

DOMICILE & STATE OF RESIDENCY

JB LANGLEY-EUSTIS LAW CENTER

EXPLANATION OF TERMS

Domicile is the state where one has his or her true and permanent home. For military members, it is the place to which the member intends to return at the conclusion of his or her military service. The Servicemembers Civil Relief Act (SCRA) prevents a state from creating a presumption that an active-duty military member becomes domiciled in that state simply because he is stationed there. The member may choose to become a domiciliary of that state, but cannot be forced to—he can retain his old domicile throughout his military career. Contrary to a popular misconception, however, the SCRA does *not* give a military member the unlimited right to choose *any* state as a new domicile. You could not, for example, become a domiciliary of Texas if you are not stationed there.

Residence is frequently used as a synonym for domicile. However, you may become a legal resident of a state for certain purposes without changing your domicile. For example, if you have lived in Virginia for at least six months, you qualify as a “legal resident” for purposes of obtaining a divorce.

Home of record is not necessarily your domicile. Instead, it is merely the Air Force term for the address you listed when you entered active duty.

EFFECTS OF CHANGE OF DOMICILE

Taxes: The biggest consequence of changing your state of domicile is state income taxation. Federal income tax laws apply to your military pay no matter where your domicile is located. However, your military pay is subject to state income tax only in your state of domicile. Some states do not tax military pay, others do. In addition, tax rates vary from state to state.

Resident tuition rates: Resident tuition rates apply at state colleges and universities in the state of your domicile. Nevertheless, some states entitle military members and their dependents

stationed in the state to resident tuition rates as well.

CHANGING YOUR STATE OF DOMICILE

Three things are required to change your domicile:

1. Actual presence in the state where you desire to establish a new domicile;
2. An intent to remain there permanently or indefinitely;
3. An intent to abandon your old domicile.

PROOF OF YOUR DOMICILE

Proof of your domicile may be required if you attempt to take advantage of benefits offered to persons domiciled in that state, or if you claim a different domicile for the purpose of avoiding taxes.

Proof of domicile includes:

- a. Where you file your state income tax return;
- b. Where you own real property;
- c. Where you are registered to vote;
- d. Where you hold professional licenses or maintain a place of business;
- e. Where your car is registered and which state issued your driver’s license;
- f. Your home state when you entered military service;
- g. Your family’s home (the place you visit when you are on leave or making a PCS move);
- h. Total length of time you have been present in the state.

Although no one factor is controlling, some states have a presumption that a person who is registered to vote in that state is a legal resident or domiciliary of that state. Consequently, if you do not wish to change your state of domicile, it would be wise not to register to vote in another state.

In Virginia, one cannot register to vote unless six criteria are met. One of these criteria is the intent to permanently live in Virginia. Because of this one criterion, the Commonwealth may interpret registration to vote in Virginia as proof that you are now domiciled in Virginia, and begin to tax you as a Virginian. The burden will shift to you to prove Virginia is not your domicile.

MILITARY SPOUSES RESIDENCY RELIEF ACT

The Military Spouses Residency Relief Act (MSRRA) is a federal law that was signed into effect in 2009. It extends a number of benefits already available to active duty service members to their civilian spouses. Under MSRRA, the domicile of a civilian spouse does not change when he or she moves to a new state if 1) the service member is stationed in the new state and 2) the spouse moves to the state to be with the service member. Further, income the civilian spouse receives from work performed in the new state is, in most cases, exempt from income tax in that state. However, it is important to note that the military spouse is *not* exempt from income tax in all states – the spouse may still be required to file an income tax return in the state in which he or she remains domiciled. This law is very fact specific, so contact an attorney if you think it might apply to you.

Note: The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.