

McDonald & Kanyuk, PLLC

Attorneys at Law
Concord, New Hampshire

How to Change Your Domicile from New Hampshire to Florida

By: Joseph F. McDonald III, Esq.

A. General Observations; The Legal and Tax Significance of Domicile.

The terms “domicile” and “residence” are often incorrectly used interchangeably by some courts. As they affect tax liability and certain other legal rights and obligations each two terms have different meanings. You may maintain a residence, dwelling place, or abode in two states such as New Hampshire and Florida, but you can only have one domicile.

Many people are unaware that there can be significant costs to maintaining multiple residences in different jurisdictions. If you spend part of the year in Florida and part in New Hampshire, both states (and, possibly other jurisdictions in which you might maintain residences) can each conclude that they are your domicile. This could be very expensive after your death, since it could result in claims for multiple state death taxes, as well as cost extra attorneys’ and fiduciaries’ fees. Thus, if you do decide to change your domicile to Florida, you should do everything possible to complete the change.

In the eyes of the law, your domicile is where you intend to remain permanently. It is your true, fixed and principal establishment, to which whenever you are absent you intend to return. Your domicile will be determined both by your subjective intent and by your actual residence. The required proof that you are domiciled in Florida will consist of various specific acts which demonstrate that you have the requisite intention to be domiciled there and actually reside in Florida.

No one act is sufficient by itself to establish domicile. Rather, the necessary intent and residence elements will be determined by a consideration of several factors to determine your true interest. According to the U.S. Supreme Court, the question is determined by “the attitude and relationship of person to place”.

Once you have acquired a domicile (as you did at birth) you retain it until you change it. This involves its complete abandonment and the acquisition of a new domicile. To establish your abandonment of your New Hampshire domicile, you must establish an absolute and fixed intent to do so and to acquire one in Florida. Since this intent is shown by your

state of mind, should the question ever arise after your death, the acts indicative of your state of mind must confirm you actually intended to change your domicile. Courts are not bound by where you say your domicile is and will look to physical facts and other evidence in the light of human experience. Carefully taking all or most of the following steps now to support your change of domicile to Florida can help to avoid expensive litigation after your death.

B. *Suggestions as to How to Change Your Domicile.*

The suggestions as to how to change your domicile are based on some of the tests and indications of domicile considered by courts. In no given situation can anyone tell which of these or how many of these are necessary to determine domicile, nor can anyone determine which are not necessary. Such questions can often only be answered after the courts have finally ruled on your particular situation, usually after your death.

For that reason, you should try to act on as many as possible of the suggestions made below. It is not necessary that you implement each and every one of them. On the other hand, your compliance with only one or two will not be sufficient. Some suggestions, especially the first 11, are more important than others. While the courts have generally found these 11 to be the best indicators of intent on the domicile question, many people find implementing them to be the most inconvenient.

1. *Avoiding New Hampshire's Resident Interest and Dividends Taxes.* Conduct your affairs in the future so that you are not considered to be either a resident or domiciliary of New Hampshire. Your physical presence in Florida and absence from New Hampshire is important. Thus, to avoid future liability for any New Hampshire interest and dividends tax income taxes, you must take yourself outside New Hampshire's definition of a resident. A "resident" for New Hampshire income tax purposes is generally defined as a "permanent resident", a definition similar to domicile. Establishing exclusive Florida domicile will, therefore, immunize you from the proper assessment of New Hampshire interest and dividends income taxes.

2. *Physical Presence.* Besides limiting your trips to New Hampshire, try (at least during the first year or two that you are claiming New Hampshire domicile) to spend more than 183 days out of those years in Florida. This will be an indication that you really intend to be a Florida domiciliary. However, if your affairs do not permit you to spend that much time in Florida, you should be sure to comply with all the other suggestions set forth below.

a. The longer your physical presence in Florida and the smaller the proportion of time spent in New Hampshire the better. Any

time spent in New Hampshire should be explainable as consistent with the demands of business or vacations such as would ordinarily be in keeping with that of other Florida residents in similar circumstances.

b. Not only is your presence in Florida important, but the presence there of the other members of your immediate family is also. It would take an extremely strong case on all the other points to convince a court that you were a Florida resident when your spouse and dependent children lived year round in New Hampshire (at least if you were on good terms with your spouse).

