

7 FAM 600 PROPERTY, CLAIMS AND RELATED MATTERS

7 FAM 610 INTRODUCTION

*(CT:CON-103; 05-02-2005)
(Office of Origin: CA/OCS/PRI)*

7 FAM 611 SUMMARY

(CT:CON-103; 05-02-2005)

- a. **Protection of Property:** U.S. citizens/non-citizen nationals regard property ownership interests in foreign countries as deserving of protection and therefore a U.S. interest. The U.S. owner may be an individual, a partnership, an estate or trust, a corporation, or other entity organized under the laws of a state of the United States. In some cases, such as when U.S. citizens own more than 50 percent of a foreign corporation, U.S. ownership interests are substantial and warrant consular attention and protection.
- b. **Currency and Exchange Requirements:** You should establish a working relationship with foreign officials to obtain information that would apply to U.S. citizens/non-citizen nationals who are interested in opening or closing a local bank account. Some countries tightly control hard currency remitted through banking channels. Some countries may also require a U.S. citizen/non-citizen national who wishes to reside there to report the acquisition of assets in the United States or a third country.
- c. **When Banks Fail:** The U.S. Government sympathizes with individuals and companies who are unable to withdraw deposits due to a bank failure. Bank deposits and other investments in foreign financial institutions are subject to local law. They are not afforded the legal protections of U.S. domestic law. The U.S. Government will not intervene in or otherwise attempt to influence actions by a foreign government or a private foreign banking institution that affect U.S. investments or deposits if those actions are within the scope of that country's laws, are not

unreasonable and discriminatory with respect to U.S. depositors, and are otherwise consistent with international law. If U.S. depositors believe they are entitled to legal redress, it is their responsibility to pursue all available local remedies. The U.S. embassy will monitor the situation in accordance with international law, and provide depositors with any information that might be helpful.

- d. **Estate of Deceased U.S. Citizens:** See 7 FAM 200 Personal Estates of Deceased U.S. Citizens for guidance about the consular responsibility in estate matters and 7 FAM 700 regarding estates of seamen.
- e. **Restrictions on Acceptance of Private Property for Safekeeping:** All consular personnel should be aware of the limited circumstances in which you may accept property owned or claimed by U.S. citizens for safeguarding. (Personal effects of deceased U.S. citizen or seaman; Disaster at sea.) You should not accept private property for safeguarding, even in a situation that appears to be a public emergency, without the prior approval of the Department (CA/OCS/ACS). See 7 FAM 620 Accepting Private Property for Safekeeping.
- f. **Property and Prisoners:** See also 7 FAM 423.8 Protecting Prisoners' Personal Property, 7 FAM 485.4 Prisoner Transfer Personal Effects and 7 FAM 1626.3 Extradition: Disposition of Articles Seized at Time of Arrest.
- g. **What You Can Do:** Generally, protective services that you may perform for U.S. citizens include:
 - (1) Providing a list of attorneys, which should also be available on your post web page (see 7 FAM 990);
 - (2) Referring a case to the proper local officials; and
 - (3) Facilitating communication when a citizen reports having difficulty in learning the status of an ongoing case.
- h. **What You Cannot Do:** You should not act as an agent, attorney, or in a fiduciary capacity. See 22 CFR 92.81. You should not participate directly in judicial proceedings, unless authorized by the Department (CA/OCS/ACS, L/CA (U.S. domestic proceedings) and L/DL (foreign proceedings) as appropriate. See 22 CFR 172, 7 FAM 980 and 2 FAM 500. Posts may observe foreign proceedings as appropriate.
- i. **Responsibility of Property Owner:** U.S. citizens/non-citizen nationals who own property abroad and who thereby have assumed responsibilities concurrent with ownership of property in a foreign country should take steps on their own initiative to safeguard their interests and to employ private legal counsel when the need arises.

- j. **International Claims:** If it appears that a U.S. citizen has been denied access to judicial remedies for establishing or protecting property rights or may otherwise be a victim of discriminatory treatment, you should bring the matter to the attention of CA/OCS, EB/IFD/OIA and L/CID. See 1 FAM 246.7.

