



## Flying South for the Winter: Estate Planning for Snowbirds from Maryland to Florida

By Faith G. H. DeNoble, Esq.

The bitter cold of an east coast winter has many Marylanders considering, “what if I went to warmer weather?” These people, often known as “snowbirds,” escape the cold for sunshine, sandy beaches, and for what many have discovered is a tax haven for retirement. However, the luxuries of warm weather and tax benefits can often carry significant implications for those who fail to plan properly.

If you have properties or significant presence in both Maryland and Florida, establishing a legal domicile in either state can affect estate tax liabilities, probate jurisdiction, and the validity of certain estate planning documents.

### Intestacy: When There’s No Will

Without a valid Last Will and Testament, your estate will be governed by each state’s intestacy laws, which can vary significantly.

In Maryland, when a decedent (a person who has passed away) dies without descendants, the surviving spouse or registered domestic partner inherits the entire estate. If a decedent leaves a surviving spouse and minor children, the spouse inherits one-half of the estate and the remaining half is distributed among the children. In the event of the decedent leaving adult children who are not issue of the surviving spouse, the spouse receives the first \$100,000 plus half the remainder, and the rest is divided among the descendants. If there are no surviving blood relatives entitled to inherit, stepchildren may inherit from a deceased person. Legally adopted children are treated the same as biological children.

In Florida, intestacy laws provide that if someone dies with no descendants, the surviving spouse receives the entire estate. If a decedent leaves a surviving spouse and descendants of any age who are also the spouse’s descendants, the spouse still inherits everything. However, if there are descendants not related to the surviving spouse (e.g., from other relationships), the spouse inherits one-half of the estate and the children inherit the remainder. Stepchildren have no inheritance rights unless legally adopted.

### Maryland and Florida: Estate Tax Treatment

[Info@AskFrost.com](mailto:Info@AskFrost.com)





Maryland maintains both an estate tax and a separate inheritance tax (the only state in the country to have both tax regimes). Estates exceeding \$5 million may face estate tax at 8% to 16% rates, depending on the size of the estate. Portability is an option for married couples that, when properly elected, allows the surviving spouse to benefit from their spouse's unused exemption. In addition to estate taxes, a 10% inheritance tax may apply to transfers to non-lineal heirs such as friends or distant relatives. Transfers to direct lineal descendants such as children and grandchildren (among others) are exempt from the inheritance tax, while transfers to family members such as nieces and nephews would have the 10% tax imposed.

Florida, by contrast, imposes neither a state estate tax nor an inheritance tax. Additionally, Florida does not have state income tax. Many snowbirds may face trouble with taxation, however, if they keep considerable holdings such as real property or tangible personal property in states that do have state estate tax such as Maryland, New York, and the District of Columbia. It is important to speak with an attorney or accountant who is well versed in multistate taxation.

### **Establishing Domicile**

To reap the benefits of the Florida tax system, it is important to establish legitimate domicile in Florida, which requires more than seasonal presence. Domicile is the intention of a person to have a location as their permanent home. Some important steps toward establishing a Florida domicile include obtaining a Florida driver's license, registering to vote in Florida, filing a Declaration of Domicile, and relocating significant

financial accounts. One of the largest considerations is spending half the year, or 183 days, in the state in order to establish "statutory residence." Courts evaluate these actions as evidence of intent to make Florida your permanent residence.

Although not strictly defined in Maryland, domicile has an intent centric statutory history. Domicile is where a person has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place that person has, whenever absent, the intent of returning. As a consideration for residency, similarly to Florida, if a place of abode is maintained in Maryland and a person spends fewer than 183 days in Maryland, then they are considered a nonresident. This is inclusive of a person maintaining a home for the purpose of returning to Maryland to visit family or as a vacation home, barring that the person spend over 183 days in Maryland.

### **Avoiding Pitfalls of Dual Residency**

For those commuting back and forth, it is important to consider the implications of moving between states both from a probate planning perspective as well as an income tax perspective.

Maryland and Florida both require ancillary administration probate procedures when a non-resident dies and maintains certain assets in that state. In order to avoid the tedious process of multi-state probates, you may wish to consider revocable trust planning. Assets transferred into a revocable trust avoid probate or ancillary probate. A Florida resident with property in both Florida and Maryland can transfer the properties





into a single revocable trust and avoid probate of those assets in both states. However, it is important to note that regardless of whether an asset is held in a revocable trust, certain assets, such as real estate, will still be subject to estate and/or inheritance tax in the state in which they are located. Additionally, it is important to discuss the impact of trust planning on Florida homestead exemptions.

Notably, Florida does not have state income tax. However, in Maryland, to the extent that a person receives income from Maryland tangible sources, they must file a Maryland Nonresident Personal Income Tax Return and pay tax on the Maryland source of income. A nonresident individual is subject to tax on that portion of the federal adjusted gross income that is derived from tangible property, real or personal, permanently located in Maryland and on income from a business, trade, profession, or occupation carried on in Maryland and on all gambling winnings derived from Maryland sources.

### Conclusion

The snowbird lifestyle offers both charm and complexity. While living between Maryland and Florida can be idyllic, it also intersects with intricate legal frameworks regarding probate, intestacy, and taxation. These differences can materially affect how your assets are managed and transferred. Working with an estate planning attorney familiar with both states' laws ensures your plan protects your family, honors your legacy, and maximizes favorable legal and tax conditions. If you need assistance please don't hesitate to contact us at [\(410\) 724-1313](tel:4107241313) or [schedule a confidential consultation](#) with our team of experienced attorneys.

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