3. Dwelling Place. The more permanent type of dwelling place you acquire in Florida, the greater weight and the more persuasive it becomes that Florida is your domicile. To purchase a home in an established residential area has great weight as evidence of Florida residence. If it is necessary to rent a house, enter a written lease for at least one year. Avoid monthly or seasonal rentals. Living in a hotel, motel, boat or mobile home or trailer not permanently in concrete has very little weight at all, and is usually taken as evidence of a temporary visit. If you retain a New Hampshire abode, consider its size and value relative to that in Florida. A larger and more expensive New Hampshire home is some indication that it, rather than Florida, is your domicile.

4. Furniture and Heirlooms. If you do not retain a Florida place of abode, do not store furniture in New Hampshire. Either sell it or relocate it to Florida to your new home or some storage space there.

a. The location of your family heirlooms and keepsakes are good indication of where your “real home” is, regardless of where you say it is located. In this category are such things as family photograph albums, antique furniture and furnishings, heirloom jewelry, bridal gowns, etc.

b. However, if you retain a house in New Hampshire (or elsewhere outside of Florida), you will naturally wish to retain certain furnishings, art objects, etc., in these places. But, the less kept in them, particularly in your present domicile, the better off you will be in establishing a Florida domicile. Move all hobby collections that you have, such as stamps, coins, guns, antiques, furniture, etc., as well as costly paintings, furnishings, silver and china, especially those with sentimental value, from your present domicile (and other places of abode) to Florida.

5. Licenses.

a. Notify the Motor Vehicle Division of any state in which you hold a driver’s license of your permanent move to Florida, obtain Florida driver’s licenses for both yourself and your spouse, return driver’s

licenses issued by any state other than Florida to that state's Motor Vehicle Bureau and change the registration of any cars and boats you own to Florida, obtaining Florida plates as soon as possible.

b. If you hunt or fish, obtain Florida resident's hunting and fishing licenses. If you have a New Hampshire license, it should clearly reflect that you are a non-resident of New Hampshire and a resident of the State of Florida. If you have to pay an additional fee because you are a non-resident so much the better. Anything you do that cost you money because you are a resident of Florida is strong evidence that you are really a resident of Florida. On the contrary, anything you do which saves you money because you are a resident of Florida is of lesser weight.

6. Change of Voting Registration. Write your New Hampshire Town Clerk to give official notice that both of you are abandoning your New Hampshire domicile on a certain date. Instruct the Clerk to remove you from voting lists and do anything else appropriate to recognize your new status. Then register as a voter in Florida.

a. Vote in the State and local elections. Of course, save the evidence of this registration as in all other situations.

b. If you are not entitled to vote, write to the appropriate Supervisor of Registration or Town or City Clerk, informing them that you are a local resident and wish to vote at the next election, and inquire as to what is necessary for you to do so. Save the copy of your letter and the reply. When you are able to register, be sure to do so.

c. While many people are of the belief that where you vote controls the location of your domicile, the United States Supreme Court has said that while "Voting is highly relevant, [it is] by no means controlling."

7. Federal Tax Returns. File your federal income tax returns from your Florida address, with whom Florida residents file returns at the IRS Service Center identified in the 1040 instructions for Florida residents' returns. If you pay someone to prepare your return, it should be prepared by someone in Florida. If it is absolutely necessary to be prepared by your old accountant, caution him to use your Florida address on it and caution him to mail it to the proper Service Center. Unless he is advised of your change of residence, he may forget to do this.

8. State Income Taxes. Since Florida has no state income tax per se, it is not necessary to file a state income tax return in Florida. You may, however, be required to file a Florida "intangibles tax return". The establishment of a Florida domicile will make it unnecessary to file a New

Hampshire interest and dividends tax return, except for the portion of the year preceding your domicile change. Claim non-residence on your New Hampshire return as of whatever date you actually change your domicile to Florida and use your new Florida address on it.

