

**MEMORANDUM IN SUPPORT OF PRIMARY RESIDENCY  
FOR 2509 TOP HILL ROAD, LOUISVILLE, KY 40206**

**I. HISTORY OF THE PROPERTY.**

The 2509 Top Hill Road premises was purchased in approximately 2016 as part of an “IRS § 1031 Exchange” (hereinafter “1031”). By the very nature of a 1031, the property had to serve as investment property for seven years.<sup>1</sup>

Since the requirements for a proper 1031 involving 2509 Top Hill Road have been satisfied, Mr. Gallavin has moved into 2509 Top Hill Road as his “primary residence” -- by any definition in the Commonwealth, including the requirements of § 145 of the Kentucky Constitution. As a consequence, 1274 Everett Avenue will not, and cannot, serve as Mr. Gallavin’s primary residence. Which begs the question(s) -- If not Top Hill Road, where is Mr. Gallavin’s primary residence in Louisville? Where can he vote if it is not deemed his “primary residence”?

The 2509 Top Hill Road premises will serve as Mr. Gallavin’s primary residence (for at least two of the next five years) and, consequently, also is subject to IRS § 121. To deny Mr. Gallavin’s registration, the Board would be limiting Mr. Gallavin’s ability to use § 121 -- a property right. It is Mr. Gallavin’s intent to live at the premises at least this year (and another year) to use § 121 when appropriate. Intent is the primary factor in determining a primary residence under the IRS Code.

Here, Mr. Gallavin has sworn to his intent to live at 2509 Top Hill Road.

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<sup>1</sup> At or near the same time, 1274 Everett Avenue was purchased. The 1274 Everett Avenue property was not part of a 1031, and it was used as Mr. Gallavin’s primary residence for the last several years. We only bring up the 1274 Everett Avenue address to explain how the tax consequences of the properties interrelate, and Mr. Gallavin’s motivation to move to 2509 Top Hill Road.

## II. QUESTIONS REGARDING MR. GALLAVIN'S PRIMARY RESIDENCE.

According to the Ordinances, it appears Mr. Gallavin's primary registration can be questioned for only three reasons: (1) conflicting documentation, (2) inadequate documentation, or (3) violating or failing to comply with any applicable provisions. Here, there is no inconsistent documentation regarding 2509 Top Hill Road, nor any inadequate documentation. Also, Mr. Gallavin has not been informed of any violation regarding his primary residency at 2509 Top Hill Road.

Secondly, the Ordinances state:

A primary residence is the main home of an individual. An individual has only one primary residence at a time. If any individual owns and lives in just one dwelling unit, then that property is his or her primary residence. (Emphasis added).

The 2509 Top Hill Road premises is owned by a Revocable Trust with only one asset -- 2509 Top Hill Road -- and one trustee and beneficiary -- Mr. Gallavin. Thus, by the Ordinances' own definition, there is "just one dwelling unit" applicable to the Trust, and Mr. Gallavin's position as trustee and beneficiary of the Trust.

Third, it may appear to someone who has not considered Mr. Gallavin's knowledge of the IRS Code that it is not his intent to use 2509 Top Hill Road as his primary residence. There is no inconsistency with, nor anything improper regarding, Mr. Gallavin's actions -- rather they are his attempt to not run afoul of any applicable law. Thus, his registration should be granted *pro forma*.

Mr. Gallavin has an absolute right to change his residency as he is doing, without any repercussions. While it may seem counterintuitive, it is a perfectly legitimate process under the tax laws. It is also consistent with Kentucky law. A determination that Mr. Gallavin is not the primary resident at 2509 Top Hill Road has serious repercussions.

Lastly, under election laws, the word “reside” or “residence” means “legal domicile,” and residence for purpose of voting means a place of fixed domicile with the element of permanence; there must be the act of abiding coupled with the intention of remaining and making the place one’s home to the exclusion of other places. *Everman v. Thomas*, 197 S.W.2d 58 (Ky. 1946). By filing his voter registration, Mr. Gallavin is swearing to his intention of remaining at 2509 Top Hill Road at the exclusion of any other places. He is also subject to criminal penalties under KRS 119.025.

Mr. Gallavin is registered to vote in District 9 in Jefferson County. Mr. Gallavin has a constitutional right to vote in the precinct pursuant to Kentucky Constitution § 145 which states:

Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and **the precinct in which he offers to vote sixty days next preceding the election**, shall be a voter in said precinct and not elsewhere but the following persons are excepted and shall not have the right to vote. (Emphasis added).

Jefferson County Ordinances, or the Board’s holdings, cannot run afoul of a constitutional provision protecting Mr. Gallavin’s right to vote. If the Board determines Mr. Gallavin is not a “primary resident,” then there has been a finding which exposes him to a violation of KRS 119.025. The practicality is Mr. Gallavin cannot vote if there is an adjudication by an agency of competent jurisdiction which states he does not reside at 2509 Top Hill Road. The effect of denying Mr. Gallavin’s registration has serious consequences addressing tax and voter laws.

While Mr. Gallavin wishes to preserve any objection to the fact a Hearing was even scheduled (considering the Ordinances’ language), he will comply with the Hearing requirement. As stated above, even if he is subjected to a Hearing outside the reasons set forth in the Ordinances, his registration should be approved *pro forma*.