7 FAM 612 AUTHORITIES

(CT:CON-103; 05-02-2005)

Responsibility for protection of property and related interests is derived from a variety of treaties, laws, and regulations.

a. TREATIES

- (1) Vienna Convention on Consular Relations (VCCR). The VCCR is the framework for consular rights and responsibilities. See Treaties in Force on the Department of State Internet page to confirm whether the VCCR is in force between the United States and the host country.

Vienna Convention on Consular Relations ...

Article 5(a) - Protecting the interests of the United States and its nationals, both individuals and corporate bodies;

Article 5(e) - Helping and assisting nationals, both individuals and corporate bodies;

Article 5(g) - Safeguarding the interests of nationals in cases of succession;

Article 36 (a) - Communication with nationals;

Article 37 - Information concerning deaths, trusteeships, shipwrecks and air accidents.

- (2) **Bilateral Consular Conventions:** There are a variety of bilateral consular conventions in force between the United States and other countries. See Treaties in Force on the Department of State Internet page to confirm whether there is such a treaty, convention or agreement between the United States and the host country. See the CA/OCS Intranet treaties feature and CA Internet bilateral consular treaties feature for the texts of bilateral consular conventions.

- (3) **Bilateral Treaties on Stolen Vehicles, Vessels and Aircraft:** These treaties establish procedures for the recovery and return of vehicles and aircraft stolen or embezzled in one country and found in the territory of another. Review the bilateral section of Treaties in Force on the Department of State Internet page to confirm whether such a treaty, convention, or agreement exists between the United States and the host country. See 7 FAM 650. See the CA/OCS Intranet treaties feature for the texts of these agreements.
- (4) **Other Treaties, Conventions and Agreements:** Many treaties dealing with friendship, commerce, navigation, civil aviation, real and personal property, cultural property, maritime matters, taxes, and claims include protections for U.S. citizens owning or possessing property abroad. Some of these treaties include provisions designed to prevent discrimination against U.S. citizens. See the bilateral section of Treaties in Force on the Department of State Internet page. See the CA/OCS Intranet treaties feature for the text of these agreements.

b. **Key U.S. Laws**

Disaster At Sea	
46 U.S.C. 721	Vessels Stranded on Foreign Coasts

c. **Key U.S. Regulations**

U.S. Regulations Related to Property Abroad	
22 CFR Part 71	Protection and Welfare of Citizens and Their Property
22 CFR 71.5	Storage Or Safekeeping Of Private Property
22 CFR Part 102	Civil Aviation
22 CFR 102.14	U.S. Aircraft Accidents Abroad Salvage of Mail and Other Property
22 CFR 102.15	U.S. Aircraft Accidents Abroad; Protection and Preservation of Wreckage
19 CFR 123.82	Treatment of Stolen Vehicles Returned From Mexico

7 FAM 613 ACTION OFFICE RESPONSIBILITIES

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- a. **Summary:** Various sections of U.S. embassies and consulates abroad have certain responsibilities related to property issues. The consular section is generally the action office for non-commercial property assistance requests for private U.S. citizens. A number of functional bureaus and offices in the Department of State also have an interest in the protection of property issues. In addition, the geographic desks may play a role in specific property cases that have political, economic, or legal implications. Posts should keep the Department advised of relevant property related issues, using appropriate tags and terms in reporting telegrams. See 5 FAH-3 Tags and Terms Handbook.

TAG	TERM
CASC	Assistance to Citizens
EAIR	Civil Aviation
EINV	Foreign Investments
KIPR	Intellectual Property Rights
KIDE	Investment Disputes and Expropriations

- b. **Bureau of Consular Affairs, Overseas Citizens Services:** The Directorate of Overseas Citizens Services (CA/OCS) is the action office in the Department for most cases that involve the protection of private property of private U.S. citizens. OCS reviews property protection issues and problems to assure effective policy and support services. Posts should address inquiries to the appropriate geographic division of the Office of American Citizens Services and Crisis Management (CA/OCS/ACS), using CASC TAG for telegrams about property. Direct questions concerning international agreements related to stolen vehicles, vessels and aircraft to CA/OCS’s Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), which will coordinate with the geographic desks and the Office of the Legal Adviser as appropriate. You may also contact ASKPRI@state.gov, which is monitored daily.

c. **Office of the Legal Adviser**

Various offices in the Office of Legal Adviser (L) have responsibilities for property related matters. See 1 FAM 240.

