

# **Establishing Your Domicile: Home is Much More Complicated Than Simply Where Your Heart Is**

## **Part 1: Service-members**

by Yosefi Seltzer, Legal Assistance Attorney

Establishing and maintaining a domicile has traditionally been one of the greatest challenges for service-members and their civilian spouses. Too often, service-members and spouses rely on mistaken guidance offered by other service-members, state Department of Motor Vehicle employees, car salesmen or realtors. When I ask service-members and their spouses the question: "Which State do you call home?" the answer I often receive goes something like this: "I vote in Virginia, my driver's license is from Kentucky, my vehicle is registered in Maryland, I own a house in North Carolina, but for taxes, I am a Florida resident."

The decision as to which domicile to maintain has major implications, most notably: state income tax liability, vehicle registration and emissions regulations, Court jurisdiction, in-state college admissions and tuition rates for yourself or your children, estate planning and voting rights. Because of the significant legal and financial implications of maintaining a domicile, the decision is serious and once chosen, it must be carefully preserved. This article will deal specifically with Service-members on Active Duty. Part 2 will discuss implications for the spouses of Service-members.

You acquire "Domicile" or "Legal Residence" when you are born, taking on the domicile/legal residence of the State in which you live. Domicile/Legal Residence does not change simply because the service-member enters military service and is stationed in different state. When you enter Active Duty military service (reservists and national guard service-members retain domicile/legal residence of where they physically reside so long as they are not mobilized or on Active Duty orders), you may retain a domicile/legal residence of the state in which you entered Active Duty service regardless of where you are stationed throughout your Active Duty career. It is the place to which the service-member intends to return to after the end of Active Duty military service. If you retire from Active Duty, you become a resident of the state in which you physically live for six months or more. Thus, if you retire from Active Duty in May and remain in Virginia the rest of the year, the portion of time you were on Active Duty you can remain a Domiciliary of your previous state, but you become a Virginia Domiciliary once you become a civilian. You may choose to change your domicile/legal residence from your service-entry state to a state in which you are stationed, but think carefully before doing so: attempting to reverse the change, back to the service-entry state, may be difficult to defend, particularly if you no longer maintain a residence in the service-entry state and are not physically living there when you attempt to make the change.

The primary indicators of Domicile/Legal Residence are where the service-member votes, pays state taxes, maintains a driver's license and vehicle registration. Changing any of these may have serious legal and financial consequences: if you establish ties in Virginia through registering a vehicle, voting or getting a driver's license, you are giving the Commonwealth of Virginia the opportunity to argue that you have made conscious steps to establish Virginia as your domicile because you are taking benefits from Virginia and therefore should pay Virginia state income taxes on military pay. It could also disqualify you or your children from securing in-state college admissions or tuition rates from your true domicile. With most states facing budget shortfalls, state departments of revenue are expected to become more aggressive at comparing their voter registration, driver's license and vehicle registration rolls with state

income tax records in an attempt to identify individuals who have taken benefits from Virginia without paying Virginia income taxes.

So how do you preserve your Domicile/Legal Residence? **The most effective way to avoid any problems is to be consistent with your voter registration, vehicle registration and driver's license by claiming all from your state of domicile/legal residence.** Voting is considered the most important indicator of intent to establish and maintain domicile/legal residency in most states. While voting "absentee ballot" (by mail) may be inconvenient, you should make the effort if your domicile/legal residence is not the state in which you are stationed and physically live.

Moreover, some states provide real property tax relief to cap the increased taxes on personal homes owned by residents. Maryland is one such state. If you purchase a home in a state such as Maryland, **do not** request that state's homestead tax credit: if you request the property tax discount in Maryland, you are indicating to Maryland that your Maryland residence is your "homestead" which implies it is your domicile. You are permitted to own multiple houses, condos and the like in multiple states, but you can only have one domicile. If you have Virginia source income (such as a service-member who has a second part-time job on evenings and weekends), be sure to file a Virginia Form 763 Non-Resident tax return, **not** a Virginia 760 or 760PY Resident or Part Year Resident tax return.

As you can see, establishing and maintaining proper residency can become complicated and have long-lasting financial implications, particularly for Active Duty service-members and their spouses. To discuss your personal residency or tax questions, please contact the Legal Assistance Office for an Appointment: 703-805-2856.