

# VOTER RESIDENCY GUIDELINES FOR FLORIDA

(Updated February 2012)

*These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.*

- **Legal residence-Permanent.** Legal residency is not defined in law. However, over the years, the courts and the Florida Department of State/Division of Elections' have construed legal residency to be where a person mentally intends to make his or her permanent residence.<sup>1</sup> Evidence of such intent can come from items or activities such as obtaining a Florida driver's license<sup>2</sup>, paying tax receipts, paying bills for residency (light, water, garbage service) and receiving mail at address, claiming the property as homestead,<sup>3</sup> declaring the county as domicile, and doing other activities indicative or normally associated with home life. Therefore, legal residence is a convergence of intent and fact. Once residency is established for voting purposes, it is presumptively valid or current until evidence shows otherwise. See *Op. Atty Gen. Fla. 055-216 (August 26, 1955)*. A business address is not typically a satisfactory legal residential address but if the person resides there despite the zoning ordinance, the address could become the person's legal residential address.<sup>4</sup>
- **Legal residence-Temporary Out-of-County.** A person who has no permanent address in the county but intends to remain a resident of Florida and the county in which he or she is registered must be registered in the Supervisor of Elections' main office address and assigned the corresponding precinct. (Section 101.045, Fla. Stat.) The person has to have had some prior physical presence and residence in the county. Such persons though cannot vote in the municipal elections.
- **Legal residence-Mobile.** For a person with a nontraditional abode (e.g., boat, motor home, etc.) who intends and has presence in the county and intends for county to be residence county, acceptable addresses include: 1) the place where messages regularly received<sup>5</sup>, 2) the general delivery address at a specific post office, or 3) the address for the campground or docking site (mail is received there).
- **Legal residence-Homeless.** It is against Florida and federal laws to discriminate against a homeless person. The voter registration laws cannot be applied in a manner to deny such person the right to register to vote.<sup>6</sup> Therefore, a person who is homeless or without a permanent 'traditional' home but intends to remain permanently in the locale can register using an address for: 1) place where he or she regularly receives messages, 2) the church if it agrees to accept mail or messages on the person's behalf, 3) the shelter or other local that a person frequents and could be reached, 4) the specific post office for general delivery. It may even be a specific street corner, park bench, vacant lot, etc., to where the person frequently rests or returns and intends to serve as the "home-base".<sup>7</sup> The general point is to be able to generally locate and assign a precinct that corresponds with that location.

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<sup>1</sup> See *Op. Div. Elect. Fla. 93-05, 80-27; 78-27; Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981); and *Cruickshank v. Cruickshank*, 420 So. 2d 914 (Fla. 1st DCA 1982). *Bloomfield v. City of St. Petersburg*, 82 So.2d 364 (Fla. 1955); *Ogden v. Ogden*, 33 So.2d 870 (Fla. 1947); *Herron v. Passailaigue*, 110 So. 539 (Fla. 1926).

<sup>2</sup> Under Florida law, you cannot have two valid driver licenses for different states at the same time.

<sup>3</sup> For homestead exemption claims, "permanent residence" is defined as the place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she intends to return. A person can only have one permanent residence at a time. Once established, the status continues until the person shows that a change has occurred." See s. 196.012, F.S. Permanent residence is a factual determination by the property appraiser. See s. 196.015, F.S.

<sup>4</sup> *Andrews v. Hartzog*, Case No. 38-2008-CA-000032 (8th Cir. Levy County, Florida 2008)

<sup>5</sup> The address of a mail-forwarding service company is probably not a sufficient legal address. A Supervisor of Elections' has a duty to determine the registrant's ineligibility. While generally the sworn application is sufficient, in this case, the SOE could ask the applicant what else he or she may have as evidence of intent to be a permanent resident (e.g., driver's license registered in county, affidavit of domicile filed with clerk of court, etc.). See s. 98.045, F.S.

