

5-1-1957

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Recommended Citation

C. Pfeiffer Trowbridge, *Domicile Problems of "Winter Residents"*, 11 U. Miami L. Rev. 375 (1957)
Available at: <https://repository.law.miami.edu/umlr/vol11/iss3/3>

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DOMICILE PROBLEMS OF "WINTER RESIDENTS"

C. PFEIFFER TROWBRIDGE*

The rapid growth in population taking place in Florida at the present time is due in large part to the number of persons brought to the state, more or less permanently, by the optimism surrounding Florida's latest boom. Florida has always enjoyed an influx of new residents seeking retirement in the state's famous climate. But of greater significance today is the fact that a growing percentage of this number are persons in the younger age groups. With the introduction of new industry to supplement the long-established tourist trade, more and more out-of-staters are moving to Florida to take part in this new boom and to establish themselves in Florida prior to the usual age of retirement.

Those new arrivals who buy homes, move in bag and baggage, and find regular employment or establish businesses of their own, have few, if any, domicile problems. Their physical presence in the state concurrent with the present intention to make Florida their permanent home effects a change in domicile to Florida and proof of this intention is readily established by their actions and interests in the state. Similarly, the elder men and women who come to Florida after retirement upon a pension, Social Security, or under some investment program that does not require active management, have little difficulty in establishing a clear and unequivocal Florida domicile. It is, rather, the winter resident, the man who comes to Florida in semi-retirement, who enters into the quagmire of domicile determinations.

The term "winter resident" as used in this article describes a man who meets most of the following requirements: (1) He formerly lived in another state; (2) He built his fortune in that state; (3) He is now retired or semi-retired in Florida; (4) He lives over six months of the year in Florida; (5) He retains an interest in a business or investment in his original state which requires some supervision on his part; and (6) He makes trips to that state at least annually to look after his interests there. The winter resident, as such, is distinguished from the "tourist," who merely visits Florida on vacation, and from the "winter visitor," who annually winters in Florida but who does not meet most of these requirements and who makes no pretensions of surrendering his out-of-state affiliations.

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The domicile problems encountered by the winter resident are varied and many. Too often he takes no steps to establish a definite, provable domicile in Florida or to retain a domicile in the state in which he formerly resided. Frequently he takes actions in each state requiring domicile in each. If he is not advised as to the consequences of such inconsistent action, he may compound the confusion to the point at which each of several states may lawfully determine domicile inconsistently. He may eventually find that he is unable to establish domicile in a particular state in order to obtain privileges from that state and at the same time be unable to establish domicile elsewhere in order to avoid duties and liabilities asserted by the same state.

The primary fields in which inability to establish domicile may have serious consequences are: (1) Tax problems, including the assertion by a state of intangible personal property taxes, estate taxes, and license taxes, and the assertion by the winter resident of homestead and other exemptions; (2) Problems involving efforts of the winter resident to engage in a business or profession in Florida on a part-time basis or as a hobby; (3) Domestic relations problems, including marriage, divorce, marital rights of spouses, child custody, etc.; and (4) Problems involved in voting and holding public office. Most of these problems will be dealt with severally below. There are, however, many other rights and duties under the law that depend upon domicile, residence, or citizenship which are too numerous to discuss in detail. Eligibility to serve as executor or administrator¹ and liability for military service to the State² are a few among the many. As will be seen, the establishment of a domicile readily provable is an important matter too often neglected by new residents.

I. SPECIFIC DOMICILE PROBLEMS

A. Tax Problems

1. *Intangible Personal Property Tax.* The layman is often dismayed to discover that more than one state asserts the right to tax his intangible property and is even more disconcerted when informed by an attorney that this is constitutionally possible. The Supreme Court of the United States has several times stated that there is no constitutional rule of immunity from taxation of intangibles by more than one state.³ In *State Tax Comm. v. Aldrich*,⁴ the Court held that in the case of shares of stock, not only the state of the owner's domicile, but also any other state which has extended benefits or protection or which can demonstrate the practical fact of its

1. FLA. STAT. § 732.47 (1955).

2. FLA. STAT. § 250.02 (1955).

3. *Utah v. Aldrich*, 316 U.S. 174 (1942); *Currey v. McCanless*, 307 U.S. 357 (1939).

4. *Utah v. Aldrich*, *supra* note 3.

power or sovereignty over the shares may constitutionally levy a tax upon the share interests. In another case the Court pointed out that such action is not necessarily multiple taxation of the same property, but may be considered a tax on the separate interests protected by the taxing states.⁵ This approach is not unreasonable when one considers the fact that several states may furnish the protection of their courts and laws to the owner of property, *i.e.*, trust property may be located in one state, the trustee may reside in another, and the courts of a third state may supervise the administration of the trust.

The Florida intangible tax statute requires each person who owns or has the control, management, or custody of intangible personal property subject to taxation under the laws of Florida, including trustees, executors, administrators, receivers, and other fiduciaries, to file a return of such property.⁶ Although the normal tax date is January 1st, the same statute provides that every such person who becomes a legal resident of the state subsequent to January 1st and prior to the following April 1st of any year is subject to taxation on the date he becomes a legal resident of the state. Accordingly, a tax problem may arise when a non-resident physically enters the state after January 1st but does not clearly and unequivocally acquire a new domicile in Florida or maintain his prior domicile. The hardship of multiple taxation in this situation, however, is alleviated somewhat by a provision in the same section permitting the taxpayer to credit any amounts paid to another state on the same property. This gratuity on the part of the state does not, however, entirely relieve the situation in which the taxpayer unsuccessfully claims domicile elsewhere and the Florida tax imposed upon the property exceeds that imposed by the state of his claimed domicile.

A minor problem in connection with the filing of such a return arises in determining the county in which the intangible property is properly assessed. The statute provides that it shall be assessed in the county "where the taxpayer resides or has his usual place of abode."⁷ If a foreign domicile is unsuccessfully asserted by the taxpayer, a dispute may then arise as to the appropriate county for assessment.

The taxation of intangible interests in trusts is governed by a statute which distinguishes between resident and nonresident beneficiaries and trustees.⁸ The tax is applicable to the beneficial interest of a resident of Florida in trust estates of all kinds when the trustee resides out of Florida, or, if the trustee is a corporation, has its principal place of business outside the State of Florida. In such cases, however, if the trustee returns the beneficial interest to the Florida tax collector, the beneficiary need not do

5. *Currey v. McCanless*, 307 U.S. 357 (1939).

