tide, will not reoccur in the foreseeable future. Well over three million persons have been admitted as conditional permanent residents of the United States and, upon evidence of knowledge of U.S. government, history and English language are admissible as

unrestricted permanent residents of the United States.

NOTE: All permanent residency cards issued today are no longer "green", but rather computer generated with a pink hue. They are not duplicable and it is a crime to attempt to do so, punishable by fines and one year imprisonment. Today's cards (they are subject to change, of course) have an "expiration date" ten years from date of issuance. Don't worry! It doesn't mean that the residency will expire in ten years, only that the holder is being encouraged to become a U.S. citizen before that time. Although it is not written in any statute, residency holders are considered "fence-sitters", i.e. they benefit from all the advantages but have no nationalistic ties to the U.S. It is projected that in the post 2000 A.D. years, the cards will be automatically renewable although this does give the Immigration Service an additional check or control on your U.S. residency status, particularly to control those who have secured residency but are not utilizing it.

- D) The Immigration Act of October 1990 added another viable alternative to those who are in illegal status or are legal within the U.S. We are making reference to the so-called "Diversity Program" which allows a fixed number of permanent visas to be issued to the following underrepresented countries.

Albania, Algeria, Argentina, Austria, Belgium, Bermuda, Czechoslovakia, Denmark, Estonia, Germany, Finland, France, Gibraltar, Great Britain and Northern Ireland, Guadeloupe, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, New Caledonia, Norway, Poland, San Marino, Sweden, Switzerland, Tunisia. (\*subject to annual change).

To accede to residency through this vehicle, it is somewhat of a lottery - the applicants must file by mail (we recommend return receipt mail) with his/her name, date of birth, nationality, address and a job letter (valid for no less than one year after residency is secured) to a U.S. address. From time to time the authorities will make a random drawing after which the winners will be notified.

- E) In continuing the "lottery" theme, there are U.S. consulates in some countries that are conducting outright lotteries, i.e., the name, address and nationality are filed with the Embassy or Consulate and drawings are conducted to determine eligibility for residence. Usually they are on a first come, first served basis and have been very popular.

Those who worked illegally in the United States are not presently eligible for permanent residence. The Amnesty Act of 1982 allowed person in illegal status the right to apply for a permanent residency despite the illegality of their presence. This applied to those who were able to prove that they had lived in the United States from prior to January 1, 1982. This program has now ended after having admitted more than one million applicants.

Those who are in the United States without a visa and those who have entered fraudulently are not eligible for a permanent residency in the United States. An individual having the intention to becoming a permanent resident should make sure he obtains the right to reside before crossing the border. Otherwise he risks being faced with a refusal even though he has applied properly. It would be wise to wait for 30 days before applying with such a request.

Is it preferable to apply for a lawful American residence in the United States or abroad? It has been proven by experience that it is more advantageous to apply in the United States because the foreigner benefits from all the privileges of the American Constitution. Moreover,

The Department of Immigration has a flexible attitude. In the case of a negative decision, the foreigner has the right of appeal before an Immigration Court and Appeals Courts for immigration. This advantage is not possible abroad.

Note: Foreigners who do not have a permanent residence or who do not have a visa allowing them to reside for longer than six months in the United States, should know that they cannot stay longer in the U.S. than 183 days per year. It is useless to return to your country of origin temporarily in order to reset the calendar.

As we have mentioned several times in this book, we do not pretend to have all the answers herein to every immigration question. The issues are as complex and fluid as life itself. Consult an immigration attorney, preferably someone who is a member of the American Immigration Lawyers Association (AILA) for proper guidance.

Immigration attorneys are for the most part creative individuals. They have to be to understand and resolve the myriad of life problems which they face every day. But as creative as those problem-solvers may be, occasionally no solution may exist to open the door to permanent residency. Therefore, in a desperate situation where all else fails, it is time to pull the parachute: for persons who have physically resided in the U.S. for six years or more and are undergoing deportation proceedings, strong ties to the local U.S. community **and** a hostile situation in their home country may avert a deportation order. This does not mean that such an individual will be granted permanent residency - rather he/she will remain out of status and without any lawful status, a very difficult predicament, since they remain in limbo indefinitely and "prisoners" in the United States with little or no hope of leaving and re-entering the U.S.

## CHAPTER 29: Questions Most Often Asked

Q. *I do not understand why Cubans and Haitians are allowed easy entry to the United States and not other nationals?*

A. The field of immigration law is influenced not only by economic factors but also by political and social forces. Many decisions are based upon the government in power or the influence by a social group in the United States. There should be no objection to saving people who are trying to flee communism or a dictatorship.

Q. *I heard that if I marry an American, even if we don't live together, I would be able to get my Green Card quickly. Is that so?*

A. First, what you are suggesting is immoral, illegal, and strictly prohibited by American law, if the marriage has been solely entered into for reasons of immigration benefits. The two parties can be fined and/or imprisoned for such a fraud. Since November 1986 this kind of fraud has been considerably reduced thanks to the introduction of the system of conditional residence. This system requires that the couple live together for two years before being granted a permanent residence. A dissolution of the marriage within the two years may entail the possible removal from the beneficiary of his temporary American residency.

Q. *I have been living here during the winter months but never for more than six months. I would like to be able to work in any field during this period. What do you recommend?*

A. Naturally I would recommend that you would find an employer who would be interested in sponsoring you even for a brief period of time. There exist temporary visas (H2, H3) for people with or without experience according to the job market in the area where you wish to work. Do not try to circumvent the law without legal advice. Look into the requirements of the Department of Labor and Department of Immigration.

Q. *If the Department of Immigration finds out that I am working illegally, will they tell the American tax department about me?*

A. The government uses computers extensively and there is a great deal of cooperation between various departments. It is likely that such a situation could happen in the near future. We have noted that there is a closer relationship that now exists between the Department of Labor and Immigration. This allows inspectors to check files of people who although they are in good faith when they apply for a work permit, are actually working without authorization which makes them deportable. Therefore, it is entirely likely that there will be close cooperation between all U.S. government agencies with the greater use of computers.

Q. *What must I do if I am arrested by an immigration officer?*

A. You must first ask for an attorney to be present and a translator if you do not speak English fluently. Then according to the charge and if in court the judge allows you, you should choose to **depart** the United States voluntarily so as not to be deemed "**deported**". This would allow you to return with a legitimate authorization to work in the future. If you are deported, you would not be able to return to the United States within at least 5 years.



## **PART II: DOING BUSINESS IN AMERICA**

***SECTION A: BUYING OR SELLING REAL ESTATE IN AMERICA***

## CHAPTER 30: When Buying U.S. Real Estate

In the United States, most real estate buying agreements are made by "Deposit Receipt and Contract for Sale Agreements" (i.e. the offer to buy). In it is stipulated that the buyer has made a good faith deposit, usually 10% of the purchase price in order to secure the transfer of the property.

If the buyer changes his mind, this deposit held by an escrow agent is normally forfeited to the seller as a payment for damages and interest unless the parties have decided differently.

Before signing any contract in the United States, consult a attorney specialized in real estate law and not only a title insurance company. The contract should at least stipulate the following:

- The price of the sale, the deposit received and the balance to be paid;
- The mortgage or a long term payment, if applicable;
- The date of transfer of the property (closing).

If you are the buyer and the date of transfer has gone by, do not worry because the transfer can be made within a reasonable period of time, that is to say about 30 days after the date indicated on the contract. Naturally the two parties can choose a specific date for the transfer of title.

In order for the contract to be valid, the parties must sign before two witnesses. These can be members of the same family of seller or buyer but they must be over the age of 21 and be able to sign.

Each transfer of property must give the right to the attorney of the purchaser to check the title of the property in order to make sure there are no liens on the property.

In order to be protected against unexpected negative events such as unforeseen heirs, judgments or other marketable title problems, the buyer should purchase title insurance.

During the purchase of a home or an apartment which is older than one year, the buyer should reserve the right to examine the roof and to check if there are termites on the property as well as radon gas, appliances, plumbing, electrical and structural. The costs of repairs are left up to your negotiations, usually 2-4% of the purchase price.

The seller must guarantee to the buyer that all the debts of the property have been paid. For example, if the seller has installed new plumbing, he will have to prove that the plumber has been paid.

In many U.S. states the law obliges the seller or the broker to reveal the problems with a property which is for sale if they have any knowledge. The buyer must under no condition release his right to legal recourse. If the seller insists that such a clause be stipulated, the buyer should become immediately suspicious.

Investigate before you invest!



## **CHAPTER 31: Practices and Customs of Real Estate Transactions**

You have finally decided to buy a house or a condominium in America. Congratulations! First, you must take the necessary precautions in order for this investment to be fruitful. We will try to familiarize you with the procedures required for a real estate transaction in many American states.

Usually a person buys a property through a real estate broker, friends, or acquaintances. In order to be properly understood, you are better off consulting a real estate agent who speaks your language because in the course of such important transactions, language communication is essential. Before calling on a real estate broker, it is advisable to check his or her credentials or make sure that he or she is recommended by other professionals.

According to American law, real estate brokers have the right to prepare an offer to purchase. Before signing it, it is preferable to consult an attorney specialized in real estate law. If you are unable to delay the signature, insist that the contract be subject to approval by legal counsel.

In America, there are no notaries trained in law to speak of, but one can call on attorneys specialized in the field. The buyer, as well as the seller, should separately retain the services of an attorney in order to protect their interests. Unless the parties are good friends and they have absolute confidence in the same attorney, it is preferable to choose two lawyers so as to ensure that the interests of each party be protected. As soon as the offer to buy is accepted and that the lawyer of the purchaser has studied it in order to determine if the title and all other matters are clear, the transfer of title can take place.

All amounts related to the transactions are listed on a statement of account and the expenses are broken into two categories; the expenses calculated on a pro-rated basis, according to the date of transfer of the property, and the fixed expenses to be paid by the buyer or the seller depending on the case and custom of the country.

Adjustments will be made for county taxes and if necessary for existing transferable mortgages. Let us look at an example. If Pedro sells his property worth \$100,000 to Carlos, for whom annual taxes are \$1000, he will be responsible for payment of the taxes for all the time when he has been owner of the building that is until the day of transfer of the property. If the transfer takes place on May 1, Pedro will have to pay four months' taxes (Jan. 1 to May 1.): this amount will be credited on Carlos' statement who will have to pay all these taxes plus the balance of the year's taxes during the month of November of the same year, the date on which they are sent to the owner.

The same calculations apply for an existing mortgage; the buyer contracts to assume the monthly installments (principal and interest) starting on the date of transfer of the property. So, in our case, if the transfer takes place on May 15, and Pedro has already finished paying for the month of May at the bank, Carlos will have to grant Pedro a credit for the rest of the month of May then assume the following monthly payments. There is neither a winner nor a loser in this transaction!

During the course of a real estate transaction, certain fixed expenses will have to be paid by

each party:

- The buyer will have to pay for the document registration of the sale and for the expenses for the new mortgage. If the property is a condominium, association application fees will also be at his expense (this must be part of negotiations and must be shown on the offer to buy).
- The seller must pay the expenses of the extract of title and the taxes of the government for the title transfer.

Of course, attorney fees are paid by each party respectively.

Generally, the transaction is performed in the office of the buyer's attorney, unless the latter are outside of the county where the property in question is located.

All the documents are attested to by two witnesses and carry the seal of a notary public. The deed of sale is then recorded at the Courthouse so that it appears in the public records.

Enjoy your new home or investment!

## **CHAPTER 32: Financial Obligations of the Seller and the Buyer in a Real Estate Transaction**

In order to properly understand the financial duties of both buyer and seller let us look at a typical real estate transaction. A seller decides to sell his U.S. property. In order to do so, he calls upon a competent real estate broker. After having accepted and signed the offer to buy made by the purchaser, the day of the closing has finally come.

Usually the parties rarely take the time to read or understand the documents which they will sign or have signed. This is a mistake which can prove to be costly. You must well understand the extent of this action and your lawyer must explain it to you. The most important document is the closing statement which lists all your financial obligations i.e. what you have to pay and what you will receive.

On the closing statement you will find the debits and credits of both parties. The purchase price is stipulated first. The buyer receives a credit for the deposit made at the signing of the offer to buy (this usually amounts to between 5% and 20% of the purchase price).

In our example, the seller holds a 12% per annum mortgage amortized over 17 years with a balance of \$30,000 which he offers to the buyer. The latter accepts to assume the mortgage and to pay the administration cost to the bank which usually is about 1% of the balance. If the buyer refuses, he must either make another mortgage loan or pay expenses which are higher (between 2 and 5% of the value of the mortgage) or pay the whole price in cash. If the existing mortgage was taken out recently, there are good chances that it will include a "clause 17", by which the bank allows the buyer to assume it at the current rate or allow itself the option not to allow the assumption of the mortgage.

Banks insist that the borrower have an escrow account, i.e. an account in trust for guaranteeing the payment of taxes and insurance at the end of the year. The amount representing approximately 1% of the value of the property will be reimbursed to the seller since he will no longer be the owner, or it is prorated on the closing statement.

If the buyer accepts to assume the house insurance (fire, flood, theft, and civil responsibility) he will have to reimburse the premium paid by the seller on a pro-rata basis for the number of days remaining in the policy.

In some states, real estate taxes of the preceding year must be paid in November, but the owner has until the end of the month of March of the following year in order to pay before being penalized; once this delay is passed, the government start undertaking legal procedures. If you are a buyer, allow yourself the right to recalculate the taxes at the end of the year, because if the government increases them, you will be asked to pay the difference.

In the event the seller accepts a purchase money mortgage where the buyer does not have enough cash i.e. the difference between the purchase price, the existing mortgage and the cash remitted, this may be considered as a second (or higher) mortgage, the interest rate and duration being negotiable with a maximum rate of interest being 18% per year.