- (1) **L/EB - The Office of the Assistant Legal Adviser for Economic and Business Affairs** provides general legal advice on United States policy and relations in such matters as trade, investment, debt, civil aviation, maritime, intellectual property, international financial institutions, and economic sanctions.
- (2) **L/PD - The Office of the Assistant Legal Adviser for Public Diplomacy and Public Affairs** administers the Immunity from

Judicial Seizure statute, which protects from seizure under judicial process certain objects of cultural significance imported into the United States for a temporary display or exhibition.

- (3) **L/CID - The Office of the Assistant Legal Adviser for International Claims and Investment Disputes** provides legal advice and representation, and coordinates Department activities with respect to all aspects of international claims and investment disputes, including:
- (a) Claims under international law by the United States and U.S. nationals against foreign governments, including questions of domestic and international law and standards of compensation; expropriation; other international property and investment disputes;
 - (b) Claims under the investment chapter of the North American Free Trade Agreement (Chapter Eleven);
 - (c) Claims against foreign states of the Overseas Private Investment Corporation under the dispute provisions of bilateral investment guarantee and investment incentive agreements;
 - (d) Claims against the United States, and state-to-state claims against foreign states for “espousable” claims, under the dispute provisions of bilateral and other investment agreements and the investment provisions of free trade agreements;

Espousable: In certain cases where a U.S. investor with a claim against a foreign government has exhausted local remedies (or demonstrated their futility), the investor's claim against a foreign state may be "espoused" by the U.S. Government. A claim is espoused when the Department (L/CID) makes the claim the subject of a formal claim for reparation to be paid to the United States by the foreign government responsible for the injury. The decision to espouse is wholly within the discretion of the U.S. Government; since espousal represents only a final stage in the resolution of a claim, it is often unnecessary and therefore rare. In addition to the requirement that an investor generally have exhausted local remedies first, international law allows espousal of investment claims only when the other state has violated the investor's rights under international law and when the investor was a U.S. national

at the time of the injury and continuously thereafter.

and

(e) Promotion of international investment dispute settlement machinery and related issues in bilateral or multilateral fora.

(4) **L/LEI – The Office of the Assistant Legal Adviser for Law Enforcement and Intelligence**, provides legal advice and services on international aspects of law enforcement matters, including the international extradition of fugitives, legal assistance in the administration of justice in criminal matters, and illicit or questionable payments by U.S. firms in connection with international commercial transactions. L/LEI provides guidance about the stolen vehicle and aircraft treaties.

d. **Bureau of Economic and Business Affairs (EB)**: The Bureau of Economic and Business Affairs (EB) formulates and carries out U.S. foreign economic policy, integrating U.S. economic interests with our foreign policy goals so that U.S. firms and investors can compete on an equal basis with their counterparts overseas. Consular Affairs coordinates with a variety of offices in EB, including:

- (1) The Bureau of Economic and Business Affairs, **Office of Commercial and Business Affairs (EB/CBA)**, which plays a major role in coordinating trade and investment matters to support U.S. firms doing business overseas.
- (2) The Bureau of Economic and Business Affairs, **Transportation Affairs Division (EB/TRA)**, which has two offices: the Office of Aviation Negotiations and the Office of Transportation Policy.
- (3) The Bureau of Economic and Business Affairs, **Office of Investment Affairs (EB/IFD/OIA)**, which develops and carries out U.S. policy on international investment matters, in cooperation with other agencies.

7 FAM 614 OTHER U.S. GOVERNMENT AGENCY RESPONSIBILITIES

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We receive numerous inquiries from U.S. citizens about property-related matters that involve the functions of other U.S. Government agencies. You are not expected to furnish authoritative information on property-related

matters beyond the scope of consular duties and responsibilities, but you should be aware of the Federal agency to which the matter should be referred. For a list of these agencies and summary of their basic functions, see the table below.

