

Take a Close Look: Is Your Client Really a Florida Resident?

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Before filing any bankruptcy case, it is imperative that you first determine which state's exemption laws apply on the date of filing, so that you can properly advise your client of the impact that any bankruptcy will have on their assets.

The Bankruptcy Code provides that if a debtor's domicile has been located in the same state for the 730 days (2 years) immediately preceding the bankruptcy filing date, then the exemption laws of that state apply. However, if the debtor's domicile has not been located in a single state for the 730 days immediately preceding the bankruptcy filing date, then the exemption laws of the state in which the debtor's domicile was located for the 180 days (6 months) immediately preceding the 730-day period, or for a longer portion of such 180-day period than in any other state, apply. *See*, 11 U.S.C. § 522(b)(3)(A).

For example only, suppose your client, on the bankruptcy filing date, has domiciled in Florida for the last 12 months, prior to that they domiciled in Georgia for 14 months, and prior to that they domiciled in Texas for 7 years. In that example, the Florida exemptions would not apply because your client has not domiciled in Florida for the 730 days (2 years) immediately preceding the bankruptcy filing date. In the 180 days (6 months) immediately preceding the 730-day period, your client was domiciled in Georgia for 2 months and in Texas for 4 months; therefore, because your client was domiciled in Texas for a longer portion of the 180-day period, the Texas exemption laws or the Federal Exemptions (as set forth in section 522 of the Bankruptcy Code) will likely apply.

When determining whether your client is domiciled in Florida, one factor to consider is whether or not they have homestead property in Florida and when that homestead status was obtained. According to the applicable Florida case law, "failure to claim the homestead tax exemption is not evidence that property is not in fact homestead." Taylor v. Maness, 2006 WL 3302514, 3 (Fla. 3d DCA 2006); *see also*, Pierrepoint v. Humphreys, 413 So.2d 140, 143 (Fla. 3d DCA 1982). Actual occupancy of the home by the homestead applicant with an intention to remain in the home are, generally speaking, essential elements of the homestead right. However, the applicant does not have to have conclusive intent to remain in the house forever. In re Van Meter, 214 So.2d 639, 643 (Fla. 2d DCA 1968); *see also*, Engel v. Engel, 97 So.2d 140, 140-2 (Fla. 2d DCA 1957). In addition, Florida courts look at a number of other factors to determine if the homestead applicant's property is, in fact, his or her homestead. These factors include the following: 1) formal declarations of the applicant; 2) informal statements of the applicant; 3) where the applicant is employed; 4) where the applicant is registered to vote; 5) the address on the applicant's driver's license; 6) where the applicant's license tag on his or her motor vehicle is issued; and 7) the address listed on the applicant's federal income tax returns. *See*, Fla. Stat. § 196.015.

It is important to consider all of these factors as a whole when evaluating your client's specific circumstances. If your client files a bankruptcy case and is mistaken that they are entitled to claim the Florida exemptions, when in fact the Federal Exemptions apply in their case, that could be detrimental to them. For instance, if the Florida exemptions apply, your client may

be able to claim that their entire homestead property is exempt; however, if the Federal Exemptions apply, your client can only claim \$21,625 as exempt for their residence. *See*, 11 U.S.C. § 522(d)(1). Thus, it is crucial that you take the necessary time to evaluate your client's situation, to identify their domicile, and to determine the applicable exemptions for their specific case.

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