6. FLA. STAT. § 199.07 (1955).

7. FLA. STAT. § 199.08 (1955).

8. FLA. STAT. § 199.02(2) (1955).

so. If the trustee is a resident of Florida and returns the corpus of the trust as provided by law, then there is no tax on the beneficial interest.

It should be noted that the Florida cases distinguish between a resident beneficiary's "naked right" to receive income from a foreign trust and a right to income coupled with other powers and rights in such a trust. In the first case the supreme court has held that an attempt to levy an intangible tax on the beneficiary's interest is in effect a tax on income which is prohibited by Section 11 of Article IX of the Florida Constitution.⁹ On the other hand, if the resident beneficiary has a power of appointment over the corpus¹⁰ or a present right to alienate his interest,¹¹ then the interest in the trust is taxable to the beneficiary. If the trustee is a Florida resident, his interest is taxable regardless of the taxability of the beneficiary's interest or exemptions applicable to the beneficiary.¹² The fact that one of several trustees is a nonresident has been held not to alter the taxability of the trustees' interest where the trust property is held and administered in Florida and the resident trustees had actual control.¹³ The United States Supreme Court has held that a state may constitutionally tax the resident trustee's share of a trust even though the trust was created and administered in another state, the life beneficiary and the other trustee reside in another state, and the resident trustee does not actively perform his duties in the taxing state.¹⁴ Here again the Court stressed the fact that the courts of the taxing state are available for actions against the resident beneficiary.

There is little Florida case law on the provisions taxing executors and administrators on the estates under their management. However, several opinions of the Attorney General reveal the extent to which local tax officials may attempt to assess and collect intangible taxes on such estates. If the decedent was domiciled in Florida, his estate is subject to the intangible tax until it has been administered and distributed with the approval of the court of original probate even though it is held by an ancillary administrator in another state.¹⁵ The fact that the sole heir or devisee removes the property from the state does not alter this result.¹⁶ If the decedent was and the personal representative is domiciled in the state, it is immaterial that the property is located outside the state.¹⁷ If the personal representative

9. *Mahan v. Lummus*, 160 Fla. 505, 35 So.2d 725 (1948); *Owens v. Fosdick*, 153 Fla. 17, 13 So.2d 700 (1943).

10. *Wood v. Ford*, 148 Fla. 66, 3 So.2d 490 (1941).

11. *Burrows v. Hagerman*, 159 Fla. 826, 33 So.2d 34 (1947), *appeal dismissed for want of substantial federal question*, 334 U.S. 817 (1948).

12. *Florida Nat'l Bank v. Simpson*, 59 So.2d 751 (Fla. 1952).

13. *Ibid.*

14. *Greenough v. City of Newport*, 331 U.S. 486 (1947); *cf. OP. ATT'Y GEN. Fla.*, Jan. 5, 1934.

15. *OP. ATT'Y GEN. Fla.*, Sept. 6, 1949; *OP. ATT'Y GEN. Fla.*, Nov. 22, 1946.

16. *OP. ATT'Y GEN. Fla.*, Dec. 29, 1947.

17. *OP. ATT'Y GEN. Fla.*, Nov. 22, 1946.

is appointed by a Florida court, his intangible interest is taxable regardless of where he resides or takes the property.¹⁸ However, if the personal representative derives his sole authority from another state and the property is not located in Florida, the mere domicile of the personal representative in Florida will not give the property a taxable situs in Florida.¹⁹

2. *Tangible Personal Property Tax.* The imposition of the tangible personal property tax does not present as many domicile problems as the intangible tax since the situs of tangible property generally controls its taxable status.²⁰ However, several exemption provisions do require residence in the state. Section 11 of Article IX of the Florida Constitution exempts household goods and personal effects to the value of \$500 to the head of the family residing in the state and Section 192.201 of the Florida Statutes exempts household goods and personal effects to the assessed value of \$1000 to every person residing and making his permanent home in the state. Another statute²¹ exempts pleasure yachts and boats of nonresident ownership which are enrolled, registered, or licensed at ports other than in the state, which would be liable to tax in Florida by virtue of remaining in Florida waters the year around, if the owner has paid a tax on the vessel in the state of his residence or can show that it is not subject to tax there.

A further exemption based upon residence is not limited by its terms to tangible personal property, but should be considered in this area. Section 9 of Article IX of the Florida Constitution exempts property to the value of five hundred dollars "to every widow and to every person who is a bona-fide resident of the state and has lost a limb or been disabled in war or by misfortune."

3. *Homestead Real Property Exemptions.* Section 7 of Article X of the Florida Constitution establishes the homestead real property tax exemption. It is beyond the scope of this article to discuss the many problems involved in establishing and limiting the exemption, but it should be noted that a residence problem does exist. Among the requirements for the exemption is a provision that the person claiming the exemption must reside on the property and in good faith make it his permanent home or the permanent home of another or others legally or naturally dependent upon the claimant. (Section 1 of Article X establishes a similar exemption from forced sale of certain property "owned by the head of a family residing in this state.")

18. OP. ATT'Y GEN. Fla., Jan. 5, 1934. See also OP. ATT'Y GEN. Fla., Oct. 17, 1955.

19. OP. ATT'Y GEN. Fla., Nov. 22, 1946.

20. FLA. STAT. § 200.021 (1955). See *Greenough v. City of Newport*, 331 U. S. 486 (1947), for Supreme Court discussion of the constitutionality of an attempt by a state to tax tangible personal property of a resident which is located outside the state.

