



Domicile Planning

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Agenda Preview

- What is domicile?
- Who needs domicile planning?
- How to choose a domicile.
- Practical measures that can be taken to establish domicile.
- The dangers of ignoring domicile planning.
- Specific advantages and disadvantages of establishing a Florida domicile.



What is domicile?

- A relationship created by law between an individual and a locality.
- For today, we are speaking specifically about state domicile.
- Each state defines 'domicile' either by statute or case law.



What is domicile?

- There is no universal definition of domicile, although the states (and the IRS) share a general understanding...
 - Physical presence within a state, concurrent with;
 - An intention of making it a permanent home.



Pennsylvania Domicile

In re Prendergast, 543 Pa. 498

- A domicile is the place at which an individual has fixed his family home and principal establishment for an indefinite period of time.
- A new domicile can be acquired only by physical presence at a new residence plus intent to make that new residence the principal home.



Florida Domicile

Kevolah v. Carter, 699 So.2d 285 (Fla. 5th DCA 1997)

- The place where a person has fixed an abode with the present intention of making it his or her permanent home.
- Once established, a domicile continues until it is superseded by a new one.



Who needs domicile planning?

1. **Changing** domicile
2. **Changeable** domicile
3. **Ambiguous** domicile



Changing Domicile.

- Typical situations to watch for...
 - Older clients retiring to a new state.
 - Professionals moving because job relocation
 - Non-U.S. citizens moving to the U.S. for various political, personal or financial purposes




Changeable Domicile.

- Clients who are part-year residents of two or more states, and maintain associations with each state so that adopting a new domicile would require relatively little effort.
 - These clients may be more difficult to identify because they most likely have not given domicile planning any consideration.



Ambiguous Domicile.

- Closely related to a client with a Changeable domicile.
- These clients include:
 - those who have taken insufficient steps in an intended domicile change.
 - those who have inadvertently accumulated significant indicia of domicile without an intent to change domicile.



Choosing a Domicile.

- Once a client that will benefit from domicile planning is identified...

First: Determine the appropriate domicile.

Second: Document the choice of domicile.



Determining the most beneficial domicile.

- Avoidance of a state's income, estate or gift tax.
- Taxation of US and foreign situs property.
- Desire to be near family and friends.
- Creditor protection laws.
- Divorce laws.
- Elective share considerations.
- Political, work, church affiliations etc.



Documenting a domicile change.

Review the law of the former domicile. (this may act as a roadmap to domicile avoidance)

Domicile definitions are inherently subjective, and courts rely on intent of the individual.

It is advisable to take as many objective steps toward documenting a domicile change as possible.



A Domicile Nightmare.

- In Re Dorrance's Estate, 309 Pa. 151
- Dr. John T. Dorrance –
 - Employed by Joseph Campbell Preserve Co., reorganized as Campbell Soup Co.
 - In 1930, at his death, Dorrance owned all 100% of the Campbell Soup Co.'s capital stock.
 - Dorrance's estate in 1930 exceeded \$115,000,000.00.



A Domicile Nightmare.

- Dr. Dorrance and his family lived in Camden, NJ for most of Dr. Dorrance's career.
- In 1925 the Dorrance's bought an elaborate estate ('Woodcrest') in Radnor, PA.
- However, the Dorrance's continued to maintain a residence in NJ.



A Domicile Nightmare.

- Dr. Dorrance claimed a NJ domicile.
 - New Jersey law exempted Dorrance's Campbell's stock and government securities from property tax.
 - New Jersey law allowed Dorrance to leave his 100% interest in Campbell's to his children, without his wife being able to elect to take personalty against his will... not possible under Pennsylvania law.



A Domicile Nightmare.

- The Pennsylvania Supreme Court found Dorrance to be a PA domiciliary.
 - PA Supreme Court reversed the lower court's ruling that where one has more than one residence he may choose for his domicile whichever one of them he pleases.
 - The Dorrance estate paid approximately \$17,000,000.00 in inheritance tax to Pennsylvania.



A Domicile Nightmare.

Indicia of PA domicile...

- All personal effects were moved to PA
- Paid nearly \$95,000/yr. to maintain the PA estate
- Over 25 servants employed at the PA estate
- Dorrance commuted daily from PA to work in NJ
- The Dorrance children went to school in PA
- Mrs. Dorrance changed church membership to a PA church
- Frequently hosted social and professional dinner parties at the PA estate
- Dorrance's daughter's wedding reception was held at the PA estate
- The Dorrance family spent most all of its time at the PA estate



A Domicile Nightmare.

Indicia of NJ domicile...

- Maintained a residence in NJ staffed with servants
- NJ home was open all year; whereas the PA estate was closed when the family traveled
- Dorrance executed a formal agreement with his wife stating their intention to maintain a NJ domicile
- Still visited the NJ home
- Dorrance's mother and sister occupied the NJ home
- Dorrance maintained church membership in NJ
- Dorrance and his wife voted in NJ
- Dorrance's will states that he was a NJ domiciliary and that the will was to be probated in NJ
- Dorrance was living in NJ when he died



A Domicile Nightmare.

- The Pennsylvania court found...
 - As regards the determination of domicile, a person's expression of desire may not supersede the effect of his conduct.
 - The domicile of a person is where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.



A Domicile Nightmare.

The Fallout...

- New Jersey courts determined that Dorrance was a NJ domiciliary and assessed a NJ inheritance tax.
- No deduction was given for the “erroneous and illegal” taxes paid to PA.
- US Supreme Court refused to hear the case.
- The Dorrance estate paid an additional \$17,000,000.00 in NJ inheritance tax.
- Total state inheritance tax = \$34 Million in 1932.



Domicile Lessons.

Domicile planning requires careful analysis and deliberate questioning to make an informed decision.

Any informed domicile decision is preferential to leaving domicile ambiguous.

The consequences of inadequate domicile planning are too costly to ignore.



Thank you for coming!

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