

## The concept of “domicile” as a law and its far reaching effects

*Many people are unaware of the existence of “domicile” and few understand its implications.*

This is according to David Knott, a fiduciary expert at Private Client Trust, the fiduciary services division of Private Client Holdings, who explains the concept of domicile and some of its consequences.

“Domicile relates to one’s permanent place where you lay down to rest, where “home” is,” says Knott.

### Acquiring domicile

“At birth a legitimate child automatically acquires the domicile of the father, whilst illegitimate children require the domicile of their mother. This domicile of the parent follows the child and will change if the parent changes his or her domicile at any stage. On becoming an adult, the child is then free to adopt a new domicile of choice - for example by settling in a new country with the intention that the new address would be permanent.”

According to Knott, it is difficult to shake off your domicile of birth. “One has to take a definitive action to amend your domicile of birth – such as renounce your domicile of birth or settle permanently in another country with no intention of ever returning to your country of birth.

### Marriage and domicile

“When couples marry, the wife assumes the domicile of her husband - even if he may be seen to be domiciled in another country – one that she has never even visited. She may not acquire a separate domicile of choice whilst still married and will also acquire any subsequent domiciles that her husband may take. Even if the wife has not settled in the country where the husband has acquired a new domicile of choice, she will also be regarded as being domiciled there,” says Knott. “However, should she divorce her husband, she would revert back to her domicile of birth.”

Knott advises that many a young man has finished his tertiary education, has backpacked around Europe, met and married whilst travelling thinking that his marriage is governed by the laws within that European country only to find out many years later once returning to South Africa that his marriage is in fact governed by SA law - because his domicile is still registered as being in SA – and is married in community of property and not without community as he might have thought.

### Domicile and your Estate

“Domicile also has an effect upon intestacy in that movables found in the intestate estate will devolve in terms of the laws the country in which that person is domiciled,” says Knott. “Immovable property on the other hand will devolve upon the laws of intestacy where that immovable property is situated.”

For example, a person domiciled in South Africa but living in France with plans to return to SA at some stage dies without a Will. Their French movables, furniture, motor car etc. will devolve in terms of South African intestacy laws whilst their house in France would devolve in terms of the French intestacy rules.

“The amount of estate duty or inheritance tax payable on death may also depend on the domicile of the deceased,” cautions Knott. “Many countries will seek to levy such tax upon the estate of anyone having

been born within that country, and unless the deceased has exhibited clearly that he has renounced his domicile of birth in favour of a domicile of choice, the estate may suffer harshly.”

“Domicile as a concept is often the deciding factor as to the legal rights and obligations of a person, and also the capability of a court to have jurisdiction over a particular action,” explains Knott, who concludes by saying that domicile can be difficult to determine if an individual has not been settled for long in an area and if they still retain strong links to their birthplace.

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