

MAKING FLORIDA YOUR DOMICILE

While a person may have more than one residence, theoretically a person may have only one domicile. The process of establishing a Florida domicile can be complex as well as elusive. Many individuals are under the mistaken impression that if they purchase a home in Florida and send out address change cards they are officially Florida residents and have fulfilled all the requirements for relinquishing residency in their former state, however, many more steps need to be taken.

Establishing a Florida domicile can be obtained by choice, however, two necessary elements must be met. First, there must be physical presence which can be met by owning or leasing a residence in Florida. The more permanent the relationship is with Florida the stronger a case can be made. The second element, "intent" is subjective. The burden of proof is on the person declaring domicile to show that Florida is the center of the person's social, economic as well as civic activity.

In many instances the issue is not the steps an individual has taken to become a Florida resident, but rather the steps that an individual has taken to divorce him or herself from their northern abode. Many northern states have lost substantial sums of both income tax as well as estate and revenue as a direct result of part time Florida residents declaring Florida their domicile. Accordingly, many states have established criteria placing the burden of proof on the party declaring Florida as their domicile. At a minimum it is strongly recommended that the following steps be taken if an individual with two residences seeks to declare Florida their domicile.

- A) File Declaration of Domicile with the Clerk of Court in the Florida county where one resides.
- B) Obtain Florida drivers license, Florida vehicle registration and voters registration card.
- C) If you own property in Florida, file for a Homestead Exemption in the county in which you reside.
- D) Transfer securities, bank accounts, brokerage accounts and similar investments to institutions located in Florida.
- E) Transfer valuables from safety deposit boxes in the former state to a safety deposit in Florida. (Courts have held the location of a person's safety deposit to be a critical factor in determining domicile).
- F) Establish wills, trusts, health care declarations and durable powers of attorney which recite Florida domicile.
- G) Change affiliations with religious and social organizations to Florida and seek to request non-resident status with organizations maintained in the former state of domicile.
- H) Transfer family possessions, heirlooms and collections to the residence in Florida since it is assumed those items would be kept at a permanent home.

I) File the Federal Income Tax showing Florida as your address and affirmatively state on your last return in your former state that it was your final return for that state. It is beneficial to notify the Internal Revenue Service by certified mail that you have changed your address.

J) File Florida Intangible Personal Property Tax returns by June 30th.

K) Change addresses for credit cards, charge accounts, corporations partnerships to your Florida address.

L) Establish relationships with Florida doctors, attorneys, accountants, and insurance agents.

M) Make sure that you spend more than six months away from your residence up north and seek to be able to document the time spent in Florida if need be through a travel log and/or charge receipts.

N) Direct that paychecks, interest and dividend checks be mailed to Florida.

The key issue is that northern states look beyond whether Florida domicile has been declared and look directly to see if the client has effectively abandoned their northern domicile. As a result, it has become increasingly complex to defensively plan to limit or avoid exposure to income tax and estate tax laws of northern states. In many instances red flags are raised at the time of death of Florida residents who otherwise own northern property.

Seeking to localize a Florida resident's affairs through various instruments may effectively reduce the possibility that an estate tax will be claimed. Suggestions include: Revocable Trusts, Limited Liability Companies, Irrevocable Trusts, and Offshore Trusts. In these circumstances the northern real property may be reduced to personal property held and owned in the state of Florida, thereby eliminating the need for tax clearance letters from the northern state.

In summary, careful planning must be given including spousal rights for new residents seeking to declare Florida their domicile.