The expenses which we have established up to the closing date have been calculated on a

pro-rata basis. To determine the cash necessary, we calculated the credits and debits in the following theoretical approximate examples:

#### EXAMPLE

	Debit	Credit	Comments
<b>Purchase price</b>	\$50,000		
<b>Deposit</b>		\$ 5,000	
<b>Mortgage</b>		\$30,000	Balance owed to the bank
<b>Monthly Payment</b>	\$ 250		Reimbursed in part to the seller
<b>Purchase Money Mortgage</b>		\$ 5,000	
<b>Insurance</b>	\$ 250		Reimbursed to the seller
<b>Account in trust: Bank</b>	\$ 500		"Escrow account"
<b>Real estate taxes</b>		250	Portion owed by the seller
<b>Total</b>	\$51,000	\$40,250	
Less credit	\$40,250		
<b>Cash required</b>	<b>\$10,750</b>		

In addition to the adjustment which must be taken into consideration, the buyer and the seller have fixed expenses to pay. In the example, which we are analyzing, the seller will have to pay:

- the abstract of title: \$100.00;
- the taxes (\$.60 per \$1,000.00 of value): \$300.00;
- the fees for his lawyer of purchase price (1 to 2%): \$250.00;
- the taxes on the balance of the sale price: \$15.00.

As for the buyer, his expenses will be:

- registration of the warranty deed at the courthouse: \$6.00;
- the taxes on the balance of the sale price: \$10.00;
- the expenses for transferring the mortgage (\$100.00 to \$500.00): \$100.00;
- title insurance: \$150.00;
- the expenses for inspection of the roof: \$50.00;
- the expenses for verification of the existence of termites: \$50.00; and
- the expenses of the attorney: \$500.00.

The statement of account is as follows:

#### EXPENSES

	Buyer	Seller	Comments
<b>Abstract of Title</b>		\$100.00	
<b>Government taxes</b>	\$ 10.00	\$ 7.50	Taxes on the balance of sale
<b>Registration of balance of sale</b>		\$ 15.00	
<b>Registration of deed of sale</b>	\$ 6.00		
<b>Transfer of the mortgage</b>	\$100.00		
<b>Title insurance</b>	\$150.00		

<b>Attorney expenses</b>	\$500.00	\$250.00	
<b>Inspection of the roof</b>	\$ 50.00		
<b>Verification of termites</b>	\$ 50.00		
<b>Total</b>	<b>\$866.00</b>	<b>\$372.50</b>	

The seller will receive the cash (\$10,750.00) less his expenses (\$372. 50) which will be deducted immediately. The buyer will have to pay the cash (\$10,750.00) plus the total of his expenses (\$866.00) in order to conclude the transaction.

The example cited is only that, an example! Each statement varies depending upon the type of transaction and the time and place at which it was concluded. For example, expenses related to the sale of a condominium property are not the same as those required for the sale of a motel and may vary from state to state.

Between the signature of the offer to purchase and the transfer of the property, 30 days can go by quickly. If the buyer cannot be present for the transfer of property, he can send an inter-bank wire transfer or a bank draft to his attorney who will be responsible for concluding the transaction.

Note also that foreign national sellers may be subject to a 10% withholding of the sales price by the closing agent unless an application for withholding certificate has been filed and received prior to the closing date.

## CHAPTER 33: Applying for a Mortgage

You have decided to invest in U.S. real estate. You can pay for it either of two ways. If you can pay cash, all you need to do is send an inter-bank draft from your home country which will cover the price and all expenses. Make sure you take into account the *exchange rate* which will vary depending upon the bank and fluctuations on the world markets. If on the other hand, the cash you have is not sufficient, you will need to finance the difference with a mortgage.

The purpose of this section is to help foreigners secure mortgages from American banks. In America, there are two categories of banks: the banks which make loans for industrial and commercial purposes and savings and loans institutions which primarily specialize in loans for residential properties. Make sure you know which classification of bank you are dealing with because you could waste a great deal of time by trying to get a home mortgage from a commercial bank.

Before making the necessary move to get a mortgage, foreigners should be aware of one reality: you are an unknown entity in America! In your home country, relations between a bank manager and the client are often close. That is not generally the case in the United States where personnel transfers are frequent and the manager does not have the opportunity to know his clients well. Consequently, the prospective borrower must expect to fill a number of forms having detailed questions. Do not feel insulted. Banks need to take all possible precautions in order to avoid problems.

First, in order not to waste any time and to ensure that your application is not rejected, make sure you understand the forms and answer all the questions. Do not leave any blanks. It is better to fill the blanks with the words "not applicable". On these forms you will be asked the name and address of your employer, your annual income, other mortgages which you are assuming, your real estate holdings in the United States and abroad, your liquid assets and the financial obligations which you are meeting.

If your wife is co-owner, she will also have to sign the forms. It will then be necessary to sign authorizations for verification of your existing employment, bank deposits and present mortgage payments. These will be sent by the American bank to your country of origin in order to control your verbal and written declarations. Be prepared for a long wait!

Most banks require tax returns, often going back two years, a financial statement and a copy of the offer to buy the property that you wish to acquire.

Make sure that all the documentation is in the English language or make sure that you have it translated before it is presented. If possible, make all figures appear in U.S. currency.

The purpose of this verification is to prove to the bank that you are able to meet monthly payments without it severely hurting your finances. These procedures can seem to you outrageous but they are very logical.

Before making an agreement with a bank, make sure that it is ready to guarantee you a fixed rate during at least the next 90 days. Many banks will offer the current rate but this could be

disadvantageous if interest rates should go down in the future. Make sure that you work with a bank whose administration fees, which are the cost of obtaining a mortgage, do not exceed 1 1/2% to 2% of the total mortgage. Many ask for 3% to 5% in points or administration fees. It is incumbent upon you to search for the best rate.

You will need to be patient. All these procedures can easily take three to eight weeks or even more if you are not physically present in the United States. You must take into account the lengthy postal service between your home country and the United States. Make sure that the date of the transfer of the property be after that of the granting of the mortgage. Count on a minimum delay of 45 days if you must apply for a mortgage.

## CHAPTER 34: The Law of Mortgages

The American real estate legal system is based on the principal of a legal interest in a property. This means that several people can hold different interest in the same property. For example, there sometimes exist interests of public privilege which are tied to a property, such as an easement which is granted to an electricity company in order to allow them to run wires, or an easement granted to a municipality in order to allow access to land.

However, when buying a property, one of the most frequent rights encountered is the mortgage which is created by two contracting parties, the lender and borrower. The mortgage confers upon the lender the rights to a certain interest in the property. This means for example, that if the property is worth \$100,000 and the mortgage is \$70,000 the mortgage lender will have an interest in 7/10 of the property. Why then is the property not in its name? In reality, when registering the mortgage to the new buyer immediately after the deed of sale, the lender guarantees his rank in the chain of titles. This guarantees him a privilege and confirms that he has an important interest in the property. One can consider the building as a chain made of links... Each person can own one or several links... e.g. the mortgage lender, the city or the Court if there is a judgment, or the title holder.

We would like to bring your attention to the responsibilities which you will take upon yourself when signing a mortgage.

Let us look at a specific case. Mr. and Mrs. Sanchez just bought a house from Mr. Rodriguez. The purchase money mortgage (balance of sale price) will be prepared by Mr. Rodriguez' attorney who will seek to protect the interests of his client. Aside from the legal description, he will make sure that he includes as a guarantee all the furniture and fixtures which are part of the transaction. For example, the equipment of the swimming pool, the air conditioner, the electrical appliances and other equipment related to or affixed to the property. This will give a right to the mortgage lender to seize the totality of the assets in case of nonpayment.

If the property was worth \$70,000.00 when Mr. Rodriguez was the owner and he sold it for \$100,000.00 to Mr. and Mrs. Sanchez who are also his mortgage borrowers, the latter will have to increase the house insurance in order to cover at least the principal amount of the mortgage. They should acquire a policy in a company which enjoys a good reputation and the mortgage lender has an interest in the property in order to receive the insurance payment in case of fire or other major damage. The land value is rarely insured.

The mortgage lender also has the right to recovery against the mortgage borrower in case of default of payment. This means that Mr. Rodriguez can sue the Sanchez family in Court. If he wins the case, the latter will be sentenced to pay the legal expenses, the Court costs and the mortgage arrears.

The lender usually adds a clause to this kind of mortgage which allows a reasonable delay of 10 days beginning from the date of non-payment before the mortgage lender can make a legal claim to the property.

Meanwhile, if this date is passed and the borrower does not pay, the amount owed will be due immediately if he has not made full payment. The mortgage lender will have the right to sell



the property at auction in order to guarantee the amount of his mortgage.

Along with the mortgage deed, one attaches a promissory note which mentions the amount of the mortgage, the interest rate and the methods of payment. If you live abroad, I advise you to be very careful of payment dates since mail delays can trigger the lender to take judicial action too quickly. Consequently, it would be wise for you to name a representative, such as an accountant, in America who would receive the mortgage payments and deposit them to the account of the mortgage lender. Some banks even offer a service for automatic payments as long as you have an account with them.

In the case we are studying, Mr. and Mrs. Sanchez had negotiated a mortgage at a 10% interest rate with Mr. Rodriguez. Meanwhile the lawyer of the latter had included a clause in the note stipulating that in case of default of payment the rate would escalate to 18%. This clause is perfectly legal, the maximum interest rate for individuals being 18%. Consequently, the mortgage lender can ask the maximum rate allowed by law.

Before tying yourself up with a mortgage from a mortgage lender, make sure where you're lending priority lies in the chain of title. It often happens that, for major transactions, there are three or four mortgages. Try then to fit high on the priority rankings. Be suspicious if a residence is mortgaged with two or more mortgages. This means that the property eventually can be claimed by several people. If you are the mortgage lender, the mortgage will be in effect as soon as it is registered at the county Courthouse where the property is located. The promissory note will be given to the lender during the transfer of the property. Do not lose it, it is your proof and the guarantee of your interest in the property. It must be returned to the mortgage borrower at the end of the final payment.

## **CHAPTER 35: The "Wraparound" Mortgage**

A client came to see me recently to tell me that he wanted to buy an apartment but he did not have the necessary cash. The property had an existing mortgage covering 70% of the purchase value. I told him that his options were as follows: either pays cash (which he did not have), or assume the mortgage at today's rate, or create a wraparound mortgage. The latter procedure is often used in the United States because of changing interest rates.

What is a wraparound mortgage? It is a mortgage which wraps itself around an existing mortgage and makes the seller a mortgagee. For example, if Juan sells his apartment to Luis at \$50,000.00 and he has an existing mortgage of \$30,000.00 at 12% interest, the parties can create a wraparound mortgage, wrapping itself around the existing mortgage if Luis wishes to take advantage of this rate. This satisfies the two parties - the seller/mortgagee because he has sold his property, and maintains his mortgage and the buyer because he has benefited from a rate lower than that of the market.

The wraparound mortgage can include as many mortgages as the parties wish. In the chain of title, the seller who becomes the mortgagee does not occupy the lowest rank, even if there is a second and third mortgage; he holds a mortgage on all other mortgages as well as the balance of sale. In this case the buyer only makes payments to one person: the seller/mortgagee who in turn makes payments to the prior mortgagees.

Notice that Juan does not hold a mortgage of first rank. On the contrary, he ranks after the existing mortgages because he is responsible for payment to the preceding mortgagees. For example, if the first mortgage were \$20,000.00, the second \$5,000.00, and the third \$4,000.00, the total financing is \$29,000.00. If the wraparound mortgage is \$50,000.00, the difference of \$21,000.00 will be ranked fourth in case of default of payment by the mortgagor. Generally, the mortgagor of the wraparound mortgage is required to pay an interest rate higher than those of other mortgages but usually lower than that of the market.

It is not necessary that a wraparound mortgage include each existing mortgage of the property. It can include the second and third but not the first. In this case the buyer could assume (i.e. take over payments) the first, create a wraparound for the second and the third and take out a fourth one in case of need separate from the others. This is called creative financing.

The creation of the wraparound mortgage is complex and requires in depth study by legal counsel of existing mortgages. The advantages however are considerable. Should the convenience or need arise, this type of mortgage for your next real estate transaction may be advantageous.

## CHAPTER 36: Closing a Sale of American Property while abroad

The following case is often a common recurrence. Mr. and Mrs. Fuentes spent their holidays in the U.S. and decided to buy a property (apartment, condo, house, motel, shopping center, etc). They have to return to their home country and will not be in the U.S. for the passage of title. What can be done to accommodate the Buyers?

First, one must sign nothing before having consulted an attorney specialized in real estate law. It is better to wait than to make a deal which you would regret at a later date. In the United States, attorneys often offer the advantage of being attorneys and notaries at the same time. Avoid only a notary public whose job is simply to be a commissioner of oaths attesting to signatures.

If for one reason or another the seller decides to pressure the deal, you may sign the contract but by adding the following sentence: "This contract is subject to buyer's attorney approval". This will give you the necessary time to find an attorney who will represent you. If the seller refuses this clause to appear in the contract, be careful! (The contract for the purchase of new condos can be canceled by the buyer within 15 days following the signature for a full refund. This may vary from state to state.)

As soon as the agreement is finalized, after the approval by the attorney, Mr. and Mrs. Fuentes can return to their country since the transfer of the property will be done from afar, assuming this is a legal operation from the Buyer's home country point of view. If there is an existing or newly created mortgage, the following are procedures which must be followed: upon reception of the documents sent by their American attorney, Mr. and Mrs. Fuentes go to see a notary, lawyer or U.S. Consular office (consuls act as notary publics) in their home country to certify and witness their signatures.

- They sign in front of two witnesses and the official who also sign.
- The notary or Consular office signs and affixes its seal. It is important that the seal appears on the document otherwise the U.S. county registration office will refuse it.
- All documents are then sent to the U.S. by express mail or courier.

Although the documents have been properly completed, this does not necessarily mean that the transfer of the title has taken place. The American attorney must now receive the necessary funds for the transaction in American dollars. The easiest way is to send them bank to bank - if legally possible in your country - that is, from a foreign bank to an American corresponding bank, or by sending a bank draft drawn on an American bank by express courier. Your bank manager will tell you the name of the corresponding bank. Your attorney should have an account in trust (escrow) for this purpose. Make sure that there are no delays.

