



CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series
Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon



This Information Paper from the Fort Gordon Legal Assistance Division contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney.

Military Spouse Residency Relief Act

Questions often arise regarding the residency and/or domicile of military spouses.¹ The general rule is that a person is domiciled for taxing purposes in the state in which they physically reside with an intent to remain. Prior to 2009, military spouses essentially lost their domicile with each permanent change of station (PCS) and were required to establish residency/domicile in the state in which they physically resided, creating tax, voting, and logistical issues for the military spouse.

In 2009, Congress passed the Military Spouse Residency Relief Act (MSRRA), which allowed military spouses to establish and keep residency/domicile in a state, so long as the residency/domicile was the same as the service member spouse. However, to take advantage of the MSRRA, the MSRRA required the military spouse to reside in the service member's state of residence and take steps to establish residence in that state, prior to a change in duty station. However, once residency was established, like the service member, the military spouse could elect to maintain the residency with every PCS.

In 2019, the MSRRA was amended to allow a military spouse to elect to have the same residency/domicile as the service member, even if the military spouse never resided in or independently established residency in the service member's state of residence. The result is more military spouses can take advantage of the MSRRA, alleviating the burden for military spouses to change residency with every PCS.

In order to take advantage of the MSRRA and not have to change residency with each PCS, a military spouse must be:

1. Married to a service member;
2. Elect the same residency as the service member;
3. Be in a state solely to be with the service member; and
4. The service member must be in the state to comply with military orders.

¹ For purposes of the Military Spouse Residency Relief Act (MSRRA), residency and domicile are used interchangeably. However, please note that generally, residency and domicile are separate legal concepts. Residency is generally considered a temporary place of abode. Domicile is generally defined as where a person lives with intent to remain. A person may have more than one residency, but may only have one domicile at a time.

How to Elect Residence/Domicile of Military Spouse:

If a military spouse has resided in the state with the service member, the spouse may elect to maintain that residency by simply maintaining the status quo by keeping voter registration in the state, maintaining that state's driver's license, and filing tax returns in the state. However, making the election to have the same residency as the military spouse may be more complicated when the military spouse and service member never lived together in the service member's state of residency. When the military spouse never resided in the service member's state of residence, the military spouse may "elect" the service member's residency state by doing the following (this is not an exhaustive list):

1. Register and vote in the service member's state of residency (using an absentee ballot);
2. Own property in the service member's state of residence; and/or
3. File tax returns in the service member's state of residence.

Benefits of MSSRA to a Military Spouse:

Once a military spouse elects to have and maintain residency/domicile the same as the service member, the following benefits apply:

Taxation on Earned Income: Under the MSRRA, a military spouse's income is taxed in the state in which the military spouse is a resident/domiciliary, not necessarily in the taxing state in which it is earned.

Personal Property Taxes: The military spouse is exempt from personal property taxes by a state or local taxing jurisdiction if the state where the property is located is not the military spouse's residency/domicile and the military spouse is in the taxing state solely to be with the service member who is complying with military orders. However, personal property used in a taxing state for a trade or business may be taxed even if the taxing state is not the military spouse's residency/domicile and the service member is in the state to comply with military orders.

Potential Pitfalls:

Although the MSSRA confers a much-needed benefit, it is not without its limits. A military spouse may lose the benefits conferred under the MSSRA if any of the following happen:

1. Service member retires;
2. Service member receives orders for PCS but military spouse stays behind, i.e. voluntary separation;
3. Divorce; or
4. Establish residence in a new state by actions such as voting, filing a state tax return (in some cases), accepting in-state tuition, or filing a lawsuit (in some cases).

Additional Information

The Fort Gordon Legal Assistance Division is located at 267 Heritage Park Lane, Building 35202, Fort Gordon, Georgia. You may call the office at (706) 791-7812 / 7813. Please be advised you must have an appointment to consult with an attorney; however, paralegals are available via telephone during normal hours of operation to answer general questions that do not amount to legal advice.