

RCO law

robison, curphey & o'connell

Ohioans in Florida

Project 419

May 13, 2022

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Residency

Which state is your legal residence? How do you change it? Why might you want to?

- A. Income taxation: Ohio non-residency rule and check list (new rules as of 2018)
- B. Ad Valorem/Real Estate Taxes

Form IT NRS: Ohio NonResident Statement

- During the tax year, I had no more than 212 contact periods in Ohio. (Note: This is a threshold number for a presumption of residency/non-residency. Not definitive proof.)
- During the tax year, I did not hold a valid Ohio driver's license or Ohio state identification card at any time.

Form IT NRS: Ohio Nonresident Statement

- I did not receive the Ohio homestead property tax exemption or the owner-occupancy tax reduction with respect to a tax lien date included in the tax year.
- I did not receive resident tuition benefits for an Ohio institution of higher education based on an abode being located in Ohio.
- During the tax year, I had at least one abode outside of Ohio for which I did not claim a depreciation deduction under section 167 of the Internal Revenue Code.

Ohio Cannot Base Your Residency Upon Any of These Factors:

- Location of your financial institutions, credit lenders, insurance agents, insurance companies, brokerage houses, realtors, lawyers, tax preparers, doctors, etc.
- Location of your favorite non-profits or religious institutions
- Location of your burial sites or preferred funeral facilities
- Where your business is incorporated
- Where you get married
- Where your kids go to college (but consider in-state tuition issues)
- Statement of residency in a will, trust, or other estate planning document

See O.A.C. 5703-7-16

Ohio Income Tax and Residency: Other Considerations

- Statement of Nonresidency for presumption purposes is due with traditional tax filing deadlines, including extensions
- But both states are receiving and spending revenue ...
 - State of Ohio proposed budget 2022: \$80.8 billion
 - State of Florida proposed budget 2022: \$105.3 billion
 - Florida taxes you for on promissory notes (in addition to the interest on promissory notes)

Real Estate/Ad Valorem Taxes

You can have either:

1. Florida homestead
(also consider Florida constitutional creditor protections)
2. Ohio homestead

Choice of Law

Which state's laws apply?

- For your Last Will and Testament (generally your domicile)
- For your Trust (you might be able to choose)
- For your POA or health care documents?
- For real estate (generally the state where the real estate is located)
- For beneficiary designations?

Florida Estate Planning Considerations

A. Florida Wills

1. Self-proving affidavit
2. Personal Representative –
preference in appointment, even when
there is a will but the nominated PR is not a
Florida resident.

Florida Estate Planning Considerations

B. Florida Trusts

1. Preserving Florida homestead protection

-Sample Language:

In order to claim homestead exemption rights under Section 196.031, Florida Statutes, the Grantor may use, possess, and occupy any real property that may be owned by the trust. The Grantor's interest in any real property owned by the trust will be construed as *beneficial title in equity to real property* as set forth in or any successor statute.

-Section 196.031(1), Florida Statutes, or any successor statute.

2. Uniform Trust Code

Florida Estate Planning Considerations

C. Florida Real Estate

1. Tenants by Entireties
2. Florida Enhanced Life Estate Deed
3. Documentary Stamp Taxes

D. Florida Ancillary Documents

Florida Estate Planning Considerations

E. LLCs?

- Annual report requirement
- State of Organization vs. registering to do business as a foreign LLC
- Potential doc stamp tax consequence for mortgaged real estate and change in ownership of an LLC that owns real estate
- Statutory agents

Florida Probate

- A. Florida e-file and remote practice of law
- B. Summary Administration (under \$70,000)
- C. Full Administration
- D. Ancillary Administration (for summary and full administration)
 - 1. Using certified Ohio probate documents
 - 2. Registered agent
 - 3. Restrictions on who can serve as a personal representative
- E. Attorney Fees (percentage fees are prohibited by law)

Questions?

Thank You!

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