



SIERRA COLINA

ADVANTAGES OF YOUR NEVADA RESIDENCE

You've already taken the first step to realizing the dream of making the private residences at Sierra Colina your home. Now, see why residing in Nevada is also the first step in planning for your ultimate legacy. The pristine shorelines, spectacular mountain ranges, and small community already draw home seekers to the entire Lake Tahoe region which is comprised of land inside the states of California and Nevada. The location of the Sierra Colina neighborhood on the eastern shores of Lake Tahoe allows those who are fortunate enough to call this place home to potentially reap the significant tax advantages of Nevada residency.

NO STATE INCOME TAX

Nevada is one of a few states that do not impose individual income taxes. Compare that with California, where the top income tax rate is currently 13.3%. Individuals who are domiciled in Nevada are not required to pay state income taxes on any income. Like other states, Nevada residents will still pay taxes on income earned from another state to such state and do have to pay federal taxes. The new federal tax law limits the deductibility of state and local income taxes to a combined total of \$10,000.00 and will have a significant impact on those living in states with high state and local taxes. Nevada residency also creates a potentially large tax savings for those who foresee a liquidity event, have limited income derived from another state, and those who have a home office or are able to relocate their employment or business to Nevada.

NO CORPORATE OR ENTITY TAX

Nevada is well regarded as being business friendly. Businesses which incorporate in Nevada are availed of the protections of Nevada law, which are closely modeled after the business friendly laws of the state of Delaware. By way of example, Nevada's approach to creditors piercing the corporate veil is more protective to the corporation than the creditor. Similarly, limited liability companies receive the benefit of restricted remedies to creditors. Unlike many other states, Nevada has no franchise tax, no tax on a corporation's shares, no state income tax, and there is no taxation of a corporation's non-business income. While Nevada entities do pay a minimal tax on gross receipts from in state activities, the first \$4 million in annual receipts is exempt from such tax, relieving most businesses from the payment of such tax. Nevada also has a minimal employer payroll tax (0.7% of gross wages with deductions for employer paid health insurance). Nevada has also developed a business court based on the Delaware model which minimizes the time, cost, and risks of litigation.



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ESTATE PLANNING AND ASSET PROTECTION CONSIDERATIONS

Nevada does not impose an inheritance or gift tax. There is also no unitary tax or state specific estate tax. Nevada is considered “trust friendly” in comparison to states like California. Nevada law affords more privacy to trustors than California and many other states. By way of example, if a trust has a Nevada fiduciary, then non-California sourced income distributed to non-California beneficiaries, or income that is retained in trust, will escape California taxation. Nevada law also allows for the creation of self-settled asset protection trusts that may serve to legally protect assets from creditor claims. If necessary, Nevada courts are easily accessible and knowledgeable in trust matters.

LOW PROPERTY TAX RATES

Property taxes in Nevada are well below the national average. The Nevada State Constitution caps the property tax rate at \$5.00 per \$100.00 of assessed value. It is further capped by statutes at \$3.64 per \$100.00 of assessed value. Property in Nevada is assessed at 35% of its taxable value. The property tax in Douglas County (where our private community is located) averages 0.46% of assessed home value. The national average is 1.19% of assessed home value (California is 1% of assessed home value).

Make Nevada your residence of choice. The local Nevada law firm of Alling & Jillson, Ltd., whose attorneys have practiced in Lake Tahoe since the 1970s, is available to advise prospective Sierra Colina homeowners on the many advantages of becoming Nevada residents. Alling & Jillson, Ltd. has prepared the attached literature on Nevada residency. You may visit: www.ajattorneys.com to schedule an appointment to learn more about the firm and the advantages of becoming a resident of the state of Nevada.¹

¹ The information presented is necessarily general in nature. In evaluating the overall personal economic impact of any change in your state of residency, including specific federal and state income tax consequences, you should first consult with qualified tax and legal advisors in order to assist in the assessment of personal consequences which would apply to your individual situation.

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NEVADA RESIDENCY

Becoming a resident of Nevada is more about severing your ties to any former state or jurisdiction than declaring your residency in the Nevada. California, for example, is very aggressive in attempting to tax those whom it considers its residents who claim residency elsewhere, and therefore it is instructive as far as the position of other jurisdictions on the subject of residency. We have also found that there is a lot of misinformation concerning what steps should be taken to relocate to a different state in order to avoid the income tax or other taxes of another jurisdiction. The following, though not exhaustive, is meant to provide some general information and guidance on this topic.