21. FLA. STAT. § 200.44 (1955).

The legislature has attempted to define the terms used in the homestead tax provisions thusly:

The words "resident," "residence," "permanent residence," "permanent home," and those of like import, shall not be construed so as to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his home to the exclusion of all other places where he may, from time to time, temporarily reside.²²

An attempt by the legislature to engraft a one year residence requirement onto the constitutional provisions for the homestead tax exemption was held unconstitutional by the Supreme Court in *Sparkman v. State ex rel Scott*.²³ In addition, the Court has on several occasions held that continuous physical residence is not necessary and temporary absence will not deprive property of homestead character provided an abiding intent to return is always present.²⁴ In at least two cases the Court has held that rental of the property during the winter or tourist season will not prevent the owner from claiming the tax or forced sale exemptions if there is in fact no intent to abandon the property as a permanent home.²⁵

It is no longer necessary, for the tax exemption, that the claimant be a citizen,²⁶ and the Attorney General has expressed the opinion that the claimant need not be a resident of the taxing unit if he in good faith makes the property the permanent home of another who is legally or naturally dependent upon him and he does not claim any other homestead exemption in the state.²⁷ Further, he need not be a registered voter.²⁸ If a wife has just grounds for establishing a home separate from that of her husband, she may establish a homestead if she meets the other requirements.²⁹

4. *Estate Tax*. Florida estate tax problems are considerably alleviated by a constitutional provision prohibiting an estate tax except to the extent that a credit is permitted under the federal tax law.³⁰ However, the question of whether such a tax is due the State of Florida and the amount due turns upon residency. Section 198.02 of the Florida Statutes imposes a tax upon the estate of every person who was a resident of Florida at the time of his death equal to the amount by which the federal tax credit

22. FLA. STAT. § 192.14 (1955).

23. *Sparkman v. State ex rel Scott*, 58 So.2d 431 (Fla. 1952).

24. *Jacksonville v. Bailey*, 30 So.2d 529 (Fla. 1947); *Smith v. Voight*, 158 Fla. 366, 28 So.2d 426 (1946); *Hillsborough Inv. Co. v. Wilcox*, 152 Fla. 837, 13 So.2d 448 (1943); *Collins v. Collins*, 150 Fla. 374, 7 So.2d 443 (1942); *Lanier v. Lanier*, 95 Fla. 522, 116 So. 867 (1928).

25. *Jacksonville v. Bailey*, *supra* note 24; *Collins v. Collins*, *supra* note 24.

26. *Smith v. Voight*, 158 Fla. 366, 28 So.2d 426 (1946); OP. ATT'Y GEN. Fla., Sept. 12, 1949.

27. OP. ATT'Y GEN. Fla., Aug. 18, 1955.

28. OP. ATT'Y GEN. Fla., May 4, 1949.

29. OP. ATT'Y GEN. Fla., Feb. 21, 1951; OP. ATT'Y GEN. Fla., Aug 23, 1940.

30. FLA. CONST. art. IX, § 11.

allowable is reduced by the aggregate of all constitutionally valid estate, inheritance, legacy, and succession taxes actually paid to another state. Other statutes impose a tax upon the transfer of property of nonresident decedents which may be constitutionally taxed by Florida but with a limited reciprocity exemption.³¹ Under these statutes "resident" is defined as a natural person domiciled in the State of Florida³² and "nonresident" means a natural person domiciled without the State of Florida.³³

5. *License Taxes.* A small but irritating problem is raised by the residence requirements found in the licensing statutes. For example, Florida motor vehicle license tags need not be purchased by a nonresident if he has complied with the law of the state of his residence.³⁴ However, no such exemption is granted if the nonresident accepts employment, engages in any trade, profession, or occupation in the state, or enters his children in the public schools.³⁵ The Attorney General has pointed out, however, that ordinarily a person cannot be a resident so as to claim homestead exemption and at the same time be a nonresident so as to operate a car without a Florida license plate.³⁶

The requirement that the operator of a motor vehicle have a driver's license issued by the state is relaxed in the case of a "nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country."³⁷ Again, however, the exemption does not apply to a nonresident who accepts employment within the state or enters his children in the public schools.³⁸ A nonresident is defined simply as "Every person who is not a resident of this state."³⁹

The aircraft registration fee imposed by Section 330.11 of the Florida Statutes is made inapplicable to aircraft owned by a nonresident if it is registered in another state and is not engaged in carrying persons or property for hire or for commercial purposes in the state.⁴⁰ However, this exemption does not apply if the nonresident owner is employed in Florida.

Applicants for fishing and hunting licenses will discover that Chapters 370 and 372 of the Florida Statutes impose varying license fees upon residents and nonresidents. These chapters carry their own definitions of "resident" which include the requirements of United States citizenship and continuous residence in the state and county for varying periods of time.⁴¹

31. FLA. STAT. § 198.03 (1955).

32. FLA. STAT. § 198.01(6) (1955).

33. *Ibid.*

34. FLA. STAT. § 320.37 (1955).

35. FLA. STAT. § 320.38 (1955).

36. OP. ATT'Y GEN. Fla., Feb. 15, 1950.

37. FLA. STAT. § 322.04(3) (1955).

38. FLA. STAT. § 322.04(5) (1955).

39. FLA. STAT. § 322.01(9) (1955).

40. FLA. STAT. § 330.12(3) (1955).

41. FLA. STAT. §§ 370.01 and 372.001 (1955).

B. *Engaging in Business or Profession in Florida*

The winter resident frequently wishes to continue his business or profession in Florida either on a part time basis or merely to keep his hand in his chosen occupation and to help pass the time. Here again he may find that a determination of his domicile is necessary in order to engage in many occupations. A few of these will be mentioned to point up the problems involved.

Section 112.02 of the Florida Statutes imposes a definite residence requirement for state employment. All employees of the state or of any county must have been bona fide residents of the state for the two years next prior to their employment unless no such person can be found who has the necessary qualifications for the particular job.

Applicants for admission to the practice of law are required to be citizens only of the United States,⁴² although the forms for application which have been used from time to time have included affidavits that the applicants are or intend to become residents of the state. Persons wishing to engage in the occupation of funeral director or embalmer must be bona fide residents of the state.⁴³ And a stevedore must have been a resident of the state six months previous to the date of his commission.⁴⁴

Fire, casualty, and surety insurance agents and solicitors must be citizens of the United States and bona fide residents of Florida. In the case of an agent, he must have been a resident for the year last past and must actually reside in the state six months of the year.⁴⁵ In the case of a solicitor, the residence requirement is for more than the six months last past.⁴⁶ However, certain limited reciprocity is granted to nonresidents licensed in other states.⁴⁷ Other restricted reciprocity is granted to life insurance agents⁴⁸ and to accident and health insurance agents.⁴⁹

Insurance adjusters licenses require varying residence qualifications. A public adjuster must have been a bona fide resident for one year immediately preceding the filing of his application for a license.⁵⁰ An independent adjuster must meet the same requirement unless he is an employee of a currently licensed adjuster or firm.⁵¹ A company employee adjuster

