



**CONFIDENTIAL MEMORANDUM**  
**Attorney/Client Privileged and Attorney Work Product**

**To:** [REDACTED]  
**FROM:** Stuart Levine  
**RE:** Change of Domicile and Checklist  
**DATE:** December 18, 2020

You've asked about the issue of change of domicile. See below.

**ANALYSIS**

In *Comptroller v. Lenderking*, 268 Md. 613 (1973), the Court of Appeals stated that:

[A] change of domicile is an exercise of the mind, the substitution of an *animus non revertendi* for an *animus manendi*. [T]he cerebration must be supported by or at least not be at variance with extrinsic circumstance. Moreover, there may be a sharp distinction between a change of domicile and a change of residence.

*Id.* 268 Md. at 617, citing *Shenton v. Abbott*, 178 Md. 526 (1940).

Citing 1 Restatement of Conflict of Laws 2d, § 19 at 78 (1971), the Court in *Lenderking*, stated that it is "quite clear that a domicile, once established, continues until it is superseded by a new domicile." *Id.*, 268 Md. at 618.

Significantly, the Court of Appeals in *Bainum v. Kalen*, 272 Md. 490 (1974) stated that:

A person may have several places of abode or dwelling but "[h]e can have only one domicile at a time." *Shenton v. Abbott, supra*, 178 Md. at 530. A person's domicile has been defined as the place "with which he has a settled connection for legal purposes" and the "place where a man has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning." *Shenton v. Abbott, supra*, 178 Md. at 530. The

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controlling factor in determining a person's domicile is his intent. One's domicile, generally, is that place where he intends it to be. *Harrison v. Harrison*, [117 Md. 607, 612, 614 (1912)]; *Wagner v. Scurlock*, [166 Md. 284, 292 (1934)]; *Gallagher v. Bd. of Elections*, [219 Md. 192, 198 (1959)]. However, the determination of intent is not dependent upon what one says at a particular time. As this Court has stated, intent regarding domicile "may be more satisfactorily shown by what is done than by what is said." *Wagner v. Scurlock*, *supra*, 166 Md. at 292; *Harrison v. Harrison*, *supra*, 117 Md. at 614.

*Id.* 272 Md. at 498.

In the case of *Blount v. Boston*, 351 Md. 360 (1998), the Court of Appeals addressed more directly the distinction between "domicile" and "residence" as follows:

The concept of domicile is somewhat elusive, and there is no single definition of the term which will mechanically determine each person's domicile once the pertinent facts are known. One's domicile "has been defined as the place 'with which he has a settled connection for legal purposes,'" *Bainum v. Kalen*, *supra*, 272 Md. at 497 quoting *Shenton v. Abbott*, [*supra*], 178 Md. at 530. It has also been defined, in the same judicial opinions, "as that place where a man [or woman] has his [or her] true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he [or she] has, whenever . . . absent, the intention of returning." *Shenton v. Abbott*, *supra*, 178 Md. at 530. In addition, domicile has been defined as the place that is "the 'centre of [a person's] affairs,' and the place where the business of his life [is] transacted." *Thomas v. Warner*, 83 Md. 14, 20 (1896). A person's domicile is ordinarily "where he and his family habitually dwell," *Id.* One claiming a particular place as his domicile "identifies himself and all his interests" with the place and there "exercises the rights and performs the duties of a citizen." *Id.*

*Id.*, 351 Md. at 367.

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Properly understood, then, the question is not really whether one state or another has the strongest case to stake a claim as to an individual's domicile. Rather, the question breaks into two subsidiary questions:

First, does the individual intend, subjectively, to abandon his current domicile when he or she takes up residence in another state?

Second, does the individual intend, subjectively, to establish domicile in the other state when he takes up residence there?

I litigated the case of *Posey v. Comptroller*. A copy of the Maryland Tax Court's opinion is attached. On page 4 of the opinion, the Court states as follows:

*Shenton v. Abbot*, 178 Md. 526 (1940) created a two-prong test to establish if a change in domicile has occurred: First, it must be shown that a new residence was acquired with the intent of remaining there. *Harrison v. Comptroller of Treasury*, 1987 WL 16440, 1 (1987) citing *Shenton v. Abbot*. Second, the abandonment of the old domicile must be so permanent as to exclude the existence of an intent to return to the former place.

The determination of intention with regard to the acquisition of a new domicile is a question of fact and is determined based on the subjective intent and actions of the individual to ascertain whether that person truly intends to sever ties with the jurisdiction or is merely seeking to avoid taxes. *Gallagher v. Board of Election Supervisors*, 219 Md. 192 (1959); *see also Comptroller v. Haskin*, 298 Md. 681 (1984).

In determining whether a person has abandoned a previously established domicile, The Maryland Court of Appeals, has never deemed any single factor conclusive. *Toll v. Moreno*, 284 Md. 425 (1979). Instead, certain factors are viewed as more important than others; the two most important being where a person actually lives and where the person votes. *Id.* at 444.

