

# Moving to Florida: 3 Tax Traps, How To Avoid Them, and Domicile Checklist

By Phillip B. Rarick, Miami Trust Attorney



## Executive Summary

In addition to our sunshine, Florida has one of the best tax and asset protection climates of any state in the country. Florida has no state income tax, no fiduciary tax, no intangible tax, no estate tax, and arguably the most generous homestead laws anywhere in the U.S.: you can have a multi-million dollar home in Florida and this residence will be virtually untouchable by creditors. However, moving to Florida without proper planning does have risks. This Guide discusses the risks and gives you a handy checklist to establish Florida domicile.

## Quick Tip:

Before making the move to Florida, it is important to seek legal counsel of a Florida trust attorney to ensure that you will be able to reap all the benefits of Florida law. It may also be wise to consult with a CPA in your current home state to cut off ties that may continue to subject you to your home state taxes.

## Trap #1: Failure to Escape Fiduciary or Income Tax of Your Former State

Failure to make proper revisions in the Trust for a person moving to Florida may result in tax exposure in your former state. Florida is one of only seven states that does not impose a fiduciary income tax. Other states impose a tax at top rates from 3% to 10.3%. See Jeffrey A. Kern and H. Allan Shore, [\*So You Left Your Trust at Home When You Moved to Florida\*](#), *The Florida Bar Journal*, May, 2009.

Here is a sampling of how some states determine their jurisdiction to tax a Trust.

**New York.** Taxes solely on the basis of the resident Settlor or Testator with the exception for a resident Trust where all of the following are satisfied: (1) all Trustees are domiciled outside of New York; (2) all Trust assets are located outside of New York; (3) there is no New York source income.

**Note:** One dollar of New York source income can trigger New York jurisdiction.

**Illinois & Pennsylvania.** These states tax the fiduciary income of a Trust if the sole connection to the Trust is a resident Settlor of a living Trust or resident Testator of a testamentary Trust.

**Massachusetts.** Tax jurisdiction based on residence of Trustee. Can be avoided by ensuring all Trustees reside in Florida.

**Connecticut.** Similar to Illinois, however in the case of a living Trust, with a resident Settlor, the Trust must have a resident beneficiary for Connecticut to impose its tax.

**Michigan.** Taxes a living Trust on the basis of a resident Settlor unless all beneficiaries, all Trustees, and all administration of the Trust takes place outside the state. Michigan taxes a testamentary Trust solely on the basis of a resident Testator.

### **Trap #2: Failure to Take Your Trust**

A common oversight of persons moving to Florida is failing to take their Trust. You may have packed your Trust and taken it with you, but if the Trust situs remains in your original state the Trust has not actually moved. This is usually a mistake which can be easily remedied. To avoid this trap, you should have all your Trusts reviewed by a Florida attorney regarding such issues as: (1) transfer of governing law or place of administration; (2) change of Trust from non-grantor to grantor status; (3) change of Trustees or their successors; (4) transfer of insurance policies; (5) other desired revisions.

### **Trap #3: Failure to Name a Florida Qualified Trustee**

Another common problem is if the Trust names a non-Florida Trust company or law firm as Trustee or successor Trustee. Under Florida law, a law firm or Trust company not licensed in Florida cannot act as Trustee or personal representative of a Will unless it qualifies as a Trust company in Florida.

**Side Note:** A non-Florida attorney cannot act as Personal Representative or Executor in the Will unless he or she is related to the Testator.

## **How to Avoid the Traps: A Domicile Checklist and Practical Tips**

The short answer is this: Clearly establish “domicile” in Florida. Here is a Checklist and Tips, but first it is important to distinguish domicile vs. residence.

### **A. Domicile vs. Residence**

“Domicile” and Residence are two different legal terms, but often confused. A person can have only one domicile, but any number of residences in different states. Domicile is your actual residence in the state joined with your intention to make that state your permanent home. In order to establish a new domicile, you must first abandon your old “domicile”, but not necessarily your old “residence.” The Florida test is both a subjective and objective test. The following checklist is a list of important objective criteria.

### **B. Do Not Sit On the Fence**

It is important to clearly establish domicile by following the following criteria listed here and abandoning the same in your original state of domicile when feasible. For example, once you secure a Florida driver’s license you should relinquish the license in your original state. You should abandon the mailing address of your original state and have all correspondence – especially tax correspondence – come from your Florida mailing address.

**Note #1:** It is not necessary to do all of the steps listed in this checklist. However, the more items completed the stronger is your argument that you have established Florida domicile.

**Note #2:** The following is not a complete list, as there is no “complete list”.

## Florida Domicile Checklist

Action Item	Date Done
File Declaration of Domicile (not required but helpful)	
Use Florida residence as your primary (if possible exclusive) mailing address	
File for Florida homestead property tax exemption	
Register to vote in Florida and in fact vote	
Execute a new Florida Will; recite Florida residence in Will	
Update other estate planning documents (such as living trust, will, durable power of attorney, health care surrogate) to conform with Florida law	
File Federal Income tax with IRS using Florida address	
Change address on passport to Florida residence	
Obtain Florida vehicle license plates (relinquish plates from original state)	
Open Florida bank account	
Notify Social Security Administration of new Florida address if receiving such benefits	
Register Florida address with Medicare and other insurance providers	
Change credit card(s) address to Florida mailing address	
Obtain safe deposit box in Florida and transfer valuables to box	
Affiliate with Florida church, temple or mosque	
Direct that all income, pension, dividend and interest checks be sent to Florida address or deposited in your Florida bank account	
Notify social clubs of Florida address	
Establish professional relationships with Florida CPA, attorney, investment advisor, and other professionals	

**Note:** Your new Florida trust should have specific language concerning: (1) Florida law to control validity and construction; (2) principal place of administration; (3) determination of situs; (4) transferring situs; and (5) substituting Trustee upon change of Trust situs.

## **Conclusion**

In addition to our sunshine, moving to Florida often has excellent tax and asset protection advantages. However, it is not without risk, as your former state may claim tax jurisdiction over you or your Trusts. Upon moving to Florida, you should have your entire estate plan reviewed by a Miami trust attorney. This estate plan may include your trusts, will, durable power of attorney, living will, and health care power of attorney. Proper planning will allow you to enjoy the warm Florida tax climate.

For more information, contact **Phillip B. Rarick, Miami trust attorney** with **Rarick, Beskin & Bowden Gold P.A.** at (305) 556-5209 or [info@raricklaw.com](mailto:info@raricklaw.com).

## **Special Note**

The information on this guide and website is of a general nature and is not intended to answer any individual's legal questions. Do not rely on information presented herein to address your individual legal concerns. If you have a legal question about your individual facts and circumstances, you should consult an experienced Miami trust attorney. Your receipt of information from this website or blog does not create an attorney-client relationship and the legal privileges inherent therein.