42. Rules of the Supreme Court of Florida Relating to Admissions to the Bar, § 19.

43. FLA. STAT. § 470.08 (1955).

44. FLA. STAT. § 307.01 (1955).

45. FLA. STAT. § 627.79 (1955).

46. FLA. STAT. § 627.80 (1955).

47. FLA. STAT. § 627.85 (1955).

48. FLA. STAT. § 634.08 (1955).

49. FLA. STAT. § 644.09 (1955).

50. FLA. STAT. § 636.26 (1955).

51. FLA. STAT. § 636.27 (1955).

need only be a bona fide resident of the state.⁵² Nonresident adjusters licenses may be issued under limited conditions, however.⁵³

In several other occupations, such as optometry⁵⁴ and beauty culture,⁵⁵ the only residence distinctions made are in the fees required, and in at least one occupation, outdoor advertising,⁵⁶ a bond is required of non-residents.

C. Domestic Relations Problems

The tangle of rights and duties arising out of interstate marriages, divorces, alimony and support awards, and other domestic relations matters is well known to all lawyers but generally not recognized by the laity. In this field the determination of domicile becomes especially important as both personal relationships and property rights may suffer drastically from an incorrect assumption of domicile.

Florida law requires the complainant to have resided ninety days in the state before filing a bill for divorce.⁵⁷ A large portion of the Florida cases upon the subject of domicile are cases involving divorce. These cases will be discussed in Part II, *infra*. It is sufficient at this point to state that the residence required includes domicile as well as presence in Florida for the ninety days. A venue question may also arise in such cases and is dependent upon a determination of residence.⁵⁸ Under the general venue statute, a bill for divorce usually must be brought in the county where the defendant resides if the defendant is a resident, but may be brought in any county if he is a nonresident.⁵⁹

Either a resident or a nonresident may be appointed guardian of the person of a resident incompetent.⁶⁰ However, only a resident may be appointed guardian of the property of a resident incompetent⁶¹ and the county judge in which property of a nonresident incompetent is located may, on petition, appoint a resident guardian of the property of a non-resident incompetent even though the incompetent has a foreign guardian.⁶²

D. Voting and Public Office Holding

Section 1 of Article VI of the Florida Constitution gives the franchise to every person "of the age of twenty-one and upwards that shall, at the

52. FLA. STAT. § 636.28 (1955).

53. FLA. STAT. § 636.31 (1955).

54. FLA. STAT. § 463.10 (1955).

55. FLA. STAT. § 477.17(2) (1955).

56. FLA. STAT. § 479.06 (1955).

57. FLA. STAT. § 65.02 (1955).

58. *Merritt v. Merritt*, 55 So.2d 735 (Fla. 1951); *Evans v. Evans*, 141 Fla. 860, 194 So. 215 (1940).

59. FLA. STAT. § 46.01 (1955).

60. FLA. STAT. § 744.27 (1955).

61. *Ibid.*

62. FLA. STAT. § 744.18-27 (1955).

time of registration, be a citizen of the United States, and that shall have resided and had his habitation, domicile, home and place of permanent abode in Florida for six months" Section 97.041 of the Florida Statutes reiterates these requirements as prerequisites to registration.

Residence qualifications for public office are prescribed by the constitution only in the cases of the governor, senators, and members of the house of representatives.⁶³ Section 3 of Article IV provides that "No person shall be eligible to the office of Governor who is not a qualified elector, and who has not been ten years a citizen of the United States, and five years a citizen and resident of the State of Florida, next preceding the time of his election" Section 4 of Article III requires senators and members of the house of representatives to be qualified electors of the county or district from which they are chosen, and Section 8 of the same article provides that their seats are vacated by permanent change of residence from such county or district.

Eligibility for aid to dependent children by the state requires residence for the year prior to application⁶⁴ and for mothers' aid by the county the requirement is residence in the state for the two years and the county for the one year prior to the application.⁶⁵ Aid for the blind,⁶⁶ old age assistance,⁶⁷ and admission to or treatment in the Florida State Hospital⁶⁸ are similarly granted only upon meeting definite residence requirements.

II. DETERMINING DOMICILE

A. General Rules

The basic rules for determining domicile are familiar to all lawyers and are neither complicated nor difficult to understand. The problem, however, is the application of these rules to the facts. Accordingly, this discussion will deal primarily with the factual situations considered by the Florida courts and the mixed conclusions of law and fact reached in the reported cases.

In the 1857 case of *Smith v. Croom*⁶⁹ the Florida Supreme Court set forth the basic rules in a classic opinion upon the historical aspects of domicile. This early opinion of the court should be read by every attorney faced with a problem in this area because of the excellent piece by piece analysis of each factor considered relevant by the court in its search for the proper domicile determination.

63. *State ex rel Att'y Gen. v. George*, 23 Fla. 585, 3 So. 81 (1887).

64. FLA. STAT. § 409.18 (1955).

65. FLA. STAT. § 414.03(4) (1955).

66. FLA. STAT. § 409.17 (1955).

67. FLA. CONST. art. 13, § 3; FLA. STAT. § 409.16 (1955).

68. FLA. STAT. § 394.27 (1955).

69. 7 Fla. 81 (1857).

In *Smith v. Croom* the court quoted⁷⁰ from Judge Story who classed domicile under three distinct heads: domicile by birth, domicile by choice, and domicile by operation of law. The first classification refers to the well established rule that the domicile of the father is the domicile of all of his minor children and they are incapable of making a choice of domicile during their minority.⁷¹ The second classification refers to a domicile voluntarily chosen by a person capable under the law of changing his domicile. This is accomplished by the concurrence of physical presence within a state with the present intention of permanently residing therein.⁷² The third classification refers to rules such as the wife takes the domicile of her husband upon marriage and may not normally acquire a domicile separate and apart from her husband, with certain exceptions which will be discussed later.⁷³

A companion principle to these three is the rule that a domicile once established continues until a new domicile is acquired.⁷⁴ In *Smith v. Croom* the Florida Supreme Court considered the result of abandonment in fact of the domicile of origin with the present intention to acquire a new domicile when the person concerned dies *in itinere* before he has consummated his intention by an actual residence. The court said that the domicile of origin *ipso facto* and *eo instante* reverted and reattached.⁷⁵ However, it would appear more accurate to consider that the first domicile had never been lost because the new domicile was never acquired by the concurrence of the requisite intention with physical presence in the state.

