

The Importance of Establishing Your State of Domicile

Once you have determined where you want to live for the rest of your life or just retire there are several important elements that need to be considered. Your first consideration should be where you intend to keep your primary residence. Today it is not uncommon for individuals to maintain several residences where they spend specific times of the year. However, the determination of your primary residence has both tax and estate planning considerations. Therefore, before determining your primary residence you should consider the following:

1. Does the State have a homestead exemption from creditors and if so what is the amount?
2. Does the State have a personal income and/or estate tax and what is the rate?
3. Does the State have an intangible tax on property?
4. What is the State sales tax and does it vary from county to county?
5. What are the tax implications to the filing of your income and estate tax returns in the State?
6. What are the creditor protection laws of the State (are they creditor or debtor friendly).

Once you have considered these factors and chosen your state of residence it is recommended that you accomplish the following:

1. List your new address on all IRS, Federal and State tax forms.
2. File for the homestead exemption in the state, if any.
3. Obtain a new driver's license with your new address.
4. Register your automobile(s), license plates and to vote.
5. Transfer your safe deposit box contents to your new state and area of primary residence.
6. Open bank account(s) in your new state and area of primary residence.
7. Change the address on your credit card accounts and on your passport.
8. Execute a new Will and/or amend your Trust to reflect your new state of residency.
9. Affiliate with local civic and religious organizations.
10. Consider the acquisition of a local cemetery plot.

If a legal question should arise about your domicile, it is very common for the above listed prerequisites to be used as a point of reference. If necessary, a court will resolve the domicile issue as a factual question and weigh all of the various factors. However, be advised that there is no formula that effects the certainty of the process. Therefore, you are forced to act at your own peril. This fact makes it difficult to properly advise someone who may think that they have changed their state of domicile when their prior state of domicile may disagree.

However, if you maintain two or more homes, it is not necessary to give up any of the following in the non-resident states:

1. Affiliation and membership in social organizations, country clubs, a church or temple or a burial plot.
2. A bank account and safe deposit box.
3. Business interests because of capital gains tax or other business reasons.

The individual must also weigh the tax benefits of a domicile change with its direct effect upon them. The domicile change may force them into a new pattern with which they may not be comfortable. Therefore, if the individual is reluctant to abide by the checklist, they should reconsider whether they are really a candidate for a domicile change.

This issue has become especially important in the State of Florida where property taxes have increased up to 80 percent in the last year alone. This has left many non-resident homeowners looking for a shelter to protect them from rising taxes. Under the Florida constitution, non-resident homeowners are not protected from big tax increases that coincide with rising real estate values. This protection is exclusive to Florida residents and is derived from a 1992 Florida Constitution amendment that limited the maximum increases to the taxable value of a homeowner's primary residence to 3 percent or the rate of inflation, whichever is lower. This amendment was affectionately known as "Save Our Homes."

It is also unfortunate that the courts are reluctant to accept at face value a change of domicile when an actual residence is established and maintained. Several states, including New York, are overly aggressive in contending that no domicile change has taken place and taxation in the state. It is most important that the individual not continue to do anything that is inconsistent with a change of domicile or risk a challenge upon their death.