



State of Legal Residence



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" college 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, because they move around so much that they don't have any close, continuous links to any particular state.

A factor contributing to the confusion is the number of different terms that mean almost, but not quite, the same thing. In this case, these slight differences can have significant consequences, so it's important to understand the terms.

"State of legal residence" (SLR) and **"domicile"** mean the same thing – your true, fixed, and permanent home, i.e., the place where, while you are absent from it, you intend to return to. For example, a Soldier with a SLR in Oregon leaves the state on military orders, but intends to go back to Oregon after leaving the military. Oregon is his permanent home, even though he is temporarily absent from it due to military orders. The Soldier might never be stationed in Oregon during a thirty-year military career, and yet Oregon would remain the Soldier's SLR for the entire thirty-year period.

"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. Except in the military, home of record is usually a meaningless term. However, since the HOR is often the same as the SLR, some colleges ask for information about the HOR as evidence of a person's SLR. HOR can almost never be changed, except at time of reenlistment after a break in service or to correct an administrative error.

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

"Statutory resident" is very similar to "residence" in that it refers to the state where you are actually living. This term is used to describe a certain category of persons who are liable for state income taxes. For example, in some states, someone who is physically present in that state for a specified period of time is considered to be a statutory resident and therefore liable for state income taxes in that state. This is one time that "residence" does have some legal significance. It is important to note that a statutory resident of State A may still retain State B as their SLR, but may be required to file a tax return in State B AND in State A. You might also be required to file a tax return in a third or fourth state, if you own property there or you or your spouse have earned income from a civilian job in that 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 his or her SLR. Naturalized citizens usually are considered to have a SLR in the state where they became citizens. (However, as noted below, there may be an exception for naturalized citizens married to citizens domiciled in another state.)

Changing your SLR has only two requirements: 1) you must be physically present in the new state, 2) 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.

There is one situation where you may be able to change your SLR without meeting the physical presence test. If you marry a resident of a different state, you might be allowed to claim your spouse's SLR as your SLR, or vice versa, without ever having been physically present in that state. The marital relationship is so significant that, by itself, it may

give the spouse a close enough connection to the new state to justify claiming the new state as the SLR. But talk to a legal assistance attorney before you decide to make this change.

Being assigned in a state pursuant to military orders, whether for five, ten, or even 30 years, is not sufficient by itself to establish a new SLR. However, if you have the intent to make the state where you are stationed your SLR, then you have met the basic requirements. If you're overseas or stationed in Korea and want to change your SLR, **YOU CAN'T!** You have to go back to the U.S., establish physical presence in a new state, and at the same time, have the appropriate intent to make it your new permanent home.

How can anyone prove their mental intent to make a state their new SLR? External indicators provide supporting evidence of your intent, but none of these are sufficient alone to establish a new SLR. External indicators include: buying property in the new state, getting a driver's license there, registering your vehicle there, moving there, notifying the state of your previous domicile that you are changing your SLR, registering to vote in the new state, executing a last will and testament pursuant to the laws of your new SLR, paying state and local income taxes to the new state, sending your children to schools in that state, getting a mailing address in that state, and/or obtaining a professional license in the new state (nursing license, law license, hairdressing license, etc).

It is important to know that you cannot change you domicile just for "tax purposes." You must meet both the physical presence and intent tests discussed above. Filing DD Form 2058, State of Legal Residence Certificate, doesn't change your domicile either. That form should be filed to adjust your state income tax withholding AFTER you have changed your SLR. Merely filing the form has no effect in actually making the change. Filing the form improperly may get you in serious trouble. Military personnel have been court-martialed, tried in civilian courts, and given huge fines, for wrongfully claiming legal residency, tax evasion, and other misconduct related to residency issues.

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

- a. 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.
- b. Adjust your military pay's state income tax withholding by filing DD Form 2058 with your finance office.
- c. Adjust your civilian pay's state income tax withholding by filing a W-4 Form with your employer's HR office.
- 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 resident returns or non-resident returns in both states.

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