Before proceeding any further with the principles for determining domicile, it should be recognized that many statutes and cases mix the terms "domicile" and "residence" indiscriminately and, upon occasion, include "home," "place of abode," and other related terms.

Perhaps the interpretation of no words used in legal phraseology has given the courts of this country more labor and difficulty, and has resulted in a greater variety for judicial opinion, than the interpretation of the words "*domicile*" and "*residence*." Undoubtedly, much of the apparent variety and inconsistency in the decisions is due to the facts that the words "resident," and "nonresident," as well as the word "domicile," are evidently used in a different sense

70. *Id.* at 151.

71. *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694 (1929); *Beekman v. Beekman*, 53 Fla. 858, 43 So. 923 (1907); *Minick v. Minick*, 111 Fla. 469, 149 So. 483, 491 (1933) (dictum).

72. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Beekman v. Beekman*, *supra* note 71; *McIntyre v. McIntyre*, 53 So.2d 824 (Fla. 1951) (dictum); *Chaves v. Chaves*, 79 Fla. 602, 84 So. 672, 677 (1920) (dictum).

73. *Merritt v. Merritt*, 55 So.2d 735 (Fla. 1951); *Minick v. Minick*, 111 Fla. 469, 149 So. 483 (1933); *Herron v. Passailaigue*, 92 Fla. 818, 110 So. 539 (1926).

74. *Wade v. Wade*, 93 Fla. 1004, 113 So. 374 (1927); *Smith v. Croom*, 7 Fla. 81 (1857).

75. 7 Fla. 81, 158 (1857).

in some statutes from that in which they are used in other statutes relating to different subjects.⁷⁶

The discussion of the various areas in which domicile problems arise, in Part I, *supra*, indicates the number of different statutes in which domicile or residence is involved, and an examination of these statutes reveals the different relationships to the state required for the different purposes of the statutes. In the discussion of principles determining domicile, the purpose for which the determination is being made should always be borne in mind. For example, in the case quoted from above, a wife left her husband without cause and moved to Nevada. The husband sued for divorce and utilized the constructive service statute alleging his wife's residence to be Nevada. The court held that the wife's domicile remained that of her husband, Florida, but that her residence for the purpose of the constructive service statute was Nevada. The court said that an allegation of domicile would not necessarily satisfy this statute, since the purpose of the statute is to give the defendant the best possible notice and in a case such as this, notice at her domicile would not be as effective as notice at her actual residence in Nevada.

As can be expected, the courts have striven to define the terms "domicile," "residence," and the like so as to distinguish their varying usage in statutes. The Florida court has stated that "residence" indicates place of abode, whether permanent or temporary, but that a "resident" is one "who lives at a place with no present intention of removing therefrom."⁷⁷ This definition of "resident" would appear to be, in fact, a definition of domicile. The court has recognized this in another case in which it pointed out that "residence," "residing," and equivalent terms, when used in statutes relating to taxation, suffrage, divorce, limitations of actions, and the like, are used in the sense of "legal residence" or the place of domicile or permanent abode as distinguished from temporary residence.⁷⁸ "Legal residence" of a person under the divorce statutes has been defined as "the place which he has made the chief seat of his household affairs or home interests."⁷⁹

The court has pointed out that a man may have several residences at the same time⁸⁰ or even several domiciles, commercial, political, or forensic.⁸¹ This latter dictum, however, would appear to refer more accurately to residence than to domicile. Moreover, in the same case the court ex-

76. *Minick v. Minick*, 111 Fla. 469, 477, 478, 149 So. 483, 487 (1933).

77. *Fowler v. Fowler*, 156 Fla. 316, 22 So.2d 817 (1945).

78. *Herron v. Passailaigue*, 92 Fla. 818, 110 So. 539 (1926). See also *Evans v. Evans*, 141 Fla. 860, 194 So. 215 (1940); *Minick v. Minick*, 111 Fla. 469, 149 So. 483 (1933).

79. *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694 (1929). See also *Wade v. Wade*, 93 Fla. 1004, 113 So. 374 (1927).

80. *Wade v. Wade*, *supra* note 79.

81. *Smith v. Croom*, 7 Fla. 81, 150 (1857).

pressed a particular liking for the word "home" in defining domicile and distinguishing it from mere residence.⁸²

In general, domicile is established by a weighing of the evidence as in any other case.⁸³ Such a question is one of law and fact⁸⁴ and of facts and intentions.⁸⁵ The difficulties inherent in establishing intention were recognized in *Smith v. Croom, supra*:

It must readily occur that no compass of language can ever fully comprehend the variety of actions which shall in any given case tend to prove the establishment of a domicile; for these acts will ever be as various as are the occupations of men or the emotions of the mind.⁸⁶

Such intentions must be proven by secondary facts, as the place of a man's business⁸⁷ and where he votes and exercises other indicia of citizenship.⁸⁸

The Florida court has accepted the definition of the requisite intent set forth in Section 20 of the Restatement of Conflicts:

For the acquisition of a domicile of choice the intention to make a home must be an intention to make a home at the moment, not to make a home in the future.⁸⁹

In addition, this intention must be to make a home in fact and not just an intention to acquire a domicile.⁹⁰ Because the formation of such an intent is essential, a person of unsound mind does not have the ability to acquire a domicile of choice and, if he is an adult, his domicile may not be changed for him by any person, no matter how closely related, who has not been placed in charge of him by legal proceedings.⁹¹

The Florida court has stated several times that the best proof of a man's domicile is where he says it is.⁹² However, vague and conflicting oral declarations are considered unreliable and entitled to little, if any, weight.⁹³ Such items as entries in hotel registers and places mentioned in legal documents are entitled to some weight but this depends primarily upon the

82. *Id.* at 153.

83. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Wade v. Wade*, 93 Fla. 1004, 113 So. 374 (1927); *Smith v. Croom*, 7 Fla. 81 (1857).

84. *Fowler v. Fowler*, 156 Fla. 316, 22 So.2d 817 (1945); *MacQueen v. MacQueen*, 131 Fla. 448, 179 So. 725 (1938).

85. *Fowler v. Fowler, supra* note 84; *Kiplinger v. Kiplinger*, 147 Fla. 243, 2 So.2d 870 (1941); *Smith v. Croom*, 7 Fla. 81 (1857).

