



STATE RESIDENCY REQUIREMENTS

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GENERAL RESIDENCY LAW

Generally, your state of “legal residence” (also called your “domicile”) is the state where you live and intend to remain. Once you are a legal resident of a particular state, your domicile does not change until you concurrently satisfy all three of the following criteria:

- 1) Physical presence in a new state—physical presence means your actual presence in the state; having parents or relatives who live in the state is insufficient.
- 2) An intent to reside permanently or indefinitely in the new state—you meet the requirement when you can say that a particular state is where you live and to where you intend to return if away, which could include a PCS assignment in another state if you intend to return to the state you consider home when your assignment is over.
- 3) An intent to abandon your previous legal residence—having an intent to abandon a previous legal residence means that you do not plan to return there after you complete your military service or when you retire.

While physical presence is easy to establish, how do you prove that you intend to reside permanently or indefinitely in a new state? Courts and state agencies consider certain actions, when coupled with physical presence, as objective evidence of your intent to reside permanently or indefinitely in a new state. These actions include:

- 1) Registering your vehicle
- 2) Obtaining a driver's license
- 3) Registering to vote
- 4) Purchasing real estate and claiming a homestead exemption
- 5) Paying local and state taxes
- 6) Opening checking, savings, and credit accounts

Likewise, eliminating such ties to your prior state of legal residence will demonstrate your intent to abandon your previous domicile.

STATE RESIDENCY IN THE MILITARY

For civilians, the concept of legal residency does not typically present a problem. For military members, however, the concept can be quite confusing because military members on orders often reside in states where they would not otherwise consider living. The Servicemember’s Civil Relief Act of 1940 (SCRA) provides some relief for military members by allowing them to live and work in one state while maintaining a domicile or legal residence in another.

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Your domicile upon entry into the military is generally the state where you resided just prior to entering active duty. Ordinarily, this is your “home of record.” You should note that the concept of a “home of record” is separate from the concept of a “legal residence” or “domicile.” Your home of record is used in part to determine your transportation entitlements upon separation and will not change as you move from state to state or as you change your legal residence.

The SCRA allows a servicemember to maintain legal residence in their previous state when PCSing to a new state as long as the servicemember can still claim under state law legal residence in the previous state. The primary benefit of the SCRA is that the servicemember will pay all state income taxes on qualifying earned income to the servicemember’s previous state as the state of legal residence, not to the new state where the servicemember is stationed. This can have significant state tax advantages if the servicemember claims a state like Florida—a state without an income tax— as a legal residence and is stationed in a state like California—a state that taxes most income over six percent. There is a similar, but not identical, benefit for military spouses under the Military Spouse Residency Relief Act (MSRRA). For more information on these benefits, please see the legal-aid handout on state residency and tax rights under the SCRA and MSRRA.

CHANGING YOUR RESIDENCY

Before you attempt to change your state of legal residence, you should give serious consideration to all factors involved. Changes of domicile can be confusing and result in some unexpected consequences. Ultimately, a court might decide where your legal residency is if, for example, you are ever sued by a state for unpaid taxes. If you change your state of legal residence, you also need to change your state income tax withholding election. You can do so by completing a DD Form 114 and a W-4 form at Military Pay. If you have any questions about your legal state of residence or desire to change it, you should consult an attorney or your legal assistance office for advice.