

Relocating to Florida

Drawing upon the experience we have gained through advising our existing clients, we have summarized certain local procedures and laws which may be helpful to you in preparing to live in or establish domicile in Florida. Topics include:

- Florida Residence and Domicile
- Florida Taxes
- Estate Planning for the New Florida Resident
- Buying a Home in Florida
- Miscellaneous Information

FLORIDA RESIDENCE AND DOMICILE

There are many opportunities and responsibilities associated with relocating to Florida. Residents of Florida are entitled to certain benefits and are subjected to certain obligations. In general, however, only those persons "domiciled" in Florida are subject to Florida's jurisdiction regarding income and death taxation, devolution of property, execution of Wills and administration of estates and other assorted legal matters.

It is important to understand that a person's "domicile" may be very different from his "residence." While a person can have a number of different residences or be a resident of a number of different states, he can have only one domicile. Domicile is defined as actual residence within a particular state combined with the intention of making that state one's permanent home. In order to establish a new domicile, you must first abandon your old domicile.

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. Specific actions which show a person's intent to become domiciled in Florida include filing a Declaration of Domicile in that person's Florida county of residence, registering an automobile in Florida,

obtaining a Florida driver's license, registering to vote in Florida, applying for the Florida homestead exemption, working in Florida, sending children to Florida schools and paying Florida taxes.

All Florida domiciliaries and residents are subject to Florida's real property tax and sales and use taxes, as described more fully below. Florida domiciliaries and residents also may be subject to an estate tax in the future. Although Florida does not impose income tax, inheritance tax or gift tax on its residents or domiciliaries, a person may be subject to income and/or inheritance taxes in another state or states if that person has not properly changed his or her domicile to Florida. Therefore, in order to take advantage of Florida's favorable lifetime and death tax laws, it is imperative to take all the steps necessary not only to establish your new domicile in Florida but also to make clear that you have terminated your prior domicile in another state.

When considering a change of domicile, it often is advisable to take advantage of certain provisions of the Internal Revenue Code which allow you to exclude all or a portion of the capital gain on the sale of your primary residence. As these provisions are complex, it is *essential* for you to discuss with your tax advisor, prior to your change of domicile, the proper timing of your change of domicile and the sale of any residence.

FLORIDA TAXES

The following is a brief description of some Florida taxes that may affect you as a resident or domiciliary of this state.

I. Income Taxes

Florida does not have a personal (individual) income tax.

II. Individual Intangible Personal Property Tax

Florida formerly imposed an intangible personal property tax on certain assets owned by a Florida domiciliary, or a Florida estate, partnership, or corporation and certain trusts. The tax was generally imposed on stocks (including stock in a closely-held corporation), bonds,

notes receivable and interests in limited liability companies and partnerships registered with the Federal Securities and Exchange Commission. This tax, however, was repealed during the 2006 legislative session. Individuals who become Florida domiciliaries on or after January 1, 2007 need not be concerned about this tax. Individuals who have been domiciled in Florida prior to January 1, 2007 will only be liable for this tax with respect to tax years before 2007.

III. Florida Estate Tax

Florida cannot currently impose its estate tax. The tax law changes under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) significantly changed the scheme of state death taxes. EGTRRA eliminated the "federal death tax credit." Before EGTRRA, most states shared in federal estate tax revenues by claiming the maximum amount permitted under the federal state death tax credit. To respond to the tax revenue loss, many states have begun imposing estate taxes separate from the federal state death tax credit system.

The Florida Constitution prevents an enactment of estate taxes separate from the federal state death credit system (decoupled state death tax). Therefore, commencing in 2005, Florida could no longer collect state death taxes. However, if a Florida resident owns real property in a state which has enacted a state death tax, their estate may be subject to taxes in that state.

IV. Real Estate Taxes

Each county and municipality in Florida collects from its residents real estate taxes on the value of real estate within its borders. These properties are assessed each year according to their values on January 1 for purposes of computing these taxes. Each county and municipality determines its own rate of tax (mil rate) according to its budget needs for the year. The assessed value of a property is then multiplied by the applicable mil rate for the year to calculate the tax. These taxes are due by April 1 of a given year for the prior calendar year and, if paid early, may be eligible for a discount of up to 4%. Tax bills are typically mailed out during September or October each year.

