

EB 5 Attorney Retainer Agreements Explained

A comprehensive guide from EB5 Attorneys

Before any legal work begins on your EB 5 case, your attorney will present a retainer agreement (also called an engagement letter) that defines the terms of representation. This document governs the entire attorney client relationship, including what services the attorney will perform, how much you will pay, and what happens if things go wrong. Understanding every clause before you sign is essential.

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What a Retainer Agreement Is and Why It Matters

A retainer agreement is a binding contract between you and your attorney that establishes the terms of the legal representation. In EB 5 cases, where legal fees often range from \$15,000 to \$50,000 or more and the underlying investment is at least \$800,000 (TEA) or \$1,050,000 (non TEA) as of April 2026, the retainer agreement carries significant financial weight. The agreement serves several purposes under state bar rules. It satisfies the ethical requirement that fee agreements be clearly communicated to the client (see ABA Model Rule 1.5, which requires that the basis or rate of the fee be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation). It defines the scope of the attorney's obligations, preventing misunderstandings about what is and is not included. It establishes the payment schedule and terms. And it provides a framework for resolving disputes if they arise. Many EB 5 investors, particularly those from countries where legal fee structures differ significantly from U.S. practice, are unfamiliar with the American retainer agreement format. Some investors sign the agreement without reading it carefully, only to discover later that certain services they expected were not included. This guide helps you read, understand, and negotiate the retainer agreement so that you enter the attorney client relationship with clear expectations.

Scope of Services: What Is and Is Not Included

The scope of services clause is the most important section of the retainer agreement. It defines exactly which legal services the attorney will provide and, equally important, which services are excluded. A well drafted scope of services clause for an EB 5 case should specify whether the engagement covers: preparation and filing of the I 526E petition (Form I 526E, currently filed with a \$3,675 filing fee as of April 2026); source of funds analysis and documentation; review of the business plan and economic impact study; response to Requests for Evidence (RFEs) from USCIS; preparation and filing of the I 485 adjustment of status application (if applicable); consular processing support (if applicable); preparation and filing of the I 829 petition to remove conditions on residence; and representation in any administrative appeals. Many retainer agreements cover only the I 526E petition preparation and filing, with RFE responses, adjustment of status, consular processing, and I 829 filing treated as separate engagements with additional fees. This is a common and legitimate practice, but you must understand the boundaries before signing. If the agreement is ambiguous about whether a specific service is included, ask for clarification in writing before you sign. Do not assume that any service not explicitly listed is included. Common exclusions that catch investors by surprise include: representation before the Administrative Appeals Office (AAO) if the petition is denied; litigation in federal court; tax advisory services; securities law advice; and translation of documents.

Fee Schedule and Payment Terms

The fee section of the retainer agreement specifies how much you will pay and when payments are due. EB 5 retainer agreements typically use one of three fee structures: flat fee, hourly billing, or a hybrid that combines elements of both. A flat fee arrangement means you pay a fixed amount for defined services. This is the most common structure for I 526E petition preparation, with fees typically ranging from \$15,000 to \$25,000 for the initial petition. The advantage of a flat fee is predictability: you know the total cost upfront. The disadvantage is that if your case proves more complex than anticipated, the attorney has already committed to the price and may be less inclined to invest additional time. An hourly billing arrangement means you pay for the attorney's time at an agreed upon rate, typically \$300 to \$750 per hour for experienced EB 5 attorneys. Hourly billing is more common for complex cases, RFE responses, or matters that are difficult to scope in advance. The advantage is that you pay only for the work actually performed; the disadvantage is that costs are unpredictable. A hybrid arrangement might include a flat fee for the I 526E petition preparation plus hourly billing for any RFE responses or additional work beyond the defined scope. The retainer agreement should also specify: the payment schedule (full upfront, or installments tied to milestones); whether the retainer is refundable if you terminate the engagement before work is complete; how USCIS filing fees and other costs (translations, document procurement, courier fees) are handled, whether included in the fee or billed separately; and the method of payment accepted.