Having in his hands the documents and the funds, your attorney can proceed to the transfer of the title. This assumes that he has already studied the title and that he has not found any irregularities. The transfer is done according to a final statement of account (see Chapter 31) and the keys to the property are handed over to the buyer or their representative according to American legal tradition.

The due date is critical. One day, a foreign buyer came to see me at my office to tell me about the following event: he was supposed to close on a real estate transaction on December 10, but had not received the necessary funds from abroad until the 11th. The seller consequently canceled the contract because of default of full payment and kept the deposit.

A quick study of the contract showed that it contained the following clause: "*Time is of the essence*" (i.e. that the expiration date was most critical and final). This clause means that the seller and the buyer or his legal representative, must be present on a specified date in order to close on the transaction otherwise the contract is null and void by default. It is a very strict law which stipulates that the transaction can be closed, up to midnight of the day which was chosen on the contract.

If this sentence was not stipulated, the transaction could have been made within a reasonable period of time after the specified date in the contract, generally, within 30 days. This applies as much to real estate as to businesses and mobile homes. The purpose of the harshness of this clause is to allow the seller to close on another transaction with another party which the buyer did not know or to dispose of the funds as he may require.

How can one avoid such a situation? First, one should practice preventive law, i.e. always try to anticipate problems and behave accordingly. What could our buyer have done to protect himself? There are three possibilities:

- First, he could have refused to have this clause in the contract since the law does not require it.
- Second, he could have had funds sent from abroad at least two or three weeks before the date of the transaction. Usually only 48 hours are required to transfer funds by telex but one cannot always rely upon the efficiency of bank transfers.
- Third, the date of the transfer is usually indicated in the following manner "On or before the 10th of December". This means that one can close the deal the 7th or the 8th i.e. before the specified date as long as it is close to the first contract closing date.

If the contract is not signed by both parties, it is not valid. It should also show the date of the signatures. All changes of dates on the contract must be initialed by all parties. Powers of Attorney are not recommended to sign original documents as they may be declared invalid.

In order not to find yourself in a difficult situation, read the contract well in case of default, because the seller keeps his property and the deposit. Moreover, if a broker is involved, he may have the right to a percentage of the deposit according to the contract even if the transaction did not take place, since legally he has the right to his commission, the custom requiring however that he wait until the transaction was closed in order to be paid by the seller.

## CHAPTER 37: Title Insurance: Necessity or Waste?

Let us dispose of a few misconceptions. Title insurance does not cover goods such as furniture nor protect from physical damage caused to others. It deals mainly with real estate and its purpose is to protect the buyer from unfortunate and unforeseen title complications.

In order to understand its existence, one must know what it means. In the chain of title, the history of each property is written in an abstract, that is to say in volumes where inscribed acts, judgments, liens, are and other documents, which may have affected it since its inception. When one buys title insurance, the abstract is analyzed by an attorney (who may act as a notary in the United States) or by a title insurance company, in order to determine if there exist liens or irregularities concerning the title, such as a right which may be claimed by a third party.

The specialist who analyses the abstract is qualified to detect problems and in most cases, to resolve them without litigation. Consequently, to buy title insurance is not absolutely necessary but is very desirable. Title insurance offers advantages that are similar to house insurance since it protects the buyer who could be faced with situations which the abstract may not mention. For example:

- Liens by unknown heirs of a previous owner;
- Liens by workers and contractors who have not been paid;
- Deeds of sale transacted by a person who claimed to be single while still married;
- Survey disputes;
- Falsified documents and others.

Because these situations may not appear in the abstract, it is very difficult to detect them. If one of them later causes a title problem, do not blame the specialist who examined the abstract. Simply ask the Court for your rights. Title insurance helps straighten things out while defending you in Court and paying you the face value of the policy if the case is lost.

The cost of title insurance is established according to the value of the property. It is not necessary to renew it every year. The company covers you as long as you are still owner. While paying a single premium and remaining owner, the buyer is covered for an indefinite period.

This insurance is not legally mandatory for the transfer of a property. However, some banks insist that a mortgage policy be purchased in their favor before funds are released in order to protect their interests. The latter protects the bank. For a small amount, the policy can equally cover the buyer.

How much does title insurance cost? When one considers its coverage, it costs very little. For a property having a value less than \$100,000, most lawyers will bill you 1% of the value of the property and will give you the documents which are necessary for the transfer of the property and a detailed report of the abstract. The percentage is generally less for a property of \$100,000 or more.

Why call upon an attorney rather than a title insurance company to issue a title insurance policy? An attorney can represent you legally in order to defend your interests in addition to

issuing title insurance interests without it having to cost you further. Make sure however that the attorney that you choose is specialized in the real estate field.

Do not forget that a title insurance policy is an asset for the person who sells his or her property since it can help expedite a subsequent sale. Also, if you are a developer you can benefit from large premium discounts if the same project requires you to issue more than 25 policies.

Is title insurance really necessary or is it a waste? The choice is yours! If you are willing to run the risk then title insurance is useless. If you feel that your investment needs to be protected, then it is necessary.

## **CHAPTER 38: Condominium or Cooperative?**

Which is most convenient for you? Often a foreigner will want to set up an apartment in the U.S. for vacations or for setting up a permanent residence. In most cases, it will be a rental apartment, a condominium, or a cooperative ownership. Before deciding, it is necessary to understand the difference between the latter two.

When the developer creates a corporation in order to become the building owner, the apartments in the building are offered for sale on a cooperative basis. The corporation assumes all the responsibilities and the buyers own shares proportionate to their investments. They also have a lease with the owning corporate entity as long as they pay their bills for taxes, maintenance, mortgages, etc. The mortgage lender of the entire building and the corporation are concerned that the prospective shareholders be solvent.

In the case of a condominium apartment, the buyer has full title to an apartment and not of shares of a corporation. The building is managed by an association of owners on a non-profit basis. The owners must pay for the common services, such as landscaping, hallways, swimming pool and saunas. Meanwhile each owner is individually responsible for payment of his property taxes, mortgages and other expenses. The condominium offers an advantage because it generally increases in market value more than a cooperative apartment. The interest on the mortgage and the property taxes can be deducted from federal personal income tax.

Moreover the owner can decorate his apartment to suit his taste. No matter what your choice, do not forget that before signing an offer to buy it is essential to get legal advice.

## CHAPTER 39: Is Time-Sharing for You?

Do you know about time-sharing (property on a shared time basis)? Have you noticed how many signs there are in many vacation states reading "House for sale", "Condominium for sale". If they attracted your attention you must have wondered what the average price of those properties was.

Before investing, calculate the number and length of your trips to the U.S.. Most visitors come once or twice a year for a period of one to three weeks. Does that warrant the purchase of a condominium? As a result of increases in real estate properties and hotel rates, a concept already well established in Europe took roots in North America. It is called "time sharing" property on a shared time basis. The principal is very simple; one divides the year in 52 units of one week each and sells it individually. This means, for example, that if you expect to spend the last 3 weeks of March in the U.S., you only buy that period. Instead of paying \$90,000.00 for a condo which you will not occupy most of the time, you will only pay for three weeks, and share it with other people who will come to the U.S. the rest of the year.

Let us look at a time sharing property example. Originally, the building was a hotel on the ocean. A promoter having recognized the advantages of time-sharing converted it for that purpose. Each apartment having one, two or more bedrooms is furnished and ready for use. The price depends upon the location and the season. After each owner leaves, a maintenance team cleans up the apartment. If the buyers decide they want three weeks in March, they receive title to the property for that part of the year. The same applies to each buyer. If the owner so wishes, he can sell his three weeks to a third party or exchange his apartment on a time-sharing basis in another country. Most properties in a time-sharing resort are members of an international club which allows member to exchange apartments.

Another advantage of time-sharing is that you can take out a mortgage the same way you would for any other piece of real estate property. Each promoter offers financing, but generally 20% to 40% cash is required. If you pay cash for the whole purchase, you could receive discounts on the purchase price.

Why then disburse \$5,000.00 to \$30,000.00 per week for a time sharing property when there are hotels everywhere in the world? First, because you will own an asset in the form of U.S. real estate and the cost (real estate tax, insurance, maintenance, condominium expenses) of your future vacations will remain relatively low and stable despite inflation.

There are however some precautions that should be taken. Make sure that there is a management service on the spot at all times that will supervise maintenance. And make sure that you receive the warranty deed which guarantees the number of weeks which you have bought. Some companies may sell you a lease from 20 to 80 years but it does not have the same value as a warranty deed.

The time-share concept represents an enormous advantage for the promoter. Instead of selling a \$100,000.00 condominium, he can sell units at \$5,000.00 per week or \$250,000.00 for one year which means an additional profit of \$150,000.00! As a buyer, never be pressured into an acquisition.

Time-sharing has existed for a long time in Europe but it is relatively new to America. That is



why the legislature has written legislation to control the activities of promoters and protect the rights of consumers. Whether you are a promoter or a buyer, always consult an attorney specialized in the matter.

## **CHAPTER 40: Characteristics of a Condominium Association**

The Declaration of Condominium is a series of documents which have been created for a condominium association and the rules which it has established for peaceful co-existence of owners. The association and all the owners must abide by this law.

Each owner has an exclusive right to his own property and uses his unit. It is understood that the association has the right of access, during reasonable hours for reasons of maintenance or repairs or in order to prevent damages to common areas or to other units. The owner of a unit has the right to enjoy the common areas as long as he respects the rights and enjoyment of other owners.

Sometimes an association limits the amount of time that a condominium owner can rent out his condominium. The association cannot oppose itself to the renewal of a lease between the condominium owner and the same lessee. The association can improve a restriction on the rental period of a unit from a minimum period of four months to a maximum period of twelve months per annum to the lessee.

One of the most frequent problems faced by a condominium association is that of decoration and renovation of units. Let us look at the case of an owner who had installed on his balcony railings that were different from those of other units without having received the consent by 51% of unit members. He was thus violating the association rules. He had however received the authorization of the promoter. Moreover, one year had gone by before he was served notice concerning these railings. After a great deal of trouble, the condominium owner won his case.

The minutes of the board of directors meetings are an important function of the condominium association. For example, if the minutes of the association stipulate that the owners do not have the right to install wind-breakers on the balcony and that one of them does so, the association can require that he remove it because he has not respected decisions which were made during the meeting.

The powers of a condominium association are great. In another case, an association succeeded in obtaining an injunction against an owner who had erected a patio on common areas. The latter should have, before undertaking this improvement, obtained permission in writing from the board of directors as stipulated in the condominium declaration.

Often the owner of a unit must inform the association of his intention to sell it. In this case the association can exercise the right of first refusal and make an offer for the unit to be sold. The best protection for an owner is to become involved in the condominium association and attend its meetings regularly.

## CHAPTER 41: Condominium Questions and Answers

*Question: I am a director of my condominium building. Does the Board of Directors have the right to restrict the right to rent apartments in the building? Should this restriction be approved by the owners and should the condominium charter be consequently amended?*

*Answer:* Recently the Federal courts determined that the board of Directors has the right to restrict the rental period for a minimum of four months to a maximum of twelve months and to order the owners to abide by it.

Note however that a decision by the Federal courts does not bind the state courts. Such restrictions become valid subsequent to an amendment to the condominium charter.

*Question: Our condominium association must take legal proceedings against the promoter for being made false warranties and false representations. We feel we will need \$40 per unit in order to pay for legal expenses. Should we divide it pro-rata in the same way as maintenance costs or can we directly levy \$40 per unit no matter what the size of the unit?*

*Answer:* The outlays by a condominium association for legal fees against a promoter are common expenses. The condominium law requires that the necessary funds for payment of common expenses be divided pro-rata or on a percentage basis as established in the condominium charter. Consequently the directors cannot impose an arbitrary amount on each property without taking into consideration the size of the units.

Note: the percentage of contribution to common expenses is determined on the basis of the number of square feet per unit.

*Question: Our board of directors recently voted in favor of a decision to repair the roof. One of the owners opposed this decision and our suggestion to levy an amount per unit. What can the association do in order to collect this amount?*

*Answer:* The association of owners has the power to collect levies. Without this power, the condominium could not exist. So the condominium law allows the association first to have a lien against the unit and if the charter so allows, to take up legal proceedings against the owner. If the latter still does not pay, the association can sell the unit at auction in the same way as would be done for default of payment of a mortgage. If the association decides not to sell, it can always try to obtain a judgment against the condominium owner.

## **CHAPTER 42: Condominium Conversion Is in Style**

In some areas the lack of construction and the growing demand for condominium apartments has encouraged a large number of building owners to convert apartments which they operated as rentals into condominiums.

The return on investment is considerable. Let us look at the following example: supposing Mr. Gomez bought in 1975 a 100 unit building at the price of \$25,000 per unit. By making improvements which cost \$5,000 per unit, he could resell them at \$50,000 per unit.

The initial investment was only \$2,500,000 made by Mr. Gomez. By having sold for \$5,000,000.00, with a cash cost of \$500,000, this operation generated a net profit of \$2,000,000 after all expenses have been deducted. Do you know of an investment which can generate so much in so little time?

This method of condominium conversion had generated a void unavailability of rental apartments. Many people had been evicted from their homes. As a result state governments introduced protective legislation. It protects the rights of consumers by stipulating that the lessee must be advised of a condominium conversion and have priority if he or she wishes to become owner of his or her dwelling unit. One can conclude that many renters have decided to become owners. The demand for condominium apartments is still strong today.

The apartment buildings can be transformed slowly into condominiums if their physical structures meet the requirements set by the government.

In order to convert an apartment building or a motel into a condominium, it is necessary to proceed in the following manner: the landlord retains the services of an attorney specialized in real estate law who will be able to gather a team of professionals including an architect, an engineer, a financial expert, a decorator, and a real estate agent. The architect and engineer will have to determine if the structure is sufficiently solid; inspect the roofing, plumbing, electricity, and facade. The financial expert's responsibility will be that of finding the necessary funds to generate the mortgage loans for prospective buyers. The decorator will have to choose colors, furnish the model apartment and make sure that the building will be an enjoyable place to live. The real estate agent will have to sell the condominium apartments either himself or with the cooperation of other brokers.

