

# snowbird estate planning



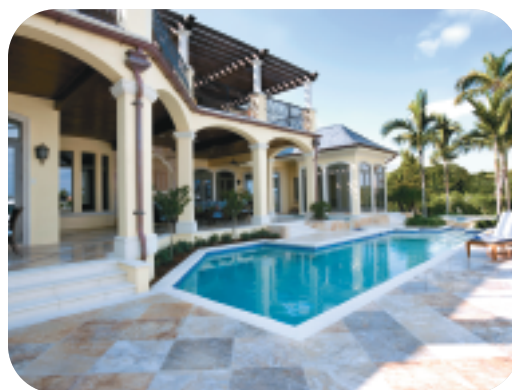
On a recent flight to Florida, I was seated next to a lady named Rose who has residences in both the Hamptons and Palm Beach. During the flight, Rose learned that I was a Hamptons attorney and realized that she now had a three-hour free consultation. I was trapped. So her first question was: “How can I benefit most from estate planning with respect to being a snowbird?” I thought that this was such an important question, that I chose to share it with all of our snowbird friends at *Homes of the Hamptons*.

I said, “For starters, Rose, you are going to have to pick a state as your domicile.” Realizing that Rose had no idea what I was talking about, I said: “While you may have residences in both Palm Beach and the Hamptons, only one of those places is where you always plan to

return, your true home, which is your domicile. Importantly, your domicile dictates which state’s laws, taxes, and courts are appropriate to administer your estate, what we lawyers call jurisdiction. Yet, don’t worry Rose, domicile is just important for legal reasons, and it does not prevent you from continuing to use both of your residences. In fact, domicile is not even dependent entirely on how long you live in a given residence during the course of a year. Instead, it is determined by both the manner in which you live in each residence and your actual intent, which may be expressed or implied. Yet, the key to determine where you consider your domicile is to look at your conduct. So pay attention to where you pay taxes, vote, make passport declarations, and concentrate your finances. There are many intricacies in establishing your domicile.” Rose asked, “Why does it matter?”



I explained, the domicile of a decedent is important strategically. It’s the foundation of an estate plan. I explained to Rose that regardless if she is domiciled in New York or Florida, she will have to plan around federal estate taxes, but only New York has state estate tax, so being domiciled in Florida has an appeal. Yet, there are many other factors besides money when choosing a domicile for estate planning. To illustrate, spousal rights of inheritance are also determined by the domicile of the decedent. I explained, “In your situation, if you and your husband change your domicile from New York to Florida, and he



leaves you out of his will, your right to elect from his estate will be reduced from 33% to 30%.” Rose stopped me, smiling, and said, “Harold would lose more than 30 percent if he left me out of his will.”

While I thought Rose was getting the idea, I wanted her to realize that estate planning was not a do-it-yourself job with a will form from

the stationery store, so I said, “Besides the laws, the technical drafting requirements for legal documents and the procedures to affect them also differ between the states, and domicile matters for that as well. For example, New York requires only two witnesses to a will, while Florida requires three.”

Realizing that we were about to land, I left Rose with my card and said, “What you really need is a comprehensive estate planning conference where we can help you plan your estate and take advantage of both states’ nuances. Only through addressing each issue can you plan your estate.”



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