

### **An Overview of the Supreme Court's Guidance on "Residences" and "Domiciles"**

The below excerpt from Leathers v. Warmack, 341 Ark. 609 (2000)(citations omitted) is a summary of the Arkansas Supreme Court's guidance on the distinction between "residence" and "domicile" In short, "domicile" has a broader meaning and includes residence. A person can generally have one domicile but can have more than one residence. These are ultimately fact-based distinctions that would depend on the particular facts of a situation. The below excerpt from Leathers provides more detail:

Under our case law, the distinction between the terms "domicile" and "residence" is often subtle; however, this court has consistently held that the terms are not synonymous. A person's "residence" is the place of actual abode, not a home that a person expects to occupy at some future time. This court has defined "place of abode" as "something more than a place of temporary sojourning," implying a degree of permanence. "[A] given place may be a 'place of abode' of a party, though he may be actually absent therefrom for a long period of time." No particular length of time is necessary to establish residence. Rather, the key consideration is whether the place is 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 the true domicile[.]" Each case must be decided on its own facts.

On the other hand, this court has long recognized that "domicile has a broader meaning than residence, and includes residence." Thus, "domicile" requires an actual residence plus the intent to remain in a particular place. No word, it is said, is more nearly synonymous with domicile than home, and it is generally agreed that a man can have but one home or domicile, but that he may have more than one place of residence." Thus, like residence, no particular length of time is required to establish one's domicile, "but there must be residence attended by such circumstances surrounding its acquirement as to manifest a bona fide intention of making it

a fixed and permanent place of abode." The intent to abandon one's domicile and take up another must be ascertained from all the facts and circumstances of the particular case. The factfinder is not bound to accept claims of intent when the circumstances point to a contrary conclusion; they cannot prevail unless borne out by acts. "When acts are inconsistent with a person's declarations, the acts will control, and declarations must yield to the conclusions to be drawn from the facts and circumstances proved."

### **Arkansas Law Pertaining to the Alteration of a Signature on a Petition or Canvasser Affidavit after Notarization**

Arkansas Code § 7-9-103(c)(2) states that a person acting as a canvasser, notary, sponsor, or agent of a sponsor commits a Class A misdemeanor if the person "prints a name, address, or birth date other than his or her own on a petition unless the signer requires assistance due to disability" and the signature is otherwise valid. Additionally, under Arkansas Code § 7-9-127(a)(1) and (2), a person commits a Class A misdemeanor if the person knowingly "changes a signature other than his or her own signature on a petition" or "erases or otherwise removes a signature other than his or her signature on a petition". These statutes do not seem to limit offenses to a particular point in time in the initiative process. Whether a violation of these statutes occurred would depend upon the particular facts of the situation.

Arkansas Code § 7-9-109 provides that each petition containing signatures shall be verified by a canvasser's affidavit. That affidavit requires the canvasser's current residence and must be notarized. A canvasser who knowingly makes a false statement on a petition verification form is guilty of a Class D felony. A canvasser who witnesses signatures on a petition part but knowingly allows another canvasser who did not witness all signatures on a petition part to execute a false verification affidavit with respect to that petition part commits a Class D felony. A sponsor, sponsor's agent, or representative commits a Class D felony if a sponsor, sponsor's agent, or representative knowingly pays a canvasser for petitioner signatures on a petition part not personally witnessed by that paid canvasser or knowingly submits to the Secretary of State a petition part where the verifying canvasser has not witnessed each signature on that petition part.