9. Bank Accounts, Safe Deposit Box and Intangibles.

Move your checking accounts, savings accounts, safe deposit box, securities and other intangible assets to Florida. If they are left in a state imposing an intangibles tax there is a possibility that they might obtain a taxing "situs" in that state, even though you yourself are domiciled in Florida.

10. Investments. Handling investments to show that you are a Florida domiciliary is perhaps the most difficult requirement to comply with, and the one most difficult on which to give any answers. The more investments you have in Florida and the less in New Hampshire, the better. This particularly applies to land and especially to dwelling places. The ideal situation is for you to own a home in Florida, no real estate in New Hampshire, have all of your stock certificates and bonds in Florida, and no brokerage accounts in New Hampshire. In such a situation, the odds are very good, even in a weak Florida domicile situation, that no question will ever be raised.

11. Mail; Change of Address. Notify the post office, all of your banks, brokers, professional advisors, creditors, insurance companies, business associates, magazine subscription offices, friends and other similar correspondents that you have moved to Florida permanently. Change your address for receipt of dividends, etc.. File I.R.S. Form 8822, Change of Address, with the Internal Revenue Service.

12. Estate Plan Revision. Re-examine your estate plan in the light of your change in domicile, making sure that no documents (particularly your will and that of your spouse) identify you as residents of any place other than Florida.

a. Whether your wills and trusts should recite that you are Florida residents and domiciliaries or whether they should take no position as to where you reside should be decided by the draftsman in the light of the facts at that time.

b. If you are able to comply with most of the suggestions contained in this memorandum, you probably can safely recite in your will and trust that you are a Florida resident and domiciliary.

13. Statements of Domicile. Use your Florida address on all deeds, instruments of transfer, contracts, securities, other legal documents and whenever you are registering in hotels, motels or for any

reason giving a home address. It would be wise to keep a list of such hotels and motels with your will in case any question is raised as to your Florida domicile after your death.

a. Your statements that you are a resident of a particular place are admissible to show the location of your domicile. Such statements would, if the courts believe them, be the best evidence of this fact. When you are attempting to change your domicile for tax reasons, any such statement may be questioned as a self-serving declaration, and may frequently lack persuasiveness, or be contradicted or negated by other declarations and inconsistent acts. Nevertheless, you should make such statements to members of your family, business associates and friends in strong and positive terms (in such a manner as to impress it on their memory) that you have changed your domicile and are now a resident of Florida. Support this whenever possible by logical reasons for the change (other than tax reasons or to establish a residence for divorce purposes).

b. Whenever visiting in New Hampshire or visiting with New Hampshire friends or acquaintances, extol the virtues of living in Florida and try to convince them to do the same.

c. Complete and file with the Clerk of the Circuit Court for the Florida county in which you reside a statutory form "Affidavit of Domicile" listing your new Florida address.

14. *Membership in Organizations.* Request that any memberships you have in New Hampshire clubs, lodges, societies, churches or temples, etc., be transferred to Florida branches of these organizations, made non-resident ones, or ended.

a. Courts would find it difficult to believe that your heart is really in Florida when you still maintain your memberships in a church or temple, clubs and lodges in New Hampshire.

b. Evidence of the change of membership and copies of letters requesting changes of membership and resignations from New Hampshire organizations should be kept with your will.

c. Join Florida clubs, societies, fraternal organizations, and a church or temple there. Try to become a patron of local Florida activities, such as the symphony, theater groups, fair, etc., and participate in charitable activities and fund raising for community affairs, to the extent that time is available to you in Florida. Cease doing this in New Hampshire, but you may still contribute financially to New Hampshire charities and even leave a bequest to them in your will without this considered an indicia of still being a New Hampshire domiciliary for

income or death tax purposes.

15. *Passports and Credit Cards.* Apply for new passports, using your Florida address or change the address on your existing passports. Change the address on all your credit cards.

