

Choosing Your State of Domicile

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WHAT IS MY STATE OF DOMICILE?

Your domicile is the state where you maintain your legal residence. Domicile is determined by intent, rather than by the length of time you spend in a state. You may establish a state as your domicile the first moment you occupy property there, provided your intent is to return there if you go away. You only have one domicile, although you may have more than one home.

Example:

Fred, who lives in New Mexico, takes a new job in Arizona. He establishes a temporary residence there until the end of the school year when his wife and children will join him. Although he maintains a home in both Arizona and New Mexico, he decides to keep New Mexico as his state of domicile until his family relocates to join him, after which he'll call Arizona his state of domicile.

Your domicile is not formally registered anywhere, but if you want to change it, you should be prepared to convince the authorities of any state which may be negatively affected by your change of intent.

Example:

Frank changes his state of domicile from Massachusetts, a state with income taxes, to New Hampshire, a state without income taxes. He prepares to convince the Massachusetts Department of Revenue, if called upon, that he's made a legitimate change of domicile by renting a home in New Hampshire, getting a driver's license and registering his car there, and also registering to vote there.

DEFINITIONS

Domicile, also called your "state of legal residence" your true, fixed, and permanent home.

It is the place to which you intend to return if you're away.

Example:

Jane relocates from Atlanta to Boston to attend graduate school. She intends to return to Atlanta when her education is complete. Georgia is her state of domicile. Even if Jane remains in Boston for many years earning several advanced degrees, Georgia is her state of domicile for the entire period as long as she intends to return there.

Suppose, while living in Boston, Jane decides she won't return to Atlanta but would like to make Vermont her state of domicile. She would have to travel to Vermont and have the appropriate mental intent while physically present there.

Residence

The place where you actually live. This, by itself, has little or no legal significance.

Statutory residence

The place where you live and where you're required to pay state income taxes. In some states, if you're physically present for a certain period of time, you're reliable for income taxes in that state.

Tip: If you're a statutory resident of one state and claim another state as your domicile, your state of domicile may require you to file a tax return there as well.

Long-term health care considerations

Before deciding on the domicile strategy that will meet your goals, it is imperative to understand all the risks, costs and benefits associated with the long-term health care delivery system of that state. We can provide educational materials and guidance needed to develop a comprehensive review for you.

WHY IS YOUR DOMICILE IMPORTANT?

Your domicile is important because it affects the following:

- Your liability for state income taxes;
- Your eligibility for certain state benefits such as in-state tuition rates at public colleges and universities, disability benefits, and Medicaid benefits;
- The jurisdiction where your will is probated.

DETERMINING YOUR DOMICILE

In general

- You must be physically present in the state, although you don't have to be present for any particular length of time. Half a year or 183 days is a good rule of thumb, and each state differs. In practice, however, if your residency status is ever challenged in court, you might need to prove that you were in the state for several months.
- You must intent to make that state your permanent home.

If you're a naturalized citizen, your domicile is usually the state where you became a citizen, unless you marry a citizen domiciled in another state.

Tip: There is one exception to the physical presence requirement. If you marry a person domiciled in another state, you may be able to claim your spouse's state of domicile as your own, even if you've never set foot there.

PROVING INTENT TO MAKE A STATE YOUR DOMICILE

While it isn't necessary to do any of the following in order to claim a state as your domicile, you might want to take some or all of actions listed below to prove that you intend to make that state your domicile.

1. Be present in the state of domicile for over 183 days in a given year to establish physical presence.
2. Register to vote in state of domicile.
3. Obtain a driver's license in state of domicile.
4. Register cars and other vehicles in state of domicile.
5. Obtain a library card in state of domicile.
6. Purchase a residence in state of domicile at least as substantial as any other residence.
7. Notify post office of new address and avoid mail to any retained residence.
8. File Form 8822 Change of Address with the IRS.
9. Notify creditors and publishers. etc. of new address.
10. File federal income tax returns using the state of domicile address.
11. List the state of domicile residence of the primary residence on homeowners and other insurance policies.
12. Move tangible personal property to state of domicile residence domicile residence.
13. Move personal memorabilia (photo albums, scrapbooks, paintings, etc.) to state of domicile residence.
14. Dispose of the residence in the former state of domicile (alternatively rent out or keep usage below 183 days).
15. Cease employment activity in former state of domicile (do remaining work from state of domicile and cease state withholding).
16. Move contents of any safe deposit boxes to state of domicile.
17. Open personal checking, savings brokerage, or other financial accounts in state of domicile and close others.

18. Direct all pension, dividend and interest checks and other payments to be sent to state of domicile address or deposited into a bank account in the state of domicile.

19. Notify prior social and religious organizations of the change in domicile and cease membership or maintain non-resident membership.

20. Join the state of domicile organizations including clubs, religious organizations, etc., and establish ties to the local community.

21. Move professional relationships (medical, dental, legal, financial/accounting, etc.) to state of domicile practitioners.

22. License pets in state of domicile.

23. Update estate planning documents to conform with state of domicile law and declare state of domicile in such documents.

Specific purposes

If your state of domicile is important to you for specific reasons, such as state income tax, the effect of state property laws, or state tuition rates, you may want to consult an attorney. The specific facts regarding your domicile that you will need to establish may vary depending upon the benefit that you are seeking.

CHANGING YOUR DOMICILE

There are only two requirements to change your domicile: (1) you must be physically present in that state and (2) you must intend to make it your permanent home. In order to prove your intent, you may also want to take some or all of the actions mentioned above. The most important point to remember when claiming a state as your domicile is that you should be consistent. Inconsistency is the single biggest mistake you can make regarding domicile.

Example:

Melissa chooses Oregon as her state of domicile. She doesn't keep her California driver's license or vote in New Mexico, where she has a second home.

DOMICILE AND COMMUNITY PROPERTY

You may own community property and income and separate property and income depending on your state of domicile. If you and your spouse have different domiciles, you must examine the laws of each domicile to determine if you own community property and income or separate property and income. If you move in or out of a community property state during the year, you may or may not have community property and income.

You must take into account the factors noted previously in determining your domicile.

TAX CONSIDERATIONS

Your income may be taxed in two states.

Your income may be taxed in your state of domicile or the state where you earned it, or both.

You may need to file part-year returns.

If both your present and former states of domicile tax income, and if you move on any day other than the first of January, you'll have to file part-year returns in both states.

Your choice of domicile can affect state death taxes.

At your death, if your state of domicile is unclear and more than one choice is available, your personal representative should take into account the effect of domicile on state death taxes. State tax laws vary with different exemption amounts, tax rates, etc. A wise choice of domicile may minimize your state death tax liability.

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