BENEFITS OF FLORIDA RESIDENCY

The state of Florida offers many benefits to their residents.

Key wealth planning considerations.

In addition to the intangible benefits of living in sunshine all year round, Florida residents are likely to enjoy the advantages of very favorable homestead and tax laws compared to other states. In the following document, the top line benefits of establishing permanent residence in Florida are outlined.

Homestead

Florida's Constitution provides protection for homeowners through its Homestead Law. A Florida resident's principal home in Florida is called "homestead" property and the laws of Florida provide a number of special protections for the homeowner and his or her family. Two laws designed to protect residents include creditor protection and property tax savings.

Creditor Protection - Article X, Section 4 of the Florida Constitution protects a Florida resident's homestead against the claims of general creditors. With the exception of mortgage holders and lien holders who have provided services to your homestead, creditors may not seize your homestead to satisfy debts such as judgments from lawsuits or unsecured loans. However, both the federal government and local governments may foreclose tax liens on your property.

In addition to the homestead protection, Florida residents may also benefit from creditor protection for assets held as tenants by the entirety (a special form of ownership only available to married couples), most retirement plans, 529 college education accounts, life insurance proceeds, and annuities.

Property Tax Savings - Property taxes are based on a millage rate, which is set by the local government, multiplied by the assessed value of the property. Property with a homestead exemption enjoys a reduced assessed value and caps on future increases of the assessed value. Homestead exemptions of up to $50,000 are available to Florida residents on their primary residences. The first $25,000 applies against all property taxes. The second $25,000 applies against assessed values between $50,000 and $75,000 and applies to non-school taxes only. There are additional exemptions for widows and widowers, persons with disabilities, and veterans.

The Florida Constitution limits the annual increases in the assessed value of property receiving the homestead exemption to 3% or the percentage change in the Consumer Price Index, whichever is lower. This assessment limitation is commonly referred to as the "Save Our Homes Cap." The intent of the cap is to limit the increase on an individual's property taxes during a period of rapidly increasing real estate values. When the residence is sold, the property is revalued and the new owner will pay taxes based on the updated assessed value. The cap is reset at the new value, but the new owner will be able to protect against future significant increases if the property becomes his homestead. A change in ownership, such as an addition or removal of a joint tenant may also reset the cap.

In 2008, Florida voters approved an amendment to the Florida Constitution allowing a homeowner to transfer his Save Our Homes benefit from his prior Florida residence to his new Florida residence as long as the new residence is purchased within two years of the sale of the former residence. There are a number of requirements that must be met before qualifying under the amendment, so you need to discuss this issue with your accountant, attorney or real estate agent before purchasing your new home.

Florida Income Tax

One of the most significant benefits of becoming a Florida resident is that Florida does not charge state income tax for individuals. It is one of only seven states that does not impose a personal income tax on its residents. Because the Florida Constitution prohibits a state income tax, it is highly unlikely that status will ever change. Similarly, the state constitution forbids municipalities and counties from levying any personal income tax.

Florida Estate and Inheritance Taxes

Florida is one of just a few states that has no state inheritance, gift, or estate taxes in addition to no income tax. These wealth transfer taxes are also prohibited by the Florida Constitution. The federal government collects estate and gift tax at a rate of 40% on taxable transfers that exceed annual and lifetime exclusion amounts. Many other states have a separate gift and estate tax that can contribute significantly to the overall tax paid on transfers of wealth, and the exclusion amounts can be much lower than the federal exclusion amounts. For example, a person dying as a resident of Connecticut in 2015 will pay a separate estate tax on taxable transfers over $2 million with rates that start at 7.2% and increase to 12% for transfers over $10,100,000. This threshold is significantly lower than the current federal exclusion of $5,450,000, creating a tax liability where there might otherwise be none had they been a Florida resident.

Establishing a Florida Domicile

To take advantage of Florida's homestead and tax laws, Florida domicile must be established. Residence must be established by January 1 to take advantage of the homestead property tax exemption for that year. An application for the exemption must be filed with the county property appraiser by March 1. Florida statutes also allow an individual to file a Declaration of Domicile with the Clerk of the Circuit Court of the county in which the individual resides. The declaration evidences the person's intent to declare his Florida residence as his domicile. "Domicile" has been defined as "[t]he permanent residence of a person or the place to which he intends to return even though he may actually reside elsewhere. A person may have more than one residence but only one domicile." It is often much easier to establish Florida as your domicile for Florida tax purposes than to have your previous state of residence relinquish their claim that you are still a resident of that state. States such as New York are notorious for claiming that you remain a resident of New York and are subject to taxation there and often have strict "days in state" rules that presume you are a resident for that state's income tax purposes.

So what do you need to do to clearly sever your domicile from your previous state of residence? It's all a matter of facts and circumstances and the extent to which you treat Florida like it is your new residence. The more contacts with the previous state of residence that you can remove, the more difficult it will be for that state to successfully claim you as a permanent resident. The advice of a qualified attorney can be invaluable in guiding you through the process of changing your domicile. Some of the facts and circumstances indicating your intent to be a Florida resident may include:

(1) Filing a formal Declaration of Domicile with the Clerk of the Circuit Court in the Florida county where your new residence is located,
(2) Enrolling your children in school in Florida,
(3) Registering to vote in Florida, and voting in local, state and federal elections as a Florida resident,
(4) Transferring your church/temple membership to Florida,
(5) Obtaining a Florida driver's license or a valid Florida identification card,
(6) Registering your automobiles, boats and other vehicles in Florida,
(7) Listing Florida as your residence on your income tax return and filing in the appropriate location,
(8) Switching your social and professional memberships to the local club,
(9) Moving your primary banking relationship to a Florida bank or branch,
(10) Spending the majority of your time, at least 6 months and 1 day, in Florida each year and keeping a calendar of your travels outside the state,
(11) Hiring a Florida licensed attorney to prepare a new Will and/or Trust Agreement recognizing Florida as your residence,
(12) Establishing relationships with Florida service professionals, such as doctors, dentists, lawyers and accountants,
(13) Relocating significant personal items to your Florida home, including treasured artwork, important family papers, and photos,
(14) And maybe most importantly, if at all possible, selling your old residence or gifting it to other family members.

If you decide to become a Florida resident, one of the most difficult decisions will be deciding where you want to live. The choices are endless – beach, lake or riverfront, flatlands or rolling hills, quiet pastures or international cities, master planned communities or quaint villages, moss-draped oaks or palm trees (or both). But no matter where you settle, you can receive the benefits of Florida's most favorable homestead and tax laws.

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