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Below, is a checklist of items to consider when attempting to change one's state of domicile.  
But remember:

***The rule is that you will retain the domicile of your current state of domicile until you establish domicile in another state. You cannot be a domiciliary of more than one state.***

**CHECKLIST**

\_\_\_ Obtain a driver's license in the new state of domicile and relinquish your previous state's driver's license.

\_\_\_ Acquire license plates and register car(s) in new state and relinquish your previous state's license plates.

\_\_\_ If possible, (i) purchase a new residence in your new domicile state and (ii) sell your residence in your previous state. Some courts (but none in Maryland as yet) have held that if an individual has more than one home and other evidence of domicile is not conclusive, the home first acquired will be considered the domicile.

\_\_\_ Register to vote in your new domicile state and actually vote in that state, preferably in person.

\_\_\_ File a nonresident, rather than a resident, income tax return if there is source income from your previous state.

\_\_\_ License pets in new domicile state.

\_\_\_ File federal income tax return with the corresponding IRS service center for your new domicile state.

\_\_\_ Transfer safe deposit box contents to a safe deposit box in new domicile state.

\_\_\_ Open a bank account or bank accounts in new domicile state, closing the accounts in previous domicile state.

\_\_\_ Change address(es) of brokerage and other financial accounts to new state.

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- Notify the Social Security Administration of your change in address.
- Direct regular bills such as credit card bills to your new address.
- Execute new wills, powers of attorney, health care directives, and living wills.
- Refer to your new state's residence in all trusts and other legal documents.
- File a declaration of domicile if applicable. (Florida has such a declaration.)
- File for a homestead exemption if applicable.
- Affiliate with in-state clubs, houses of worship, and social and other organizations. If you want to maintain a connection with your current affiliations, see whether they have non-resident or part-time memberships.
- Where feasible, have family gatherings and social activities centered in your new state.
- Consider selling business interests in your previous state.
- If you intend to invest in real estate or businesses, focus on those in your new state.
- Transfer works of art, expensive furniture and heirlooms to your new state.
- Personal and family memorabilia (*e.g.*, scrap books, family photos, etc.) should be transferred to the new state.
- Have, as your primary care physician, a physician in your new state and transfer your medical records to that physician.
- Similarly, all of your specialty physicians and other health care providers should, if possible, be located in the new state and relevant medical records should be transferred to these physicians. This is particularly important with respect to medical specialists that you may see on a regular basis, such as psychiatrists, psychologists, allergists, etc.
- The state through which you obtain medical insurance and/or your primary address for Medicare should be the new state. (Rates and available carriers are determined by permanent residence.)
- Consider acquiring cemetery plots in your new state.

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\_\_\_ List your new state residence as the primary residence on all homeowner's insurance, as well as other insurance policies.

\_\_\_ Make certain that you do not physically reside in previous domicile state for more than 181 days a year. Remember, you will likely have to prove some years after your change of domicile that you have actually made such a change. To that end, maintain a diary on a daily basis of where you physically reside even on trips outside of your new domicile. This diary ought to be consistent with the charges incurred that appear on your card statements and the location(s) at which cell phone calls originate or are accepted.

- The geographic location of where mobile phone calls are made or accepted can be obtained from the mobile phone company.
- If you eat at a restaurant or make any purchases in a physical location (as opposed to on-line), your credit card bills will reflect those payments and, thus, the fact that you were at that physical location on a specific date.
- Also, records from the use of electronic highway toll payments can also be used to track one's location.
- If you travel by air, your travels can easily be tracked.

JOHN B., III and NANCY V. POSEY	*	IN THE
	*	MARYLAND TAX COURT
vs.	*	
	*	No. 08-IN-OO-1038
COMPTROLLER OF THE TREASURY	*	No. 09-IN-OO-0187
	*	

### MEMORANDUM OF GROUNDS FOR DECISION

The sole issue on appeal from this case is whether the Petitioners, Dr. John B. Posey, III and Nancy V. Posey (hereinafter Dr. Posey, Mrs. Posey or collectively, the Poseys) abandoned their Maryland domicile in 2003 while establishing a new domicile in Maine. The Comptroller contends that the Poseys did not sever their domicility with Maryland until 2006, when they set up a new domicile in Louisiana. The Poseys contend that they had severed their ties with Maryland in 2003 and were domiciled in Maine for the tax years 2004 and 2005.

Though there are several cases in Maryland that discuss the legal standard for determining one's domicile, each case has been decided on its own unique facts. In the present case, the Court must determine the subjective intent of the Poseys from the collective facts. As the Court of Appeals noted in *Lenderking v. Comptroller*, 268 Md. 613 (1973):

[A] change of domicile is an exercise of the mind, the substitution of an *animus non revertendi* for an *animus manendi*, *Shenton v. Abbott*, 178 Md. 526, 534, 15 A. 2d 906 (1940), the cerebration must be supported by or at least not be at variance with extrinsic circumstance. ...

