



## Adopting Florida Residency

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The Estate Planning and Administration Group

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## Introduction

More and more of our clients are considering Florida residency. This is not just for the year-round warmer temperatures and usually sunny skies, but also for the favorable tax climate, as well as homestead asset protection benefits that may help you weather against certain types of creditor claims. That is why 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 for your information.

## Executive Summary

- It is relatively simple to adopt residency in Florida in order to take advantage of this state's favorable taxation and homestead asset protection provisions.
- Required forms to declare Florida residency can be filed in Florida or in any other state.
- Although there is no specific legal formula as such, there are a number of suggested affirmative steps new residents should take to document and legitimize their intent to be Florida residents.
- However, particularly in the case of "snowbirds," care should be taken to avoid multiple taxation in a state where the new Florida resident is a former or part-time resident.
- Note further — individuals considering Florida residency, as part of an asset protection strategy contemplating bankruptcy, should be cautioned that in such instances, Florida's homestead asset protection might not necessarily be effective against creditors.

## 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.

- File a Declaration of Domicile as provided for by statute.
- Apply for the Florida homestead property tax exemption.
- Draft and execute a new Florida living will and health care surrogate appointment.
- Obtain a Florida driver's license.
- Transfer the title and registration of all motor vehicles, watercraft, and aircraft to Florida.
- Register to vote in Florida, and vote in Florida.
- Open a bank account in Florida, or better yet, move all bank accounts to Florida financial institutions. For accounts that must be maintained in other states, change permanent address on file to Florida.
- Obtain a safe deposit box in Florida, and deposit contents formerly held in another state.
- 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. Resign or minimize involvement in and contributions to such organizations in former state.
- File federal income taxes to the IRS office (Atlanta, Georgia) serving 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.)
- Avoid maintaining a home in another state or downsize any homes outside Florida.
- File a final income tax return for the former state and subsequently cease filing returns for that state, and 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.
- Consider making funeral arrangements, including arrangements for interment or disposition of ashes, with a Florida funeral home.
- 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 in all new legal documents.
- Designate Florida as residence when registering at a hotel, renting a car, etc.
- Designate Florida as the address for personal listings in professional, social, and religious institution directories.
- Establish a professional relationship with a physician, dentist, accountant, and (gulp!) attorney in Florida.
- Change the address to Florida 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.
  - Service and/or delivery providers, such as dairies, gardeners, landscapers, cable or satellite television companies, snow shovelers, maintenance, and rubbish collectors 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. Typically, this is not necessary from a residency point of view, but may nonetheless be appropriate if your financial or personal circumstances have changed.

## 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.

## For Further Information

This material was prepared by the Schiff Hardin Estate Planning & Administration Group, which includes attorneys licensed in Florida, Illinois, New York, Hawaii, and many other states. For questions or additional assistance regarding the selection of a state domicile, please contact any of the members of our Estate Planning & Administration Group listed below:

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