U.S. Agencies With Property Related Functions	
Federal Aviation Administration	Maintains records of all aircraft registered in the United States. See FAA Interactive Aircraft Inquiry site.
Treasury Department, Office of Foreign Assets Control (OFAC)	Administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals. Imposes controls on transactions and freezes foreign assets under U.S. jurisdiction.
U.S. Customs Service and Border Protection (CBP), U.S. Department of Homeland Security	U.S. Customs and Border Protection serves at the nation’s ports of entry and provide the American public, travelers and the international trade community with “one face at the border.”
U.S. Patent and Trademark Office, Department of Commerce	Handles patent and trademark related matters.
U.S. Copyright Office	Handles copyright related matters.
Department of Commerce	Assists U.S. businesses.
Justice Department, Foreign Claims Settlement Commission	Adjudicates claims of U.S. nationals against foreign governments, either under specific jurisdiction conferred by Congress or pursuant to international claims settlement agreements. See 45 CFR 500-599.
Securities and Exchange Commission	Protects the interests of the public and investors against malpractices in the securities and financial markets.
Overseas Private Investment Corporation (OPIC)	Helps U.S. businesses invest overseas.
National Transportation Safety Board (NTSB)	The National Transportation Safety Board investigates every civil aviation accident in the United States and significant accidents in the other modes of transportation - railroad, highway, marine and

	pipeline - and issuing safety recommendations aimed at preventing future accidents. See 49 U.S.C. Chapter 11.
U.S. Coast Guard National Vessel Documentation Center	Vessel documentation.

7 FAM 615 REPORTING REQUIREMENTS ABOUT PROPERTY

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- a. In addition to the case-specific consular reporting described in 7 FAM 613b, U.S. embassies and consulates are required to provide input for the annual report to Congress required by the “Helms Amendment” of April 30, 1994, Section 527 of FY 1994-1995 Foreign Relations Authorization Act. EB/IFD/OIA sends instructions to economic and commercial sections of U.S. embassies and consulates each year about the reporting requirement.
- b. The economic and commercial section is responsible for contributions to the annual report to Congress on investment disputes in foreign countries, mandated by the “Helms Amendment”. The Helms Amendment prohibits bilateral assistance, and requires the President to instruct the U.S. Executive Directors of multilateral development banks and international financial institutions to vote against financial assistance (except humanitarian) to any country whose authorities have:
 - (1) Nationalized or expropriated the property of “any U. S. person.”
 - (2) Repudiated or nullified any contract with any United States person.
 - (3) Taken any other action that has the effect of seizing ownership or control of the property of any United States person.

A “**U.S. person**” means a U.S. citizen or corporation, partnership, or association not less than 50 percent beneficially owned by United States citizens or corporations.

- c. Unless, within three years after the date on which the claim was filed, the authorities have:
 - (1) Returned the property;
 - (2) Provided adequate and effective compensation;

- (3) Offered a domestic procedure providing prompt, adequate and effective compensation in accordance with international law; or
- (4) Submitted (or offered to submit) the dispute to binding international arbitration.

7 FAM 616 CRIMINAL LAWS REGARDING PROPERTY MATTERS

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Certain acts against property come within the scope of U.S. criminal law. CA/OCS coordinates closely with L/LEI and the U.S. Department of Justice, Criminal Division on a variety of property related issues. At post, you may find yourself working closely with U.S. law enforcement authorities on these matters. Also, see 7 FAM 650.

See ...Selected Criminal Laws and Related Material

- 18 U.S.C. 956 Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country;
- 18 U.S.C. 2313 Sale or Receipt of Stolen Vehicles;
- 9 U.S. Attorneys Manual, Criminal Resource Manual 14, Conspiracy Within the United States to Damage Certain Property Overseas;
- 9 U.S. Attorneys Manual, 9-61.000 Crimes Involving Property; and
- 9 U.S. Attorneys Manual, Criminal Resource Manual 1300-1377 Motor Vehicle and Aircraft Theft.

7 FAM 617 THROUGH 619 UNASSIGNED