V. Real Estate Conveyance Tax

The State of Florida imposes a tax known as the Documentary Stamp Tax which is an excise tax levied upon certain documents. Certain conveyances and written obligations to pay may be subject to the documentary stamp tax. The base rates of documentary stamp taxes are promulgated by the State of Florida and are regulated by the Florida Department of Revenue. In most counties, the tax rate for documents that transfer an interest in real property, such as a Deed, is \$.70 per every \$100 (or portion thereof) of the consideration paid. In some counties, such as Miami-Dade County, the rate differs. Documentary stamp tax on a mortgage, lien or other form of indebtedness is generally \$.35 per \$100 (or portion thereof) and is based upon the amount of indebtedness or obligation secured. Costs associated with the conveyance deed generally are paid by the seller, while costs associated with a mortgage generally are paid by the purchaser; both are collected when the deed or mortgage is recorded or at closing. The issue of documentary stamps can be a complicated area in some instances such as in transfers of real property in and out of trusts or into corporations. Your attorney can help you determine if your transaction will be subject to the documentary stamp tax and also help you plan with this in mind.

In addition, the State of Florida imposes a nonrecurring intangible tax on the recording of a mortgage, equal to \$.20 per \$100 (or portion thereof) of the face amount of the mortgage. This tax generally is paid by the purchaser and is collected at closing or when the mortgage is recorded.

VI. Sales and Use Taxes

The State of Florida collects a tax on the sale of all tangible personal property, with certain exceptions. The tax rate is 6% of the purchase price, but may vary by county.

The State of Florida also imposes a "transient rentals tax," which is a sales and use tax equal to 6% of the rentals charged for the occupancy of most accommodations (such as hotels, motels and apartments) for a term of six months or less. Certain types of accommodations, such as licensed nursing homes, are exempt from this tax. The

transient rentals tax is collected in addition to other taxes or fees imposed on the same rental agreement, such as the tourist development tax.

Florida counties may impose additional sales and use taxes.

VII. Gift Tax

Florida does not tax lifetime gifts.

VIII. Reemployment Tax on Household Employees

Unless a household employee qualifies as an independent contractor, an employer residing in Florida may be required to pay a quarterly Florida Reemployment Tax. The state tax is due for all wages paid in a year if cash wages of at least \$1,000 are paid to a domestic employee in any calendar quarter. For new employers, as of January 1, 2001, the Florida Reemployment Tax rate is 2.7% for the first 10 quarters of operation. Thereafter, the employer is granted an experience-based tax rate. The applicable rate is applied only to the first \$7,000 of each employee's wages.

To make the required payments, you must first register online at www.floridarevenue.com ("Register to collect and/or pay taxes") or file a paper Florida Business Tax Application (Form DR-1) to obtain an account number. The tax is then paid quarterly (by the end of the month following the calendar quarter for which the tax is due) by filing Form RT-6 with the Florida Department of Revenue. For more information, contact the Florida Department of Revenue Taxpayer Assistance Center at 850.488.6800 or visit www.floridarevenue.com.

A Florida resident employer must, of course, also satisfy all federal requirements. The employer is required to (i) file Form 941 with the Internal Revenue Service and pay FICA tax (social security tax) quarterly, (ii) file a Form 940 with the Internal Revenue Service and pay federal unemployment tax annually, and (iii) file Forms W-2 and W-3 annually with the Social Security Administration.

ESTATE PLANNING FOR THE NEW FLORIDA RESIDENT

Laws applicable to the drafting of Wills and the probate process vary from state to state. Consequently, a person relocating to Florida should review the peculiarities of Florida law with a qualified estate planner in order to determine the appropriateness of his or her current estate plan. Although you may not need to rewrite your Will, there may be good reasons for considering a revision.

I. Is Your Out-of-State Will Effective?

Most states, including Florida, recognize an out-of-state Will as valid so long as it was executed according to the requirements of the state in which it was signed. However, even if your Will was validly executed, its effectiveness should never be assumed.

For instance, if your Will does not have a "self-proving affidavit" which complies with Florida law, it will be necessary at your death to try to locate the witnesses to your Will. This will likely increase costs and delay the admission of your Will to probate unnecessarily.

In addition, you may by the terms of your Will attempt to convey residential property which, by virtue of Florida's homestead laws, may result in an invalid devise. These provisions of your Will should be reviewed to ensure they do not conflict with these protections.

