

Domicile and Legal Residency

It is important to understand the difference between *domicile* and *residence*, which are two separate legal concepts. A person is a *resident* of any place where he or she lives. Since an individual may live in more than one place, he or she may have more than one *residence*. However, a person may have only one *domicile*, or *legal residence*, at a time. An individual's domicile is essentially his or her permanent home.

The concept of *domicile* is important because it often determines important legal rights. It usually determines to which state an individual must pay income tax. Domicile also affects the determination of where an individual's will is probated, liability for state inheritance taxes, the right to vote in state and local elections, the right to homestead, veteran's claims, or tax exemptions, whether community property rules apply to the division of assets in a divorce action, and bonuses for wartime service. It also may affect entitlements, such as the right to attend a state college at the "in state resident" tuition rate.

Domicile can be determined either by operation of law or by choice. Domicile is determined by operation of law when a person is under a legal incapacity that prevents him or her from acquiring a domicile of choice. Thus, minor children have the domicile of their parents (or of the custodial parent, if the parents are divorced or separated) regardless of where they actually reside or intend to remain. Incompetents also retain the domicile of their parents, unless they had the capacity to choose their domicile before becoming incompetent. In that case, they will retain the domicile of choice that they had before becoming incompetent. A person retains his or her childhood domicile until he or she selects a new domicile by choice.

A person can acquire a domicile of choice by fulfilling two requirements: (1) physical presence, and (2) intent to remain at the new domicile indefinitely. The person does not need to intend to remain at the new domicile permanently, but intent to remain for only a specified finite period is insufficient to effectuate a change of domicile. For instance, a student who moves to another state to attend college, but plans to leave that state after four years to work elsewhere will not have effectuated a change of domicile. Similarly, a military member who plans to spend two years at a duty assignment in a specific location, but plans to leave that state at the end of those two years and not return, will not acquire a domicile at that location. If a person has more than one permanent dwelling, courts will generally consider him or her a domiciliary of the state of his or her *primary residence*.

The reason why a person intends to remain at the new location is not relevant to the determination of domicile. It is enough that an individual has physical presence at the new location and the intent to remain there indefinitely or to return at a later time.

DOMICILE OF MEMBERS OF THE ARMED FORCES

Under the Servicemembers Civil Relief Act (SCRA), members of the armed forces may not involuntarily lose their domicile when absence from their domiciliary state is due to military orders. A military member, however, can change his or her domicile if the member meets certain requirements. This is important because, among other things, only the state of a member's domicile may tax the *military* income and personal property of an active duty military member. (Note that income from *off-duty employment* may still be taxed by the state you are employed in or that you reside in, regardless of your domicile). Similarly, states cannot deprive their active duty domiciliaries of their right to receive state entitlements such as in-state tuition rates at state universities for themselves or their children. However, military members should be aware that certain protections may not apply to spouses or adult children, who may lose their original domicile if they accompany the military member to a new location and intend to remain there indefinitely.

DOMICILE OF SPOUSES OF MEMBERS OF THE ARMED FORCES

Under the Military Spouses Residency Relief Act (MSRRA), spouses of members of the Armed Forces may not involuntarily lose their domicile when they move to a new state in order to live with their servicemember spouse. If a military member is entitled to SCRA legal residence/domicile tax protection, their spouse is entitled to the same protection for the same legal residence/domicile of the military spouse *if the spouse had previously acquired the same legal residence/domicile*. The spouse does not “inherit” or “adopt” the domicile of the servicemember upon marriage, nor may a spouse claim any state as a domicile without having first lived in that state. Domicile must have been established in accordance with that state’s laws and regulations. MSRRA protection only applies for purposes of taxation and voter registration.

Requirements for MSRRA Protection:

- a. Nonmilitary spouse previously acquired and has not lost domicile;
- b. Nonmilitary spouse’s new location is a direct result of a move to remain with the military member who is stationed according to military orders; and
- c. Nonmilitary spouse’s domicile is the same as the military member’s.

MSRRA Protection ends when:

- a. Servicemember leaves the service;
- b. Divorce;
- c. Voluntary physical separation from the member; or
- d. Affirmative action to change domicile (examples are: applying for certain state benefits, legal action claiming residence, & voter registration).

CHANGING DOMICILE

Since changing your domicile depends upon both physical presence at the new location and your intent to remain there indefinitely, you need evidence of your intent to acquire a new domicile in a way that will be recognized by both your new domicile and your old domicile. This is important because ineffectively changing your domicile can cause problems. For instance, you may still owe state income tax to your original domicile if a valid change is not made. If you do not pay it because you incorrectly believe that you have acquired a new domicile, you may be billed for back taxes in one lump sum, incur hefty penalties, or even be criminally prosecuted for tax evasion. It is important to note that merely changing your state of residency on your pay records is NOT sufficient to validly change your domicile.

Taking the following actions all provide evidence of intent to acquire a new domicile:

- a. registering to vote at the new location;
- b. changing your driver’s license and vehicle registration;
- c. buying real property and applying for the homestead tax exemption;
- d. changing your W-4 form;
- e. executing a new will listing the new domicile; and
- f. establishing bank accounts or other financial and/or business ties to the new location.

Since all of these actions are viewed as evidence of your intent to change your domicile, you should take as many of these actions as you can if you want to validly change your domicile. However, you must remember that in the end, the question is one of intent. Therefore, if you have strong ties remaining with your previous domicile, such as maintaining your professional licensures there, it may be difficult to establish the requisite intent to abandon your old domicile and acquire a new one.

You are considered a Florida resident . . . when your true, fixed, and permanent home and principal establishment is in Florida. Filing a declaration of domicile with the appropriate Florida Circuit Court clerk (Florida Statutes §222.17), maintaining a permanent home in Florida and qualifying for a homestead exemption, using your Florida address for correspondence with all financial and governmental institutions, maintaining financial accounts in Florida, listing a Florida address on federal income tax returns, executing estate planning documents with Florida stated as your residence/domicile, terminating residency in a state other than Florida, working in Florida, and registering to vote and actually voting in Florida can contribute to establishing residency. (*See, e.g.*, Florida Statutes §196.015) Other actions, such as obtaining a Florida driver's license, registering your dependent children for school in Florida, and registering your motor vehicles in Florida, indicate an intent to establish residency.

If you have questions about domicile or residency, please feel free to make an appointment to speak to an attorney.

The material in this handout represents general legal advice. Since the law is continually changing, some provisions in this pamphlet may be out of date. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.