



LEGAL BRIEF

MILITARY SPOUSES RESIDENCY RELIEF ACT

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PREPARED BY

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On 11 November 2009 Congress passed an amendment to the Servicemembers Civil Relief Act. The amendment involved the rights of spouses who are accompanying a servicemember to a new state due to active duty military orders.

The common title for this amendment is the Military Spouses Residency Relief Act. Just as the name sounds, this act eases some of the burdens that are involved with following a spouse from state to state while he or she is on active duty orders.

The act is broken down into two major subsections: voting rights and tax rights

If you are absent from your state of residency and/or domicile **ONLY** because you have decided to accompany your spouse while he/she is on military orders, then:

- 1) You will not automatically lose your residence/domicile in your state.
- 2) You will not automatically gain the residence/domicile of the state to which you PCS.
- 3) You do not have to intend to return to your state.

Voting

This act affects a military spouse's voting rights in federal, state, and local elections.

If you **CHOOSE** to retain the residence and/or domicile of your state then you can vote in your state's local and state elections. You should vote for all Federal elections through your state.

If you **CHOOSE** to retain the residence and/or domicile of your state you will not be able to vote in the state that you have PCSd to.

Taxes

Nevada does not have state income taxes; therefore, it is not an issue for this assignment. However, if your military spouse is PCSing to a state that does have state tax, you intend to work

in that state and you CHOOSE to retain your residency/domiciliary in your state then the income earned within that new state will not be subject to that state's income tax.

Your income will be subject to your own state's income tax laws. Remember you must CHOOSE to retain your state of residency and/or domiciliary for this protection to take effect.

Choosing a State of Residence and/or Domicile

Under NRS 483.141, a **resident** is a person whose legal residence is in the State of Nevada, who engages in intrastate business and operates in such a business any motor vehicle, trailer or semitrailer, or any person maintaining such vehicles in this state, as the home state of such vehicles, who physically resides in this state and engages in a trade, profession, occupation or accepts gainful employment in this state, or who declares himself to be a resident of this state to obtain privileges not ordinarily extended to nonresidents of this state. This definition does not include a person who is an actual tourist, an out-of-state student, a foreign exchange student, a border state employee or a seasonal resident.

A person is a **domiciliary** of a "place where a [s/he] has [her/his] true, fixed, permanent home and principal establishment, and to which whenever [s/he] is absent [s/he] has the intention of returning." Black's Law Dictionary 572 (5th ed. rev. 1979).

A heavy emphasis has been placed on choosing your place of residence and/or domicile. These selections must be made with thought and may take some effort on your part.

You need to retain sufficient contacts with your state to show that you intend to retain it as your domicile and/or residence. Below is a list of some things you may want to consider in establishing your choice.

- 1) Where do I pay taxes?
- 2) Where do I own property?
- 3) Where am I registered to vote?
- 4) Where is my vehicle registered?
- 5) From what state was my driver's license issued?
- 6) Where is my bank located?
- 7) What state does my military spouse declare on his LES?
- 8) Where were we married?
- 9) Where was I born?
- 10) Have I declared myself a resident/domiciliary of a particular state on a legal form (divorce decree, child custody decree, etc.)

If the majority of the answers are one particular state and it is not the state that you and your spouse are stationed in, then you may have chosen to retain your state as the controlling state. If the majority of the answers indicate the state in which you have PCSd, you may have relinquished your right to retain your domicile or residence; thus losing the protection of the act.

Limitations on Choosing your State

Many military spouses want to “adopt” the residence/domicile of their military spouse once they become married. This is not always possible.

Example 1: Capt Joe Smith and Mary Lee Smith met while Capt Smith was stationed in California. Mary lived in California her whole life and was a resident and a domiciliary of the State of California. Capt Smith had retained the residency of the state in which he was born, Texas. Mary wants to adopt Texas as her resident state. Mary cannot adopt Texas as her state of residence or domicile. Mary does not have any connection with the State of Texas. Mary must retain her domicile and residence in the State of California. She must pay California income tax and she must vote in California.

Example 2: Capt Smith gets orders to Nevada. Mary, having no other connection with the Nevada, packs up and moves with her husband. When Mary arrives in Nevada, she gets a driver’s license and registers her car in Nevada; the Smith’s purchase a house in Nevada. Mary changes her bank to the Bank of Nevada and registers to vote in Nevada. Mary begins working in Nevada. In this example Mary has CHOSEN to relinquish her California residence and domicile and has CHOSEN to accept Nevada as her new state of residence and domicile.

Example 3: After a three year tour in Nevada, now Major Smith gets orders to Arizona. Mary, having no other connections to Arizona, moves with her husband. The Smith’s decide to keep the home they purchased in Nevada and rent it out. When Mary gets to Arizona, she does not change her driver’s license or her car registration. She continues to bank with the Bank of Nevada. Mary informs Nevada that she will need to register to have her ballots sent to her now that she is out of state. Mary has CHOSEN to retain Nevada as her residence/state of domicile. She could change it to Arizona if she wanted to, but it does not appear that she wanted to do so. Her choice is protected by the act. Mary can vote in Nevada elections and should vote absentee in Nevada for Federal elections. Mary will not be taxed in Arizona if she chooses to work in that state. She will not be taxed in Nevada because Nevada doesn’t have any income tax.

What about the state I am PCSing to?

If you have a question about your specific situation or a state that you are considering a PCS, please contact the number at the top of this page to arrange for legal assistance.

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