

INTRODUCTION

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.

Military members often have questions about their state of legal residence and how to change it. Under the Servicemembers' Civil Relief Act (SCRA), only a member's state of legal residence may tax a member's military pay. Military spouses have the same domicile requirements as active duty members, but their right to retain a previous domicile is limited.

A member's state of legal residence can impact other important issues, such as where to vote and whether you qualify for in-state college tuition. Therefore, it is critical for you to understand how legal residency works and how and when it may be changed.

Your legal residence does not change when you PCS. It will remain the same throughout your career unless you affirmatively and properly change it. Merely changing your state of residence with the military Finance Office does not legally change your state of residence.

LEGAL RESIDENCE VS. HOME OF RECORD

In the United States military, the terms "state of legal residence" and "domicile" are often confused with the term "home of record." A main cause of this confusion is frequent moving and relocating from one duty station to another without close and continuous ties to any particular state. The constant uprooting causes service members to be confused about which state they are legal residents of, or assume the home of record governs their state of legal residence.

Home of Record. A servicemember's "home of record" is the state from which he or she entered the military. It may or may not be the same as a person's state of legal residence. The primary purpose of home of record is to determine military benefits such as travel entitlements upon separation from the military. Other than that, the term home of record is usually a meaningless term outside of the military, and it has no effect on where one votes, pays taxes, registers vehicles, or receives any of the other privileges of state residency.

State of Legal Residence (SLR) or Domicile. A servicemember's SLR or domicile, on the other hand, refers to the place where a service member intends to return to and his or her permanent home after retirement. SLR also determines where a service member votes, pays taxes, registers vehicles, where his or her will is probated, or whether or not he or she receives privileges from a state.



Do you have additional questions? If so, contact the Misawa Air Base Legal Office and request to schedule a Legal Assistance Appointment.

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LEGAL RESIDENCE

THIS BROCHURE INCLUDES:

- LEGAL RESIDENCE DEFINED
- HOW TO CHANGE YOUR LEGAL RESIDENCE
- HOW TO ABANDON YOUR EXISTING LEGAL RESIDENCE
- ISSUES WITH CHANGING YOUR LEGAL RESIDENCE
- LEGAL RESIDENCE VS. HOME OF RECORD



The information in this brochure is of a general nature and is not intended as a substitute for legal counsel.

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WHAT IS MY STATE OF LEGAL RESIDENCE?

A person is a legal resident of a state when:

1. Physically present in the state,
2. Simultaneously has a present intent to remain in the state indefinitely, AND
3. Abandons his or her previous state of legal residence.

Once a person meets these three requirements, that person is domiciled in a state, and that state will be the person's state of legal residence. This does not mean that every time a person moves to another state that the person's state of legal residence changes.

Under the SCRA, servicemembers retain the state they claimed when they entered active duty as their state of legal residence unless they take affirmative steps to change their state of legal residence. As a servicemember moves throughout their career, only the member's state of legal residence may tax a member's military pay. This also applies to civilian employees residing in Japan on government orders.

HOW DO I CHANGE MY STATE OF LEGAL RESIDENCE?

Military members and their families residing in Japan normally retain the state of legal residence they had before they came overseas. Once overseas, it is difficult to change your state of legal residence because physical presence in the new state is required to make a change. Actual physical presence in the new state is required, not just an intent to move there in the future.

However, if you can establish physical presence in a new state, your state of legal residence is not impossible to change. Courts and state agencies look at some key factors to determine whether

you have established an intent has been manifested:

- ⇒ Registering and voting in the new state
- ⇒ Getting a driver's license in the new state
- ⇒ Registering your vehicle(s) in the new state
- ⇒ Paying state taxes (income, property, etc.) in the new state
- ⇒ Changing your Will to reflect the new state as your legal residence
- ⇒ Establishing a permanent address in the new state
- ⇒ Notifying the old state's taxing authorities of your change in domicile
- ⇒ Owning property in the new state

Each of these factors helps indicate a person's intent to remain in a place indefinitely. Therefore, accomplishing some or all of these acts may provide enough evidence for a state agency to accept your new state of residence.

HOW DO I ABANDON TIES WITH MY FORMER STATE OF RESIDENCE?

While it is necessary to establish ties to your new residence, it is a good idea to abandon ties to your old state. A state can always challenge a change of legal residence and demand that you pay back taxes with interest. If you are challenged in such a way, you should be prepared to demonstrate that you have abandoned your former state of residence and have established a new domicile. The steps taken to demonstrate intent to remain in the new state also serve to demonstrate intent to abandon an old state. To demonstrate your intent to change your legal residence, you can:

- Surrender your old drivers' license
- Not vote in your old state's elections
- Deregister your POV in the old state
- Write a letter to state income tax authorities informing them that you are no longer a legal resident of the old state. The legal office can provide you with the appropriate address.

ANY ISSUES WITH CHANGING MY LEGAL STATE OF RESIDENCE?

A change in domicile affects three major areas of a person's life:

1. TAXES: A legitimate change in legal residence will result in a shift of **personal tax obligations from the old state to the new state.** Be aware that states use more than just income tax to generate revenue. For example, perhaps in the old state, you were required to pay state income tax, but in the new state you would be required to pay a personal property tax (but no income tax). Also be aware that while only your state of legal residence can tax your military pay, both your state of legal residence and the state where you are stationed can tax non-military income (such as income you earn from off-duty employment).

2. PUBLIC EDUCATION: **State benefits such as public higher education** privileges may also change. Most state colleges charge much lower tuition rates for legal residents of that state.

3. STATE CIVIL LAW: Finally a change in domicile subjects a person to the **civil law and jurisdiction of the new state.** Family law (such as divorce issues) and estate law (which governs your will) are examples of these areas.

Additionally, in-state tuition rates and residency requirements for divorce may be dependent on specific time periods of actual residence in the state.

For more specific details on any of the issues discussed in this pamphlet, please make an appointment with the legal office to discuss your specific situation with an attorney.