Finally, the realtor will be responsible for planning a budget with the promoter (or owner). The attorney will ensure that the complex documents related to the conversion of the building will be approved by government agencies.

## CHAPTER 43: The Purchase of a Mobile Home

You have been dreaming of owning a mobile home, an inexpensive factory manufactured self contained housing unit, in America for a long time and you have just found it! Before buying make sure you take all the necessary precautions.

Let us look at the case of a couple who wanted to buy a mobile home but the land of the mobile home park on which the mobile home was situated was not for sale, but only for rent. The only problem was that the seller wanted to transfer the property the following year. What to do? We prepared an offer to buy which took into consideration the wish to have the property transferred the following year. The purchase price of \$15,000.00 was inscribed in the agreement. The purchaser made a deposit of \$1,000.00 in order to prove his good faith. This deposit will be received by the seller in case of the buyer changes his mind. This money will stay in a trust account (escrow) until the parties are ready to consummate the transaction.

On this offer are the names of buyers and sellers as well as a complete description of the mobile home:

- its size;
- its registration number;
- the number of the title;
- the year it was made
- the name of the manufacturer; and
- the serial number.

Normally one sets a date for the transfer of the property. However, the date of transfer is left to the discretion of the parties unless the contract includes the following statement: "Time is of the essence". In this case the transfer will have to be made on the specified date by mutual agreement. If it does not take place, the deposit will have to be forfeited.

The date of transfer and the takeover of the property having been established, the parties will want to take an inventory of all the personal property which is inside the mobile home. This inventory will be checked the following year to make sure that nothing is missing. It is a necessary precaution which must be undertaken in order to avoid any surprises.

Depending on the age of the mobile home, the buyer would be well advised to inspect the roof and check for termites within 30 days preceding the transfer of the property. Generally, the seller is responsible for all defects of the roof and for all damages caused by termites up to 4% of the value of the property. This could be important if the inspector discovered damages even after one year from the signature of the contract. The inspection costs are paid by the buyer.

An attorney should only represent one of the parties. It is necessary to state on the contract that each party has been able to avail itself of the advice of its attorney before the signature of the contract.

The payment for the real estate taxes and mortgage are adjusted to the day of the transaction if necessary. In the case of our client, the seller not having any mortgage was responsible for all payments up to the date of transfer of the property. The only adjustment

required will be that of the rent of the mobile home park.

We have also discussed the possibility of an increase in rent. At the signature of the contract the seller paid \$50.00 per month rent. My client not wishing to run the risk of having a rent which would increase unreasonably, decided to move the mobile home to another park. We arrived at a compromise with the seller guaranteed a maximum of \$175.00 a month for rent. If the amount turned out to be greater, the transaction would be considered null and void and the buyer would have the right to have his deposit refunded. Also stipulated was that the buyer would have the right to a refund of his deposit if damages caused by termites or to the roof was in excess of 4% of the value of the property or if he did not receive the approval of the mobile home park as a tenant.

Since the seller certified to my client that the property was owned by him and was free of a mortgage and other liens, he would have to deliver it to him under the same conditions. This means that if during the course of the year the seller decided to mortgage the mobile home, he would have to clear the mortgage before transferring the property.

One month before the transfer, inspections were being made. It is at this time that one would be able to determine if the property is in the same condition as at the time of purchase. The day of the transfer the buyers will inspect the property in order to make sure that the furniture and other fixtures are in the mobile home. The parties will then go either to the attorney's office or to the motor vehicle's bureau in order to transfer the title. The procedure is simple. All that is required is to endorse the title before a notary public who will make a note of the new owners. The purchasers will have to pay the sales tax to the state.

## CHAPTER 44: Restrictions on Mobile Home Parks

State laws define the relationships between owners of mobile home parks and the owners of the mobile homes which are located within the parks.

First, you must know that a mobile home is considered to be personal property, just like a car. The title of a mobile home resembles that of a car and the sale is conducted much the same manner. All you need to do is endorse the title before a notary public and pay the tax to the vehicle registration bureau to transfer title.

The statute applies only to owners of mobile homes who rent land upon which the mobile home is situated, not to owners of mobile homes affixed to the land. Most park owners require that mobile home owners sign an agreement or lease upon their entry the mobile home park. The rules are spelled out to ensure peace and quiet in the park and are usually reasonable. However, because of the lack of lots, some park owners require that restrictive and repressive leases be signed. In this case, the Courts have authority to determine if the lease should be canceled, upheld in part or interpreted differently. For example, if one of the clauses forbids a lessee to seek legal recourse, this clause is automatically null and void.

The obligations of each of the two parties must be clearly defined. The lessor must not enter in a mobile home without the consent of the lessee unless there is an impending danger such as a fire. The Lessor must respect the laws of the construction code, maintain public installations in good order, and ensure that gas distribution is proper and that water and electricity are also provided. The lessee or owner of the mobile home must respect the rules of the park, conform to security requirements and not disturb the neighbors. He can stay in the park for the duration of the lease unless he does not pay his rent in which case he would be violating federal or state law. If however he contravenes a reasonable rule of the park, he will have to be served a thirty day notice by the park owner.

Sometimes the zoning of a park must be changed. In this case the owner of the park has the right to cancel the leases of all his tenants but must advise them six months ahead so that they would be able to find new sites.

American law fights discrimination against certain classes or categories of people. Thus, if a rule applies to one person, then it applies to all. The Court can at all times, no matter what the bill, determine if this ruling is reasonable. The fact you would be a foreigner does not preclude your seeking justice before the courts. If the park owner has violated the law, an injunction and damages as well as interest can be imposed upon him.

The owner of the park cannot require an increase in rent because of usage of electricity or gas. Moreover if the owner of a mobile home decides to sell it, the park owner cannot object to a sign visible from the street which respect sign ordinances.

During the sale, the owner of the park does not have the right to a commission unless he has stipulated so by a written contract that he has acted as an agent.

The new owner then becomes a new lessee. If the owner of the park refuses three good offers because he is not too keen on doing business with the new lessee or because he

wants to cash in on a commission, the fourth offer becomes valid and he cannot object to it. American law protects the right of the seller to transfer his property.

In case of disagreement with the owner of the park, lessees or mobile home owners can write to the State Mobile Home Tenant Commission of the state where the mobile home is located. This commission is responsible to supervise the increase in rent and the decreases in services. You can also have judicial recourse as was mentioned earlier. Some mobile home park owners try to profit from the fact that there is a scantiness of lots and that language is sometimes a barrier. It is therefore important to know one's rights and not to be intimidated.



## **CHAPTER 45: Foreign Nationals: Beware of U.S. Tax Withholding!**

Over the last century, many foreign nationals have invested in many U.S.-based assets, primarily real estate. These nationals were often not subject to U.S. capital gains taxes and therefore had no reporting to complete either in the U.S. or often in their home country. As a result, persons subject to the U.S. tax system such as U.S. citizens, lawful permanent residents, or non immigrants who are U.S. residents for tax purposes were penalized for the American nationality.

Recently, the FIRPTA (Foreign Investment in Real Property Tax Act) law was enacted to close this existing loophole in the tax laws. As a result, the withholding agent which is the attorney closing the transaction, the real estate agent or the buyer must determine if the seller is a foreign national for tax purposes and therefore subject to a ten per cent withholding for the sales price. That is to say, that said agent must withhold in a special trust account or remit to the Internal Revenue Service ten percent as an "insurance" that the foreign national will pay his, her or its fair share of the capital gains to the U.S. Treasury on profits realized on American property.

The tax can be applied to foreign individuals, corporations or entities and is applicable on all U.S. real property. There are exceptions which apply, but for the most part all parties must be very aware of their legal responsibilities prior to or at time of closing of the transaction.

Thus, if the transaction is for residential property and the sales price is less than \$300,000.00 with the property being acquired by an American tax resident, the buyer can sign a certification stating that he or she will occupy the property for a period greater than six months per year for the next two years and thus the withholding tax will not be necessary. There is a presumption that the capital gains tax will ultimately be collected by the U.S. government from the U.S. buyer.

On residential properties with a sales price of over \$300,000.00 and on all commercial properties, notwithstanding their value, a withholding procedure must be completed. The closing agent may file a request for a "withholding certificate" indicating that the sales price of the property is the equivalent or less than the total of the original acquisition price plus improvements since the acquisition. All expenses, including closing expenses, but not mortgage payments since the acquisition can be included.

So as to receive the buyer certification exemption, the buyer must attest that he is an American for tax purposes and inscribe his or her U.S. tax identification number on closing documents. The same is true of properties owned by U.S. corporations who must inscribe their tax identification numbers on similar documents.

Very often a state corporation is utilized as the owning entity of U.S. real property so as to avoid the withholding tax at the sale. Although there is no restriction to foreign nationals owning shares in a state corporation, there is always the risk that a court or jurisdiction could pierce the corporate veil to determine that the sole purpose for creating the corporation was to shield the foreign national from paying the capital gains tax.

Ownership of the real property by a foreign corporation will not shield the payment of the

withholding tax either since such corporations is treated much like individuals.

In the event that the closing of the real property takes place and that the withholding agent had to remit the tax to the IRS, if the seller - individual or corporation - feels that he either lost money on the property or that he did not realize a capital gain, he may apply for a refund from the IRS by proving such.

If there is enough time between the time of the execution of the contract and the closing but that the IRS did not respond by the closing date as listed on the contract, the withholding agent may place the funds in an interest bearing escrow account to the benefit of the seller and then remit what may be taxed by the IRS pursuant to their analysis.

In the event of non remittance, the buyer and/or the withholding agent may be subject to fines, penalties and interest on the outstanding amount. Therefore, it is essential that the American tax resident prove his residency either in the form of a birth certificate, lawful resident alien card, E2 investor visa status, U.S. passport or official recognition by the IRS of the seller as being a U.S. tax resident.

***SECTION B: A SELF-DEFENCE GUIDE TO DOING BUSINESS IN AMERICA***

## **CHAPTER 46: Starting Your Own Business in America**

One of the most exciting events in your life in America is starting your very own business. It is the American dream for everyone to start and own his or her own business, from the smallest to the largest operation. What does it take for someone who is lawfully in the United States but not used to doing business in America to start up a business?

It is important to note that the type of business is not vital to the principles which we are applying. Whether a dry cleaning, manufacturing, ship building, or sales business, the business principles which you will need to apply are the same. Complete your market survey and analysis to determine a market need, conduct a thorough investigation and only then can you invest with confidence.

Let us begin with a framework of operation. You should have a very clear idea and intent as to the type of business which you hope to establish. Any hesitation on your part will create a sense of insecurity on the part of your suppliers, employees, sales team and clients. Be sure and be firm!

Next, it is important that you surround yourself with competent professionals on whom you can rely, with whom you feel conformable and with whom you can easily communicate. If you have trouble reaching your professional, this can seriously delay your important business decisions and expansion.

The first professional to be retained is an accountant. In the United States, the most competent accountants are those designated "Certified Public Accountant", i.e. they are state licensed and are deemed to understand not only bookkeeping but also the myriad of tax laws of the country. A good accountant will assist you in business planning, accounts receivables and accounts payables procedures and verify your books to ensure that you are on the right path in addition to assisting you in minimizing your federal or state taxes. Remember, it is the right of every American to lawfully contain his taxes to a minimum by proper planning!

The second professional to be consulted will be your banker. Since the business may require a loan and a current account, it is vital to establish your creditworthiness with a solid, recognized financial institution that will back you up for the years to come. The more documentation available to the banker, so that they may make a good recommendation and long term relationship. Ensure that your business is well capitalized to prevent failure from the beginning. Ninety percent of business failures in America are caused by business undercapitalization, which do not have staying power.

The third professional to engage within your team would be a competent attorney specializing in business law and, again, as in the case of the accountant, with whom you feel comfortable and can easily communicate. An attorney will be able to organize your corporation, register business names, secure tax identification numbers, record deeds and security agreements, coordinate all other professionals and render general advice to avoid the pitfalls involved with starting a new business.

If you do not have a place of business, a well recommended realtor with good credentials can save you much time and money in locating an office or perhaps a warehouse. He or she will negotiate a lease or, in the case of an acquisition, the purchase, of the space to accommodate your present and prospectively your future needs. Try to have your attorney review any formal leases and contracts.

Insurance is also a very important business dimension. Everything from insuring your company truck to your office are the domain of a general insurance agent. Insuring your life, that of your partner's and investing all those profits is within the purview of a life insurance agent. Check out his credentials, how long he or she has been in business, their reputation and the companies with whom they do business.

The local chamber of commerce as well as business forums have already been organized to assist you in succeeding in your business. They can generate leads, provide important contacts in the community and help in the marketing of your enterprise. If you are dealing on the international level, the state chamber of commerce is more competent to lend assistance as are all the governmental agencies in Washington D. C., such as the United States Information Agency or the Office of the Secretary of Commerce. All government agencies can provide statistics and local resource persons to assist your business in becoming a valuable taxpayer

You will discover that it is easier to establish a business in America than perhaps any other country in the world. Naturally, the installation of a basic item such as the telephone is very quickly accomplished, usually under ten days for a business line. The telephone and state-of-the-art facsimile (fax) machines are the lifeline to the outside world.

You will also need to secure occupational licenses from the county and the city in which the business is located so that the local governmental authorities can consent to the type of business which you will be conducting at a certain location. Usually, by presenting a copy of your deed or lease, these licenses are obtainable in under two days. Make sure that you also obtain a state driver's license for yourself and your employees.

Marketing and networking your service or product should also be one of your major concerns. The "Yellow Pages" is an important marketing tool as are local, regional or national trade shows where by exposing your business you can reach a targeted market. Many businesses are built solely on trade show exposure. Brochures, business cards, invitations to openings and just about any other acceptable method of doing business in America will be well received by prospective clients. Aggressive marketing is vital to success as is the location of your business. Ensure that you are at the right place and that your product is right for the times. Do not assume that what may have worked in your country of origin will necessarily work in America. Investigate before you invest.

