

PREVENTIVE LAW

SERIES

Legal Assistance Program

TOPIC:

Legal Residence

January 2014

If you have questions concerning the topic
of this pamphlet, please contact the
Legal Assistance Office

For additional information & useful links, please visit:

<https://aflegalassistance.law.af.mil>

Legal Assistance Office
Phone: 226-4022

Office of the
Staff Judge Advocate
Misawa AB, Japan

HOW DO I CHANGE MY STATE OF LEGAL RESIDENCE?

WHAT IS MY LEGAL RESIDENCE?

Your legal residence (also called “domicile”) is the place you consider as your true, fixed and permanent home. It is the state to which you intend to return after a temporary absence. Once a person is domiciled in a particular state, the legal state of residence does not change until the person meets the requirements for establishing domicile in another state: i.e. being physically present and intending to remain there indefinitely.

DOES MY LEGAL RESIDENCE CHANGE WHEN I PCS?

Under the Servicemember’s Civil Relief Act (SCRA), military members keep the state from which they entered military service as their domicile. Therefore, you may keep the legal residence that you held when you entered active duty. This also applies to civilian employees residing in Japan on government orders. This is important because only the state of domicile may tax the military income and personal property of an active duty military member.

In November 2009, the Military Spouses Residency Relief Act (MSRRA) became law and amended the SCRA. This new law changes some basic rules of taxation that could affect servicemembers and their spouses. Under the new law, a military spouse who is present with a service member 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 (permanent home). However, the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments.

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 service member's domicile upon marriage without the necessary contacts with the State.

CAN I CHANGE MY LEGAL RESIDENCE?

A valid change of legal residence (domicile) requires that you satisfy a majority of the following requirements:

1. You must simultaneously intend to remain in the new state permanently or to treat that location as your permanent home; and
2. You must intend to abandon your old domicile.

3. You must be physically present in the new state. Physical presence in a state can often times be satisfied by the following actions:

- Register to vote and vote in the new state
- Get a driver's license in the new state
- Register your vehicle(s) in the new state
- Pay state taxes (income, property, etc.) in the new state
- Change your Will to reflect the new state as your legal residence
- Establish a permanent address in the new state
- Notify the old state's taxing authorities of your change in domicile
- Owning property

You also need to record your change of legal residence with the Accounting and Finance Office on DD Form 114 and a W-4 Form.

ARE THERE ANY PROBLEMS WITH CHANGING MY LEGAL RESIDENCE?

Military members often mistakenly believe that changing the state of domicile in their pay records changes their domicile. While this tactic may cause the finance office to stop withholding state income tax, the member may not have validly changed domicile and may be liable for back taxes, interest, and penalties. In addition, the member may be subject to criminal prosecution for failing to pay state income taxes.

Even when a member validly changes domicile, the old state may require proof of the new domicile before removing the person's name from its tax rolls.

Changing your residence may also affect the following rights:

- The right to vote in state elections
- Where your Will is probated
- The right to homestead, veterans' claims, or tax exemptions
- Whether you or your children may attend a state college without paying higher fees
- Whether community property principles apply for divorce matters

RECOMMENDATION

Domicile is a complex issue that is easy to ignore, but it is very important. Military members are encouraged to clearly establish their domicile to prevent future problems.

THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT YOUR CIVILIAN ATTORNEY OR THE MISAWA AIR BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.