

## **What You Should Know About Your State Of Legal Residence**

**Introduction.** 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 from one location to another 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. This article aims to clear the confusion because your state of legal residence is important in determining where you file your taxes, probate your will, vote in state and federal elections, whether you qualify for in-state tuitions, and other very important issues.

**Home of Record.** A service member’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 (SLR). 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 or Domicile.** A service member’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. Now let’s look at an example, a service member with SLR in

Minnesota leaves the state on military orders, but intends to return to Minnesota after leaving the military. Minnesota is the service member’s SLR, even though the service member is temporarily absent from it due to military orders. The service member might never be stationed in Minnesota during his or her military career, but Minnesota would remain the service member’s SLR.

The Service Member’s Civil Relief Act (SCRA) of 2003 provides very important protections for the Soldier in our Minnesota example, as it does for all service members on active duty. In effect the SCRA allows active duty service members to maintain legal residency in one state while physically stationed in another state. This SCRA provision protects service members from having income and personal property taxes accessed by both their SLR and the host state where physically present. This same SCRA provision also provides a monetary incentive to claim domicile in a State with no income tax or one with favorable tax treatment of military income. However, these service members in particular have a lot at risk if a tax jurisdiction challenges the soldier’s residency claim. Read on for ways to protect yourself.

**Maintaining State of Legal Residency.** As a matter of practice, service members should maintain, even when inconvenient or additional costs are incurred, as many connections to their SLR or domicile as possible – to include filing tax returns if applicable, registering to vote, obtaining drivers licenses and vehicle registrations, setting up wills, etc. Service members can run into trouble for tax purposes when these “connections” are spread amongst multiple states and there is no clearly defined, obvious SLR.

### **Methods of Changing SLR.**

Changing one's SLR is no easy matter. There are 3 requirements and all must be met to change one's SLR. First, you must be physically present in the new state. A mere PCS or temporary transfer from one duty station to another may not be enough. Usually, having a permanent home in the said state will suffice the physical presence. Second, you must intend to remain in the new state permanently or treat the location as a permanent home. Service members may be able to show a strong intention of making the said state as their SLR by maintaining a permanent home in the new state, registering to vote or voting in the new state, obtaining a driver's license in the new state, registering vehicles in the new state, paying taxes in the new state, and changing your will to reflect your intention to reside in the new state. Moreover, you may show your intention by recording your change of SLR with the military finance office on DD Form 2058 (State of Legal Residence Certificate), and W-4 Form. Lastly, you must intend to abandon your old SLR or domicile. One way to meet this requirement is through informing the old state's taxing authorities of your change of SLR or domicile by filing a part-year tax return where applicable.

### **Other Effects of Changing SLR.**

Changing one's SLR may affect a service member's wills and the probate process, his or her ability to vote in state elections, bonuses for wartime service, qualification for in-state tuition, and application of community property laws upon divorce.

If a change of SLR occurred, then it is important for the service member to be consistent. A common mistake that service members make is having inconsistencies after changing from one SLR to another. One example would be changing one's SLR to Texas for tax purposes, but continuing to keep a Minnesota's driver license, New

York vehicle registration, owning a house in Virginia, registering to vote in Louisiana, and having a will that is to be probated in Arizona. The service member may mitigate the problem by changing all the above to his or her new SLR.

### **How about Non-Military Spouses?**

While the SCRA allows service members to claim SLR in one state regardless of subsequent permanent change of stations, the same is not true for their spouses.

The legal residency of the non-military spouse is generally determined independent to that of their military sponsor. This does not necessarily mean that spouses become legal residents by virtue of being present in a particular state when that presence is due to the military orders of their sponsor. The spouse should maintain as many "connections" as possible to their permanent home state that they intend to return to. That said, some states have statutory residency laws that impose involuntary residency status once present in the state for a certain period of time (usually 180 days). The SCRA prevents this from happening to the military sponsor, but offers no help to their spouses. Luckily, Kansas law, as currently interpreted, offers some latitude when the demonstrated intent of the spouse is not to remain in Kansas beyond the duration of the military orders. In such cases, Kansas law generally allows spouses to maintain drivers licenses and car registrations in their SLR, as well as file income tax returns under a non-resident status if Kansas sourced income is earned

**Conclusion.** Contrary to a service member's home of record, a service member's SLR or domicile determines many important matters. The service member's SLR or domicile affects and/or determine many very important issues. Service members are encouraged to clearly

establish their SLR or domicile to avoid future problems. For more information about the legal implications of SLR or domicile, contact the Fort Leavenworth Legal Assistance Office at (913) 684-4944.