Fluency in the English and Spanish languages is also vital to doing business in America. Although America has been unilingual for centuries, it is estimated that by the year 2000, one third of its population will be principally Spanish speaking. Further, with the shrinkage of the global village, knowledge of another language is extremely advantageous as native born Americans grope to deal with the international marketplace where, although English is dominant, it is not exclusive.

Finally, you should know that part of the American experience is discovering that anyone who has a burning desire to succeed in America can do so. Education, particularly continuing adult education, is a tool to many business successes. There will be many surprises on the road to success; however, spending some time to establish a proper business plan and not necessarily running on emotions will go a long way to making the dream reality.

## **CHAPTER 47: The Purchase of a Business**

Have you already thought of buying a business in America? If you have, you are certainly aware of the legal ramifications that this involves. Let us look for example at the purchase of a restaurant which is similar to the acquisition of any business in America.

A couple wishes to settle in America and to work there. Let us take for granted that they obtained their status of immigrants and that they found the restaurant of their dreams. Before giving one penny to the seller, they should sign an agreement with him in order to protect their right and to make sure that they will not inherit a business which is riddled with debts.

The agreement can be made in the following manner: the price of the sale is established and a deposit is made with the attorney or the broker. The deposit's purpose is to consolidate the transaction, to prove the good faith of the buyer and to stop the seller from making a transaction with another party before the transfer of title is made.

Usually the name of the restaurant is transferred to the new owners because that is part of the assets of the new business. The telephone number remains the same as well as the existing lease. Note that the owner of the building must agree to give a lease to the new lessee. He has a right however to analyze the financial statements and to decide if they are sufficiently solvent to undertake the lease.

What in fact is the seller selling? He sells the personality which is listed in the inventory and the reputation which has developed since its opening. If the seller is a well-known restaurant operator, the buyer will include a clause which will prevent the seller from opening another restaurant in the area or within a radius of 2 to 25 miles.

The seller can also sell his alcohol license separately. This does not cause a problem to the new owner because it is not necessary to be an American citizen in order to obtain such a license. The government requires that the new restaurateur undergo a medical examination and that they not have a recent criminal record. The seller must guarantee that his restaurant is free from debt and that if it has any, he will pay them. He must also guaranty that there is no court case pending and that he is really the owner of the personality which he is selling.

Most buyers require, with due reason, that the equipment be in good working order and that the seller guarantee such. If that is not the case, the seller is required to make the necessary repairs.

Before the transfer, one establishes a statement of account in order to determine the parts related to expenses, such as insurance, payment of the rent, the operating license from the state, the city, the county and other aspects of the business.

The agreement is then signed and the date of transfer must be made within 60 days following the signature. But it does not end there. The buyers will have to make their payments in American dollars, have the necessary inspections made and have the alcohol license transferred to their name. One assumes here that the sale of shares of a

company does not take place in this case, where an official transfer then is not necessary.

The seller is obligated to obtain the agreement of the owner of the building to show the accounting books and to pay the invoices that are outstanding before the new owners can take over the business.

If the purchase price is not paid totally in cash, a mortgage is needed. The guaranty is provided by the personality of the restaurant, terms and conditions are stipulated in the contract.

It often happens that the seller enjoys a strong local customer base and that he has good professional experience. One recommends that he be available to advise the new owners during a period of two to three weeks after or before the closing in order to make the transition easier.



## **CHAPTER 48: A Real Estate Commercial Lease**

Let's look at the general conditions of a commercial lease in the United States. First, let us be clear about the terminology. The lessee is the person who rents a property. The lessor is usually the owner of the building.

The first condition upon which the parties must agree on is the rent. Aside from the amount, it is important to establish the duration of a lease and express if the lessee will be able to renew this lease in the future at a different rent. Most commercial leases contain an index clause in order to review the rent as a function of inflation. This formula depends on the inflation rate established by the Department of Commerce of the United States. The lease is part of the assets of the lessee's business. Ordinarily, he cannot sublet his place of business to a third party without the approval of the lessor. He cannot make improvements or changes to the structure without permission of the lessor. Do not forget that all improvements to a property may not be personal and will become the property of the lessor at the end of the lease since they may be considered fixtures.

The lessee must respect the laws of the state, of the city and of the federal government regarding zoning as well as the rules of each level of government. This means that a building which is zoned, for example, to house a clothing store will not necessarily be able to house a restaurant. Such an infraction would be sufficient to cancel the lease and jeopardize the security deposit which the lessee is forced to make at the start of the lease.

In case of a fire on the property, the lessor has a period of 90 days to restore the property to its original condition. If the property is not restored, the lessee or the lessor will have the right to cancel the lease and the rent will be due up to the date of the fire.

If the lessee leaves the premises before the end of the lease or if he defaults on his payments, the lessor will be able to, if he so wishes, put an end to the lease and take over the property forcefully or otherwise without being held accountable. He will also have the right to rent again the location under terms and conditions which he will determine and to collect the rent. Meanwhile the lessee who has left the location is legally responsible for the rent to the second lessee if it is less than the first.

If the lessor finds himself having to collect his rent through the courts, the lessee will be responsible for paying court costs as well as attorney fees. Most commercial leases stipulate that the lessee is responsible for the payment of gas, electricity, and water. Moreover, the lessee's personal are used as a guaranty for payment of rent. In case of default, the lessor will have the right to seize them.

The lessor has the right to inspect the property at reasonable hours and to display a "for rent" sign 30 days before the lease is finished. The lessee must return the premises at the end of the lease in the same shape as at the beginning, excluding improvements and normal use. If the lessee caused damages, the lessor will have the right to use the deposit in order to make the necessary repairs.

Let us, for example, look at the case of a lessee who rents a building in order to run a dance hall. He signs a commercial lease with the lessor who is also the owner of the building. One

year later, the lessee decides to sell his business to another party. The lessor will want to make sure that the buyer of the business is solvent and can require his financial statements before approving the transaction.

As soon as the transaction has been approved, the lessee signs a document assigning the lease to the purchaser of the business. The latter will also sign a document in which he will accept to be responsible for the current lease. The lessor will sign his consent to this assignment.

Generally, the lessor does not oppose such a transaction especially if it only means a change of lessee. There would have to be a valid reason to refuse, for example, if the new buyer does not insure the premises.

Before signing a commercial lease, carefully read every clause and understand it. Generally, problems occur when one has not asked the right questions from the very start.

## CHAPTER 49: The U.S. Banking System

Tourists as well as newcomers to the U.S.A. often find difficulty in adjusting to the American banking system. That is because it is very different from any other foreign system.

For an individual or a company, establishing a relationship with a banker and particularly getting credit (very important) in the United States is quite a challenge. You probably have an excellent relationship with your bank manager in your country of origin. If you have not taken the necessary precautions, you will notice that this kind of relationship is virtually impossible in America.

Since there are such a large number of visitors every year, bankers are suspicious of dishonest people, fraud and bad debts. You are probably well known in your hometown, But in America, no matter how much money you have, you may not be known.

Consequently, we recommend that you take some precautions before leaving your country and upon arrival to the United States. First, it would be best to have a letter of introduction sent from your bank to the American bank of your choice. A letter from your accountant and your attorney would also help establish your credibility. Bring with you tax reports for the past three years translated into English. Never take for granted that there is a bilingual person on the spot who can translate it for you. Your personal financial statements along with your bank balances for the past year will round out the picture.

In the alternative, those who are not represented by professionals may wish to bring some of the following helpful documentation: cancelled checks, bank statements, church membership records, house title, paid invoices, automobile title and insurance, local credit cards, passport and driver's license. It will also be necessary to be properly attired and have made *some* local connection to be able to use as a reference.

If you follow this advice, the bank will consider you to be a serious client. Your financial statements are certainly most important but the way that you are introduced is even more. I cannot tell you how many clients I have met who have been disappointed in the manner they were received by the banker just because they had not taken the necessary introductory measures before hand. The sincerity of your conduct with the banker, notwithstanding your financial strength, will ultimately establish your credibility with the financial institution.

Your choice of the American bank is important because in the United States banks are specialized according to their charter. If you would only like to have a mortgage, you can call upon a Savings and Loan association. If you need a commercial loan, you must deal with a commercial bank. In order to avoid wasting time, it will be necessary to express your needs to the banker as soon as you arrive. A local accountant and an attorney can equally advise you.

A person wishing to live in America will have to be informed about the checking system and bank drafts that are used in the state where he will reside. In order to cash a foreign check deposited in an American bank, you will have to wait at least 30 days. A bank draft

drawn on an American corresponding bank requires only 10 days. Consequently, if you must count on funds for your personal use or to consummate a transaction, it would be wise to plan ahead in order to avoid being disappointed.

In an American bank, whether it be commercial or not, the deposits are insured up to \$100,000 per account, as long as the bank is a member of the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation. You can deposit your funds in several differently titled bank accounts for additional insurance.

When you need to change money, you should know which banks control the region in which you are living. Consumers can get the best rate from a commercial bank because other local banks depend on it for their international clients. You should also get information on the exchange rate at the airport. It varies every day and can sometimes be advantageous. Do not forget that money changing companies are not financial institutions and do not have the reserves to accept all currency exchanges.

In order to make your transactions easier, learn about the American banking system, to know about credit and references which are most important. If you have always made payments with your credit card, this will play an important role since the American banker will be less suspicious by being able to verify your payment history.

## **CHAPTER 50: Foreign Checks**

People who come to America often wonder how much cash they are allowed to bring into the U.S. and if their checks will be accepted by a local bank.

First, U.S. customs law stipulates that an individual (or couple travelling together) can bring up to \$10,000 cash into the United States without having to make a custom's declaration. This law is understandable because a greater amount could encourage an individual to live permanently in the United States or work illegally.

It is difficult to cash a foreign check in an American financial institution. Let us look at the worst case scenario: that of a check drawn upon a personal account in a foreign country. If the check is deposited in an American account, it will be necessary to wait three to four weeks before the funds are cleared and transferred. The American bank accepts the check if you have an account but does not guaranty that it will honor it even if the foreign bank is known and enjoys a solid reputation. The issuance of an NSF (non-sufficient funds) check is a criminal offense and the issuer could be prosecuted by the Attorney General of the state.

If you think that getting a bank draft in a foreign country proving that you have the necessary funds will solve your problems, you are mistaken. Cashing a draft (or certified check) is easy in other countries but not in the United States. The reason is simple. The issuer can easily oppose (i.e. stop payment) a draft after it is cashed in the state. So in order to protect itself and to enjoy floating interest, financial institutions accept drafts, but they do not become cash until three to seven days later!

The business person arriving in America with a draft thinking that he will be able to do business the same day could be disappointed especially on the eve of a real estate transaction.

How can this problem be solved? First, by establishing good relationships between bank managers abroad and in the designated state by only doing business with financial institutions having international departments. Finally, request that your U.S. bank manager place a "no hold" on your important checks drawn on U.S. banks in U.S. dollars. You can be sure that he will only grant you this privilege if he knows you well. Every country has its customs!

## CHAPTER 51: The Loss of Money by Default

"I will lose \$15,000.00"... "According to the contract I am going to lose \$15,000.00"... It is very difficult for me to accept that one can lose such a large amount of money just as the result of pure negligence, purchaser misunderstanding or miscommunication. It is therefore necessary to read and understand every clause of a contract before signing.

One is often faced with this kind of problem when buying real estate (a house, an apartment, or others) or personal (boats, mobile homes, cars). In these written contracts, the default clauses are often identical.

Let us examine this clause and find out what precautions must be taken. A verbal contract is not valid as far as real estate transactions are concerned. Only written agreements are legally acceptable. Generally, the contract stipulates that a deposit (often equivalent to 10% of the total value) will be given by the buyer to the seller as a proof of good faith. If the buyer changes his mind, the seller will have the right to keep the deposit and that will be the end of the deal. If the seller changes his mind, he will have to return the deposit to the buyer who will have the right to "specific performance", that is to say he could force the seller to go through with the transaction by taking legal action.

Let us look at two examples of the default clause. One applies to real estate while the other to personal.

A foreigner finds the motel of his dreams having eight units in a good neighborhood, at the price of \$250,000.00. He is enthused and immediately makes a deposit of \$15,000.00 upon signature of the contract because he wants this motel! His decision is not logical and not calculated because it is purely emotional. The foreign buyer signed a contract which was written in English by a broker without seeking counsel from an impartial party or at least from someone who knows the English language.

Rather, he should have remitted the \$15,000.00 and added a conditional clause to the contract, subject to approval by his attorney, before the signatures. Moreover, he consented to buy the motel "as is", i.e, he renounced his right to inspecting the roof, termites, plumbing, and all other equipment. When a seller sells "as is", one must always be suspicious.

How can we solve the buyer's problem so that he does not lose his \$15,000.00 deposit? The buyer may ask a broker to find another buyer who would accept to take over the first contract. This would allow two transfers of the same property the same day or an assignment of the same contract. The winners of this transaction would then be the seller, the broker, and the first buyer if he is able to save his deposit!

In the case of the purchase of a personal such as a new computer, the manufacturer will have the buyer sign a contract, the conditions of which are printed on the back.

The problems of the buyer of a computer are similar to those of the buyer of a motel. Enthused by the U.S., the foreigner decides to buy a computer having \$15,000.00 value and deposits \$1,500.00 (10% of the total value). Unfortunately, his business abroad

faces setbacks and instead of the computer being a source of convenience, it becomes a problem. What can he do?

The manufacturer is not in the wrong because the buyer had the opportunity to read the contract in which the conditions of default were clearly stated. In this case, it is necessary to try to find a buyer at the same price, to absorb a loss by negotiating a refund with the manufacturer or to hope that the delivery date will not be respected. These solutions are really wishful thinking!

Before signing a contract it is important to be well advised. A seller in good faith will wait for the buyer to consult specialists. After all, would you sign a contract written in a language in which you weren't fluent?