16. *Relationships.* Cultivate relationships in Florida so that both you and your spouse actually “feel” that you are part of your local community in that state and that it is your home.

17. *Subscribe to Local Newspaper.* Subscribe to a local newspaper in Florida.

18. *Entertain Mostly in Florida.* Try to do all your major entertaining, particularly that of a family nature, in Florida, while avoid doing any in New Hampshire. Minimize any necessary business entertaining that may have to be done in New Hampshire.

19. *Keep a Record of Your Whereabouts.* If you are working and you travel frequently, arrange for your secretary to maintain a diary or appointment book showing what jurisdiction you are in each day.

a. This should not be quite as hard as it sounds, since when you are in Florida for a period of several months at a stretch, the diary will merely show the inclusive dates. Then if you come to New Hampshire for a few days, the diary should show those days.

b. For convenience, it might be best to indicate in the diary every place you spent the night when you are not in Florida.

c. These records will be available in the event that any dispute over your domicile should ever arise, particularly after you die.

20. *Keep Your Pets in Florida.* If you have any pets, they should all be kept in Florida.

21. *Remains of Relatives.* You might consider moving the remains of deceased close relatives to a Florida cemetery. One court has even found persuasive the removal of a pet from its original resting place in one state to a new burial plot in another. (I would understand if you felt that this one was a bit unnatural and goulsh).

22. *Make Major Purchases in Florida.* When you next buy a car or boat or make some other major purchase, do so in Florida.

C. *Overall Suggestions and Remarks About Domicile.*

There is no magic formula to fix your domicile beyond dispute. Since you probably plan to maintain some contacts in New Hampshire, including possibly even a place of abode, you should keep yourself informed of changes in its tax laws, especially any changes in the definition of a resident.

If any person or state agency questions your domicile, it will be determined by the courts on the basis of the facts of your life as they are disclosed by evidence presented at such a future time. All kinds of testimony and other evidence will be admissible. What appears to be genuine and natural will be believed, but anything that appears to be a subterfuge or is artificial will be largely discounted. The court will fix your domicile in the place which as of your death it believes to have been your only home. If at that time you still have several places of abode, your domicile will be fixed at the principal one. The court will neither be guided nor led astray by legal rules or legal fictions. It will approach the question realistically and in a common sense fashion.

The question whether you have abandoned your New Hampshire domicile and established a Florida domicile cannot be resolved by any single factor, such as amount of time or money spent in Florida or by voting or paying taxes there. It can be established only by the combination of all relevant facts. Since intentions are determined by your state of mind, they will be shown by the facts of how you live. These will be determined by how carefully you are able to follow the above suggestions.

Although you may retain more than one home, this is not inconsistent with having a clear-cut domicile in one place. You must first decide that you definitely will make Florida your living headquarters and then you must act to center your life there. The danger that exists now is that two or more jurisdictions can each hold you to be their domiciliary. To avoid this, you must group all your significant contacts in Florida.

By keeping all or most of your assets (securities, bank accounts, tangible personal property, etc.) in Florida, not only would you strengthen the objective facts supporting your domicile there, but should New Hampshire or any other state assert you were domiciled in it, that state may be left without assets (other than whatever real or tangible property you have in the jurisdiction) from which to collect any taxes which it seeks to assess by its assertion of domicile.

D. Conclusion.

You should use the above guidelines to determine if a Florida domicile is practical for you. It would be better to retain your present domicile than make a half-hearted unsuccessful attempt to switch it to

Florida and still wind up with your estate having a great many additional legal costs and taxes at your death.

However, once you have decided to become a of Florida domiciliary, be diligent in complying with as many of the above as is possible. Do not think that a few ostensible acts such as purchasing a second home and voting in Florida will prove you are a Florida domiciliary. What may satisfy you may not satisfy a Court. Furthermore, do not think you can sneak back when no one is looking and pick up the old ties, such as voting in a New Hampshire election in which you are particularly interested. Be very careful in filling out forms, especially those which will be kept in New Hampshire. Always state your home is Florida and give your Florida address.