

Atlantic Trust White Paper

2009

Moving to Florida

Sun, sand, and the beach might be enough to lure you to move to the Sunshine state. Add in no state income tax, state estate tax and the recent repeal of the Florida Intangibles Tax, and Florida is an even more attractive destination if you are looking to relocate. Once you have decided to make the move to Florida, you should work closely with your attorney or tax advisor to be certain that you have effectively changed your domicile to Florida so that you may benefit from these favorable tax laws.

The Wealth Strategies Group at Atlantic Trust integrates estate, financial and investment planning through sophisticated assessment of goals to achieve multigenerational capital preservation, family business continuity and strategic philanthropic objectives.

Domicile versus Residency

It is necessary to distinguish between domicile and residence. As a person's domicile and residence are usually the same place, the terms are frequently used interchangeably, but there are differences which must be considered. Residence means simply living in a particular locality, but domicile means living in that locality with intent to make it your fixed and permanent home. Residence simply requires physical presence as an inhabitant in a given place, while domicile requires both a physical presence in that place and also an intention to make it your domicile. You may have more than one residence, but only one domicile.

Although domicile is said to be a matter of the mind or a matter of intention, certain facts and circumstances are often examined when determining which state is a person's state of domicile. Below is a list of considerations that will help determine which is an individual's state of domicile when that person has homes in more than one state.

Factors Determining Domicile

Why and when did you buy your home in Florida?

How much time do you spend there?

Was your home in the other state retained?

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Where are your banking transactions conducted, including the location of:

- checking and savings accounts
- retirement accounts
- safety deposit boxes

How many days do you spend in each home?

What is the comparative size and value of your homes and the furnishings therein? Where do you work? Where is your business or job actually located (including main and subsidiary offices and the number of days spent working at each such location)?

Do you belong to any professional or trade organization or have any professional or trade licenses?

Where does your family, both immediate and extended, live? Where do they visit you?

Where are your friends or other social contacts located and how much time do you spend with them?

Where are you registered to vote? And where have you voted in the past?

Where are your automobiles registered?

Which state issued your driver's license?

Which is your stated residence in your will?

Where do you file your tax returns? Are you filing other states' returns as a resident or nonresident?

Where are your attorneys, accountants, stockbrokers, investment advisors, doctors, dentists and other advisors or professionals located and what are the addresses to which all bills and correspondence are sent?

Do you belong to any formal or informal social organizations or groups? If so, where are they located and what is your level of involvement in each organization?

Do you belong to any religious organizations and, if so, where they are located? What is your level of involvement in each organization?

Do you contribute time or services to any local or national charities or political organizations? How much time (or services) do you contribute to each location of any such charity or political organization?

Have you purchased cemetery plots? If so, where?

Do you qualify for or have you applied for a homestead exemption in any state?

What addresses were listed on your federal and state tax returns? Passport and other government forms and official documents? Deeds, contracts, securities, and other legal documents?

Where are your magazines, newspapers, bank statements, credit card bills, and other mail sent? If your mail is at any time forwarded to your other residence, how much time is it forwarded for each year?

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Where are your video club member-ships? Supermarkets where you maintain cash checking cards? Which libraries do you belong to?

Do you have domestic help? To what extent and where?

How much are your monthly tele-phone and utility bills in each state in which a home is maintained?

How to Change Your Domicile to Florida

It is well settled that the burden of establishing domicile is upon the party who asserts it. Therefore, if there is no clear determination of your intent to abandon one state's domicile, it is possible that both your original state of residence and Florida will try to tax the same income or property. Only costly litigation will determine in which state the client is domiciled. Therefore, you should pay careful attention to detail to clearly qualify as a domiciliary in Florida.

In order to support a change of domicile to Florida, you should consider taking the following steps:

Register to vote in Florida and file

Declaration of Domicile in Florida. Forms can be picked up or received by mail and must be notarized or signed in the presence of the county recording clerk.

File any other state income tax returns which may be due as a non-resident.

Move some bank accounts and safe deposit boxes to Florida.

Notify post office, banks, brokers, attorneys, accountants, creditors, insurance companies of your new Florida address.

Change your Last Will and Testament to claim Florida as your residence and taxing jurisdiction and execute your Last Will and Testament in Florida. Use your Florida address in deeds, contracts, securities and other legal documents.

Register your automobile in Florida and obtain a Florida resident driver's license.

Use your Florida address when registering in hotels, etc.

Join Florida clubs, societies, fraternal organizations, temple or church; become a patron of local activities (symphony, theater, etc.); and participate in charitable activities, raise funds for community affairs, etc.

Claim the homestead exemption under Florida statute, if available.

Change your status in membership clubs in any other state from resident to nonresident and pay dues accordingly.

Apply for a passport using your Florida address.

Cultivate relationships in Florida. Become part of the community.

Move your tangible property to Florida.

Florida: great weather, great tax law and with the proper documentation ...a great new place of domicile. ■

Florida Homestead Exemption

Florida's homestead exemption is one of the broadest laws of its type in the country and offers significant creditor protection. In addition to protecting the actual home, the statute also protects proceeds from the sale of a home. Additionally, the exemption reduces the value of a home for property tax purposes by up to \$25,000 per year, reducing the property tax owed on that property by up to \$750 per year (assuming 3% property tax rate).

At the same time, these laws limit one's ability to devise or alienate the homestead property. If the homeowner is survived by a spouse and children, the spouse will be entitled to a life estate in the property and the child would receive a vested remainder interest.

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