## CHAPTER 52: The Tax Rule of 183 Days

Many people who share their time between their home country and the U.S. feel that the 183 day rule for being present in the U.S. has exceptional qualities. In fact, according to them, all they would have to do is be present for a total of 183 days or more in the U.S. per year in order to pay federal American income tax. For the same reason, they believe that for having resided in their home country for less than 183 days in the same calendar year, they do not owe any income taxes to it (federal as well as state). Along the same lines, they believe that if they are present in their home country longer than 183 days per year, they will pay their income taxes to it and none to the United States.

This subject is often confusing and it is important to look at the facts.

1. The rule of 183 days of presence in a calendar year does not exist in the United States. For example, a person present in the United States for only two months can, for a number of factors, be considered to be a tax resident of the United States. Conversely, if this person does not meet criteria set by the revenue department, he or she will not be considered to be a tax resident even if that person has resided in the United States for more than 10 months. However, the 183 day rule can generally be taken as a valid parameter.
2. The word "stay" must be related to visits, trips, travel, i.e. short visits which cannot be considered to be "residency". Thus, a person who within a calendar year does not "reside" abroad for tax ends, but comes to the U.S. during a period of 183 days or more for the purpose of touring, holidays, or to take up a temporary employment, stands a better chance of becoming a presumed resident of that country from the U.S. tax authorities' perspective. Conversely, a person who usually resides abroad, for example from January until September, and who as of this date comes to America, is not subject to the rule of 183 days. In fact, from January to September, that person is considered to be a resident of the foreign country. Therefore, he is considered to be a non-resident of the U.S.

According to this thinking, let us assume that person usually resides abroad in January and February, then settles in the United States in March, and later in the year returns to his home country from a visit to America totaling 183 days or more. This person is then considered to be a U.S. tax resident for the calendar year: January and February, because of his usual residence abroad and the ten remaining months because of the rule of 183 days. This example illustrates the difference that is made between residents and "stay" abroad, which can entail the status of a presumed tax resident.

Of course, the person who usually resides abroad all year is not subject to the rule of 183 days. The person whose ties, (family, house, close relatives, social contacts, finances, etc.) are abroad and who often comes to the United States in such a way as to be there longer than 183 days per year, will be taxable in the U.S. for that whole year.

The tax "residence" of a person can be simultaneously abroad and in the United States. It is therefore important to make sure that the foreign rule of 183 days not be applied. Watch out for the length of your stays outside or inside the U.S.A.!



## CHAPTER 53: The State Corporation

Business people are aware of the advantages of the corporation. Among others, it limits personal liability, allows for flexibility of directors, shareholder, dividends, etc. If you would like to create a state corporation in order to do business, you should know the following.

The first step is to choose a name that is available. One telephone call to the state Division of Corporations can usually tell you right away if the name that you have chosen has not already been taken up. Know that the more original the name, the better are your chances of getting your preferred name.

Second, it is necessary to prepare the documents of incorporation. They will allow you, as long as you register them, to do business in the state of the incorporation but must be separately registered in other states within the United States for it to do business there. The corporation can have ordinary shares and/or preferred shares as well as multiple classes and values to each.

Most corporations are perpetual, that is they are not limited by time. The perpetual corporation will, in the future, be dissolved by choice or obligation (in case of bankruptcy), but usually this is at the discretion of the directors and shareholders.

Only one person is required in order to form a corporation and that individual need not be an American national or resident. There is a nominal annual update filing fee.

The main office of the corporation must be in the designated state but can change address therein from time to time. A personal residence can even be considered as a head office for a state corporation.

The corporation must be formed by a "Subscriber", the latter usually being an attorney or the principal of the company. Once the charter has been drawn up, the subscriber transfers the shares to the shareholders. All the activities of the corporation must be entered into the minutes, which includes the history of the corporation.

Every corporation must follow an important rule: that is to appoint a registered agent to receive service of process in the event of a lawsuit against the corporation. This agent must reside in the state, but if you do not know one, the Secretary of the State can act as such. The annual meetings of the corporation do not necessarily have to be held in the subject state. As long as there is a motion in the minutes and that the shareholders have been advised, the meetings can be held in another country.

You should note two more points:

- a) the officers of the corporation do not necessarily have to be shareholders;
- b) the objectives or operations of the state corporation need not be precisely outlined in the charter because it has freedom to act independently as long as the activities are legal.

You have certainly noticed that I have always used the term "state corporation". I did this with the purpose of showing that in the United States there do not exist federal

corporations to speak of.

The foreigner who is planning to set up a state corporation enjoys a number of advantages, especially in the field of immigration, real estate and investment. The tax advantages are very important as well. The annual cost and the obligations of a corporation are minimal compared to its advantages.

***SECTION C. THE LAW AND YOU IN AMERICA***

## CHAPTER 54: Survival Driving in America

If it weren't so frightening to drive on America's highways, it would be almost amusing. Here you will witness America's multi-ethnic fabric buzzing by, slowing down, crossing lanes, learning to drive or just plain attempting, at the risk of life and limb, to get from "Point A" to "Point B". So the next time you think that you are the king of the road, for your own safety, you may want to know who's driving next to you.

First and most dangerous is the driver who has had his license suspended, or even worse, revoked. Close to half the actual drivers are in that category violating the privileges which they once had. These are people who may have been caught previously driving without a license, driving intoxicated or repeat offenders. Stay out of their way, as they have little or no regard for the law.

Second, you may also encounter a white-knuckle situation where the driver in front of you (or on the far left lane) decides he's going to stop to check his map notwithstanding traffic flowing at 55 miles per hour. America receives millions of tourists annually and this is one of the negative consequences.

Remember, for fast travel go on the left, for slow travel on the right, and damaged vehicles in the right lane.

Third, how about the new arrival immigrant (bless them) who has never driven an automobile, but who decides to pack in seven of his closest friends in his brand new used car. Here minimum speed limits, change of lanes, seat belts and the like play no role. Watch out!

Chances are that we will not be able to restrict or weed out many of the bad drivers in America in the foreseeable future. Therefore, we respectfully make some suggestions for surviving your next foray on America's roads:

1. Be a defensive driver. Make sure you're alert and *expect* an accident. Only by being alert do you have a chance of avoiding one.
2. Get a large automobile. Statistics prove that the guy in an accident in a big car almost always wins, unless he takes on a truck!
3. Get your eyes and ears tested regularly. Who says that *you* @-e perfect? It wouldn't be a bad idea to have your senses checked.
4. Sell your car! It's not a crazy idea. When you think about the capital cost of a reliable auto insurance, gasoline, maintenance and all the risk associated with driving, maybe you're better off with a taxi, chauffeur, train, or public transportation.
5. Remember that every driver has a different purpose and mindset when entering the roadway. Be mindful of the other driver's attitude and style of driving.

6. Watch out for bright-colored vehicles, predominantly red, white, yellow, orange. These are people saying "Get out of my way!"; let them by - there's usually a policeman waiting for them over the road shoulder.
7. Watch out for rental vehicles. They're probably the worst. The driver usually has little clue as to where he is going, is not familiar with the strengths and weaknesses of the car and is paranoid about missing an exit; you would think he were missing an urgent appointment if he misses the exit.
8. The weather will play havoc on your driving skills. Needless to say, it will take you several months to learn how to drive in snow, but think about a similar danger of driving on a rain-slick road, or having a flash storm pour water in front of you thereby decreasing visibility. If you're going to put your emergency flashers on, don't keep moving. The flashers are for stationary vehicles only. Also be careful of the sun at sunrise and sunset so that it doesn't blind you to oncoming traffic. Learn about weather conditions in the region early!
9. Be careful about drivers who have headsets on while driving. Other than being illegal, it insulates them from the traffic conditions which surround them. Also be mindful of persons with hearing problems. They may not be able to hear your horn at the last second.
10. Try to avoid rush-hour traffic. People are extremely stressed trying to reach their work place. They have invariably left too little time to arrive at their destination and will make bad judgments simply to gain a few minutes, or even seconds. If you have to drive during rush hour, allow yourself those extra few minutes. Rush-hour in many American cities can run from 7.30 a.m. to 9-00 a.m. and again from 4.00 p.m. to 6-00 p.m. However, many companies are judiciously using flexible time to allow employees to use the roads at non- peak times.
11. Make sure your headlights, brake lights and turn signals are in working order, especially for night driving. Nothing is more frightening than seeing a vehicle travel at 60 miles per hour depending only on overhead lamps. If you think you can't see him, think of how bad *his/her* vision must be!

So there you have it. Driving a vehicle in America is a privilege, not an automatic right. Guard your life by not abusing this privilege.

## CHAPTER 55: The Fundamentals of Insurance

In the great land of America, there is a world of material, moral, and intellectual riches to be conquered by an interested party. Yet, wherever opportunity is found in such abundance, there will always be a certain element of risk. There is no escape from the presence of risk, and residents must accordingly seek ways of dealing with it.

Insurance is a necessary evil in the American Society. An individual in the process of making his dream a reality cannot be without the protection against risk. Insurance is an economic device whereby the individual substitutes a small certain cost (the premium) for a large uncertain financial loss (the contingency insured) that would exist if it were not for the insurance.

We will define risk, for the purpose of this chapter, to be a condition in which there is a possibility of an adverse deviation from a desired outcome that is hoped for or expected. While it would be impossible to list all the risks confronting an individual or business, we can briefly outline the nature of the various risks.

### A) Classifications of risks

⇒ Personal risks:

- premature death
- dependent old age
- sickness or disability

⇒ Property risks:

- loss of the property
- loss of use of the property or its income
- additional expenses occasioned by the loss of the property

⇒ Liability risks-

- The basic peril of the unintentional injury of other persons or damage to their property through negligence or carelessness. Liability may also result for intentional injuries or damage.

⇒ Risks arising from failure of others:

- When a person's failure to meet their obligations would result in your financial loss. For example, a contractor's failure to complete a construction project as scheduled, or an uninsured motorist.

The mistakes that most people make when buying insurance are either buying too little or buying too much. Buying too little consists of the failure to purchase essential coverage that can leave the individual vulnerable to unbearable financial loss. On the other hand, buying too much is possible by purchasing protection against losses that could be more economically retained. The difficulty in buying the right amount of insurance is compounded by the fact that it is possible to make both mistakes at the same time.

Unless the insurance program is designed to protect against the catastrophes to which the individual is exposed, an entire life's work can be lost in a single uninsured loss. Too

often critical risks are ignored, leaving gaping holes in the overall pattern of protection, while unimportant risks are insured, using valuable premium dollars that would be more effectively spent elsewhere. To emphasize this point, an individual living in the Arizona desert would have no need for flood insurance while someone living on the east coast of South Florida would.

Some sort of plan is needed to obtain maximum benefit from dollars spent. Such a plan should formulate and set priorities for the allocation of premium dollars on a basis of the degree and importance of risk. Periodical evaluation and review of the insurance plan is essential because things change and in some cases change may be the only constant. The purpose of the review is to address the situation before it becomes too costly. This is where a knowledgeable professional becomes very valuable. His role is to help you avoid risking more than you can afford to lose, consider the odds, and not risk a lot for a little.

## **B) Social insurance**

Social insurance is a device for the pooling of risks by their transfer to an organization usually governmental, which is required by law to provide pecuniary or service benefits to or on behalf of covered persons upon the occurrence of certain pre-designated losses. The following would be considered under the social insurance programs:

- Old age, Survivor's Benefit;
- Disability Insurance and Medicare;
- Unemployment Compensation;
- Worker's Compensation.

There has always been an assumption in our society that one should provide for one's own economic security. However, there are many circumstances in which, for various reasons, a reasonable degree of security is impossible through the efforts of the individuals themselves. In such an instance, the government redistributes money from those who are not in need and gives to those who are. Usually these programs are for people deprived from minimum basic standard needs.

## **C) Conclusion**

While the selection of an insurance company is an important aspect of the insurance buying process, in most cases the individual is probably well advised to focus his primary attention on the selection of the agent rather than the company. In choosing a company, the major considerations abound be its financial stability and its integrity. Essentially, the insurance product is a promise of future performance. The individual seldom knows if the product he or she has purchased is adequate until a loss occurs, a rather inconvenient time to learn of its inadequacy.

## CHAPTER 56: The Practice of Law

This subject is very important for persons who have been brought up in a country outside the United States. When you will need a legal adviser in America make sure that he is a member of the state Bar because many claim to be legal counselors but are not members of the Bar.

Let us take for example the Notary Public. A foreigner might think that they are "notaries". We know that in a country where the civil code is practiced, a notary is a person who has pursued studies of law, who has studied to become a notary and is a member of the Chamber of Notaries. In America, a notary public is only a commissioner of oaths who can attest to a signature on a legal document.

Make sure that you find out if someone is an "Attorney at Law" or a "notary public". The latter often mislead clients into thinking that they are notaries who practice as defined in the civil code. First, they are not members of the Bar. Second, they have no legal training or education which enables them to give opinions on legal matters. In America, attorneys have a dual education which allows them to represent their clients for real estate transactions and to appear in court on the client's behalf.

Let us take a sample case which was recently judged by the Florida Supreme Court: The Florida Bar vs Joe Mills. Mr. Mills, a non-lawyer, was accused of having prepared and filed a corporation charter, its rules, resolutions, and other documents pertinent to the corporation of the client. The court determined that this demonstrated the practice of law and entailed therefore criminal and civil sanctions.

The same situation can present itself in the case of accountants. Since accountants are primarily bookkeepers, they are not allowed to give legal counsel for fees. Note that certified public accountants (CPA's) can give advice on subjects related to U.S. taxation.

In order to illustrate this situation, let us take the case of a man who in order to help a fellow foreigner has been declared civilly and criminally responsible for acting as an intermediary during a real estate transaction. Although he was not an attorney, he prepared the deeds of sale of personal real property and no lien affidavit i.e. all the documents necessary for a real estate transaction. The two clients are now exposed to severe consequences especially if the chain of title is not clear.

