



Home of Record or State of Legal Residence Change



Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

WHAT'S THE DIFFERENCE BETWEEN STATE OF LEGAL RESIDENCE, DOMICILE, AND HOME OF RECORD

"**State of Legal Residence**" (SLR) and "**Domicile**" mean the same thing; your true, fixed, and permanent home. This is the place where, although you may leave for military duty, you intend to return. 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. It is an accounting term used by the military to determine a number of military benefits, such as travel allowances, transportation expenses, and travel time to report to duty. A Soldier's HOR is usually the same as their SLR; but, that's merely a coincidence since most people happen to join the military in the state that is also their SLR. Home of Record is usually a meaningless term, except in the military.

WHY DOES THIS MATTER?

Since Servicemembers can have a "legal residence" in one state and be stationed in a different state, the **Servicemembers Civil Relief Act** (SCRA) allows military members to pay taxes, register vehicles, and vote in their SLR rather than the state where they are currently stationed. This can sometimes result in a tax advantage because several states exempt military pay from state taxes.

CAN I CHANGE MY SLR?

A valid change of SLR requires that you satisfy ALL of the following requirements:

1. You must be **physically present** in the new state;
2. You must, simultaneously, **intend to remain permanently** in the new state or treat that location as your permanent home; and
3. You must intend to **abandon your old SLR**.

You can show your intent to change your SLR by taking as many of the following actions as possible:

- Get a driver's license in the new state
- Register your vehicle(s) in the new state
- Pay state taxes (e.g., income and property) in the new state
- Change your Will to reflect the new state as your legal residence
- Establish a permanent address in the new state
- Notify the old state's taxing authorities of your change in SLR

Once you've taken these steps, go to your unit S-1 or finance office and complete a DD Form 2058, State of Legal Residence Certificate. Filing this form alone doesn't change your SLR; the form should be filed to adjust your state income tax withholding **after the change has already occurred**.

CAN I CHANGE MY SLR FOR "TAX PURPOSES?"

You cannot change your SLR just for "tax purposes." You must meet the physical presence and mental intent test discussed above. Remember, just filing a DD Form 2058 doesn't change your SLR. 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.

IS THERE ANY WAY TO CHANGE MY SLR TO A STATE I DON'T LIVE IN?

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. This is a somewhat aggressive strategy, but there is some support for it. 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 it as their SLR.

There is substantial historical precedent for this argument. Earlier this century, when a woman married a man from a different state, the woman became a legal resident of the man's SLR by operation of law. Those laws no longer exist, but that helps demonstrate the legal significance of the marital relationship and the type of legal consequences that can result from marriage.

ARE THERE ANY PROBLEMS WITH CHANGING MY LEGAL RESIDENCE?

Military members often mistakenly believe that changing the state of residence in their pay records changes their SLR. While this tactic may cause the finance office to stop withholding state income tax, the member may not have validly changed SLR and may be liable for back taxes, interest, and penalties. In addition, the member may be subject to criminal prosecution for failing to pay state income taxes.

Even when a member validly changes SLR, the old state may require proof of the new SLR before removing the person's name from its tax rolls.

Servicemembers who continue to maintain their professional licenses in the state of their old SLR may have a difficult time establishing that they have the intent to change their SLR.

Changing your residence may also affect the following rights:

- Liability for state inheritance taxes
- Where your Will is probated
- The right to vote in state elections
- Bonuses for wartime service
- The right to homestead, veterans' claims, or tax exemptions
- Whether you or your children may attend a state college without paying higher fees required of non- domiciliary residents
- Whether community property principles apply for divorce matters

CAN I CHANGE MY HOME OF RECORD?

The ability to change your home of record is very limited. In most cases individuals will not be allowed to change their home of record. An individual's home of record is a place recorded as the home of the soldier when commissioned, appointed, enlisted, inducted or ordered on active duty.

The place recorded as the home of the individual when reinstated, reappointed, or reenlisted remains the same as the recorded when commissioned, appointed, enlisted or inducted or ordered into the relevant tour of active duty unless there is a break in service of more than one full day.

Only if a break in service exceeds one full day, can the home of record be changed by a Servicemember.

If the home of record was *originally recorded incorrectly*, a change can be authorized. The individual must provide supporting documentation to justify the change.

In every case the burden is on the individual to justify a change to the home of record to file.

To request a change of Home of Record:

Individuals requesting a home of record change must submit a written request with their full name, SSN, and the place they want their home of record changed. The request should include any documentation (which is not already on file in the OMPF) to support their request IAW AR 600-8-104, table 5-2, item 25 and AR 601-280, Para 11-10(2) and table 11-1, item 3.

Enlisted Soldiers: (Note: SRDC cannot change home of record on the ERB).
Director, SRDC, 899 E 56th Street, ATTN: AHRC-ERP, Personnel Actions Branch,
Indianapolis, IN 46249-5301

Officers: Commander, U.S. Total Army Personnel Command Alexandria, VA 22332-0400

This information paper is courtesy of the Stuttgart Law Center.