

Introduction

Military members often have questions about how to change their state of legal residence. Under the Service Members Civil Relief Act (SCRA), only a military member's state of legal residence may tax a member's military pay. Additionally, a member's state of legal residence can impact other important issues, such as college tuition. Therefore it is important to understand how legal residence works and how and when it may be changed.

Your legal residence does not change when you PCS. Also, merely changing your state of residence with the finance office does not change your state of legal residence. If you wrongfully claim a different legal residence from the state you claimed when you entered active duty, you could be liable for back taxes with interest!

OTHER RESOURCES

- **Armed Forces Legal Assistance:**
<http://legalassistance.law.af.mil/>

Legal Assistance Hours:
By Appointment Only

Notary & POA Hours:
Monday-Thursday
0900-1100 & 1300-1500



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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
- Implications of Changing Your Legal Residence



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

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Legal Residence

A person is a legal resident of a state when he or she is:

- Physically present in the state,
- Simultaneously has a present intent to remain in the state indefinitely, and
- 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. It is important to note that 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, members 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.

Changing your Legal Residence

Military members and their families residing here at Yokota Air Base normally retain their states of legal residence before they came overseas. Once overseas, it is difficult to change your state of legal residence because of the fact that physical presence in the new state is required to make a change. However, it is not impossible to change. Courts and state agencies look at some key factors to determine whether or not this intent has been manifested:

- Where one has been issued a state driver's license;
- Where one is registered to vote;
- Where one owns real estate;
- Where one has a will which declares his or her state of residency;
- Where one has bank accounts;

- Where one pays state and local taxes.

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.

Abandoning Ties to Your Former 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. Additionally to demonstrate your intent to change your legal residence, you can:

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

Implications of Changing Legal Residence

It is important to note that a change in domicile affects three major areas of a person's life:

1. A legitimate change in legal residence will result in a shift of personal tax obligations from the old state to the new. 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. 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. 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.