Must an attorney be an American citizen? No, since 1975 an attorney can practice law if he is a permanent resident of the United States. This status confers upon him the rights and obligations of an American citizen (except the right to vote), and allows him to hold a Green Card (which is currently pink!).

I bring up these issues in order to denounce people who profit from the lack of information given to our visitors. I hope that this will discourage those who behave in a dishonest manner and encourage the public to seek referrals from the Bar before hiring an attorney. The Bar is in a particularly advantageous position to make such qualified recommendations.



## CHAPTER 57: The Structure of State Government

A state constitution is parallel to that of the federal government. The most important features are the constitutional guarantees of personal freedom. The laws passed by the government must be of public interest and be of a social and moral nature (for example the laws against prostitution).

The laws must not interfere with the private lives of the individuals unless they relate to the State. For example a motorcycle driver must wear a protective helmet. The law which was enacted on this subject was of public interest.

Every law approved by the legislature must be applied, it must not be vague nor surpass the intentions of politicians. It must be clearly written so that a person of average intelligence will be able to understand it.

No state law can encroach upon the liberty of religion or expression nor impose restrictions to liberty of the press. However one can, by enacting a law, limit speech which might create riots and risk bodily damage.

In order to protect the right of association of non-revolutionary groups, one could protect a member belonging to a recognized group. In the same way, one cannot limit the right to work by forcing non-union workers to pay fees equal to those of the union.

Residents and aliens, who are on American soil, are subject to state laws. By force of law, they have the right to use the American judicial system, and have access to courts of justice and the right to undertake any legal procedures.

The law describing the equality of individuals is an example of a area of law which still has plenty of gaps. The purpose of this law is to protect the individual against discrimination, particularly as far as age, sex, race and/or nationality. The legislature however has the right to create certain classifications which could appear discriminatory. For example the Superior court judged that it was not discriminatory to define an age limit for a policeman with the sole purpose of preserving his health. While case law and statutes do provide general standards from which to be guided, foreign nationals should never assume that the standards which may have guided them in their home country are applicable in the United States.

As far as contracts are concerned, the judicial arm of the state government has the right to interpret the laws according to the event. The legislature would not be allowed to impose restrictions on contracts which have already been accepted. Agreements which do not contain clauses relating to the above can be reviewed by any other sector of the government.

The state is regulated by a government divided in three categories: the legislature, the judiciary and the executive. Each sector is independent and cannot bypass the limits of its authority. If they do so, their laws and their actions become unconstitutional. A law brought up by the legislature cannot deal with more than one subject as stated in the title. The Act is read before the members of the House of Representatives elected for a period

of two years. If it is able to receive more than 2/3 of the vote, this law is then presented to the Senators and becomes a state law if the Governor does not exercise his right of veto. If he does, but the legislature ratifies this Act by 2/3 of the votes, the Act becomes law, no matter what the objections of the Governor.

In the executive branch, the Governor has the right to undertake judicial proceedings in the name of the state against another state, county, or municipality. He can ask for advice to the Supreme Court on the subject of questions which could have an effect on its powers and executive obligations. As it is in charge of the police function, the executive can call upon the army to maintain the peace, to enforce state laws or to put down riots.

The American judicial system is comprised of two entities: the federal courts and the state courts. For the latter, the state Supreme Court is a court of last recourse. The Appeals court receives cases from lower courts such as a decision coming from an agency of the administrative court. The Circuit Court listens to the cases involving amounts in question of more than \$5,000.00, interest and expenses included. The county courts listen to claims below \$5,000.00. The judges of the county and the circuit are elected by the people and the judges of the Appeals and the Supreme courts are appointed to their positions.

This is only a brief outline of the governmental structure of one of the states of the United States.

## **CHAPTER 58: A Foreign Judgment in America**

Sometimes foreign residents who have property in America come to see us after having lost a legal case abroad to know if the foreign judgment can be applied against their assets in the United States.

The practical answer depends upon the amount of the judgment. It would not be logical for a creditor to prosecute his debtor for an amount of \$5,000.00 or less. However for an amount greater than \$5,000.00 a creditor would be justified in prosecuting. Legally, the creditor may validate (or homologate) his judgment in the U.S. notwithstanding the amount.

Does a foreign creditor who registers his judgment automatically have a lien on U.S. property of the debtor? Unless the case is that of a judgment which was rendered in another state of the United States, it does not automatically recognize the validity of the foreign judgment. For such a judgment to be enforced in the state, an action recognizing it must be filed with the state court giving validity to the foreign judgment. The American judge will study the foreign procedures in order to determine if the foreign court applied rules which are in keeping with American norms.

The defendant of the action must have received a notice of said action and the delay allotted to answer must have been respected. If the defendant does not receive such a notice and an official demand has not been remitted by a process server or another legal channel, the judgment can be rejected due to faulty procedures. American judges do not take into account the action unless due process has been respected.

It is necessary to obtain consent from the state courts in order to have a foreign judgment enforced. But what happens if one registers it in the public records before it is approved by an American court? In fact, even if the judgment has no legal force, it may establish a lien on the property. Consequently, the buyer of the property from the foreign defendant, knowing that the judgment has been recorded in a local court, would be advised of a problem with the title which could later cause him legal dilemmas.

The state courts, having to judge many cases, claim that in order to enforce a foreign judgment in an American state, the claimant must wait 3 to 18 months, depending upon the county and the vigorous representation of the foreign defendant. Thus, in any case, the enforcement of a foreign judgment in the U.S. may not be a simple or quick matter.

## **CHAPTER 59: Do You Need a Will?**

I am often asked the question by foreign clients: "Should we make a will in this state?" As every good attorney, I give two answers to this question, a positive one and a negative one because this depends on the individual and his or her lifestyle. If you are a resident of an American state longer than 6 months per year, it is advisable to make a state will. Conversely, if you are not and you already have a foreign will, it is not necessary to make another one.

In civil code jurisdictions, there are two kinds of will: the notarized (authentic) will prepared by a notary, and the holograph will which is handwritten by the person leaving the estate (or succession). In the U.S., which is a common law jurisdiction, only a notarized will is generally recognized for estate purposes.

If there is no will or if there is no recognizable will, the law which is enforced in the U.S. as well as in the foreign jurisdiction will be applied to established beneficiary priorities. For example, a son will precede a cousin. Let us take the case of a foreign couple living in the U.S. since 1977 where they manage a motel. They are American residents not only for immigration purposes but also for estate purposes. The couple has two daughters under the age of 21. In order to protect themselves, each of the parents makes a reciprocal will in favor of the survivor. This means that in case one dies, the other would inherit all of the spouse's worldly possessions and would be responsible for the children under the age of 21. What would happen in case of death of both persons? A will that is well written must anticipate the unexpected. In our example, this couple was careful enough to name in their respective wills, a guardian and an alternate guardian for their children.

The children named residual beneficiaries would have the right to the assets of their parents, but in order to avoid having them squander their inheritance, the parents took care of establishing a number of restrictions and conditions which would be required in order to benefit from the estate. In most wills, funds would be placed in a trust to ensure that advanced studies would be paid for, even though the heir is below the age of 21. Thus, in our example, one of the daughters will have to finish her nursing school course or reach the age of 30 in order to be able to benefit from the estate. The interest on the capital can be used to pay for the education.

The guardian and personal representative must face a number of important responsibilities which require a great deal of patience and diplomacy. Sometimes, spouses are not always in agreement as to what to do with the body of the deceased. It is important that you state in your will exactly what your last wishes are. For example, the husband may choose to be buried while the wife may choose to be incinerated.

Make sure you sign the will, initial every page, have it counter-signed by two witnesses and notarized by a notary (or by a notary public). Leave a copy with your attorney and keep the original in a safe place.

In the event of death without a will, a proper sequence of inheritance has been statutorily determined, each state having jurisdiction over such a sequence. Generally, if there are no named beneficiaries in a will, immediate family members will inherit the estate in order of priority.

## **CHAPTER 60 : Divorce - American Style**

Foreign nationals, even those on temporary visas physically residing in a U.S. jurisdiction for a period of six months or more may be eligible to file for a dissolution of any marriage (foreign or domestic) in a state court. Their immigration status is irrelevant to their capacity to file for divorce in their county of physical residence. A marriage in a non-U.S. jurisdiction may be dissolved in the U.S. so long as the state court accepts jurisdiction on the matter.

It is never easy to deal with divorce, especially since this procedure means the end of a marriage. If you have been a state resident for more than six months from the start of the procedures, you may be eligible to file for a divorce (dissolution of marriage) in the state courts.

Many states will accept a plea of irreconcilable differences between the spouses as a legal basis. This is valid in the case of a non-contested divorce whose procedures are relatively simple.

Usually the parties will show a written agreement in which they have agreed upon the basics. The first subject of negotiation between the parties is on personal and real property. The family home will be left to the husband or to the wife or will be sold and the result will be shared. The marriage contract which is enforced is separate to assets (i.e. each party has the right to his or her own assets if identifiable). If there are children under the age of 21 who are born abroad or in the U.S. from the marriage, the parties will name one parent who will have custody of the children (usually it is the mother). If a divorce is contested, the court usually favors the mother for custody of the children. The agreement often includes an understanding on the subject of alimony as well as the protection of a minor child as to education and maintenance.

Each party has the right to have its own attorney and must sign an agreement of their own free will. Otherwise, it is considered to be null and void. The spouse cannot influence or force the other to sign and each party must consider the agreement as being equitable (fair). If an agreement has been established before the marriage (called ante-nuptial agreement), it can be included in the new agreement. Moreover, if the divorce is itself contested, the judge is forced to take into consideration the agreement prior to the marriage before rendering his decision. Every agreement which could have been lawfully concluded by the parties during the marriage will equally be considered by the judge.

If the judge feels that the agreement is not equitable, he has the authority to make the final decision. It is therefore in the interest of both parties to make sure that the agreement is as equitable as possible from the beginning based on circumstances and financial means.

Marriages which may have been created in a foreign country may be dissolved in the U.S. so long as the residency requirements have been met by the parties. In the event one party is no longer living in the same state or country of the Petitioner, the respondent, i.e. the person from whom the petitioner wishes to be divorced, must serve notice of the dissolution of marriage procedures to allow him or her to lawfully respond.



**CHAPTER 61: American Law (as decided by the U.S. Supreme Court)**

The following court cases have been heard by the Supreme Court of the United States. The facts and judgments are real, but are summarized. Although these cases are somewhat out of the ordinary, they do represent decision by the highest court in the land. It will help the foreign reader begin to understand American legal procedures:

**1- THE COURT ORDERS THE STERILITY OF A YOUNG GIRL, AGE 15.**

*The facts:*

A mother asks the court to have her daughter age 15, sterilized. The reason is that the daughter is mentally retarded and often goes out at night with older men. She wanted to protect her from possible unwanted consequences.

The judge approved the mother's request without the daughter being present and her not knowing about that request.

The young lady thought she was entering the hospital for appendicitis whereas the objective of the operation was sterilization.

Two years later the young girl learned the truth and sued the judge who approved the operation.

*Question:*

*Was the judge responsible for the sterilization? How would you have judged the case?*

*Answer:*

If you think the judge was responsible, you are right. First, the young girl had not been informed of the request of her mother. She was not in court nor represented by an attorney. Moreover, in the United States, judges do not have the right to make decisions without referring to existing laws or cases for jurisprudence. In this particular case, there were none.

**2- A DRUG AFFAIR.**

*The facts:*

A heroin addict spent \$200.00 to \$300.00 per day in order to satisfy his habit. One day, a double agent from the police sold him \$700.00 worth of heroin, which he resold with no profit to one of his friends, since he had stocked up on a sufficient quantity from a dealer. He was arrested and sent to jail for eight years by the court for drug trafficking on a first offense.

*Question:*

*Was the judgment too severe? How would you have judged the case?*

*Answer:*

If you answered yes, then you are right. Dependence to drugs is an illness and must be treated as such. This man was sick, not a dealer. To condemn him to jail for eight years was a cruel form of unusual punishment.

### **3- THE CASE OF SEXUAL HARASSMENT.**

*The facts:*

A young lady employed by a bank was not promoted because she refused advances made by her superior who then fired her. Instead of complaining to the worker relations division of the bank, as is usually the case, she sued the bank on the basis of sexual harassment by a bank employee, her superior.

*Question:*

*Was the bank responsible for the acts of her superior? How would you have judged the case?*

*Answer:*

If you say that the bank was not responsible, you are correct. The young lady should first have complained to the worker relations department who would have undertaken an investigation. Then, if the results were not satisfactory, she could have sued.

### **4- A SUIT BY NON-SMOKERS.**

*The facts:*

Non-smoking spectators were inconvenienced by the smoky air they were breathing at the New Orleans Superdome. They sued alleging that the smoke they were breathing was dangerous to their health, unpleasant, and caused them discomfort.

*Question:*

*Can the court ban the use of tobacco in a public place? How would you have judged the case?*

*Answer:*

If you sympathize with the non-smokers, you are wrong... And you would have to get an oxygen mask!

The court judged this complaint as not acceptable because the American constitution does not guaranty the right to a clean environment. The case was remanded to the legislature for enactment of non-smoking laws.



## **5- FORTY YEARS IN JAIL FOR 9 OUNCES OF MARIJUANA.**

*The facts:*

A man was sentenced for distribution and possession of 9 ounces of marijuana. The judge sentenced the man to a fine of \$25,000.00 and to two successive 20 year jail sentences. This sentence was particularly exceptional because in the state of Virginia, a charge of marijuana possession was only punishable by a maximum of five years in jail.

*Question:*

*Could the principles of the American constitution overturn a sentence that was too harsh? How would you have judged this case?*

*Answer:*

Yes, the sentence was too harsh. When a judge analyses a case, he must evaluate the degree of violence or the danger faced by the victim. In this case, it is "only" the sale of marijuana. The court, by reducing the sentence, has brought to the attention of the legislature of the state of Virginia that it does not make any distinction between the sale of marijuana and heroin... which is an important weakness of the legislation to be corrected.

