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Process to become Florida resident involves variety of steps, reminders

Florida has become an attractive destination for Illinois residents, and they are not relocating for the oranges. The tax savings and asset protection opportunities are compelling incentives for Illinois residents with second homes in Florida to establish full-time residency in the Sunshine State.

The benefits of Florida residency include: no state income tax; no state gift tax; no state-level estate tax; unlimited exemptions for homestead property (subject to federal bankruptcy limitations); caps on the increase in the assessed value of the principal residence; no intangible tax; and recognition of tenants by the entirety titling for a variety of assets.

Florida is quick to welcome out-of-state residents; however, the state does not make it easy for attorneys who are not licensed in Florida to practice there. It does not allow attorneys to waive into the Florida Bar after a specified number of years in practice. In my first year of practice it became obvious that a Florida license was necessary to best serve my clients and I signed up to take the exam. It is known to be challenging — in 2011, the average pass rate for the Florida Bar was 72 percent, compared to 83 percent for the Illinois Bar. In addition, Florida has been known to tighten the reins on the “unauthorized practice of law” by non-Florida licensed attorneys.

In *Florida Bar v. Larkin*, 298 So. 2d 371 (Fla. 1974), the Florida Supreme Court determined that the preparation of wills and antenuptial agreements by a person not authorized to practice law in Florida constituted the unauthorized practice of law. In *Larkin*, the court suggested that if an out-of-state attorney had the documents reviewed and approved by a Florida lawyer, the out-of-state attorney would avoid the claim of the unlicensed practice of law. The rules allow an out-of-state attorney to provide legal services on a temporary basis in Florida that

arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice. Fla. State Bar Rule 4-5.5(c)(4). Practitioners are warned that in 2004, the Florida legislature made the unlicensed practice of law in the state a felony of the third degree. Fla. Stat. Section 454.23 (2004).

When Illinois decoupled with the federal estate tax exemption, Illinois estate tax levels rose as high as 22 percent. The Illinois estate tax has prompted many of my clients to become full-time Florida residents. Clients often inquire about the “six months and a day rule” — whereby residency is determined if the client spends at least six months and one day in the specific location. However, there is no specific time duration requirement in Florida. Illinois case law recognizes that there is no requirement that a person spend more time in one location than others to establish that location as her domicile — rather, the standard hinges on the intent of the party coupled with an actual physical presence (see *In re Estate of Stisser*).

Physical presence helps to bolster one's argument and domiciliaries should be physically present in Florida more days than they are present in any other location.

The process to become a legal resident is complex and requires individuals to establish new domiciliary. To establish a change of domicile, the following elements are required: (i) physical abandonment of the first domicile; (ii) an intent not to return to the first domicile; (iii) physical presence in the new domicile; and (iv) intent to make the new residence the new domicile. See *Hatcher v. Anders*, 117 Ill.App.3d 236, 453 N.E.2d 74 (2d Dist. 1983); *In re Marriage of Goldstein*, 97 Ill.App.3d 1023, 423 N.E.2d 1201 (1st Dist. 1981); *Stein v. County Bd. of School Trustees of DuPage County*, 85 Ill.App.2d 251, 229 N.E.2d 165 (2d Dist. 1967).

Florida will welcome new domiciles with open arms — however, sufficient ties with Illinois must be



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severed. Physical presence and evidence of intent to be a Florida domiciliary can be demonstrated through the following:

- Create a new will and trust (or amend and restate an existing trust) to reflect your Florida residency. Make certain the documents comport with Florida law and are at the very least reviewed by an attorney licensed to practice law in the state of Florida;
- Obtain property powers of attorney and health-care powers of attorney that reflect your Florida residency (Note: Effective Oct. 1, Florida revised its durable power of attorney statute.);
- File a declaration of domicile in Florida with the clerk of the circuit court of your county of residence;
- Obtain a Florida driver's li-

cense (and surrender the Illinois driver's license);

- File federal income tax return using Florida address in the Georgia Service Center of IRS;
 - Change the title and registration of automobiles to Florida (except for those which permanently reside in another state);
 - Register to vote in Florida (and notify your Illinois county election office of your change);
 - Submit an application for Florida's property tax homestead exemption (and notify the county assessor in Illinois that your Illinois homeowner's exemption should be canceled);
 - Move personal effects and valuables to your Florida residence;
 - Change your principal bank accounts to Florida;
 - Open a Florida safe-deposit box, cancel any safe-deposit box in Illinois and transfer the contents to Florida;
 - Obtain a new passport with your Florida address;
 - Notify Social Security Administration of change of address;
 - Affiliate with a Florida church or synagogue;
 - Affiliate with a Florida country club (and consider canceling organizational memberships in Illinois or changing your membership status to “nonresident”);
 - Affiliate with Florida charitable organizations;
 - Utilize Florida doctors for medical and dental needs;
 - Purchase a subscription for a Florida newspaper;
 - Send “change of address” notification to personal and professional contacts;
 - Purchase stationery with your Florida address for personal and professional purposes; and
 - Update your address for personal and professional purposes wherever possible.
- Clients who own a Florida home and spend a considerable amount of the year in their Florida home should consider becoming a domiciliary to take advantage of the unique benefits. And while you're at it, send a case of oranges my way.

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