

LEGAL RESIDENCE AND DOMICILE

This paper answers frequently asked questions about changing legal residency. Because changing one's residency can have serious consequences, you should contact the legal office for advice on specific questions.

Definitions

The terms "home of record," "domicile," "legal residence," and "residence," are often confused. While your "home of record" 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.

Basically the terms "domicile" and "legal residence" refer to the same place – the state you consider your permanent home. On the other hand, your "residence" is simply where you are living at a particular time.

What is your domicile?

Every person acquires the legal residence of their parents at birth and keeps this domicile until, after reaching the age of majority (usually 18 years old), they acquire a new one of their own.

Members of the Armed Forces do not lose their domicile 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 remove 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 service member'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 you change your legal residence?

A person acquires a new legal residence by being physically present in a state with the intent to reside there permanently or indefinitely. Individuals in the military must intend to return to that state as soon as their military obligations are completed. This is all that is required, but showing the intent may be difficult. Acts that indicate the state of legal residence include owning property in that state, voter registration and actual voting in elections, the claiming of a homestead exemption, the place motor vehicles are registered, where driver's licenses are obtained, the payment of state income tax, 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. Claiming the state homestead exemption will affect your legal residence.

Moving overseas does not change your legal residence and it is virtually impossible to change your legal residence once you are overseas.

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.

Voting is considered the most important indicator of intent in most states. While voting “absentee ballot” may be inconvenient, you should make the effort if your “residence” is not the state in which you are stationed.

A military spouse does not automatically assume the “legal residence” or “domicile” of the military member. While many states require the non-military spouse to obtain residency in the state in which they are living, they may still be able to vote in another state and maintain residency in the other state. Non-military spouses will have to pay income tax on their income earned in whatever state they are stationed. To maintain residency in another state the non-military spouse should file two tax returns, one in the state assigned and one in the state of residency.

Remember that in addition to establishing your liability for state income taxes, your domicile or legal residence determines many other important matters. Each of the following will be affected by the law of your state of legal residence:

- Liability for the state inheritance taxes
- The jurisdiction where your will must be probated and 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
- The family relationship, including the rules on property rights, divorce, and marriage annulments
- Liability for state personal property taxes
- Eligibility for public welfare

If you have questions, contact the Fort Bliss Legal Assistance Office at (915) 568-7141 or usarmy.bliss.hqda-otjag.mesg.bliss-legal-assistance-office@army.mil for an appointment to speak with an attorney.