

LANCASTER LAW FIRM, PLLC

FILED
SALINE COUNTY
CLERK OF COURT & COUNTY CLERK

August 9, 2024

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RE: LETTER REGARDING RESIDENCY OF CANVASERS

BY



Dear County Clerk:

There was an oversight and an error on the petitions on the submitted petitions regarding the paper ballot initiative. The canvassers were confused and wrote the address of their domicile instead of the address they were residing at when they gathered the signatures. While there is a common conception that domicile and resident mean the same thing, Arkansas has very distinct definitions about residence and domicile.

This distinction is described by the supreme court, which has consistently held that the words 'domicile' and 'residence' are not synonymous. *Matter of Adoption of Samant*, 333 Ark. 471, 474, 970 S.W.2d 249, 250 (1998) (citing *Wilhelm v. Taylor*, 236 Ark. 85, 87, 364 S.W.2d 674, 675-76 (1963)). "Residency" means the place of actual abode, not a home which one expects to occupy at some future time. *Id.* (citing *Quinney v. Pittman*, 320 Ark. 177, 185, 895 S.W.2d 538, 542 (1995)). Domicile, however, requires actual abode plus the intent to remain in a particular place. *Id. Martin v. Hefley*, 259 Ark. 484, 486, 533 S.W.2d 521, 522 (1976).

Domicile focuses on a party's subjective intent to remain more or less permanently in a particular state. *Adams v. Adams*, 2014 Ark. App. 67, 9-10, 432 S.W.3d 49, 56-57 (2014). It is a person's true, fixed, and permanent home, the place to which, when absent, he intends to return and from which he has no present purpose to depart. *Id.* Once established, domicile continues until it is superseded by a new domicile. *Id.* To effect a change of domicile, there must be actual abandonment of the first domicile, coupled with the intention not to return to it, and there must be a new domicile acquired in another jurisdiction with the intention of making it a permanent home. *Id.*

Intent is relevant to the question of domicile when a party has more than one residence or has departed from a residence for a temporary stay elsewhere with the intent of returning, but it has far less to do with the concept of residency. *Davis v. Holt*, 304 Ark. 619, 623-24, 804 S.W.2d 362, 365 (1991). The supreme court has stated that a resident is someone who has an established abode, fixed permanently for a time for business or other purpose, although there may be an intent existing all the while to return ... at some time or other to their true domicile. *Id.* The term "residence" is used by the Constitution and statutes to mean the place where a person's place of abode is physically located. *Id.*

Place of abode and residence are considered to mean roughly the same thing. *Leathers v. Warmack*, 341 Ark. 609, 617, 19 S.W.3d 27, 33 (2000). However, domicile and residence are not considered

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to be synonymous. *Leathers v. Warmack*, 341 Ark. 609, 617, 19 S.W.3d 27, 33 (2000). Residence denotes only an act (the act of residing), while domicile denotes an act (the act of residing) coupled with the intent that the residence be a permanent home. *Id.*

The distinction between domicile and place of abode is that although a person can have several homes (or places of abode) at one time, only one of those homes can be the person's domicile. Id. (emphasis in original). The home that the person intends or considers to be their permanent home (as in home base) would be the domicile. *Id.*

To restate this law very plainly, you can only have one domicile, but you are a resident of wherever you are "living" when you are away from your domicile. All the canvassers who filed out the petitions were residing in Arkansas at the address stated on the affidavits accompanied with this letter. The canvassers clearly meet the test in *Davis v. Holt, supra*.

The canvassers came to Arkansas to work on gathering signatures. They fixed a place of abode on Bill Dean Drive in Conway, Arkansas. While working, they left their residence at that address, worked in the state, and returned to that residence after working. The canvassers always intended to return to their Arkansas address—an established home "fixed permanently for a time for business," as spelled out in *Davis, supra*—until work was completed and then return to their domicile when work was completed.

I hope this explanation makes clear why the affidavit details that the canvassers made an error on the initial petitions but that the supplemental affidavit shows that they were legal residents of Arkansas when they were working as canvassers.

Sincerely,



Clinton W. Lancaster
Attorney at Law