Withdrawal and Termination Provisions

Both you and the attorney have the right to end the representation under certain circumstances. The retainer agreement should specify the terms for withdrawal by the attorney and termination by the client. Under ABA Model Rule 1.16, an attorney must withdraw from representation if the representation will result in a violation of law or ethical rules, or if the attorney's physical or mental condition materially impairs the ability to represent the client. An attorney may withdraw if the client fails to pay fees as agreed, the client insists on pursuing an objective the attorney considers unreasonable, or the client fails to cooperate with reasonable requests for information or documents. From the client's perspective, you have the right to terminate the representation at any time, for any reason. However, the financial consequences of termination depend on the retainer agreement terms. Key questions to ask about termination provisions: If I terminate the engagement before the I 526E is filed, what portion of my fee is refundable? If the attorney withdraws, what happens to the work product they have already prepared? How will my file and documents be transferred to a new attorney? Is there a minimum notice period required for termination? Are there any penalties or fees associated with early termination? Some retainer agreements include provisions that are overly favorable to the attorney, such as non refundable "earned upon receipt" clauses that make the entire fee non refundable regardless of how much work has been performed. While such clauses are not necessarily unenforceable, they are one sided, and you should negotiate them if possible. A fair arrangement refunds fees proportional to work not yet performed.

Conflict of Interest Disclosures

Conflict of interest issues are particularly common in EB 5 practice because of the multiple parties involved: the investor, the regional center, the new commercial enterprise, the job creating entity, and sometimes immigration agents or facilitators who referred the client. Under ABA Model Rule 1.7 (concurrent conflicts of interest) and Model Rule 1.8 (specific conflict rules), an attorney must disclose any conflicts and obtain informed written consent from the affected clients before proceeding with representation. In the EB 5 context, the most significant conflict arises when the same attorney or law firm represents both the investor (the I 526E petitioner) and the regional center or new commercial enterprise. The investor's interests and the regional center's interests are not always aligned. The investor wants to ensure the project will create sufficient jobs and that the investment is properly structured; the regional center wants to raise capital and may minimize risks. An attorney representing both sides may be unable to provide fully independent advice to either. Your retainer agreement should clearly state: who the attorney represents (you, the investor, and only you); whether the attorney has any relationship with the regional center, new commercial enterprise, or any referral agent; whether the attorney receives referral fees, commissions, or other compensation from any party other than you; and whether you consent to any identified conflicts. If the retainer agreement does not address conflicts, ask the attorney directly. If the attorney represents the regional center and also wants to represent you, carefully consider whether you are comfortable with that arrangement. In many cases, the better practice is to retain independent counsel who has no financial or professional relationship with the regional center.

Communication Expectations and Reporting

Clear communication expectations prevent frustration and misunderstandings during what is often a multi year legal process. The retainer agreement should address how and when the attorney will communicate with you about your case status. Under ABA Model Rule 1.4, an attorney must promptly inform the client of any decision or circumstance requiring the client's informed consent, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information. Practical communication provisions to look for or negotiate include: the primary method of communication (email, phone, secure client portal); expected response times for client inquiries (24 hours, 48 hours, one business week); whether the attorney will provide periodic status updates even when there is no new development; which attorney or staff member will be your primary point of contact; and how the attorney will handle urgent matters that arise outside normal business hours. Some retainer agreements specify that routine communications will be handled by paralegals or associate attorneys rather than the lead attorney. This is common and often appropriate for day to day questions, but you should understand who is actually managing your case and who will handle critical decisions. If the retainer agreement is silent on communication, raise it before signing. EB 5 cases can take two or more years from filing to conditional green card, and you should not have to wonder whether your attorney is paying attention to your case.

Document Retention and File Return

Your EB 5 case file will contain highly sensitive personal, financial, and legal documents, including tax returns, bank statements, business records, identity documents, and immigration forms. The retainer agreement should address how these documents will be stored and what happens to them when the representation ends. Key provisions to look for include: how long the attorney will retain your file after the engagement concludes; how documents will be stored (physical files, electronic systems, cloud based platforms) and what security measures protect them; your right to obtain copies of your file during and after the representation; whether original documents will be returned to you after filing; and how documents will be destroyed when the retention period expires. Under the ethical rules of most states, clients have the right to their file, and an attorney cannot withhold client documents as a pressure tactic to collect unpaid fees. However, the specifics vary by jurisdiction. If your retainer agreement does not address document retention, ask the attorney to add provisions covering these points. For EB 5 cases specifically, the importance of document retention extends beyond the initial I 526E filing. Your conditional residence period lasts two years, and you will need to file an I 829 petition (Form I 829, currently with a \$3,750 filing fee as of April 2026) to remove conditions. Many of the same documents used in the I 526E will be needed for the I 829, sometimes years later. Ensure your attorney's retention policy covers this timeline.

