

advisory

ESTABLISHING A FLORIDA DOMICILE

An individual who establishes his or her domicile in Florida enjoys several benefits including no personal income tax, no capital gains tax, no state gift tax, and no state estate or inheritance tax. Further, Floridians enjoy asset protection in the form of strong state laws that exempt their homestead, retirement assets, insurance, and certain spousal joint property from being used to satisfy a creditor's judgment against an individual. There are at least four steps that a person should take to properly establish that he or she is domiciled in Florida. They are:

- 1. Declaration of Domicile:** This form is filed at the County Clerk's office. By filing this Declaration, the filer is swearing that her place of abode within the State of Florida is her domicile. The Declaration must be filed with the recorder of deeds for the County in which your home is located. Significant creditor protection is available under the Florida Constitution. Although the filing is not strictly speaking required to obtain this protection, filing the Declaration shows an intent to maintain a Florida residence as a permanent home. Florida law does not exclude concurrent ownership of a second residence in another state provided that the primary residence is claimed only in Florida.
- 2. Driver's License:** You will also need to apply in person for a Florida Driver's License. This requires a visit to the local Department of Motor Vehicles office for the county in Florida in which you reside. You must bring with you the following items: (i) your existing license which you will have to turn in; (ii) proof of identity in the form of a birth certificate or pass port. Note, last names must match so you will need your marriage certificate if the name on the license is different than the name on your identity document; (iii) a social security card; and (iv) 2 of the following, a deed with your name on it, a Florida Voter Registration Card, a utility bill with your name on it, or current Florida homeowner's insurance certificate with your name on it.
- 3. Homestead Application:** If you own a home in Florida there are several property tax advantages to filing a Homestead Application. Property tax relief is available in the form of exemptions based on age, disability and a general exemption. The Homestead Exemption will entitle you to property tax exemptions allowed in the county that your home is located in that you are otherwise eligible for (e.g. age, military) and to protection under the Florida "Save Our Homes" law. This law limits annual increases in the assessed value of property with the Homestead Exemption to three percent or the change in the Consumer Price Index, whichever is lower; and,
- 4. Register to Vote:** You should register to vote in Florida, and then participate in local, state and federal elections as a registered Florida voter.

Please note that establishing Florida as your home will not necessarily avoid state income tax. Most states have their own rules when it comes to taxing income. In Rhode Island, for example, a person who is not domiciled in this state but maintains a permanent place of abode in this state and is in the state for an aggregate of more than one hundred eighty-three (183) days of the taxable year (unless the individual is in the armed forces of the United States) is considered a resident for income and estate tax purposes. So even if you establish a permanent place of abode in Florida, if you are physically in Rhode Island for more than half the year you are "deemed" a resident for state income and estate tax purposes and taxed as such. Remember, this does not mean that you have to be in Florida for more than half the year; rather, you just cannot be in Rhode Island for more than 183 days a year. In addition, even if you are out of the state for the required period of time, Rhode Island will still impose an income tax on income that is derived from or connected with Rhode Island sources. Importantly, this does not include income from passive investments such as publicly traded securities or distributions from retirement accounts.

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State Estate Tax Advantage

There are also state estate tax advantages of establishing Florida as your domicile. Although the federal estate tax exemptions currently are very generous (as of January 1st, 2019 the federal estate exemption is \$11,400,000 per person), the Rhode Island estate tax exemption is a little over \$1,500,000. The question of whether Rhode Island is your home for purposes of the estate (and income tax) is a question of one's subjective intent. In determining subjective intent courts and state taxing authorities look to objective factors. For that reason, in addition to the four items noted above there are several other things you should do if you are concerned about Rhode Island estate and income tax.

The Rhode Island Supreme Court, in a 1998 case on this issue examined a number of objective factors to establish subjective intent. In that case the taxpayer sold his company to his children in exchange for cash and a promissory note. On his death, the state attempted to impose an estate tax on his estate as a Rhode Island domiciliary even though he had done the four things noted above and was never in the state more than 183 days a year for the last five years of his life.

The factors cited by the Rhode Island Supreme Court in ultimately ruling in favor of the taxpayer included the following:

1. Florida condominium furnishings as valued for insurance purposes in excess of \$150,000 compared to \$50,000 valuation of Rhode Island furnishings;
2. Florida condominium contained silverware and paintings;
3. Florida condo more expensive than RI condo;
4. Changed wills to recite "of Florida";
5. Repeated references to Florida as permanent or official home in resignation correspondence to various Rhode Island civic and business groups;
6. Actually voting in Florida;
7. Joined churches and country clubs in Florida;
8. Volunteered with charitable groups in Florida;
9. Active in Florida politics;
10. When the TAXPAYER returned to Rhode Island for board meetings, his spouse remained in Florida; and,
11. All but one checking account in Florida.

For the above reasons, those desiring to establish Florida as their domicile for income and estate tax purposes should update their estate plan to recite they are a resident of Florida. For more information, please contact a member of PLDO's estate and trust administration, planning and litigation team in our Boca Raton office in Florida at 561-362-2030 or our Johnston, Rhode Island office at 401-824-5100. Or email Gene M. Carlino, Partner, at gcarlino@pldolaw.com, Bernard A. Jackvony, Of Counsel, at bjackvony@pldolaw.com, Rebecca M. Murphy, Senior Associate, at rmurphy@pldolaw.com or Jason S. Palmisano at jpalmisano@pldolaw.com.



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