BASIC RULES. There are two basic rules you need to keep in mind if you wish to avoid tax from a jurisdiction outside Nevada. The first rule is that a California resident pays California tax on all of his or her income, whether generated in California or elsewhere in the world. For example, if a California resident is a partner in a Nevada S corporation or a member of a Nevada LLC, they will be taxed on their distributive share of each entity's income, even if each entity earned all its income completely outside the state of California.

The second rule is that California generally taxes California-source income, regardless of the recipient's State of residency. Thus, even if someone successfully establishes residency outside California, they will still be taxed on all services they perform within the state of California, rental income from California property, proceeds from sales of California real estate and other types of California source income.

RESIDENCY IN GENERAL. California has a very expansive definition of residency. California Revenue and Taxation Code section 17014(a)(2) provides that an individual is treated as a California resident if they are in the state for other than a "temporary or transitory" purpose; or if they are outside California for a "temporary or transitory" purpose, but still maintain a domicile in California. A person who is domiciled outside of California may still be found to be a California resident if that person is found to have his or her closest connections to California and if that person is receiving substantial benefits and protection from California. Voluntary physical presence in a state is a factor of far greater significance than the mental intent or outward formalities of ties to another state. The underlying theory of the Revenue and Taxation Code is to establish a person's residency by determining the state to which a taxpayer has the closest connection during a taxable year.

Unfortunately, the meaning of "temporary or transitory" is completely subjective. It depends upon the facts and circumstances of each case. (Whenever you hear me or any lawyer say something like "depends upon the facts and circumstances of each case", what we are really saying is that if you are audited, the taxing authorities will do everything possible to focus on all unfavorable factors and completely ignore all favorable factors).

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The concept of “domicile” is similarly subjective. A person’s tax “domicile” is typically that place where they have their true, fixed and permanent home to which they intend to return. A person may have only one domicile at a time; and a person retains that domicile until acquiring a different domicile elsewhere. As with “temporary or “transitory”, the domicile issue is typically determined based upon “all the facts and circumstances”. Therefore, the more objective factors you can create to confirm your true domicile, the more likely your chance of being found to have established residency in that true domicile state, should you be audited by a different unfavorable tax jurisdiction where you previously resided.

As another example, with respect to “domicile” issues, if a taxpayer sells his beachfront home in California to move to an expensive oceanfront condominium in Florida, it is more likely that he will be able to win a “domicile” argument; while the taxpayer who retains the beachfront home in California, keeps all furniture and personal effects there and claims to live in a modest 2-bedroom condominium in Las Vegas likely will not.

PRESUMPTIONS. In determining residency, California law also provides two presumptions. The first presumption is that a taxpayer who, in the aggregate, spends more than nine (9) months of a taxable year in California will be presumed to be a California resident. This presumption is not conclusive, and may be overcome by satisfactory evidence that the individual is within the State for a temporary or transitory purpose. However, for someone planning to avoid California residency, they should do their best to avoid being in California for more than six (6) months.

The second presumption is that an individual whose presence in California does not exceed six (6) months within a taxable year and who maintains a permanent home outside California, is considered as being in California for temporary or transitory purposes, provided the taxpayer does not engage in any activity or conduct within the state other than as a seasonal visitor, tourist or guest. For most people still engaged in business, this is a very difficult test to meet. It would be applicable, however, for someone who establishes residency outside the state, sells the stock in his or her business, and then spends five months in California vacationing and counting all the California tax he or she saved by his or her out-of-state move.

FACTORS FOR DETERMINING DOMICILE. In Corbett v. Franchise Tax Board, the California Supreme Court listed twenty-nine residency factors to be evaluated with respect to a taxpayer who had homes in both California and Illinois. Subsequent to Corbett, the California State Board of Equalization decided the Appeals of Stephen D. Bragg case and set forth the “Closest Connection Test” to determine the state with which a person has the closest connection during the taxable year. The Bragg Appeal added nineteen additional factors to be considered in determining residency, with weight given to particular factors depending on the totality of the circumstances.

