

Select Portfolio Management, Inc
26800 Aliso Viejo Parkway
Suite 150
Aliso Viejo, CA 92656
949-975-7900
800-445-9822
info@selectportfolio.com
www.selectportfolio.com

SELECT Portfolio Management, Inc.
REGISTERED INVESTMENT ADVISOR
Money Management, Inc.
REGISTERED INVESTMENT ADVISOR

Choosing Your State of Domicile

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What is it?

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 have only one domicile, although you may have more than one home.

Example(s): 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 homes 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(s): 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(s): 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 liable 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.

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 meet the following requirements to claim a state as your domicile:

- You must be physically present in the state, although you don't have to be present for any particular length of time. In theory,

only a few minutes would suffice. 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 intend 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

It isn't necessary to do any of the following in order to claim a state as your domicile. However, you might want to do some or all of them to prove that you intend to make that state your domicile:

- Own property
- Open bank accounts
- Register to vote
- Obtain a driver's license
- Establish ties to the local community

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(s): *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 or 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 affect 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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