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## To Move, or Not to Move ...

Some of our clients have asked us whether it is advisable for them to establish residency in Florida or another state. Not just for the favorable climate, but for the tax and creditor protection benefits. The analysis is roughly the same for Florida or any other state.

In order to take advantage of Florida's tax and asset protection benefits, for example, you must be domiciled in Florida. A person can have many places of residency, but only one place of domicile. Your domicile is your permanent and principal home.

The process of becoming a Florida domiciliary usually includes filing a form that declares Florida to be your domicile; establishing your mailing address, drivers license, voter's registration, and religious, recreational and banking affiliations to be consistent with the change of your permanent home to Florida; and otherwise treating, and holding Florida out to your family, friends, and business associates, as your principal home. If you continue to own one or more residences in other states, the ties to those other states should be examined in order to prevent the former state of domicile from asserting that you are still subject to its tax laws.

Florida does not impose a state income tax on its residents. New York, for example, imposes a maximum 12% rate and Illinois has a 3% tax although income from retirement accounts and social security benefits are not taxable in Illinois. (Please remember, even if domiciled in Florida, wages earned in other states remain subject to tax in those states.)

Some states impose some form of death tax on their residents, but Florida currently does not. Illinois, for example, imposes an estate tax on the taxable estate in excess of \$2,000,000, which if you are survived by your spouse can usually be deferred until the survivor's death.

Additionally, the Florida homestead exemption protects homes from the claims of creditors (subject to certain limits imposed by the new Bankruptcy Act) and also gives residents a break on their real estate taxes.

But, be careful. Under Florida law a surviving spouse's guaranteed minimum rights to a deceased spouse's assets regardless of the terms of the decedent's will and trust are substantially greater than in Illinois and many other states. Therefore, if you change your domicile to Florida, you should promptly review your estate plan, especially in second-marriage situations.

Other factors to be considered in moving to another state include: possible income taxes at a county or municipality level; state taxation of retirement benefits; homestead rights; intestacy and heirship rules; rules regarding trust administration and the length of time a trust can continue; protection of retirement benefits, residence and other assets from creditors; and spousal rights in the event of a divorce.

If we can be of assistance to you in considering these points further, please let us know.

Presented as information to our clients and friends, and not to be construed as or take the place of legal or other professional advice or opinion.

**IRS Required "Circular 230" Notice:** Pursuant to recently enacted federal regulations imposed on attorneys who give tax advice ("Circular 230"), we are required to include a notice in most of our written communications that any tax advice contained in the communication is not intended or written to be used, and may not be used: (i) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by any governmental taxing authority; or (ii) by any person to recommend or support the promotion or marketing of any federal tax transaction addressed in the communication.