



## THE IMPORTANCE OF DOMICILE

A Private Clients Group White Paper

Our society has become increasingly mobile and people frequently relocate from state to state, own vacation homes in a state different from that of their year-round residence or retire out of state. As a result, it is not uncommon for an individual to have established legal domicile in more than one state during his or her lifetime.

If you own homes in more than one state, have recently relocated, or are contemplating relocating or purchasing a new residence, you should carefully consider the tax and non-tax consequences of a change of domicile. Once the decision to change domicile is made, you should consciously make every possible effort to arrange your affairs to reinforce your choice of domicile.

### Domicile Compared to Residence

The concept of “domicile” is similar to, and is easily confused with the concept of “residence.” While frequently the state of one’s domicile is also the state of one’s residence, this does not hold true for everyone. While a person may have a number of different residences or be a resident of a number of different states, he or she may only have one domicile at any given time. The issue of one’s domicile is of particular importance for persons who own a number of homes in different states or who are considering relocating to another state.

A person’s “domicile” is his or her permanent home, to which he or she always intends to return. “Domicile” is often defined as (i) actual residence within a particular state, combined with (ii) the intention of making that state one’s permanent home. Actual residence in a state without the intention to live in that state permanently does not suffice. Since domicile is a question of *intent*, courts often look to a person’s overall manner of living to determine whether there has been a change of domicile.

The concept of “residence,” on the other hand, is based upon *objective* factors. Like domicile, a person’s residence is dependent upon a finding of physical presence within the particular state. Whether a person is a resident of a state may be determined, for example, based on the number of days spent within the state or the ownership of property within the state. Reference must be made to each state’s laws to determine the tax and legal consequences of being a resident of that state. However, no finding of intent is required for a person to be deemed a resident of a particular state. Thus, depending upon the laws of the particular jurisdiction, a person may be deemed a resident of more than one state and a domiciliary of yet another.

### Consequences of Domicile

The choice of domicile carries with it various legal consequences. It often determines (i) jurisdiction to assess state income and death taxes; (ii) primary jurisdiction to probate wills and administer estates; and (iii) judicial jurisdiction over an individual. Domicile also determines whether and where a person may exercise various legal rights and privileges, such as voting.

Generally, you will be subject to death taxes only in your state of domicile. However, if you die owning real property in another state, that state may impose its own death taxes on the value of the real property located in that non-domiciliary state. Other state taxes, such as income, intangible property and real property taxes, are

# CUMMINGS & LOCKWOOD LLC

often imposed in various degrees on non-residents, residents, and domiciliaries. It is therefore possible for an individual to be subject to a variety of taxes in more than one state. Consequently, when deciding whether to change your domicile, the impact of taxes must be examined.

## The Danger of Double Estate Taxation

Federal courts have allowed two or more states each to make an independent determination of domicile and each to assess its own estate and inheritance taxes on that basis. The United States Supreme Court has held that such double taxation is constitutional. In one infamous case, New Jersey and Pennsylvania both claimed an heir to the Campbell Soup fortune as a domiciliary and *each* state collected \$17 million in state inheritance taxes from the estate. Since a determination that you are domiciled in more than one state could have extremely adverse and costly consequences, it is imperative to take all the steps necessary not only to establish your new domicile, but also to revoke your prior domicile.

## Community Property Considerations

In addition to the possible tax implications outlined above, you should also be aware of other issues sometimes associated with the ownership of multiple homes or a change of domicile. Notable among these is the possible impact of community property laws. Many married couples own at least some, if not all, of their assets either as tenants in common or as joint tenants with rights of survivorship. While these forms of ownership are recognized in all fifty states, nine states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin) impose a separate community property system on property acquired by spouses. Community property laws can have a significant impact upon a person's right to dispose of marital property either during his or her lifetime or upon his or her death. In addition, community property may be treated differently than separate property in tax matters, as well as in the event of creditor problems or divorce.

Since property acquired in a community property state does not necessarily lose its character following the property owner's change of domicile, a person may own community property long after he or she leaves the community property state. Accordingly, when considering a change of domicile or the purchase of a second home, the possible impact of community property laws should not be ignored.

## Choosing Your Domicile

If you maintain homes in two states and intend to remain domiciled in your original home state, you should take every step possible to indicate that you continue to regard that state as your home state. On the other hand, if you wish to change your domicile to another state but retain a home in your original state, you should take steps consistent with this change of domicile that manifest your intention to abandon your original domicile.

