



A HANDBOOK FOR ESTABLISHING RESIDENCY IN TEXAS

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The information displayed in this handout is meant for the sole use of Active Duty service members, retirees, their families and other personnel eligible for legal assistance from the Goodfellow AFB Legal Office. The information is general in nature and presented to assist those eligible persons prepare for a legal assistance appointment with a professional in the legal office. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

CHANGE OF DOMICILE

Seven states—Texas, Florida, Washington, Wyoming, South Dakota, Alaska and Nevada—have no state income tax. The Servicemembers' Civil Relief Act protects your military pay from the income taxes of the state in which you reside by reason of military orders unless that is also your legal residence/domicile. The Act further provides that no change in your state of legal residence/domicile will occur solely as a result of your being ordered to a new duty station. Therefore, those service members who resided in one of the no-tax states when coming on active duty generally go through their entire careers without paying state income tax on their military pay. For everyone else, however, it is important to understand how domicile works and how and when it may be changed.

Home of record and domicile are usually synonymous when people first join the military. Home of record simply refers to the place from which a person enters active duty. It is used in part to determine the transportation entitlements upon separation from the service. Domicile is a person's permanent home, the place to which he or she intends to return when temporarily absent.

Service members often mistakenly believe that changing the state of domicile in their pay records changes their domicile. While this tactic may cause the finance office to stop withholding state income tax, the service member may not have validly changed domicile 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 service member validly changes domicile, the old state may require proof of the new domicile before removing the person's name from its tax rolls.

ESTABLISHING LEGAL DOMICILE IN TEXAS

Now that you have moved to Texas, you may be considering making Texas your permanent home. There are a number of reasons for this. Maybe you wish to vote in Texas elections or maybe the fact that Texas has no state income taxes appeals to you. While a residence is merely the place where you currently live, Texas law defines "domicile" as the place where you have an intent to make your fixed and permanent home (Schreiner v. Schreiner, Tex. Civ. App., 502 SW2d 840 (1973).)

But how do you actually prove that you have changed your domicile and that you now have the intent to make Texas your permanent home? The answer is not as simple as filling out a change of address card. Instead, there are a number of things you can do that when added up together tend to show your intent to change domicile.

Below is a partial list of things you can do to indicate your intent. Some of these items alone may be enough to satisfy your previous state but there is no rule anywhere that spells out one magic formula. The best thing you can do is to try to qualify for as many of these as possible. When you come up with a list of items that fit your circumstances, send a letter to your former state's Income Tax Commission. Alert them of your intent to change your domicile to Texas as of the named date, and supply the reasons why you qualify. A sample Affidavit of Intent to Change Legal Domicile is attached. Include in your letter copies of any of the documents listed below that you have obtained.

- Written intent to abandon previous domicile and establish it in Texas
- Physical presence of yourself (include duration) and your family here
- Registering to vote here

- Registering your car here
- Getting a Texas drivers license
- Proof of birth in Texas
- Completing a DD Form 2058 (change of domicile) for military records—some states require this form and some finance office require it before changing your records in DFAS
- Spouse's domicile is here
- Bank/investment assets here
- Children's school is here
- Married in Texas
- Payment of personal property tax (on vehicles, etc.) here
- Owning real property in Texas
- Earning income in Texas
- Membership in church, professional, and service organizations here

Generally, unless these steps have been taken, it is doubtful that your state of legal residence/ domicile has changed. When trying to establish a new legal residence, be consistent. The key is to cut your ties with the old state and create new ties with your new state. Failure to resolve any doubts as to your state of legal residence/domicile may adversely impact on certain legal privileges which depend on legal residence/domicile, including among others, eligibility for resident tuition rates at State universities, eligibility to vote or be a candidate for public office, and eligibility for various welfare benefits.

AFFADAVIT OF INTENT TO CHANGE LEGAL DOMICILE

STATE OF TEXAS)

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COUNTY OF TOM GREEN)

KNOW ALL MEN BY THESE PRESENTS:

COMES NOW, _____, Affiant, whose Social Security Number is _____ and whose _____ Driver's License Number is _____, being first duly sworn by me, upon his oath, and deposes and states:

I, _____, do hereby solemnly swear and affirm that I am a member of the Armed Forces of the United States/ a spouse of a member of the Armed Forces of the United States. I hereby declare my intention to make the State of _____ the state of my legal domicile. Thusly, I hereby and simultaneously abandon and reject the State of _____ as the state of my permanent home or legal domicile.