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The Corbett factors, while not universally applicable, are nonetheless helpful in planning to establish nonresident status in California or any other location. These factors look to the state in which the following occurred:

1. Birth, marriage, raising family;
2. Preparation of tax returns;
3. Resident state income tax returns filed;
4. Payment and receipt of income;
5. Ownership and occupancy of custom built home;
6. Service as officer and employee of business or corporation;
7. Holding of licenses for conduct of profession;
8. Ownership of family corporation;
9. Ownership and occupancy of vacation home;
10. Ownership of cemetery lots;
11. Attendance at services of religious organizations;
12. Donations to religious organizations;
13. Membership and committee participation in religious organizations;
14. Family doctors and dentist;
15. Car registration;
16. Driver's license of taxpayer year;
17. Driver's license of taxpayer's spouse;
18. Voter registration and actual voting;
19. Charge accounts;
20. Predominant banking and financial accounts;
21. Accountant, lawyer and professional advisors;
22. Wills prepared and located;
23. Education of children;
24. Most days within state;
25. Country club membership;
26. Plaintiff's intended state of residence;
27. Presence of, and visits by, other family members;
28. Social event attendance; and
29. Professional memberships.

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The additional Bragg factors, many of which are similar or duplicative, are as follows:

1. Location of residential real property, and approximate sizes and values of each;
2. The state wherein the taxpayer's spouse and children reside;
3. The state wherein the taxpayer's children attend school;
4. The state wherein the taxpayer claims the homeowner's property tax exemption
5. The taxpayer's telephone records (origination point of taxpayer's calls);
6. The number of days spent in California versus in other states, and the general purpose of such days (i.e., vacation, business, etc.);
7. The location where the taxpayer files his tax returns, both federal and state, and the state of residence claimed by the taxpayer on such returns;
8. The location of the taxpayer's bank and savings accounts;
9. The origination point of checking account transactions and credit card transactions;
10. The state wherein the taxpayer maintains memberships in social, religious, and professional organizations;
11. The state wherein the taxpayer registers his automobiles;
12. The state wherein the taxpayer maintains a driver's license;
13. The state wherein the taxpayer maintains voter registration, and the taxpayer's voting participation history;
14. Location of professional providers (e.g, doctors, dentists, accountants, and attorneys);
15. The state wherein the taxpayer is employed;
16. The state wherein the taxpayer maintains or owns business interests;
17. The state wherein the taxpayer holds a professional license or licenses;
18. The state wherein the taxpayer owns investment real property; and
19. Indications in affidavits from various individuals discussing the taxpayer's residency.

Using the factors in Corbett and Bragg as instructive, there are a number of actions you can take to distance yourself from jurisdictions other than Nevada. For example, some of the steps that are generally not too difficult to readily accomplish and are therefore recommended to be done as soon as possible (in addition to remaining physically present in Nevada for the majority of the year) are: obtaining a Nevada driver's license, registering your vehicles in Nevada, hiring local professionals, changing your primary accounts to Nevada based banks, joining local churches and country clubs and registering to vote in Nevada. You should also make a Nevada Primary Residence Election under *NRS 361.4723*, which also affords a cap on the increase in annual property taxes, and make sure you do not have any such election active in any other jurisdiction. Also, Nevada law provides for a Declaration of Domicile to be made under *NRS 41.191*. This process involves filing a sworn statement with the District Court in the County where you are located, evidencing residence and the intent to make that location a permanent, predominant, or principal home.

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While certainly it is another indication of the intention to reside in this state, it is not itself determinative for purposes of another jurisdiction's claim that you are in fact residents of that jurisdiction.

NEVADA RESIDENCY REQUIREMENTS: The state of Nevada itself does not have specific requirements to establish Nevada residency except for certain purposes outlined below. As Nevada does not currently impose an income or similar tax based on residency, the operable analysis is really whether you are considered a resident of any other state or jurisdiction for their tax purposes rather than whether Nevada considers you a resident. Unless otherwise required by a specific statute, *NRS 10.155* provides that the legal residence of a person in Nevada is the place where the person has been physically present within the state during the period for which residency is claimed. Legal residence starts on the day that actual physical presence begins. If a person leaves the jurisdiction of their residence with the intention, in good faith, of returning without delay and continuing his or her residence, the time of absence is not considered in determining the fact of residence.