86. *Smith v. Croom, supra* note 85, at 151.

87. *Smith v. Croom*, 7 Fla. 81 (1857).

88. *Ogden v. Ogden*, 159 Fla. 604, 33 So.2d 870 (1948); *Op. ATT'Y GEN. Fla.*, Jan. 5, 1934.

89. *Campbell v. Campbell*, 57 So.2d 34, 35 (Fla. 1952).

90. *RESTATEMENT, CONFLICTS* § 19 (1934); *Campbell v. Campbell, supra* note 89.

91. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

92. *Frank v. Frank*, 75 So.2d 282 (Fla. 1954); *Pawley v. Pawley*, 46 So.2d 464 (Fla.), *cert. denied*, 340 U.S. 866 (1950); *Ogden v. Ogden*, 159 Fla. 604, 33 So.2d 870 (1948).

93. *Smith v. Croom*, 7 Fla. 81 (1857).

circumstances surrounding these events.⁹⁴ In divorce cases the general rule is that the uncorroborated testimony of the complainant or admissions in the pleadings are insufficient to support a decree by themselves, and this rule applies to questions of domicile and residence as well as to the other matters that must be established.⁹⁵ However, in one case the court held that an express admission of residence by the defendant coupled with a clear showing that the parties actually resided in the state was sufficient corroboration of the wife's testimony as to residence.⁹⁶

The requirement of physical presence is usually one of actual rather than constructive presence, especially in divorce cases where the statute prescribes residence for a specified period.⁹⁷ However, it is not necessary that during this period the complainant did not leave the state for any purpose, as long as the intention is bona fide.⁹⁸ Absence due to the holding of political office or for government employment does not terminate political domicile as long as there is an intention to return rather than an intention to remain away permanently.⁹⁹ Under certain circumstances even an absence extending over a long period of a man's life may not result in abandonment of domicile. In one case the Florida court found an American domicile even though the person in question had lived most of his life in Europe.¹⁰⁰ The court pointed out that many Americans spend their lives abroad and mentioned the historical precedents of Benjamin Franklin and Thomas Jefferson who spent long periods of time in Europe.

The effect of military service upon domicile has been considered by the Florida court on several occasions. The court has pointed out that the mere fact that a man's presence in the state is due to his military status does not prevent his acquisition of a domicile within the state if the requisite intent is also present, but, on the other hand, if there is no such intent to change domicile, presence in the state due to military orders will not affect the serviceman's domicile.¹⁰¹ On one occasion the court rendered an opinion which could be read to hold that the statutory ninety days presence in Florida for divorce jurisdiction is not satisfied when the serviceman is ordered out of the state prior to the completion of this period.¹⁰² However, in a later opinion the court stated that the basis of the holding in this case was not entirely the absence of ninety days physical presence in the

94. *Ibid.*

95. *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694 (1929).

96. *Frank v. Frank*, 75 So.2d 282 (Fla. 1954).

97. *Campbell v. Campbell*, 57 So.2d 34 (Fla. 1952); see also 17 AM. JUR., *Divorce & Separation* § 251.

98. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Wade v. Wade*, 93 Fla. 1004, 113 So. 374 (1927); *Warren v. Warren*, 73 Fla. 764, 75 So. 35 (1917).

99. *Dennis v. State*, 17 Fla. 389 (1879).

100. *Ogden v. Ogden*, 159 Fla. 604, 33 So.2d 870 (1948).

101. *Gipson v. Gipson*, 151 Fla. 587, 10 So.2d 82 (1942).

102. *Campbell v. Campbell*, 57 So.2d 34 (Fla. 1952).

state but rather the absence of an intention to establish a present residence as distinguished from a future one.¹⁰³

The court has held that "failure to renounce pre-existing citizenship is no more than evidence to be considered in connection with the question of the *bona fides* of the plaintiff's residence which is the real test under our statutory law" pertaining to divorce.¹⁰⁴ In this case the court upheld the validity of a Cuban divorce obtained while the parties were citizens of the United States on the grounds that the parties were domiciled in Cuba at the time.

Probably the most perplexing problems in domicile determination arise out of the marital relation. We have already seen that the basic rule is that the wife's domicile is that of her husband and that she may not normally acquire a domicile separate from his.¹⁰⁵ There is a well established exception, however. The wife may establish a separate domicile if she has just cause for leaving her husband.¹⁰⁶ She must actually cease to live with him, though, in order to acquire the separate domicile, and she must comply with the usual requirements for establishing a domicile of choice.¹⁰⁷

B. Summary of Significant Factors

The practical side to the solution of domicile problems is to prevent their occurrence by "building a case" beforehand. This requires a knowledge of the factors considered significant by the Florida courts in determining a person's domicile. The factors that follow have been gleaned from a study of all the important Florida cases on the subject. It should be noted, however, that these are only factors considered by the courts and not necessarily held determinative by them.

One particular Florida case deserves consideration at the outset as an example of this approach to the determination of domicile. In *Miller v. Nelson*¹⁰⁸ the court had before it the question whether a decedent whose will was being probated had abandoned his Florida domicile by establishing a domicile in California. The Supreme Court ultimately based its decision upon the mental incapacity of the decedent to form the requisite intent

103. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364, 369 (Fla. 1955).

104. *Pawley v. Pawley*, 46 So.2d 464, 471 (Fla.), *cert. denied*, 340 U.S. 866 (1950).

105. *Merritt v. Merritt*, 55 So.2d 735 (Fla. 1951); *Minick v. Minick*, 111 Fla. 469, 149 So. 483 (1933); *Herron v. Passailaigue*, 92 Fla. 818, 110 So. 539 (1926).

106. *Merritt v. Merritt*, *supra* note 105; *Curley v. Curley*, 144 Fla. 728, 198 So. 584 (1940); *Gratz v. Gratz*, 137 Fla. 709, 188 So. 580 (1939); *Edmundson v. Edmundson*, 133 Fla. 703, 182 So. 824 (1938); *MacQueen v. MacQueen*, 131 Fla. 448, 179 So. 725 (1938); *Bowmall v. Bowmall*, 127 Fla. 747, 174 So. 14 (1937); *Minick v. Minick*, *supra* note 105; *Herron v. Passailaigue*, *supra* note 105.