<sup>6</sup> DE 89-04 and 90-07 at: [http://election.dos.state.fl.us/opinions/TOC\\_Opinions.shtml](http://election.dos.state.fl.us/opinions/TOC_Opinions.shtml)

<sup>7</sup> Note that the NVRA national mail-in registration form includes a part where an applicant can draw a map to where they live (in response to non-traditional types of residential addresses. Supervisors of elections may have to work with their respective post office/voting liaison officer to prevent additional requirements that may have unintended consequences for the homeless voter applicant or registered voter.

- **Legal residence-Military/uniformed services personnel and family members (FVAP/UOCAVA).**<sup>8</sup> In order to claim a specific Florida county as residence, a person:
  1. Must have or had physical presence in the state and simultaneously have the intent to remain or make the Florida his or her home or domicile.
  2. May only have one legal residence at a time, but may change residency each time he or she is transferred to a new location.
  3. Must make a conscious decision to change residency as exemplified by such acts as registering to vote, registering a car, qualifying for in-state tuition, etc.
  4. May not revert to the previous residence without re-establishing new physical presence and intent to remain or return.

*Uniformed service personnel and their family members cannot arbitrarily choose which state to declare as their legal voting residence without first meeting the state's residency requirements.* Marriage to an active duty member does not automatically confer the same legal residence. Florida's intent and physical presence criteria must still be met independently. A minor typically assumes either one of the parent's legal residence. Therefore, it is possible for members of the same military family to have different legal residences. Once a minor turns 18, he or she can establish his or her own residency (which can be different from either parent), provided he or she has physical presence and intent to remain or return.

The **Military Spouse Residency Relief Act of 2009**<sup>9</sup> (MSRRA) gives a military spouse the right to retain residency status (for voting or taxation purposes) in the same state as the military member when the couple has to relocate from the state due to military orders. It presumes that the couple share the same domicile/legal residency state for voting (and/or taxation purposes) in the first place which is not always the case. If they didn't have the same state domicile/legal residency state to begin with or they abandoned the residency state, the military spouse (and/or dependent family member) cannot pick and choose state of residency, the person would have to independently meet the state's residency requirements before being able to retain the residency in the state before relocating.

- **Legal residence- Overseas Citizens.**<sup>10</sup> An overseas citizen's residence is the last state in which he or she resided immediately prior to leaving the U.S. This right extends to an overseas citizen even if he or she no longer owns property or has no other ties to the last state of residence and his or her intent to return to that state may be uncertain. In the latter case, such overseas citizen is technically temporarily residing outside the county and could not vote in municipal elections.<sup>11</sup> Where a person registers/votes is a factor used to determine residency under federal, state or local tax laws except when the person only exercises the right to vote solely in elections for federal offices.
- **Legal residence-U.S. citizen born or living abroad.** A U.S. citizen who is born or living abroad **and** has never lived in Florida is not permitted to register or vote in Florida under current Florida law.
- **Legal residence-College/University Student.**<sup>12</sup> Students constitute a significant percentage of 1<sup>st</sup> time registrants/voters. A student's residential address is the address the student intends to be his or her permanent address as stated on the application—just like any other applicant who affirms indefinitely a Florida legal residential address and no matter how long he or she ends up staying (the student may leave for a summer or after 2 or 4 years). A communal university mail address is satisfactory, even if the driver's license lists a different address.<sup>13</sup>

<sup>8</sup> Federal Voter Assistance Program at <http://www.fvap.gov> and <http://www.fvap.gov/faq.html#usmq2> and Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) at <http://www.fvap.gov/resources/media/uocavalaw.pdf>

<sup>9</sup> Public law 111-97 (eff.11/15/09 [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s475enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s475enr.txt.pdf) ; Senate Report 111-46 regarding MSRRA; <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt46/pdf/CRPT-111srpt46.pdf>.

<sup>10</sup> Cf. footnote 6.

<sup>11</sup> s. 101.045, F.S.

<sup>12</sup> Every college and university must make registration forms available to their students. See Higher Education Act of 1998. Qualifying education institutes must provide at least once the opportunity for students to register or update their records. s. 97.0583, F.S.

<sup>13</sup> That does not negate the requirement to provide a Florida driver's license or social security number (if he or she has one) for registration.