Malpractice Insurance and Professional Liability

Professional liability insurance (malpractice insurance) protects you if the attorney makes an error that causes you financial harm. Not all states require attorneys to carry malpractice insurance, but given the financial stakes in EB 5 cases, you should strongly prefer an attorney who maintains adequate coverage. Ask the attorney directly: Do you carry professional liability insurance? What are the coverage limits? Does the policy cover immigration law matters, including EB 5 representation? The retainer agreement may or may not address malpractice insurance. If it does not, raise the question during your consultation. An attorney who handles cases involving \$800,000 or more in client investment capital should carry coverage sufficient to address potential claims arising from errors in petition preparation, missed deadlines, or negligent advice. Some states (such as Oregon and Idaho) require attorneys to carry malpractice insurance or disclose to clients that they do not. Other states have no such requirement. Regardless of your state's rules, knowing whether your attorney is insured provides an additional data point about their professionalism and risk management practices.

What to Negotiate Before Signing

A retainer agreement is a contract, and like any contract, it is negotiable. Many investors accept the attorney's standard form without discussion, but experienced clients negotiate terms that better protect their interests. Provisions worth negotiating include: a partial refund clause if you terminate the engagement before significant work is performed; a cap on hourly fees or a not to exceed estimate for services billed by the hour; inclusion of at least one RFE response within the flat fee for I 526E preparation; a clear timeline for when the attorney will complete major milestones (initial review, document request, petition drafting, filing); a provision requiring the attorney to notify you in writing if they believe the case has a material issue that could affect approval; and mutual termination rights with reasonable notice periods. The attorney may not agree to all your requests, and some provisions are standard for good reasons. But the willingness of an attorney to discuss and adjust their retainer agreement terms is itself informative. An attorney who refuses to discuss any modifications, or who pressures you to sign immediately, may not be the collaborative partner you need for a multi year legal process. Take the retainer agreement home, review it carefully, and come back with questions. A legitimate attorney will welcome an informed, engaged client.

Frequently Asked Questions

1. Is the retainer fee the same as the total cost of my EB 5 case?

Usually not. The retainer fee typically covers the attorney's legal fees for specific services (such as I 526E petition preparation), but it does not include USCIS filing fees (\$3,675 for I 526E as of April 2026), translation costs, document procurement expenses, or fees for services outside the defined scope (such as RFE responses, adjustment of status, or I 829 filing). Ask your attorney for a complete estimate of all anticipated costs, not just the legal fee.

2. Can I get my retainer fee back if I decide not to proceed?

It depends on the terms of the retainer agreement and the amount of work already performed. Most agreements provide for a partial refund if you terminate before the attorney has performed substantial work. Some agreements designate the fee as non refundable or earned upon receipt, which means the attorney considers the entire fee earned when you sign. Negotiate this point before signing. A fair agreement refunds the portion of the fee attributable to work not yet performed, calculated at a reasonable rate.

3. What if my attorney also represents the regional center?

This creates a potential conflict of interest that the attorney must disclose and that you must consent to in writing under ABA Model Rule 1.7. When the same attorney represents both the investor and the regional center, the attorney may be unable to advise you objectively about risks associated with the regional center's project. Many experienced EB 5 practitioners recommend retaining independent counsel who has no relationship with the regional center so that your attorney's loyalty is undivided.

4. Does the retainer agreement cover the I 829 petition to remove conditions?

In most cases, no. The I 829 petition is typically filed approximately two years after the investor receives conditional permanent residence, which may be three to five years after the initial retainer agreement is signed. Most attorneys treat the I 829 as a separate engagement with its own retainer agreement and fee. When reviewing your initial retainer agreement, check whether the I 829 is specifically mentioned in the scope of services section.

5. How should USCIS filing fees be handled in the retainer agreement?

USCIS filing fees are government charges separate from attorney fees. Some retainer agreements include filing fees in the quoted price; others bill them separately. As of April 2026, the I 526E filing fee is \$3,675, the I 485 adjustment of status filing fee is \$1,440 (plus \$85 biometrics fee), and the I 829 filing fee is \$3,750. Clarify whether these amounts are included in or in addition to the attorney's legal fee. Also confirm how the fees will be paid: whether you pay USCIS directly or the attorney pays and bills you.

6. What happens to my case file if I switch attorneys?

Under the ethical rules of virtually every state, your attorney must provide your file to you or your new attorney upon request, even if you owe the attorney money for unpaid fees. The attorney cannot hold your file hostage. Your retainer agreement may address the logistics of file transfer, including whether the attorney will provide copies or originals and the format of electronic files. When transitioning, request a complete copy of your file, including all correspondence with USCIS, work product, and copies of filed documents.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

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