



Adopting Florida Residency

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Introduction

Many of our clients ask us about adopting Florida residency. They have purchased a home there for the attractive weather, but also may be focused on Florida's favorable tax climate, as well as homestead asset protection benefits. We have created this outline of key points you should keep in mind if you are considering Florida residency. We also have included the text of the relevant Florida statute and Internet links to other helpful documents for your information.

Executive Summary

- There is no specific legal formula to establish Florida residency.
- Care should be taken to avoid taxation in the state of prior residence – particularly in the case of “snowbirds” – who continue to spend considerable time in the state of prior residence.
- Individuals focusing on Florida's homestead laws, as part of an asset protection strategy, should carefully review their circumstances with counsel to determine if the creditor protection they are seeking will apply.

Possible Affirmative Steps for New Florida Residents

An important note – no, you are not required or expected to do all of the things listed below. Obviously though, the more of these steps that are undertaken, the stronger your legal position will be in establishing that you have taken up domicile in Florida.

- Maintain a home in Florida, and reside in it as much of the year as possible. (Note: depending on how many days per year are spent in residence in other states, Florida residents may be subject to taxes in such other states.)
- File a Declaration of Domicile as provided for by Florida statute. The form can be found at <http://www.bcpa.net/Forms/domicile.pdf>.
- Obtain a Florida driver's license. Florida mandated new and much more stringent requirements, effective January 1, 2010, for obtaining a driver's license or identification card. Proof of identity, two forms of proof of residential address and one form of proof of social security number are now required at Florida driver license offices. For a complete list of acceptable types of proof of residence and social security number, please visit the Florida Department of Highway Safety and Motor Vehicles website: <http://www.flhsmv.gov/ddl/address.html#proofssn>.
- Apply for the Florida homestead property tax exemption.
- Register to vote in Florida, and vote in Florida.
- Designate Florida as residence in all new legal documents.
- Draft and execute a new Florida living will and health care surrogate appointment.
- Transfer to Florida the title and registration of your Florida-based motor vehicles, watercraft, and aircraft.
- Open a bank account in Florida. For accounts maintained in other states, change the permanent address on file to Florida.
- Obtain a safe deposit box in Florida..
- Move important personal possessions to Florida, including collectables, personal records and mementos, securities and other intangibles (*e.g.*, promissory notes).

- Update passport with the new Florida address.
- Update credit cards, other bills, and magazine/periodical subscriptions with the new Florida address.
- Join a religious institution in Florida.
- Join and/or make contributions to civic, charitable, or fraternal groups in Florida.
- Designate Florida as the address for personal listings in professional, social, and religious institution directories.
- File federal income taxes at the IRS office (Atlanta, Georgia) serving Florida.
- File a final income tax return for the former state and subsequently cease filing returns for that state; or if still required to pay tax to the former state, file only non-resident returns.
- If not retired, do as much work as possible in Florida and as little as possible in former state.
- Notify physician and family members of intention to permanently reside in Florida so that it will be given as the domicile for death certificate purposes.
- Notify relatives and friends — *in writing* — regarding new resident address and telephone number in Florida.
- Declare Florida as state of principal residence in any census that is conducted.
- Designate Florida as residence when registering at a hotel, renting a car, etc.
- Change to Florida the address on the records of closely held corporations, partnerships, and other businesses in which a personal interest is held. Have all mail from such entities sent to new address in Florida.
- Notify dividend department or transfer agents of corporations in which a personal interest in stock is held regarding change of address, and request that dividend and interest checks be sent to new address in Florida.
- Notify the parties listed below of change of address to Florida. Where possible, request that no mail be sent to former non-Florida address(es).
 - Executors of estates of which you are a beneficiary.
 - Trustees of trusts in which you have an interest.
 - Parties who are required to pay you annuities.
 - Managers of pension and profit sharing plans in which you have an interest.
 - The Social Security Administration, whether or not you are collecting benefits.
 - The Veterans Administration, if you are collecting benefits.
 - All clubs of which you are a member.
 - Banks and other parties having liens or encumbrances on any real estate, that you continue to own in your former state.
 - Services , such as utilities, cable/satellite television providers, and landscapers for any property owned in former state.

