

Domicile Planning – Which State is Your Permanent Home Located?

By: David P. Benedetto

Since 2005, the State of Florida no longer imposes a state level estate tax. This is in sharp contrast to many other states that impose their own level of estate tax, which is in addition to the federal estate tax. If you have moved to Florida from another state and wish to eliminate (or reduce) the state level estate death tax from the prior state, you must ensure not only that you are domiciled in Florida, but that you have relinquished your domicile in the state of your prior residence.

Florida law provides that a person's "domicile" is the place where he or she has fixed an abode with the present intention of making it his or her permanent home. Florida law also provides that person's domicile is determined by his or her intent, as provided by contemporaneous expression of intent, and positive overt acts proving intent.

The following is a list of suggested actions to be taken to ensure that you will be considered to be domiciled in Florida:

(a) Homestead Exemption. If you own your residence, you should apply for the Florida homestead exemption in the county in which you reside.

(b) Declaration of Domicile. As soon as you have physically moved to Florida, you should file a statutory form of declaration of domicile.

(c) Business Interests. To the extent you are actively engaged in the conduct of a business, you should consider centering the administration and financial aspects of the business in Florida.

(d) Clubs. To the extent that you belong to any out-of-state clubs or organizations, you should ensure that your membership status is changed to that of a non-resident. Furthermore, you should join various organizations within the State of Florida.

(e) Charitable Contributions. To the extent that you make charitable contributions to out-of-state national charitable organizations, such contributions should in the future be made to the local branches in Florida. In addition, you should consider making contributions to local charities in the areas surrounding your home in Florida.

(f) Voting. As soon as possible, you should register to vote in Florida, even if by absentee ballot.

(g) Tax Returns. All personal tax returns should be filed from your Florida address. In addition, you should file and pay as a resident all applicable state and local taxes, including intangible property tax and real property taxes. You should also file a "final" state income tax return in your old state of residence.

(h) Automobile Driver's License. You should apply for and obtain a Florida driver's license.

(i) Vehicle Registration. You should obtain Florida license plates and car registrations for all of your vehicles.

(j) Records. Your Florida residence should be used on records maintained by:

(i) Life insurance and other insurance companies.

(ii) Banks.

(iii) Social Security Administration.

(iv) Employers.

(v) Corporations issuing securities which you own.

(vi) Brokers.

(vii) Department stores and other retailers.

(viii) Credit card companies.

(ix) Partnerships or organizations of which you are a member.

(k) Charge Accounts. To the extent possible, you should establish charge accounts with local merchants or branches of national chains within the State of Florida.

(l) Agreements and Other Legal Documents. In the future, all agreements to which you are a party and any other legal documents should recite that you are a Florida resident.

(m) Passport. The address in a present passport should be changed to reflect your Florida residence. If you apply for a passport in the future, you should use your Florida address.

(n) Bank and Brokerage Accounts. You should consider establishing personal and business banking relationships in Florida and paying personal bills through a Florida bank account. In addition, you should open a safe deposit box in Florida and close out your out-of-state safe deposit box.

(o) Will and Living Trust. Upon the redrafting of your will or codicil and revocable (living) trust, you should recite in the instrument that you are a resident of Florida.

Finally, it should also be noted that many states tax non-resident decedents on real property or tangible personal property that the decedent owns in the non-resident state. Accordingly, if you are a Florida domiciliary and own real estate or tangible personal property in another state, it may be beneficial for you to restructure the ownership of your out-of-state property to avoid potential state level death taxes on that property. For example, if you are a Florida domiciliary who owns Massachusetts real estate, it would be advantageous to transfer the Massachusetts real estate to a multi-member limited liability company. The effect of this transfer is to change the form of the asset from real estate (a taxable asset in Massachusetts) to intangible personal property (a nontaxable asset in Massachusetts).

As the State of Florida no longer imposes a state level estate tax, it has become increasingly important to ensure that you are domiciled in Florida, that you have relinquished domicile in your prior state of domicile and that you have properly structured any real or tangible personal property owned in any state other than Florida.

David P. Benedetto is an Associate in the Boca Raton office of Broad and Cassel and is a member of the Trusts and Estate Planning Practice Group. He was admitted to the Florida Bar in 2003. He can be reached by calling (561) 483-7000 or by email at dbenedetto@broadandcassel.com.