Prepared by the North Dakota Legislative Council staff for the Taxation Committee
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RESIDENCY ISSUES UNDER NORTH DAKOTA LAW

The Taxation Committee is conducting a study under 2007 Senate Bill No. 2032, which provides in part for "examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty." Under this study issue, the committee requested information on how residency is determined under North Dakota law and the feasibility of establishing a single definition of residency for all purposes under North Dakota law.

North Dakota law provides a general definition for determining residency which follows the general rule applied in the United States. In some instances, North Dakota law provides a more restrictive definition of residency within a limited subject matter area of law.

GENERAL RULE

Residence, legal residence, and domicile are terms sometimes used interchangeably but which may have significantly different meanings in law. The general rules in United States statutory provisions and court decisions are summarized:

> Generally, "domicil" consists of two elements: residence and intent to remain.[12] As stated otherwise, domicil has two components: an actual residence in a particular jurisdiction, and an intention to make a permanent home in the jurisdiction.[13]
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> It is a fundamental legal rule that every person has a domicil at all times. Equally fundamental is the principle that no person has more than one domicil at any one time, even if a person may have one or several actual physical residences. (25 Am. Jur. 2d, Domicil, §§ 1 and 2)

The North Dakota Supreme Court has recognized these principles and stated "A person may have two or more physical residences, as distinguished from that person's legal residence that is the person's domicile" (*Dietz v. City of Medora*, 333 N.W.2d 702 (1983)) and "since domicile and legal residence are synonymous, the statutory rules for determining the place of residence are the rules for determining domicile . . . there can be only one domicile, and a domicile can be changed only by the union of act and intent." (*Estate of Burshiem*, 483 N.W.2d 175 (1992)).

North Dakota Century Code (NDCC) Section 54-01-26, referenced by the court in *Burshiem* as controlling statutory authority, provides as follows:

> **Residence - Rules for determining.** Every person has in law a residence. In determining the place of residence, the following rules must be observed:
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> 1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.
> 2. There can be only one residence.
> 3. A residence cannot be lost until another is gained.
> 4. The residence of the supporting parent during the supporting parent's life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
> 5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
> 6. The residence of an unmarried minor who has a parent living cannot be changed by either that minor's own act or that of that minor's guardian.
> 7. The residence can be changed only by the union of act and intent.

STATUTORY REFERENCES

There are hundreds of North Dakota statutory and constitutional references to residence and domicile. Terms found in North Dakota statutory provisions and the number of appearances of the term in state law include residence (415), residences (22), residency (24), resident (458), resides (190), residing (169), domicile (70), and domiciled (70).

Constitutional provisions relating to residency include residency requirements for the right to vote (Article II, Section 1), election as a legislator (Article IV, Section 10), election to statewide executive branch office (Article V, Section 4), and election or appointment as Supreme Court or district court judge (Article VI, Section 10). Statutory provisions having residency requirements include divorce proceedings (14-05-17), higher education tuition (15-10-19.1), elementary and secondary education tuition (15.1-29-14), voting eligibility (16.1-01-04), game and fish licenses (20.1-01-02), unsatisfied judgment fund recovery (26.1-23-04), probate (30.1-15-08), veterans' preference (37-19.1-02), educational assistance to veterans (37-24-01), Operation Desert Shield and Desert Storm veterans' adjusted compensation (37-26-01), war and armed conflict veterans' compensation (37-27-01), military operations adjusted compensation (37-28-02), motor vehicle operators' licenses (39-06-02), notaries public (44-06-01),

holding public office (44-02-01), county general assistance (50-01-01), aid to aged, blind, and disabled (50-24.5-07), and income taxes (57-38-01). In addition, NDCC Section 31-11-03 creates a legal presumption that a domicile once acquired is presumed to continue until it is shown to have changed.

In most instances, statutory uses of the terms residence or domicile do not have definitions, apparently in reliance on application of the general rules for determining residence under NDCC Section 54-01-26. However, some statutory provisions have different definitions of residency which apply only within the subject matter of that law. For income tax purposes, a North Dakota resident includes "any person domiciled in the state of North Dakota and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the income year within the state" (57-38-01). For motor vehicle operator's license purposes, a person must be deemed a resident of this state when "the person has lived in the state for ninety consecutive days, unless such person is a nonresident student, a tourist, or a member of the armed forces" (39-06-02). Under the veterans' preference law the residency requirement is that the individual be a United States citizen at the time of application for employment (37-19.1-02). For game and fish purposes, a person must live or be a resident of this state for six months and the "person's residence is the place where the person remains when not called elsewhere for special or temporary purposes" (20.1-01-02). For voting purposes, a voter must reside in the precinct 30 days preceding the election (16.1-01-04).

For property tax or property ownership purposes, there is no special definition of residence or domicile. This means that the general rule for determining residence under NDCC Section 54-01-26 would apply for property tax or property ownership purposes.

Evidence of Intent

Determination of residence is a question of fact in which the intention of the party is an important element (*Wehrung v. Ideal School District No. 10*, 78 N.W.2d 68 (N.D. 1956). The person's intent must be determined from the person's conduct and declarations (*Schillerstrom v. Schillerstrom*, 32 N.W.2d 106 (N.D. 1948)). Any act, event, or circumstance in the life of an individual may be evidence from which the state of mind . . . may be inferred with more or less precision; and it is impossible to formulate any general rule by which the weight due to a particular point of evidence may be determined . . . . (*Schillerstrom*). A person's declarations about his home, residence, or domicile are evidence of his intent, including oral or written statements, election registers, tax returns, letters, contracts, insurance policies, and wills. To prove that a person's intention was to change a domicile, "all acts that fairly indicate such a purpose are competent and admissible." (25 Am. Jur. 2d, Domicil, § 58). The weight to be given to the various facts and circumstances indicative of domicile depends upon the circumstances of the case. (25 Am. Jur. 2d, Domicil, § 59, citing *Burshiem, supra).*

SUGGESTED STUDY APPROACH

To redefine residence or domicile for all purposes provided by North Dakota law would be an extremely difficult undertaking, involving consideration of hundreds of sections of law to avoid unintended consequences. North Dakota law currently provides a general definition of residence that follows the general rule in the United States that residence can be changed only by the union of act and intent. Although determination of intent is a subjective question of fact, it appears it is not an unworkable standard. However, while determination of intent by courts is common, determination of intent by county officials is not. The question becomes whether it would be appropriate to make county officials make the determination of intent required to decide whether a person who owns property is a resident of North Dakota. The approach that has been taken under the election laws when questions arise about a person's residence for voting purposes is that election officials may require the individual to sign an affidavit of residency under NDCC Section 16.1-05-06. In some instances, applicants for game and fish licenses must be required to submit an affidavit of residency under NDCC Section 20.1-02-05. An affidavit must be executed under oath and witnessed by a notary public or other person authorized to administer oaths. To require statements to be witnessed may impose an excessive burden on property owners. Perhaps a simpler method that would accomplish the desired result would be to require property owners, or perhaps only property owners with out-of-state mailing addresses, to return a written statement provided with the property tax statement, stating whether the property owner is or is not a resident of North Dakota. It appears that once this information is obtained for all property it would only have to be requested when ownership changes.