II. Does Your Current Estate Plan Take Into Account Any Other State Death Taxes to Which You May be Subject?

Your estate may be subject to death taxation in another state if you own real property or other assets located in that state or if that state claims that you are domiciled there at the time of your death. Depending on the laws of that state and the type of death tax imposed by it, additional steps may need to be taken in order to minimize the impact of that tax.

States are enacting new death tax laws due to the changes in the federal tax law; therefore, your estate plan should address these new taxes especially if you own real property or other assets located in a state other than Florida.

III. Are You Taking Advantage of Your Gifting Privilege Under Florida Law?

Florida, unlike some other states, does not have a gift tax. Relocating to Florida may make it worthwhile to consider a lifetime gift program which is intended to reduce estate taxes payable at your death. Of course, you should consult an attorney with respect to any federal gift tax or generation-skipping transfer tax concerns.

IV. Is Your Choice of Personal Representatives and Trustees Still Appropriate?

If your Will names an out-of-state bank or trust company as Personal Representative or Trustee, you should confirm that the bank will be permitted to qualify and exercise fiduciary powers in Florida. If your Will names a nonresident individual as Personal Representative, he or she will not be allowed to qualify in Florida unless he or she is related to you in the manner provided by Florida statute. If your Trust Agreement names an individual residing far from Florida as Trustee, it may be impractical to expect such individual to carry out his or her responsibilities.

V. Does Your Will Relieve Your Fiduciary of Cumbersome Administrative Requirements?

Florida's probate procedures are in many instances different from those of other states. Although some of the procedures are required, others may be waived if desired by including appropriate provisions in your Will.

- **Fiduciary Bonds.** Your Personal Representative or Trustee will be required to post a bond for protection of your estate assets unless you elect in your Will to waive this requirement. Many Florida judges require a bond even if the Will waives this requirement. However, the waiver may still save the estate administrative costs by minimizing the size of the bond required by the judge.
- **Reexecution of Will Can Make Probate Easier.** To probate a Will in Florida, the witnesses must sign sworn statements testifying to its proper execution. If you do not reexecute your

Will in Florida, it may be difficult to locate the witnesses upon your death. In addition, if the validity of the Will is contested, the witnesses may also have to appear in court – often a time-consuming, expensive trip. If instead your Will is reexecuted in Florida, the appropriate self-proving affidavit can be attached to avoid the need of contacting the witnesses after your death. In addition, if your witnesses are local, it is much easier and less expensive for them to appear in court if a Will contest makes their appearance necessary.

VI. Are Provisions of Your Will Subject to Different Legal Interpretations Under Florida Law?

Laws governing the interpretation of Wills vary from state to state. Your Will should be reviewed to determine whether Florida law varies from the law of your former state in any substantive way that defeats your estate planning goals. For example, you may have provisions in your Will which attempt to penalize your spouse or heirs from contesting any provisions of the Will or from exercising their rights under Florida law to receive a share of your estate. Or you may have a provision attempting to convey your Florida homestead property in an impermissible manner. Provisions of this type are unenforceable and of no effect in Florida.

VII. Have You Ever Resided in a Community Property State?

A number of states, unlike Florida, are community property states. Whether property is community or separate affects your and your spouse's rights in determining your income and death tax liabilities and property rights. If you are relocating to Florida from a community property state, your assets should be reviewed to determine their character so that unanticipated and undesirable tax consequences can be avoided.

VIII. Have You Adequately Provided for the Management of Your Assets if You Become Incapacitated?

In some states, Powers of Attorney lose their validity when the principal becomes incapacitated. In Florida, they do not-if properly drafted. Consequently, it is usually advisable to sign a "Durable" Power of Attorney which appoints an individual as your agent to manage your assets in the event you can no longer do so. Such Powers of Attorney are an inexpensive substitute for the formal, after-the-fact court appointment of a Guardian should you ever become temporarily or permanently incapacitated.

If you executed a Power of Attorney in your state of former domicile or many years ago, it should be reviewed to determine whether it is valid in Florida and whether it will survive your incapacity.

In addition to a Power of Attorney, you may also want to consider establishing a Revocable Trust naming an individual, bank or trust company to take over the management of your assets upon your physical or mental incapacity. Under Florida law, you may act as sole Trustee of such a Trust until any such incapacity occurs.

