

Legal Residency and Domicile

Your state of legal residence is important, because it is one of the key factors in determining, among other things, your liability for state income taxes, eligibility for "in-state" tuition rates, eligibility for voting in state and federal elections, and where your will is probated.

One factor contributing to the confusion is the number of different terms that mean almost, but not quite, the same thing. In this case, these slight differences can have significant consequences, so it's important to understand the terms correctly. Let's define them right now.

"State of legal residence" (SLR) and "domicile" mean the same thing, namely your true, fixed, and permanent abode. It is your permanent home, i.e., the place where, while you are absent from it, you intend to return to. 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.

"Residence" means the place where you are actually living. By itself, residence usually has little or no legal significance.

"Statutory resident" is very similar to "residence" in that it refers to the state where you are actually living. This term is used to describe a certain category of persons who are liable for state income taxes. For example, in some states, someone who is physically present in that state for a specified period of time is considered to be a statutory resident and therefore liable for state income taxes in that state. This is one time that "residence" does have some legal significance. It is important to note that a statutory resident of State A may still retain State B as the SLR and may be required to file a tax return in State B, too.

Every U.S. citizen has a SLR. For most people, there is no question about where their SLR is. For anyone who isn't sure, figuring out which state is their SLR is probably easier if they start from the beginning. Every citizen acquires a SLR at birth, namely the same SLR as their parents. A child has the same SLR as the parents, including any changes, until the child reaches the age of majority. After that, the child can change its SLR on its own.

Changing your SLR has two and only two requirements.

- First, you must be physically present in the new state. You don't have to be present for any particular length of time. Theoretically, a few minutes or hours

- would be sufficient. As a practical matter, however, several weeks or months might be necessary, if your residency status is ever challenged in court.
- Second, while you are physically present, you must have the intention of making that state your new SLR and of ending your residency in the former state.

Those two requirements are all that's necessary. You don't have to buy property in the new state, open a bank account there, vote, get a driver's license, file a legal notice in the paper, or anything else. Physical presence, combined simultaneously with the appropriate mental intent, is all that's required.

Unfortunately, proving mental intent can be difficult sometimes. So to prove that you really did intend to make the new state your SLR, it might be a good idea to do some or all of the things mentioned above, with the understanding that those actions are not what make you a legal resident; rather they are simply evidence that you did intend to make the state your SLR.

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.

If you change your SLR, there are certain actions you should take.

- You must be consistent. If you are a legal resident of State A, then you shouldn't keep your driver's license from State B or vote in State C. Inconsistency is probably the single biggest mistake that people make in this area.
- There is no need to publish a notice or file any documents with the state Attorney General's Office or anything like that.
- If both the old and new states have an income tax, and if you moved on any day other than January 1, then you will have to file part-year returns in both states. For the first state, you report the income you had before moving to the new state. For the new state, you report the income earned after becoming a resident of the new state.

Remember, each case is different. This summary gives you general information only. It is not intended to substitute for talking with a lawyer.