Court cases deciding the issue of domicile indicate that no one factor conclusively establishes domicile. As mentioned above, the determination of one's domicile is a matter of one's *intent*, therefore, courts often look to a variety of factors in determining whether there has been a change of domicile. A person's declarations as to what he considers to be his home, residence or domicile may be used as evidence of intent. Such declarations often are found in formal legal documents as well as in other written instruments, such as letters, hotel registrations and the like. To make your choice of domicile clear, you should take as many of the following steps as are possible in view of your particular circumstances:

### In Your State of Desired Domicile

- Execute a new Will or a Codicil which recites your new domicile and which complies with all the legal requirements of your new state of domicile.
- Execute new Durable Powers of Attorney, Living Wills and Health Care Proxies which recite your new domicile and which comply with the legal requirements of your new state of domicile.

# CUMMINGS & LOCKWOOD LLC

- File a Declaration of Domicile, if available.
- Purchase and furnish a home to be used as your primary residence.
- Register as a voter and vote.
- File your federal income tax return with the appropriate IRS regional service center and show your state of desired domicile as your residence address.
- Pay state and local taxes as a resident.
- Obtain a driver's license.
- Register your automobile.
- File for any applicable tax exemptions on residential property.
- Be physically present within the state as large a part of each year as is practicable, especially during the initial year. Some individuals may wish to keep a diary of trips out of state and of nights spent in and out of state.
- Maintain a major portion of your bank accounts and brokerage accounts.
- Open a safe deposit box for your jewelry and other valuable property.
- Pay Blue Cross or other health insurance premiums.
- Conduct your business or profession in state to the extent possible.
- Join clubs, religious and social organizations.

## In Your Former State of Domicile

- If you have filed a Declaration of Domicile in another state, mail a copy to the tax authorities of the non-domiciliary state.
- Have your name removed from the voting rolls.
- Surrender your driver's license.
- Pay any taxes due as a nonresident. Mark your last return as a resident "FINAL," using your new address.
- Spend as little time as practicable in the state.
- Close brokerage and bank accounts in the state.
- Change club, religious and social memberships to "nonresident" status.

## In addition, you should

- Describe yourself as a resident of your domiciliary state in all legal documents that require a recital of residence, such as passports, real estate deeds, contracts, leases and credit applications.
- When traveling, use your new address as your residence when registering at hotels, motels, etc.
- Send a change of address to all business entities with which you deal, including those that presently owe you money or that may owe you money in the future, e.g., credit card companies, insurance companies or former employers that provide pension plans or death benefits.
- Consider transferring title to any residential real estate situated in your state of former residence to other family members, or to trusts for their benefit, but only after considering the estate planning consequences of such a transfer.
- Above all, *pursue a consistent course of conduct indicating an intention to abandon your former domicile and establish a home in the new state.*

# CUMMINGS & LOCKWOOD LLC

It is advisable to take as many of these steps as practicable since most courts determine domicile by weighing all factors. Taking most of these steps will establish a cumulative body of evidence substantiating your intent to change domicile, thus minimizing the threat of double taxation.

## Taxes are Not the Only Consideration

A change of domicile cannot be accomplished simply by signing an affidavit. Rather, one's lifestyle must be consistent with a permanent change of domicile. For many of our clients, the savings in lifetime and death taxes which might be accomplished by a change of domicile are not sufficient to warrant the abandonment of an accustomed way of life, particularly if establishment of a new domicile would require spending far more time in the new location than otherwise would be desired.

If you are considering a move to a new state or foreign jurisdiction and would like more information concerning the factors leading to a choice between domiciles, please do not hesitate to call your Cummings & Lockwood attorney.

Revised February 2006

Copyright 1998, Cummings & Lockwood LLC. All rights reserved.

This document is intended to convey to you the principal characteristics of the Importance of Domicile as they apply to common situations. For this reason we have deliberately simplified technical aspects of the law in the interest of clear communication. Under no circumstances should you or your other advisors rely solely on the contents of this document for technical advice nor should you reach any decisions with respect to this topic without further discussion and consultation with a Cummings & Lockwood attorney.

In accordance with IRS Circular 230, we are required to disclose that: (i) this memorandum was not intended or written by us to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer; (ii) this memorandum was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the memorandum; and (iii) each taxpayer should seek advice on his or her particular circumstances from an independent tax advisor.