**LEGAL RESIDENCE AND DOMICILE**

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This pamphlet answers frequently asked questions about changing legal residency. Because changing one’s residency can have serious consequences, you should contact the legal office for advice on specific questions.

# DEFINITIONS

The terms “home of record”, “domicile”, “legal residence”, and “residence”, are often confused. While your “home of record” generally cannot be changed because this is the place you were living when you entered the military, your “domicile”, “legal residence”, and “residence” can be changed.

Generally, the terms “domicile” and “legal residence” refer to the same concept and place – the state you consider your permanent home. On the other hand, your “residence” is simply where you are living at a particular time.

# WHAT IS YOUR DOMICILE ?

Generally, every person acquires the domicile (legal residence) of their parents at birth and keeps this domicile until he/she reaches the age of majority and establishes a new one, if he/she chooses to do so.

The Servicemembers Civil Relief Act (SCRA) ensures that members of the armed forces do not lose their domicile (for tax and voting purposes) merely by joining the service and moving about from state to state or abroad in response to military orders. They retain the domicile they held at the time they entered the service, unless they indicate that it is their intention to change their domicile to some other state in which they are residing. A person’s choice of domicile will determine many of his or her legal rights and obligations.

Many factors affect a person’s decision to become a legal resident of a particular state. Taxation is often a servicemember’s primary consideration in choosing their domicile.

In order to determine what your present legal residence is, you will need to consider the next section, which explains how you might have changed your legal residence in the past and how you may change it in the future.

# HOW DO YOU CHANGE YOUR DOMICILE?

A person acquires a new domicile by being physically present in a state with the intent to reside there permanently or indefinitely. Individuals in the military must intend to return to that state as their permanent home when absent due to military orders. This is all that is required, but showing the intent may be difficult. A variety of factors help determine an individual’s domicile including: where the individual owns property, voter registration and actual voting in elections, the claiming of a homestead exemption, the place motor vehicles are registered, where driver’s licenses are obtained, the payment of state income tax, and the exercise of other benefits or obligations of a particular state. Merely purchasing a new home in a new state or moving to a state under military orders does not necessarily indicate that you have changed your legal residence. Likewise, obtaining a driver’s license in a particular state does not necessariliy indicate a change in domicile. However, multiple connections with a state will likely indicate domicile in that state, and certain connections, such as claiming a state homestead exemption, or registering to vote, are considered extremely important indicators of domicile. While voting “absentee ballot" may be inconvenient, you should make the effort if your “legal residence” or “domicile” is not the state in which you are stationed.

The acts described above may be interpreted by authorities as expressing your choice of legal residence. Therefore, you are advised to vote, exercise your rights, and claim the benefits of legal residence only in the state where you intend your domicile to be, unless you intend to abandon your old legal residence and establish a new one.

Also note that moving overseas does not change your legal residence and it is virtually impossible to change your legal residence once you are overseas.

**MILITARY SPOUSES**

A military spouse does not automatically assume the “legal residence” or “domicile” of the military member. The recently passed Military Spouses Residency Relief Act has substantially changed past legal residence rules that generally applied to military spouses.

The Military Spouses Residency Relief Act (MSRRA) and Taxation: In November 2009, the MSRRA became law and amended the SCRA. This new law changes some basic rules of spousal domicile for taxation and voting purposes that could affect servicemembers and their spouses. Under the new law, a military spouse who is present with a servicemember in a particular State under military orders does not have to pay State income tax on wages earned in that State as long as that State is NOT the spouse's domicile. However, the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments. Some States, of course, don't have State income taxes.

The MSRRA does not allow a spouse to pick or chose a domicile in just any State. Domicile is established, not arbitrarily chosen. The spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, owning property, registering vehicles, holding professional licenses, declaring a homestead, or indicating a State of probate in a last will and testament. Similarly, the MSRRA does not allow a spouse to "inherit" or assume the servicemember's domicile upon marriage without the necessary contacts with the State.

The law is complicated, and because its effect will depend on the interpretations of each State, servicemembers and their spouses are encouraged to seek free, confidential advice from a military legal assistance office.

**FINAL NOTES**

Remember that in addition to establishing your liability for state income taxes, your domicile or legal residence determines many other important matters. Each of the following will be affected by the law of your state of legal residence:

* Liability for the state inheritance taxes
* The jurisdiction where your will must be probated and the resulting consequences (including who may act as your executor or guardian of your minor children)
* The right to vote
* The right to hold public office
* The right to homestead
* Determination of whether you or your children may attend a state college without paying higher fees required for out-of-state legal residents
* The family relationship, including the rules on property rights, divorce, and marriage annulments.
* Liability for state personal property taxes
* Eligibility for public welfare

If you have any difficulty in determining what state is your legal residence or have other questions, contact the legal office for assistance.

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