

Domicile and Residency



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DOMICILE AND RESIDENCY REQUIREMENTS

Overview

Many military members have inquired about how to change their state of legal residence, or domicile. They are usually still paying taxes to their home state and have heard that a stroke of the pen at finance will change their domicile and make the taxman go away. Florida, Texas, and several other states have no personal income tax. Under the Service Members Civil Relief Act (SCRA), only the state of domicile may tax a member's military pay. Air Force members who resided in one of the no-tax states when coming on active duty generally go through their entire careers without paying state tax on their military pay. For those of us not so fortunate, it is important to understand how domicile works and how and when it may be changed.

Domicile and Home of Record

Home of record and domicile are usually synonymous when people first join the military. Home of record simply refers to the place from which a person came on active duty. It is used in part to determine transportation entitlements upon separation from service. One's domicile is not formally registered anywhere, but anyone changing domicile should be prepared to provide convincing evidence of the legitimacy of the change to any state which is negatively affected by it. Most notably, this involves justifying the change to the tax authorities of the old domicile or the higher education authorities of the new domicile. A change in domicile affects three major areas of one's life:

1. A legitimate, intentional change will result in a shift of personal tax obligations from the old domicile to the new. This primarily affects military pay because income may be taxed by the state of domicile, the state where it is earned, or both.
2. A second effect is in the areas of benefits such as public higher education. Most states charge substantially higher tuition for non-residents than they do for residents.
3. Finally, a change of domicile subjects a person to the civil law and jurisdiction of the new state.

Key Factors in a Change

The key factors for a legitimate change of domicile are a long-term presence in the new domicile and a simultaneous intent to remain (or return when temporarily absent). You cannot just be passing through or visiting. For military members, the best time to change domicile is well before the end of your tour in the new state of domicile. If military members truly consider the new state their home and have the required intent of permanency, they should change domiciles. Once you get stationed in another state, you cannot change your domicile to the state you left, even if you want to go back.

Recommended Actions in Order to Change One's Domicile

- Register to vote in your new state;
- Obtain a local driver's license;
- Change your address;

- Register vehicles in the new state;
- Register yours kids for school;
- Close old bank accounts in favor of new accounts in the new domicile (only if you bank locally); and/or
- Purchase a home.

Finance should be notified so that tax withholding may be changed from the old state to the new. At the end of the tax year, part-year resident state tax returns should be filed in each state which requires a tax return.

Residency Requirements for Specific Situations

In some situations, state courts require that one or more parties to a legal action reside in the state for minimum period of time before that court can act. In Colorado, residency requirements must be met before a party can file for a divorce or for a child custody order, but there are no residency requirements for protection orders.

- **Divorce** – At least one spouse must live in Colorado for 91 days prior to filing a petition for divorce.
- **Child Custody** – In order for a Colorado court to have jurisdiction over a child, the child must have resided in Colorado for 6 consecutive months (or since birth, if the child is not yet 6 months old). Colorado will also exercise jurisdiction if it was the home state of the child within 182 days prior to the beginning of the custody proceeding and one parent continues to reside in Colorado. Importantly, if a child is in danger and needs immediate protection, a Colorado court may exercise jurisdiction irrespective of the restrictions described above.
- **Protection Orders** – There are no residency requirements to issue a protection order. Any county in which one of the parties resides, is employed, or where the acts subject of the complaint occurred can issue a protection order.