

State of 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. Some people think they do not have a state of legal residence at all; others know they have one, but don't know where it is. This paper will help clear up the confusion.

One factor contributing to the confusion is that there are several different terms that mean almost the same thing. They are:

a. "State of legal residence" (SLR) and "domicile" mean the same thing, namely your true, fixed, and permanent abode. It is your permanent home, i.e., the place where, while you are absent from it, you intend to return to.

b. "Home of record" is almost always the state where you first joined the military. Home of record (HOR) is an accounting term used by the military to determine a number of military benefits, such as travel allowances, transportation expenses, travel time to report to duty, etc. HOR cannot be changed, but it may be evidence of your state of legal residence.

c. "Residence" means the place where you are actually living. By itself, residence usually has little or no legal significance.

d. "Statutory resident" means that a state has decided to treat certain people as residents of that state for certain reasons. For example, some states allow children of military members to qualify for in-state tuition if they are stationed in the state.

Every U.S. citizen has a SLR. For most people there is no question about their SLR. For anyone who isn't sure, figuring out which state is their SLR is probably easier if they start from the beginning. Every citizen acquires a SLR at birth, namely the same SLR as his parents. A child has the same SLR as the parents, including any changes, until the child reaches the age of majority. After that, the child can change its SLR on its own. Naturalized citizens usually are considered to have a SLR in the state where they became citizens. (As we'll see below, there may be an exception for naturalized citizens who are married to citizens domiciled in a different state.)

Changing your SLR has two and only two requirements:

- a. First, you must be physically present in the new state.
- b. Second, while you are physically present, you must have the intention of making that state your new SLR and of ending your residency in the former state.



Those two requirements are all that's necessary. You don't have to buy property in the new state, open a bank account there, vote, get a driver's license, file a legal notice in the paper, or anything else. Physical presence, combined simultaneously with the appropriate mental intent, is all that's required. Unfortunately, proving mental intent can be difficult sometimes. So to prove that you really did intend to make the new state your SLR, it might be a good idea to do some or all of the things mentioned above, with the understanding that those actions are not what make you a legal resident; rather they are simply evidence that you did intend to make the state your SLR.

If you change your SLR, there are certain actions you should take:

- a. You must be consistent. If you are a legal resident of State A, then you shouldn't keep your driver's license from State B or vote in State C. Inconsistency is probably the single biggest mistake that people make in this area.
- b. You should adjust your state income tax withholding by filing DD Form 2058 with your local military finance office.
- c. There is no need to publish a notice or file any documents with the state Attorney General's Office or anything like that.
- d. If both the old and new states have an income tax, and if you moved on any day other than January 1, then you will have to file part-year returns in both states. For the first state, you report the income you had before moving to the new state. For the new state, you report the income earned after becoming a resident of the new state.

Remember, each case is different. This summary is for general information only and is not intended as a substitute for talking with a lawyer.

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