A further thought: be wary of legal counsel advising that all your estate planning documents such as your existing will and trust documents must be redrafted and executed as Florida documents in order to establish residency. While such documents may be very good evidence of an intent to establish Florida residency, they are not essential for that purpose. That said, a review of your existing documents may well be appropriate if your financial or personal circumstances have changed. Moreover, particular aspects of Florida law may affect your planning significantly. For example, individuals (other than close family members) who are not residents of Florida may not serve as a personal representative of the estate of a deceased Florida resident. Also note, qualified personal representatives who are non-residents of Florida will be required to employ a Florida licensed attorney who also is a Florida resident to handle probate proceedings. When making changes, be sure to work with a qualified Florida attorney: once you become a resident of Florida, for example, amendments to your revocable trust must be executed with the same formalities as a will in order for their testamentary provisions (that is, the provisions that dispose of your estate after your death) to be valid.

Statutory Scheme

F.S. 222.17 Manifesting and evidencing domicile in Florida.—

(1) Any person who shall have established a domicile in this state may manifest and evidence the same by filing in the office of the clerk of the circuit court for the county in which the said person shall reside, a sworn statement showing that he or she resides in and maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home.

(2) Any person who shall have established a domicile in the State of Florida, but who shall maintain another place or places of abode in some other state or states, may manifest and evidence his or her domicile in this state by filing in the office of the clerk of the circuit court for the county in which he or she resides, a sworn statement that his or her place of abode in Florida constitutes his or her predominant and principal home, and that he or she intends to continue it permanently as such.

(3) Such sworn statement shall contain, in addition to the foregoing, a declaration that the person making the same is, at the time of making such statement, a bona fide resident of the state, and shall set forth therein his or her place of residence within the state, the city, county and state wherein he or she formerly resided, and the place or places, if any, where he or she maintains another or other place or places of abode.

(4) Any person who shall have been or who shall be domiciled in a state other than the State of Florida, and who has or who may have a place of abode within the State of Florida, or who has or may do or perform other acts within the State of Florida, which independently of the actual intention of such person respecting his or her domicile might be taken to indicate that such person is or may intend to be or become domiciled in the State of Florida, and if such person desires to maintain or continue his or her domicile in such state other than the State of Florida, the person may manifest and

evidence his or her permanent domicile and intention to permanently maintain and continue his or her domicile in such state other than the State of Florida, by filing in the office of the clerk of the circuit court in any county in the State of Florida in which the person may have a place of abode or in which the person may have done or performed such acts which independently may indicate that he or she is or may intend to be or become domiciled in the State of Florida, a sworn statement that the person's domicile is in such state other than the State of Florida, as the case may be, naming such state where he or she is domiciled and stating that he or she intends to permanently continue and maintain his or her domicile in such other state so named in said sworn statement. Such sworn statement shall also contain a declaration that the person making the same is at the time of the making of such statement a bona fide resident of such state other than the State of Florida, and shall set forth therein his or her place of abode within the State of Florida, if any. Such sworn statement may contain such other and further facts with reference to any acts done or performed by such person which such person desires or intends not to be construed as evidencing any intention to establish his or her domicile within the State of Florida.

(5) The sworn statement permitted by this section shall be signed under oath before an official authorized to take affidavits. Upon the filing of such declaration with the clerk of the circuit court, it shall be the duty of the clerk in whose office such declaration is filed to record the same in a book to be provided for that purpose. For the performance of the duties herein prescribed, the clerk of the circuit court shall collect a service charge for each declaration as provided in s. 28.24.

(6) It shall be the duty of the Department of Legal Affairs to prescribe a form for the declaration herein provided for, and to furnish the same to the several clerks of the circuit courts of the state.

(7) Nothing herein shall be construed to repeal or abrogate other existing methods of proving and evidencing domicile except as herein specifically provided.

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