

**OFFICE OF THE STAFF JUDGE ADVOCATE
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LEGAL RESIDENCE

The terms “home of record,” “domicile,” “legal residence,” and “residence,” are often confused. While your “home of record” generally cannot be changed because this is the place you were living when you entered the military, your “domicile,” “legal residence,” and “residence” can be changed.

Generally, the terms “domicile” and “legal residence” refer to the same concept and place—the state you consider your permanent home. On the other hand, your “residence” is simply where you are living at a particular time. Each of the following will be affected by the law of your state of legal residence:

- ✓ Liability for state taxes;
- ✓ The jurisdiction where your will must be probated along with the resulting consequences (including who may act as your executor or guardian of your minor children);
- ✓ The right to vote;
- ✓ The right to hold public office;
- ✓ The right to homestead;
- ✓ Determination of whether you or your children may attend a state college without paying higher fees required for out-of-state legal residents; and
- ✓ The family relationship, including the rules on property rights, divorce, and marriage annulments.

What is your domicile or legal residence?

Generally, every person acquires the domicile (legal residence) of their parents at birth and keeps this domicile until he/she reaches the age of majority and establishes a new one, if he/she chooses to do so.

The Servicemembers Civil Relief Act (SCRA) ensures that members of the armed forces do not lose their domicile (for tax and voting purposes) merely by joining the service and moving about from state to state or abroad in response to military orders. They retain the domicile they held at the time they entered the service, unless they indicate that it is their intention to change their domicile to some other state in which they are residing. A person's choice of domicile will determine many of his or her legal rights and obligations.

Many factors affect a person's decision to become a legal resident of a particular state. Taxation is often a servicemember's primary consideration in choosing their domicile.

In order to determine what your present legal residence is, you will need to consider the next section, which explains how you might have changed your legal residence in the past and how you may change it in the future.

How do I change my legal residence?

A person acquires a new domicile by *being physically present in a state and while there forming the intent to reside there permanently or indefinitely*. Individuals in the military must intend to return to that state as their permanent home when absent due to military orders. This is all that is required, but showing the intent may be difficult.

A variety of factors help determine an individual's domicile including:

- ✓ Where the servicemember's LES indicates they are a resident of;
- ✓ What state does the individual pays taxes;
- ✓ Where the individual owns a house;
- ✓ Where the individual is registered to vote and whether they vote in elections;
- ✓ What state their will indicates they are a resident of;
- ✓ The claiming of a homestead exemption;
- ✓ The place motor vehicles are registered;
- ✓ What state the driver's licenses are from; and
- ✓ The exercise of other benefits or obligations of a particular state.

Merely purchasing a new home in a new state or moving to a state under military orders does not necessarily indicate that you have changed your legal residence. However, multiple connections with a state will likely indicate domicile in that state, and certain connections, such as claiming a state homestead exemption, or registering to vote, are considered extremely important indicators of domicile. While voting "absentee ballot" may be inconvenient, you should make the effort if your "legal residence" or "domicile" is not the state in which you are stationed.

The acts described above may be interpreted by authorities as expressing your choice of legal residence. Therefore, you are advised to vote, exercise your rights, and claim the benefits of legal residence only in the state where you intend your domicile to be, unless you intend to abandon your old legal residence and establish a new one.

*****Also note that moving overseas does not change your legal residence.***

MILITARY SPOUSES

The recently passed Military Spouses Residency Relief Act has substantially changed past legal residence rules that generally applied to military spouses.

The Military Spouses Residency Relief Act (MSRRA) and Taxation: In November 2009, the MSRRA became law and amended the SCRA. This new law changes some basic rules of spousal domicile for taxation and voting purposes that could affect servicemembers and their spouses. Under the new law, a military spouse who is present with a servicemember in a particular State under military orders does not have to pay State income tax on wages earned in that State as long as that State is NOT the spouse's domicile. However, the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments. Some States, of course, don't have State income taxes.

Once acquired, your state of legal residence remains the same, even if you move to another state on military orders. It is your choice, if the above factors are satisfied, to change your state of legal residence. Military members can retain their legal residence in a state without being physically present in that state because of the Servicemembers Civil Relief Act (formally Soldiers' Sailors' Civil Relief Act).

AF Legal Assistance Website

For more information about the topics above, go to <https://aflegalassistance.law.af.mil>, select Legal Information, then "Servicemembers Civil Relief Act (SCRA)" or "Military Spouses Residency Relief Act."

Additionally, you can call or email us to schedule an appointment to meet with an attorney at the RAF Lakenheath legal office.

RAF Lakenheath Legal Assistance App

For a copy of this pamphlet, as well as other helpful pamphlets, please go to the 48 FW Phone App, click on "J.A.G." at the bottom, and then click on "forms and documents."

RAF Lakenheath Legal Office Hours

Legal Assistance/Wills (**By appointment only**)

Tuesday 0900-1100 and Thursday 1300-1500

Call **0163852-3553 (226-3553)** or email 48fw.ja@us.af.mil

Powers of Attorney/Notary Service (No appointment necessary).

Monday-Wednesday & Friday 0830 – 1530; Thursday 0930-1530

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