In support of my intention, I hereby declare and express my intent to vote in the general election in the State of _____.

I have obtained a driver's license from the State of _____.

I have titled and registered my vehicle(s) in the State of _____.

Further, I hereby declare and express my intent to have my last will and testament prepared under the auspices of _____ law and to have my estate administered accordingly, and;

Finally, I hereby declare and express my desire that this affidavit serve as a legal abandonment of the State of _____ as my legal domicile and to constitute written evidence of my intent to make the State of _____ my new and present state of legal domicile.

FURTHER AFFIANT SAITH NOT.

Affiant

Subscribed and sworn to this _____ day of _____, 20____, before me, a notary public in and for the State of Texas, and I hereby certify under my official seal that I am duly authorized by the laws of the State to administer oaths in Texas.

Notary Public In and For the State Of Texas
My Commission Expires: _____

STATE OF LEGAL RESIDENCE CERTIFICATE

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Tax Reform Act of 1976, Public Law 94-455.

PURPOSE: Information is required for determining the correct State of legal residence for purposes of withholding State income taxes from military pay.

ROUTINE USES: Information herein will be furnished State authorities and to Members of Congress.

MANDATORY OR VOLUNTARY DISCLOSURE: Disclosure is voluntary. If not provided, State income taxes will be withheld based on the tax laws of the State previously certified as your legal residence, or in the absence of a prior certification, the tax laws of the applicable State based on your home of record.

NAME (<i>Last, first, middle initial</i>)	SOCIAL SECURITY NUMBER (SSN)
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LEGAL RESIDENCE/DOMICILE (*City or county and State*)

INSTRUCTIONS FOR CERTIFICATION OF STATE OF LEGAL RESIDENCE

The purpose of this certificate is to obtain information with respect to your legal residence/domicile for the purpose of determining the State for which income taxes are to be withheld from your "wages" as defined by Section 3401(a) of the Internal Revenue Code of 1954. PLEASE READ INSTRUCTIONS CAREFULLY BEFORE SIGNING.

The terms "legal residence" and "domicile" are essentially interchangeable. In brief, they are used to denote that place where you have your permanent home and to which, whenever you are absent, you have the intention of returning. The Soldiers' and Sailors' Civil Relief Act protects your military pay from the income taxes of the State in which you reside by reason of military orders unless that is also your legal residence/domicile. The Act further provides that no change in your State of legal residence/domicile will occur solely as a result of your being ordered to a new duty station.

You should not confuse the State which is your "home of record" with your State of legal residence/domicile. Your "home of record" is used for fixing travel and transportation allowances. A "home of record" must be changed if it was erroneously or fraudulently recorded initially.

Enlisted members may change their "home of record" at the time they sign a new enlistment contract. Officers may not change their "home of record" except to correct an error, or after a break in service. The State which is your "home of record" may be your State of legal residence/domicile only if it meets certain criteria.

The formula for changing your State of legal residence/domicile is simply stated as follows: physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile. In most cases, you must actually reside in the new State at the time you form the intent to make it your permanent home. Such intent must be clearly indicated. Your intent to make the new State your permanent home may be indicated by certain actions such as: (1) registering to vote; (2) purchasing residential property or an unimproved residential lot; (3) titling and registering your automobile(s); (4) notifying the State of your previous legal residence/domicile of the change in your State of legal residence/domicile; and (5) preparing a new last will and testament which indicates your new State of legal residence/domicile. Finally, you must comply with the applicable tax laws of the State which is your new legal residence/domicile.

Generally, unless these steps have been taken, it is doubtful that your State of legal residence/domicile has changed. Failure to resolve any doubts as to your State of legal residence/domicile may adversely impact on certain legal privileges which depend on legal residence/domicile including among others, eligibility for resident tuition rates at State universities, eligibility to vote or be a candidate for public office, and eligibility for various welfare benefits. If you have any doubt with regard to your State of legal residence/domicile, you are advised to see your Legal Assistance Officer (JAG Representative) for advice prior to completing this form.

I certify that to the best of my knowledge and belief, I have met all the requirements for legal residence/domicile in the State claimed above and that the information provided is correct.

I understand that the tax authorities of my former State of legal residence/domicile will be notified of this certificate.

SIGNATURE	CURRENT MAILING ADDRESS (<i>Include ZIP Code</i>)	DATE
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