Moreover, the tests and factors used by the courts to determine domicile are instructive for this Court's analysis of the manifestation of Poseys' subjective intent.

Dr. Posey joined a neurosurgery practice in Maryland in 1978, known as Chambers, Finney & Slaughter, P.A. The practice drew heavily on patients that worked for or were family members of Bethlehem Steel. Bethlehem Steel's operations began to decline, and so did Dr. Posey's medical practice. In 2001, to supplement his income, Dr. Posey began working part-time in Augusta, Maine. In 2003, Dr. Posey was notified that his malpractice insurance policy would no longer be offering him coverage. Dr. Posey considered alternative insurance companies, but the cost for similar coverage was \$100,000 a year. Dr. Posey then decided to look for a new position. He found a position with Neurosurgery Associates, P.A. ("Associates") in Maine. He decided to close his Maryland practice and move to Maine. He signed a two year contract and had the intention of becoming a full partner with the practice. Dr. Posey notified all of his patients that he would be closing his Maryland practice and referred them to colleagues. Dr. Posey sorted through medical records and disposed of old records, while preserving the records that were required to be maintained by law. The records were stored in his home in Reisterstown, MD. Mrs. Posey joined him in Maine in June of 2004 after completing her business obligations. In the Spring of 2004, Dr. Posey began to question the direction of the practice after a change in the practice administrator. In December of 2004, Dr. Posey concluded that he would not become a partner of Associates, and he decided to find another form of employment.

He found employment at Tulane University Medical School ("Tulane"), set to begin in January 2006. Unfortunately, Hurricane Katrina devastated Tulane University and delayed his new employment for at least one year. He found a short term position at Walter Reed Army Medical Center ("WRAMC") in Washington, D.C. Upon taking that position, Dr. Posey made it clear to WRAMC that the position would be temporary, and as soon as Tulane reopened, he would be moving to Louisiana. The Poseys returned to their home in Reisterstown, MD in January 2006. They remained there for about three months until they found an apartment to rent in Silver Spring, MD. In February 2006, the Poseys purchased a home in Louisiana. When Tulane opened in January 2007, the Poseys moved to Louisiana. The Poseys purchased a permanent residence near Tulane, where they now reside, a short distance away from their daughter.

In support of his position, the Comptroller points to certain facts: Neither Dr. Posey nor Mrs. Posey changed their driver's licenses to Maine. Neither one registered to vote in Maine. Neither Dr. Posey nor Mrs. Posey changed the registration on any of their three cars. The Poseys maintained Maryland bank accounts throughout 2004 and 2005. The Poseys still own a home on 10 acres of land located at 13101 Dover Road, Reisterstown, in Baltimore County. The Poseys did not rent or sell this property from 2004 through 2005. The Poseys stored unused furniture and belongings at the Dover Road property. When the Poseys purchased the home in Louisiana, they listed their Reisterstown home as their address of record on the Louisiana deed. These facts support Comptroller's position but are not determinative when considered in the context of the actual intent of the Petitioners as reflected in the other facts of this case.

*Shenton v. Abbot*, 178 Md. 526 (1940) created a two-prong test to establish if a change in domicile has occurred: First, it must be shown that a new residence was acquired with the intent of remaining there. *Harrison v. Comptroller of Treasury*, 1987 WL 16440, 1 (1987) citing *Shenton v. Abbot*. Second, the abandonment of the old domicile must be so permanent as to exclude the existence of an intent to return to the former place.

Whether Dr. Posey acquired Maine as his new domicile rests upon the concurrent presence of two essential elements: (1) Physical or bodily presence in the new State; and (2) the intent to adopt it as his new domicile and abandon the old State. At the same time, there must have necessarily been an intent to abandon Maryland as his domicile.

The new residence in Maine was designed to become permanent. Dr. Posey had every intention of becoming a partner in Neurosurgery Associates, P.A. in Maine. He negotiated with the office manager and set the terms of how to become a partner in the practice. They discussed business issues such as how the profits would be split and where his specific office would be located in order to be the most profitable for the partnership. Dr. Posey's formal move to Maine in 2004 occurred after he had been working on a part-time basis since 2000 with the Veterans Administration Hospital in Maine. His decision to permanently leave Maryland was due, at least in part, to his declining income and a promising business opportunity with a long-standing neurosurgery practice group. Furthermore, Dr. Posey signed a two year contract and had every intention of becoming a partner. At the time of moving to Maine, Dr. Posey did not consider his employment to be temporary. In fact, Dr. Posey closed his practice in

Maryland due to the increased malpractice premiums. He wrote letters to all of his patients, explained to them that he would no longer be practicing in Maryland, and provided them with recommendations to other neurosurgeons to provide their care. It would be illogical for a physician to abandon his practice in Maryland unless he intended to retire or to continue practicing medicine in another state. Dr. Posey clearly intended to abandon his domicile in Maryland in 2004 and establish his domicile in Maine where he intended to practice medicine permanently.

The Comptroller's assessments for 2004 and 2005 shall be reversed.