

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.



## LEGAL RESIDENCY & DOMICILE

This handout answers frequently asked questions about changing legal residency. Your state of legal residence is important because it is one of the key factors in determining, among other things, your liability for state income taxes, eligibility for "in-state" tuition rates, eligibility for voting in state and federal elections, and where your will is probated. Many people in the military are confused about their state of legal residence, probably because they move around so much that they don't have any close, continuous links to any particular state.

### DEFINITIONS

**"Legal residence"** and **"domicile"** mean the same thing, namely the place you consider your true, fixed, and permanent home. It is the place where a Soldier intends to return and live after he retires or is discharged from the military. A Soldier's legal residence determines what state tax laws apply while he is serving in the military.

For example, a Soldier with legal residence in Oregon leaves the state on military orders, but intends to go back to Oregon after leaving the military. Oregon is his permanent home, even though he is temporarily absent from it due to military orders. The Soldier might never be stationed in Oregon during a thirty-year military career, and yet Oregon would remain the Soldier's legal residence for the entire thirty-year period.

**"Home of record."** Don't confuse legal residence with home of record. Home of record is almost always the state where the Soldier first joined the military. Home of record is a term used by the military to determine specific military benefits, such as travel allowances, transportation expenses, and travel time to report to duty. Your home of record and your legal residence can be totally different.

**"Residence"** is simply where you are living at a particular time.

### WHAT IS YOUR DOMICILE?

Every person acquires the legal residence of their parents at birth and keeps their parent's domicile until, after reaching the age of majority (usually 18 years old), they may acquire a new one of their own.

Members of the armed forces do not lose their domicile 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 military service, unless they indicate that it is their intention to change their domicile to another state in which they are currently residing.

## **HOW DO YOU CHANGE YOUR LEGAL RESIDENCE?**

A person acquires a new legal residence by being physically present in the state with the intent to reside there permanently or indefinitely. Individuals in the military must intend to return to that state as soon as their military obligations are completed. Acts that indicate the state of legal residence include owning property in that state, voter registration and actual voting in elections, the claiming of a homestead exemption, motor vehicle registration, 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.

Moving overseas does not change your legal residence. Because physical presence in your intended state of residence is required, it is virtually impossible to change your legal residence once you are overseas.

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.

Voting is considered the most important indicator of intent in most states. While voting "absentee ballot" may be inconvenient, you should make the effort if your "residence" is not the state in which you are stationed.

A military spouse does not automatically assume the "legal residence" or "domicile" of the military member. The Military Spouses Residency Relief Act permits civilian spouses to retain the domicile of their Soldier spouse if the civilian spouse maintained his or her legal residence in that state before relocating with their Soldier spouse.

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.

***The USARAF/SETAF Legal Assistance Office number is DSN: 634-7041, Com: 0444-71-7041. If you need more information, please call for an appointment with one of our attorneys.***

Updated July 2013