If your financial or personal circumstances are complex, it may also be advisable to name a "preneed" Guardian in case of a court proceeding. Florida, unlike many other states, permits you, instead of the court, to choose this person. You may wish to take advantage of this opportunity to substitute your judgment in place of the court's.

IX. Have You Signed a "Living Will" or "Advance Directive For Health Care"?

Florida has enacted laws encouraging physicians and hospitals to follow the wishes of a terminally ill patient who earlier has signed a Declaration, often referred to as a "Living Will" or "Advance Directive for Health Care," requesting his or her doctor to withhold or withdraw extraordinary life support measures in the event of an end-stage condition. Although many other states have similar legislation, the consequences and requirements of signing a Declaration may vary considerably from state to state. If you have signed a Declaration in your state of former domicile, you should consult your Florida attorney to determine whether it complies with Florida law.

X. Have You Designated a Person to Make Health Care Decisions For You?

Florida law provides that you may designate a "Health Care Surrogate" to make health care decisions, including whether to remove life support systems, in the event you are unable to make such decisions yourself. In addition, you may confer upon your agent the authority to arrange for, and consent to, medical, therapeutic and surgical procedures. The appointment of a Health Care Surrogate is typically incorporated in an "Advance Directive for Health Care."

XI. Is Your Estate Plan Current?

The last decade has seen continual and substantial changes in the estate and gift tax laws and the laws relating to administration of estates and trusts which may make your current estate plan obsolete. Changes in your personal, financial and family circumstances also may require a revision of your plan. Accordingly, you should carefully review your estate plan with your lawyer on a periodic basis, regardless of any change in state residence or domicile.

BUYING A HOME IN FLORIDA

I. Finding Your Home

One of the best ways to begin the search for a home is by working with a qualified real estate agent. A qualified agent can provide you with information, not only about housing, but also about neighborhoods and market appreciation, schools, transportation, recreation, shopping and related subjects. Most agents in the area are members of local real estate boards, each established to cover a different area, usually county-wide. All members of a real estate board have access to information about homes listed with that local board which are known as "multiple listings" or the "MLS."

In Florida, real estate agents are paid a commission for having produced a "ready, willing and able buyer." The amount of the commission is negotiable and is usually paid by the seller upon completion of the sale. A 5 or 6% commission is common. Generally, the 5 or 6% is split between the listing and selling agent at closing. This custom does not preclude a buyer from also engaging the services of a real estate agent to represent the buyer's interest in acquiring a home. Many realtors, in fact, hold themselves out as "Buyer's brokers" only and have established successful niche marketing practices.

II. Offer to Purchase and Contract for Sale

In most areas, offers to purchase a home in Florida are customarily made in the form of a written contract which is presented to the seller for his written acceptance. The contract form which is used by most brokers and many attorneys is a Florida Board of Realtors/The Florida Bar -approved form, known as a "FAR-BAR" contract, although in Collier County,

many brokers use a form promulgated by the Naples Area Board of Realtors ("NABOR"). The Florida Association of Realtors endorses a contract known as the "FAR" contract, and many county realtor associations may also have their own approved contract forms. Most contracts typically contain the following basic information:

- The names and addresses of the parties.
- A list of the personal property (if any) to be included and "exclusions," items which the seller intends to keep.
- The legal description and street address of the property.
- The purchase price and the form, manner and time of payment.
- Provisions and contingencies for financing, if financing is desired or required.
- Instructions as to who will provide and pay for owner's title insurance, and when the title insurance commitment is to be issued.
- Exceptions to title (e.g., wetland and flood areas, unpaid taxes, easements, rights-of-way, judgment liens and mortgages) which may need to be cleared prior to or at closing.
- Deadline for the seller's (or buyer's, in the case of a counter-offer) acceptance of the contract.
- Anticipated closing date for completing the purchase.
- The form of deed to be provided.
- Other contingencies.
- Broker's fee.

The offer is customarily presented to the seller or his agent with a small deposit, usually up to 1% of the offered purchase price with an additional deposit (generally resulting in a total of 10% of the purchase price) to be made shortly thereafter. The seller, if he accepts the offer, will sign the contract. If he does not accept the offer, he may counter by crossing out the rejected terms, adding new terms, and initialing the changes. The seller then presents the revised proposal to the purchaser for acceptance. When both the purchaser and the seller have agreed on the terms, the contract is signed by all parties, and it becomes binding and enforceable. Since both parties will then be legally bound to their