107. *Frank v. Frank*, 75 So.2d 282 (Fla. 1954).

108. 160 Fla. 410, 35 So.2d 288 (1948).

to change his domicile. However, the opinion quotes from the opinion of the circuit judge which set forth twenty-one facts which influenced the circuit judge to affirm the county judge's determination of a Florida domicile. This listing of the significant factors appears in most disputed domicile opinions, although usually in narrative form, and the factors mentioned in such opinions are excellent guides to the factors that influence courts in their determinations.

The sale of former homes in other states¹⁰⁹ and the purchase of a home,¹¹⁰ farm,¹¹¹ or motel used for business and home purposes¹¹² have all been mentioned by the courts as evidence upon the question of domicile. The purchase of a residence in England,¹¹³ correspondence with real estate brokers in regard to the purchase of a house,¹¹⁴ and the fact that all of a person's property is located in the state¹¹⁵ have also been considered. Together with the purchase and sale of property, the courts usually consider the actual taking-up of residence in the state,¹¹⁶ especially where the residence has been for an extended period of time.¹¹⁷

As we have seen in Part II, A, *supra*, declarations and admissions of the person whose domicile is under question have been given varying weight in different decisions of the court. Nevertheless, such evidence must always be considered a factor as it is mentioned in many of the cases and may be controlling when it is unequivocal and credible. Declarations may be oral¹¹⁸ or written¹¹⁹ and may be found in legal documents,¹²⁰ in formal affidavits filed pursuant to statute,¹²¹ or upon stationery.¹²² Section 222.17 of the Florida Statutes authorizes the execution and recordation of affidavits of domicile in Florida or elsewhere. Although such affidavits are not conclusive in any case, in the absence of evidence to the contrary they should normally be accepted as the best evidence of a man's domicile.

109. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

110. *Frank v. Frank*, 75 So.2d 282 (Fla. 1954).

111. *Smith v. Croom*, 7 Fla. 81 (1857).

112. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955).

113. *Ogden v. Ogden*, 159 Fla. 604, 33 So.2d 870 (1948).

114. *Campbell v. Campbell*, 57 So.2d 34 (Fla. 1952).

115. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

116. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Frank v. Frank*, 75 So.2d 282 (Fla. 1954); *Wade v. Wade*, 93 Fla. 1004, 113 So. 374 (1927).

117. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948) (50 years).

118. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Ogden v. Ogden*, 159 Fla. 604, 33 So.2d 870 (1948); *Warren v. Warren*, 73 Fla. 764, 75 So. 35 (1917); *Smith v. Croom*, 7 Fla. 81 (1857).

119. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

120. *Miller v. Nelson*, *supra* note 119; *Warren v. Warren*, 73 Fla. 764, 75 So. 35 (1917); *Dennis v. State*, 17 Fla. 389 (1879).

121. *Campbell v. Campbell*, 57 So.2d 34 (Fla. 1952).

122. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

Other evidences of domicile are found in registering and voting,¹²³ paying poll tax¹²⁴ and the filing of income,¹²⁵ intangible,¹²⁶ and corporation¹²⁷ tax forms listing a Florida residence.¹²⁸ Obtaining or retaining an automobile registration or driver's license has also been considered.¹²⁹

Where a person keeps his bank accounts and safety deposit boxes is a factor¹³⁰ along with where he keeps his will¹³¹ or owns a burial lot.¹³² But where a man works, while a factor, is clearly not controlling due to the variety of reasons for inter-state employment.¹³³

Other miscellaneous factors are the address given on military records,¹³⁴ where the children attend school,¹³⁵ where a person was adjudged incompetent,¹³⁶ where he belongs to fraternal orders,¹³⁷ where he is listed in telephone and other directories,¹³⁸ where he was married or was separated by judicial order,¹³⁹ the fact that he went to another state because of his health,¹⁴⁰ the fact that he returned to the United States from abroad upon the recommendation of the American ambassador,¹⁴¹ the fact that a wife was "deposited" with her brother under Cuban law concerning domestic troubles,¹⁴² and the fact that he does not know the name of the county wherein he claims residence.¹⁴³

III. CHOOSING THE PREFERABLE DOMICILE

The winter resident has, to a limited extent, a choice of retaining his out-of-state domicile or of establishing a Florida domicile. This choice, as

123. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Gipson v. Gipson*, 151 Fla. 587, 10 So.2d 82 (Fla. 1942); *Smith v. Croom*, 7 Fla. 81 (1857).

124. *Warren v. Warren*, 73 Fla. 764, 75 So. 35 (1917) (no longer imposed in Florida).

125. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Frank v. Frank*, 75 So.2d 282 (Fla. 1954).

126. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

127. *Ibid.*

128. See also *Ogden v. Ogden*, 159 Fla. 604, 33 So.2d 870 (1948); *Dennis v. State*, 17 Fla. 389 (1879), in which the specific taxes involved were not identified in the opinions.

129. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955).

130. *Bloomfield v. St. Petersburg Beach*, *supra* note 129; *Campbell v. Campbell*, 57 So.2d 34 (Fla. 1952); *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

131. *Miller v. Nelson*, *supra* note 130.

132. *Warren v. Warren*, 73 Fla. 764, 75 So. 35 (1917).

133. *Bloomfield v. St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Wade v. Wade*, 93 Fla. 1004, 113 So. 374 (1927); *Warren v. Warren*, *supra* note 132; *Dennis v. State*, 17 Fla. 389 (1879).

134. *Campbell v. Campbell*, 57 So.2d 34 (Fla. 1952).

135. *Fowler v. Fowler*, 156 Fla. 316, 22 So.2d 817 (1945).

136. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

137. *Warren v. Warren*, 73 Fla. 714, 75 So. 35 (1917).

138. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948).

139. *MacQueen v. MacQueen*, 131 Fla. 448, 179 So. 725 (1938).

140. *Miller v. Nelson*, 160 Fla. 410, 35 So.2d 288 (1948); *Evans v. Evans*, 141 Fla. 860, 194 So. 215 (1940).

141. *Ogden v. Ogden*, 159 Fla. 604, 33 So.2d 870 (1948).

142. *Warren v. Warren*, 73 Fla. 764, 75 So. 35 (1917).

