

ESTATE LAW SERIES
CHANGING YOUR RESIDENCE



For a civilian, the concepts of home of record and legal residence are fairly simple - they are usually the same thing and identify the state where the civilian lives and works. For military members, however, the terms are not as clear. A military member can have one state as a home of record, claim another state as a legal residence, and be stationed in a third state. It is important to be able to identify one's legal residence, because it affects important aspects of one's life.

Home of Record

Home of record simply refers to the place from which a person came on active duty, or re-enlisted. It is used in part to determine transportation entitlements upon separation from active duty. Your home of record never changes.

Legal Residence

Legal residence, also called "domicile," is the place that you consider to be your permanent home and intend to return to when you are no longer serving. The Servicemembers Civil Relief Act (SCRA) allows you to retain the same legal residence you had when you entered the service, even if you are stationed in a different state or overseas.

Your legal residence determines many important matters, including the following:

- ✓ Liability for state income and 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

Changing Legal Residence

The key factors for a legitimate change of legal residence are a physical presence in the new state, intent to abandon your old legal residence, and a simultaneous intent to remain

permanently in the new state (or return when temporarily absent).

For military members the best time to change legal residence is well before the end of a lengthy tour in the state to which it is being changed. Simply passing through the state while on leave or TDY usually is not enough to satisfy the "presence" test. Therefore, once stationed overseas it is very difficult to change one's legal residence.

A change in legal residence affects four major areas of a person's life. First, a legitimate change will result in a shift of personal tax obligations from the old domicile to the new. This primarily affects military pay because other income may be taxed by the state of legal residence, the state where it is earned, or both. A second effect is in the areas of benefits such as public higher education. Most states charge substantially higher tuition for non-residents than they do for residents. Third, a change of legal residence subjects a person to the civil law and jurisdiction of the new state. The fourth major effect is the ability to vote in the state a military member is claiming as their legal residence. Changing one's legal residence for the sole purpose of a tax advantage is improper. Regulations require the military to ensure that military members are not changing their legal residence solely for this purpose.

Therefore, when changing your legal residence, military officials may require some degree of proof that you consider the new state to be your permanent home.

If a military member truly considers the new state his or her new home and has the required intent of permanency, he or she should change legal residence. Among the actions recommended are:

- Registering to vote
- Obtaining a local driver's license
- Registering vehicles in the new state
- Closing old bank accounts in favor of new accounts in the new domicile
- Paying local and state income taxes

Finance should be notified so that tax withholding may be changed. At the end of the tax year, part-year resident state tax returns should be filed in each state, which requires a tax return. It is also wise to send a letter to your former state's taxing authority announcing your intention to establish a new legal residence.

So how do you change your legal residence in a way that will not get you into tax or other trouble later? Any time you like, you may announce that

you are changing your permanent residence. However, if your original state becomes suspicious, especially if you are claiming a new legal residence in a state that has no state income tax, you must be ready to show as much objective proof as possible that you honestly intend to make the new state your permanent home.

Below is a list of some of the possible indicators of intent to make a new state your domicile. The more of these factors you can establish, the better:

- Completed DD Form 2058
- Driver's License & Vehicle Registration
- Own/Lease Real Property
- Enrollment of children in school
- Ownership of Business Interest
- Creation of bank accounts
- Membership in local organizations
- Prior prolonged presence in the state by your spouse or other relatives
- Registered to vote
- Claiming the state as your birthplace
- Payment of taxes
- Payment of resident college tuition
- Marriage in this state
- Obtaining income in this state
- Maintaining a permanent address in the state

Military Spouses

The Military Spouses' Residency and Relief Act was passed in 2009 and it allows a non-military spouse to retain the same state of residence as the military spouse, as long as the non-military spouse's sole reason for leaving that state was due to a permanent change of station (PCS) for the military spouse. This means that the non-military spouse would pay state taxes to his/her state of legal residence, which may or may not be the state in which s/he currently lives.

A military spouse does not automatically assume the legal residence of the military member though. The same criteria mentioned earlier for establishing and changing a legal residence applies to the spouse as well.