## **6- WHAT A CHARACTER!**

*The facts:*

A man wanting to change his identity presented a petition to change his name to a number "1060"... No more misspelling, no more mispronunciation... Much easier for everyone!

*Question:*

*Can this man change his name to anything or even to a number?*

*Answer:*

Absolutely not! The justices of the Supreme Court decided that changing his name to a number is an offense to human dignity and that the permission to change a name to a number is an insult to humanity.

## **7- THE SECURITY OF PRISONERS.**

*The facts:*

Imagine this scene. The jail is three stories high and according to the specifications established by the sheriff himself, a guard is located on each floor. A 19 year old young man has been placed in a cell with two other prisoners. One night because of a lack of

supervision, he was sexually molested by his cellmate. He could not defend himself and this experience caused him irreparable psychological damage, permanent anxiety, a lack of sleep, and sexual confusion. As a result, he sued the sheriff and the jury awarded him \$50,000.00.

*Question:*

*Was the jury's verdict excessive and should the sheriff be responsible for the acts of other prisoners?*

*Answer:*

The verdict of the jury was not excessive and the sheriff was responsible for the sudden attack on the young man, because he should have made sure that supervision was carried out according to established rules. The court judged that the long term suffering, sexual and emotional, to be experienced by the young man was sufficient to render the verdict valid.

### **8- MESSAGE ON A LICENSE PLATE.**

*The facts:*

A couple, both Jehovah witnesses, claimed that the slogan reading "Liberty or Death" stamped on the license plate of their car is an offense to their beliefs. The husband decided to cover the slogan... And found himself in jail for having tampered with the regulations of the state. He alleged that the slogan was contrary to his moral, religious, and political principles.

*Question:*

*Is an automobile driver forced to accept a slogan on the license plate of his car?*

*Answer:*

If you do not like it or if it is against your principles, you are allowed to refuse it. This man won his case in an Appeals Court because the court decided that an ideological message placed on private property hinders freedom of expression.

### **9- SPORTS RISKS.**

*The facts:*

Assume you are a sports fan sitting with other spectators in order to attend a baseball game. At the end of the third inning, a pitcher begins to warm up on the diamond. By chance, a baseball slips through his fingers and hits you on the head causing you discomfort. After giving it some thought you decide to take legal action against the pitcher.

*Question:*

*Can a spectator hold a baseball player or any other athlete criminally responsible?*

*Answer:*

Criminal actions are usually taken up by the "Attorney General" and not by an individual. It is the government representing the people who decides if there is enough basis to sue. There is nothing to stop you however from taking action in civil court for damages which were caused to you. In the future wear a protective hat to baseball games!

### **10- AN EXPENSIVE CUP OF COFFEE!**

*The facts:*

This is an unbelievable case! A judge orders a cup of coffee from a mobile canteen outside the courthouse... He drinks his coffee and he finds it bad! Without wasting time, he arrests the vendor, asks that he be dragged to the court wearing handcuffs in full view of many people. In addition, the vendor is subjected to a vicious interrogation, made up of accusations, insults, and threats. The result, the vendor sues the judge and obtains \$80,000.00 in damages for the mental anxiety which he has experienced and \$60,000.00 in damages for the wrong to which he was subjected.

*Question:*

*Is this verdict exaggerated?*

*Answer:*

American law allows the payment to victims of damages in order to dissuade intimidation by persons in authoritative positions. Not only was the judge condemned to pay, but he was disbarred... All this for a cup of coffee!

### **11- ONE DRINK TOO MANY.**

*The facts:*

A young man, celebrating his twenty-first birthday, goes to a well known bar and drinks ten glasses of rum in less than 90 minutes. This causes blood poisoning and his subsequent death.

*Question:*

*Was the barman responsible for his client's death?*

*Answer:*

The barman was responsible. First, he knew that the young man was not a heavy drinker and still served him very strong alcohol in large quantities. Second, a barman does not need to wait until a client collapses in order to stop serving him. Some good common

sense is required.

## **12- THE BLIND WOMAN AND HER DOG.**

*The facts:*

A blind woman goes to consult a doctor with her guide-dog without whom she could not move around. The doctor refuses to see her as long as the animal is not kept outside, alleging that it would disturb other patients and would render his office unsanitary. The woman insists on keeping her dog; the doctor refusing to see her. He sends her away and does not tell her to see another doctor.

*Question:*

*Did the doctor have the right to expel this woman out of his office with her dog?*

*Answer:*

The doctor caused a great deal of psychological trauma to the woman. In the state of Virginia, the law protects blind people while permitting them to be accompanied by their dog everywhere people are allowed. Since there is a waiting room which is deemed public, and there exists a professional relationship between the patient and her doctor, the doctor should have tolerated the presence of the dog.

## **13- ALIMONY AND REMARRIAGE.**

*The facts:*

A couple in their forties; The husband was a professor at the University of Oregon and had four children. The wife had helped him pursue his studies in order to reach this position. They ultimately decided to divorce and the husband gave his wife and children alimony in the amount of \$1705 per month. A short time after the divorce, she got remarried and our professor thought that he was freed of his financial obligations toward his family and that he no longer had to pay alimony.

*Question:*

*Must the female ex-spouse continue receiving alimony even though she was remarried?*

*Answer:*

She should not worry because her ex-husband must continue making the payments due to the wife's forfeiture of an earlier career opportunity in favor of her obligations as a housewife. The Supreme Court noted that at the time when the couple was married, young women were led to believe that their only duty was that of being a good spouse and good mothers to their family and that their husbands were there to look after their needs. So, this woman, a victim of her generation and one who was never allowed to flourish professionally outside the home, won her case.

***APPENDIX***

**APPENDIX I: Important Dates in American History**

<b>Date</b>	<b>Event</b>
<b>1492</b>	Columbus sails to Caribbean Islands.
<b>1497</b>	John Cabot explores North America from Canada to Delaware.
<b>1513</b>	Juan Fonce de Leon explores Florida.
<b>1524</b>	Giovanni da Verrazano leads French expedition along the east. From Carolina to Nova Scotia, entering New York harbor.
<b>1565</b>	St. Augustine, Florida, is founded.
<b>1579</b>	Francis Drake claims California for Britain.
<b>1586</b>	St. Augustine is destroyed by Francis Drake.
<b>1587</b>	Virginia Dare is the first baby born in America to English parents. The first European settlement in America is established at Jamestown, Virginia.
<b>1609</b>	Henry Hudson explores New York harbor and the Hudson River to Albany; Samuel de Champlain explores Lake Champlain in upstate New York; Spaniards settle Santa Fe, New Mexico.
<b>1619</b>	The first black slaves land at Jamestown, Virginia; the House of Burgesses, the first representative assembly in America, is established in Virginia.
<b>1620</b>	Pilgrims land in Plymouth, Massachusetts; the Mayflower Compact is drafted and signed.
<b>1623</b>	The Dutch found New Netherland (later New York).
<b>1626</b>	Peter Minuit buys Manhattan Island from Native Americans.
<b>1630</b>	The Massachusetts Bay Colony is founded.
<b>1631</b>	Roger Williams, pioneer of religious tolerance, arrives in America.
<b>1634</b>	Maryland is founded as a Catholic colony.
<b>1635</b>	New Hampshire is founded by Captain John Mason; the first public school, the Boston Latin School, is established.
<b>1636</b>	Harvard, the first college in America, is founded; Roger Williams rounds Providence, Rhode Island.
<b>1639</b>	The first constitution in America, is written, the Fundamental Orders of Connecticut.
<b>1647</b>	Margaret Brent is the first woman to claim the right to vote.
<b>1648</b>	The first labor organization in the United States is authorized in the Massachusetts Bay Colony.
<b>1654</b>	The first Jews arrive in New Amsterdam.
<b>1663</b>	The Colony of New Jersey is founded by Sir William Berkeley and Sir George Carteret; the Carolinas are founded.

- 1664** The English capture New Netherland.
- 1682** William Penn founds Pennsylvania.
- 1688** The first formal protest against slavery is made by Pennsylvania Quakers.
- 1692** Nineteen persons (mostly women) are executed for "witchcraft" in Salem, Massachusetts.
- 1712** A slave revolt in New York leads to the execution of 21 blacks, six commit suicide.
- 1731** The first circulating library is founded in Philadelphia.
- 1732** Georgia is founded by James Oglethorpe and others; Benjamin Franklin publishes the first *Poor Richards Almanac*.
- 1741** The second slave uprising takes place in New York; 13 are hanged, 13 burned, and 71 deported.
- 1749** Black slavery is legalized in Georgia.
- 1754** The French and Indian War begins.
- 1758** The first Indian reservation is established.
- 1763** The French and Indian War ends.
- 1764** The Sugar Act places duties on lumber, foodstuffs, molasses, and rum in the colonies.
- 1765** Passage of the Stamp Act by Britain leads to the Declaration of Rights, signed by nine colonies opposed to taxation without representation.
- 1766** Britain repeals the Stamp Act.
- 1767** The Townshend Acts levy taxes on glass, painter's lead, paper, and tea.
- 1770** Five colonists are killed in the Boston Massacre.
- 1773** The Boston Tea Party takes place.
- 1774** The Intolerable Acts passed by Parliament curtail Massachusetts' self-rule and bar the use of Boston Harbor until payment is made for tea.
- 1775** The American Revolution begins with the battles of Lexington and Concord.
- 1776** France and Spain each donate 1 million pounds in arms to America; the Declaration of Independence is drafted and signed; Nathan Hale is executed by the British as a spy; the first fraternity, Phi Beta Kappa, is founded at the College of William and Mary; the Journeymen Printers' Strike is the first in the United States.
- 1777** The Continental Congress adopts a flag with stars and stripes; Washington defeats Lord Cornwallis at the battle of Princeton; Major General John Burgoyne captures Fort Ticonderoga, but American defeat him at Saratoga.
- 1778** France agrees to assist the United States and sends a fleet; the British evacuate Philadelphia.
- 1779** George Washington orders a military campaign against the Iroquois.

- 1780** Benedict Arnold is discovered to be a traitor and escapes to the British.
- 1781** Colonial and French armies defeat the British at Yorktown, the last major battle of the Revolutionary War.
- 1783** The Revolutionary War ends with a treaty.
- 1784** The first daily newspaper, *Pennsylvania Packet* and *General Advertiser*, is published in Philadelphia
- 1787** The Constitutional Convention begins in Philadelphia.
- 1788** New Hampshire ratifies the Constitution, thereby putting it in effect.
- 1789** George Washington is chosen as first President; John Adams, Vice President; Thomas Jefferson, Secretary of State; and Alexander Hamilton, Secretary of the Treasury.
- 1790** Congress meets in Philadelphia, the temporary capital, and votes to round a new capital on the Potomac River; the United States signs the first treaty with the Iroquois.
- 1791** The Bill of Rights goes into effect; Vermont is the first state to enter the Union after the original 13 colonies.
- 1793** The invention of the cotton gin by Eli Whitney revives slavery in the South.
- 1794** Suppression by the U.S. militia of the Whiskey Rebellion, in which farmers protest the liquor tax of 1791, established the authority of the new federal government.
- 1800** John Brown, abolitionist, is born.
- 1801** Tripoli declares war on the United States.
- 1803** The Supreme Court declares an act of Congress unconstitutional in the landmark case *Marbury v. Madison*; the United States buys the Louisiana Territory from Napoleon, doubling its land holdings.
- 1804** President Jefferson orders the Lewis and Clark expedition to explore the northwest; Vice President Aaron Burr and Alexander Hamilton duel; Hamilton dies the next day.
- 1805** Conflict with Tripoli ends.
- 1808** The importation of slaves is outlawed (about 250,000 slaves are illegally imported between 1808 and 1860).
- 1810** Margaret Fuller, feminist and transcendentalist, is born.
- 1811** Harriet Beecher Stowe is born.
- 1812** The War of 1812 begins.
- 1814** The War of 1812 ends with the Treaty of Ghent.
- 1815** Florida is ceded to the United States by Spain; Elizabeth Cady Stanton, suffragist, is born.
- 1816** The first savings bank is established in Boston, the Provident Institute for Savings.



- 1817** Black abolitionist Frederick Douglass is born.
- 1818** Lucy Stone, feminist theorist, is born.
- 1820** Susan B. Anthony, suffragist and abolitionist, is born.
- 1821** Elizabeth Blackwell, the first U.S. woman physician, is born; Missouri is admitted to the Union as a slave state; Troy Female Seminary, the first women's college in the United States, is founded by Emma Willard.
- 1825** The Erie Canal is opened, cutting travel time from New York City to Buffalo and the Great Lakes by one-third.
- 1827** *Freedom's Journal*, the first black U.S. newspaper, is published.
- 1828** The first Native American newspaper, *Cherokee Phoenix*, begins publication.
- 1829** The first school for the blind is incorporated in the United States.
- 1830** Mary Marris (Mother) Jones is born; President Jackson signs the Indian Removal Act.
- 1831** Nat Turner leads a slave rebellion in Virginia.
- 1832** The first meeting of the New England Anti-Slavery Society is held; Overlin College, Ohio, becomes the first college to establish coeducation.

**APPENDIX II: Selected U.S. Embassies and Consulates**

<b>COUNTRY</b>	<b>CITY</b>	<b>ADDRESS</b>
<b>Antigua</b>	St-John (E)	FPO Miami 34054 Tel: (809) 462-3505/06 Telex: 2140 USEMB Fax: (809)562-3516
<b>Australia</b>	Caberra (E)	FPO Miami 34054 Tel: (809) 462-3505/06 Telex: 2140 USEMB Fax: (809)562-3516

**APPENDIX III: Directory of Immigration and Naturalization Service Offices**

<b>CITY</b>	<b>ADDRESS</b>
Albany Suboffice	Post Office & Courthouse Bldg. 445 Broadway, Room 220 Albany, NY 12207
Albuquerque Suboffice	517 Gold SW Ave., Room 1114 Albuquerque, NM 87103

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### ABOUT THE AUTHOR

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