Though not directly related to the establishment of residency in Nevada, below is a summary of the few Nevada laws with specific residency requirements:

MARRIAGE. *NRS 122.040* requires persons desiring to be married in Nevada to obtain a marriage license from the clerk of any county in the state. However, no residency requirements exist regarding marriage.

ANNULMENT OF MARRIAGES CONTRACTED OUTSIDE OF NEVADA. One of the parties seeking an annulment must have resided in the state for at least six (6) weeks (*NRS 125.370*).

DIVORCE. One of the parties must have been a resident of the state for at least six (6) weeks before filing a complaint (*NRS 125.020*).

ADOPTION. Persons are required to be residents of Nevada for six (6) months prior to the granting of an adoption petition (*NRS 127.060*). Persons who have lived in Nevada for less than six (6) months and residents of another state or jurisdiction are exempt from the residency requirement if the petition for adoption is filed for the adoption of a child who is in the custody of an agency which provides child welfare services or a child-placing agency licensed by the Division of Child and Family Services of the Department of Health and Human Services.

MOTOR VEHICLE REGISTRATION AND DRIVER'S LICENSE. A person is required to apply for registration of any vehicle which he or she owns and intends to operate in Nevada within thirty (30) days after becoming a resident or at the time he or she obtains a driver's

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license, whichever occurs first (*NRS 482.385*). Also, within thirty (30) days after becoming a resident of the state of Nevada, a person must obtain a Nevada driver's license as a prerequisite to driving a vehicle in the State (*NRS 483.245*).

VOTING. Persons are eligible to vote if, before an election, they have continuously resided in the State and the county for thirty (30) days and in the precinct for ten (10) days (*NRS 293.485*).

UNIVERSITY TUITION. The Board of Regents of the University of Nevada is authorized to fix tuition and fees (*NRS 396.540*). While tuition may be charged only to nonresident students, the Board may assess registration fees and other fees against all students attending institutions of the Nevada System of Higher Education (NSHE) to cover costs of attending an NSHE institution. Those who may not be assessed tuition include students who have been bona fide residents of Nevada for at least twelve (12) months prior to matriculation, certain teachers and employees of NSHE, and certain members and veterans of the United States Armed Forces. Regulations for determining residency and tuition charges are codified in the University of Nevada Board of Regents Handbook, Title 4, Chapter 15.

HUNTING AND FISHING LICENSES. In order to qualify for an instate hunting or fishing license, *NRS 502.015* and *NRS 502.240* requires that such person is a citizen of, or is lawfully entitled to remain in, the United States; and during the six (6) months next preceding the person's application to the Department for a license, tag or permit, the person: (i) maintained his or her principal and permanent residence in Nevada; (ii) was physically present in Nevada, except for temporary absences; and (iii) did not purchase or apply for any resident license, tag or permit to hunt, fish or trap in another state, country or province. A person who does not maintain his or her principal and permanent residence in Nevada but who is attending an institution of higher learning in this State as a full-time student is eligible for a resident license, tag or permit if, during the six (6) months next preceding the person's application to the Department for a license, tag or permit, the person: (i) was physically present in Nevada, except for temporary trips outside of Nevada; and (b) did not purchase or apply for any resident license, tag or permit to hunt, fish or trap in another state, country or province. As used in *NRS 502.015*, "principal and permanent residence" means a place where a person is legally domiciled and maintains a permanent habitation in which the person lives and to which the person intends to return when he or she leaves the state in which the permanent habitation is located. The term does not include merely owning a residence in the State.

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TAXES IN GENERAL. Nevada does not have a state income tax. In fact, the Nevada Constitution states, “No income tax shall be levied upon the wages or personal income of natural persons” (*Article 10, Section 1*). In many states, an inheritance tax is imposed on those who inherit property. The Nevada Constitution also prohibits such levies (*Article 10, Section 1*). While Nevada may impose an estate tax, it may not exceed the amount of the credit allowed by law against estate taxes payable to the federal government (*Nevada Constitution, Article 10, Section 4; NRS 375A.100*).

We trust the foregoing is helpful. Successfully establishing residency in Nevada requires logical and organized planning. Even if you believe you have most of the factors in your favor, the correct approach is thinking about how clearly you can prove each of the factors with documents and other hard evidence. Please contact us with any questions so we can assist in your planning.