



**XVIII Airborne Corps and Fort Bragg
Office of the Staff Judge Advocate
Legal Assistance Office**



INFORMATION PAPER – STATE OF LEGAL RESIDENCE

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. 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. A Soldier's HOR is usually the same as the Soldier's SLR, but that's merely a coincidence, since most people just happen to join the military in the state that is also their SLR. Except in the military, home of record is usually a meaningless term.

WHY DOES THIS MATTER?

Because military members may have "legal residence" in one state, but be stationed in a different state, the Servicemembers Civil Relief Act, allows military members to pay taxes, register vehicles, vote, etc., in their SLR, rather than the state they are stationed in. 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 you satisfy ALL of the following requirements: 1. You must be **physically present** in the new state; 2. You must simultaneously **intend to remain** in the new state permanently or to 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 as possible of the following actions:

- Get a driver's license in the new state
- Register your vehicle(s) in the new state
- Pay state taxes (income, property, etc.) 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**.

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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 the new state as the 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.

Member 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