143. *Ibid.*

we have seen, is not possible in the case of a minor, an incompetent, or a married woman unless she lives apart from her husband with cause. Generally, however, other persons may freely select or retain a domicile of choice if they comply with the requirements set by the law.

The question of choosing the preferable domicile, discussed in this part, and that of establishing the preferred domicile, once chosen, discussed in Part IV, *infra*, are interrelated problems. The purpose for which a domicile is chosen may have specific statutory requirements, such as residence for a set period of time. Once the choice is made in such cases, the minimum requirements for establishing this domicile follow without further difficulty. Again, if it is necessary, for other reasons, to do such things as purchase a home and accept employment in a state, domicile elsewhere might prove difficult to establish. However, in the usual case the winter resident is free to retain his original domicile or establish a Florida domicile if he complies with the basic principles outlined above. It is the selection of the preferable domicile, preferable in the circumstances peculiar to the person involved, with which we are concerned in this part.

Too often, in fact almost always, the winter resident fails to seek legal advice upon this question. Usually he lets the matter slide until he has altered his situation to such a point that there is either no choice left or else he must take drastic action to effect the preferable choice. It would not seem amiss for an attorney who handles any transaction for a new resident, usually a real estate purchase, to mention this problem and to suggest that thought be given to the subject. Such a warning would be a part of the attorney's duty when he advises his client on the manner title to real estate should be taken or during estate planning, and would be appropriate in many other consultations. By pointing out the problems and the dangers, the attorney would be doing his client a great service and would save the client time, trouble, and money in the future.

The choice of domicile may be made in one of two ways: it may be a logical choice or a choice made regardless of logic. If made logically, all the reasons for retaining the original domicile or establishing a Florida domicile are set down and weighed and the choice is made of that domicile which will be to the most overall advantage. If the choice is made regardless of logic, it will be made for some such reason as the client's hopes for political office in the future, his pride at being a "Buckeye" or "Hoosier," or other such reasons which do not yield to logical argument. In the latter case, there is little for the lawyer to do, after he has pointed out the advantages and disadvantages of such a choice, other than to set about helping the client to establish the chosen domicile.

If, however, the client is susceptible to reason on this subject, then a logical selection should be made. The lawyer should elicit as much information as possible about the client's future plans, his predominant interests,

and the possibility of sudden changes in the client's circumstances. And as an extra precaution, if the client is a married man, his wife should be interviewed. It often occurs that the wife has no thought whatever of giving up her life and interests in her home state and she may well influence her husband to alter his plans almost as soon as he has described them to the attorney.

The choice, of course, is that of the client and not the attorney, but the attorney should point out all of the advantages and disadvantages of each choice and should give his advice as to the preferable domicile. There are no hard and fast rules that can be followed. Each client's situation is a little different from that of others. In most cases there will be some desire predominant in his mind, such as minimizing taxes, voting, assimilating himself into the community or remaining detached from it, and the like. The important point is to bring forward every relative factor and to consider its relative weight. In this area, as in all others of the law, an informed decision is superior to an unformed one.

Finally, if no logical choice is readily apparent, one factor should be reconsidered and normally should be permitted to swing the balance. That factor is the simple truth that normally it is better to be domiciled in that community where a man actually lives. If there are no cogent reasons otherwise, a man should associate himself legally with that community with which he is associated in fact. The problems of interstate living are such today that they should be avoided whenever possible. And then, too, where there are no alleviating circumstances, a person should bear his share of duty to and support of the community that shelters and protects him.

IV. ESTABLISHING THE PREFERRED DOMICILE

The second practical problem is establishing the preferred domicile once it has been chosen. The solution to this problem involves "building a case," that is, having such evidence ready in advance that no one will raise a question concerning domicile or, if the matter comes to litigation, so that the trier of fact will have little difficulty in reaching the desired conclusion.

The process is fairly simple. It consists of establishing as many of the factors discussed above as possible and in preparing justifications for those factors that are not established. The simplest and easiest factor should be attacked first and then the more difficult satisfied as time passes. And most important of all, action should be decisive. There should be no question whatever what inferences should be drawn from the actions taken.

Perhaps the first act should be to file a statement regarding domicile pursuant to Section 222.17 of the Florida Statutes. The attorney who first advises action regarding domicile determination should draft such an affi-

davit and record it as soon as a decision is made by the client. At the same time the attorney should advise the client to take care in his everyday conversations with friends and associates to point out that he considers Florida his new home or that he still considers some other state as home. The client's family should follow the same practice and such comments should be consistent. In this manner, the "best evidence" of the client's domicile, that is, the place where he says it is, will be firmly established.

Next, action should be taken, if domicile in Florida is to be established, to open bank accounts and safety deposit boxes, obtain auto and drivers' licenses, and give permanent change of address notices to all regular correspondents. Although it is usually not practical to apply for membership in local organizations and fraternal orders immediately upon arrival in a new community, inquiries along these lines should be made and actual application for affiliation should be made as soon as the client becomes sufficiently known in the community. Church affiliation in preference to mere attendance is an excellent method of establishing domicile and should be considered when appropriate.

The purchase of real estate, acceptance of employment, entering children in the public schools, assembling the family in the chosen community, and the like, are decisions that will probably be determined more by circumstances other than establishment of domicile, and factors such as registering to vote require definite periods of residence which preclude their immediate utilization in establishing domicile. Nevertheless, these matters should be borne in mind and be taken advantage of whenever possible.

If retention of original domicile is desired, of course, care should be taken not to establish these factors in Florida, but rather, to retain them in the state of original domicile.

All in all, building a case for domicile is essentially a matter of evidencing one's intentions by behavior consistent with that of established residents in the chosen community. Granted that the average resident does not divide his attentions between two communities, the winter resident should, nevertheless conform himself as closely as possible under the circumstances to the conduct of the average resident in the chosen community. Judges and juries will then be better disposed to agree with the client's professed determination of domicile.

CONCLUSION

We have considered the areas affected by domicile determinations, the methods of determination, the considerations for choosing a domicile, and the means of establishing the chosen domicile. But most important of all, we have seen the necessity for constructive thinking about domicile by every person who divides his interests between two or more states. Unfor-

Unfortunately, the layman rarely recognizes the problems involved or the need for decisive action, but fortunately, the lawyer usually has an early opportunity to advise upon this subject. It is with the anticipation that the bar will take advantage of such opportunities and thereby benefit all involved that this article is written.