



# LEGAL BRIEF

## CALLING NEVADA HOME

July 2021

PREPARED BY

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702-652-2479

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*Welcome to Nevada!*

*If you decide that Nevada is the state you would like to call home, there are several steps you need to take in order for Nevada to be recognized as your legal domicile.*

### **1. Nevada State Law defines a resident as follows (NRS § 483.141):**

1. “Resident” includes, but is not limited to, a person:
  - (a) Whose legal residence is in the State of Nevada.
  - (b) 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.
  - (c) Who physically resides in this state and engages in a trade, profession, occupation or accepts gainful employment in this state.
  - (d) Who declares himself to be a resident of this state to obtain privileges not ordinarily extended to nonresidents of this state.
2. The term 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.

For purposes of taxation and other benefits, the law looks to your domicile. Your domicile is established by having a majority of the factors listed below in a particular state.

**2. Domiciliary** – “That place where a man has his true, fixed, permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.”<sup>1</sup>

#### **2.1 Factors in Determining Domicile.**

Domicile must be determined by considering and weighing the facts in each individual case. Factors normally considered include the following:

1. Expressed intent, oral or written.
2. Degree of physical presence, past and present (including duration, reasons for absences)
3. Residence of immediate family.
4. Location of schools attended by children.
5. Payment of nonresident tuition to institutions of higher education.
6. **Payment of taxes (income and personal property).**
7. **Ownership of real property.**
8. Leasehold interests.
9. Location of personal property.
10. **Voter registration.**

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<sup>1</sup> See Black's Law Dictionary 572 (5th ed. rev. 1979).

11. **Vehicle registration.**
12. **Driver's License.**
13. Location of bank and investment accounts.
14. Explanations for temporary changes in residence.
15. Submission of DD Form 2058 (State Income Tax Exemption Test Cert).
16. Home of record at the time of entering service.
17. Place of marriage.
18. Place of birth.
19. Business interests.
20. Sources of income.
21. Outside employment.
22. **Declarations of residence on legal documents such as wills, deeds, mortgages, leases, contracts, insurance policies, and hospital records.**
23. **Declarations of domicile in affidavits or litigation.**
24. Address provided on federal income tax return.
25. Membership in church, civil, professional, service or fraternal organizations.

There are many factors that point to your domicile. The key is to make sure that the state you are declaring to be your domicile applies to more of the above factors than any other state.

## **2.2 If you wish to become a resident of Nevada, you may make a declaration of domicile:**

### **§ 41.191. Declaration of domicile in Nevada**

1. Any person who has established his domicile in this state may manifest and evidence his domicile by filing in the office of the clerk of the district court for the county in which he resides, a sworn statement showing that he resides in and maintains a residence in that county, which he recognizes and intends to maintain as his permanent home.
2. Any person who has established a domicile in this state, but who maintains another residence in some other state, may manifest and evidence his domicile in this state by filing in the office of the clerk of the district court for the county in which he resides, a sworn statement that his residence in Nevada constitutes his predominant and principal home, and that he intends to continue it permanently as his predominant and principal home.
3. A sworn statement filed pursuant to this section must contain, in addition to the declaration required in subsection 1 or 2, a declaration that the person making the statement is at the time of making the statement a bona fide resident of the State, and it must set forth the person's place of residence, the city, county and state in which the person formerly resided, and all other places, if any, in which the person maintains a residence.

### **§ 41.193 Declaration of domicile in other state**

1. A person who:
  - (a) Is or was domiciled in a state other than Nevada and who:
    - (1) Has a residence in Nevada; or
    - (2) Does or has done acts within Nevada which, independently of his actual intention concerning his domicile, might be taken to indicate that he is or intends to be domiciled in Nevada and;
  - (b) Desires to maintain or continue his domicile in a state other than Nevada, may manifest and evidence his permanent domicile in that other state by filing in the office of the clerk of the district court in any county in Nevada in which he has a

residence or in which he may have performed those acts, a sworn statement that his domicile is in a state other than Nevada, naming the state and stating that he intends to permanently continue his domicile in that state.

2. The sworn statement filed pursuant to this section must contain, in addition to the declaration required in subsection 1, a declaration that the person making the statement is, at the time of making the statement, a resident of a state other than Nevada, and it must set forth a place of residence which he maintains in the state or the fact that he does not maintain a residence in Nevada. It must also set forth other facts with reference to any acts done by him which he desires not be construed as evidencing an intention to establish his domicile in Nevada.

#### **§ 41.195 Signing and recording of declaration; fee**

The sworn statement permitted by NRS 41.101 and 41.193 must be signed under oath before a person authorized to administer oaths. The clerk of a district court in whose office a statement is filed shall record in a book provided for that purpose, and collect a fee of \$5 for performing that duty.

#### **§ 41.197 Other methods of providing domicile not repealed or abrogated**

Nothing contained in NRS 41.191 to 41.197, inclusive, repeals or abrogates any existing method of providing domicile.

Attached is the declaration of domicile which you may file with the clerk's office. If you have any questions, contact the Clark County Clerk's Office at 702-455-4431

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**DECLARATION OF DOMICILE**  
**NRS 41.191**

STATE OF NEVADA                                }  
  }  
COUNTY OF                                    }       ss.

Under penalty of perjury, I hereby swear or affirm that:

1) I, \_\_\_\_\_, at the time of making this statement, reside in the residential real property located in Clark County, Nevada commonly known as \_\_\_\_\_, and that I established said residence on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ 2) I am domiciled in the County of Clark in the State of Nevada. From time to time, I may own other residential properties, but I maintain the above-mentioned residence as my predominant and principal home, and I intend to continue it permanently as my predominant and principal home.

\_\_\_\_\_ 3) I am presently a bona fide resident of Nevada.

\_\_\_\_\_ 4) I formerly resided at \_\_\_\_\_ in the state of: \_\_\_\_\_, but I have abandoned that residence as my predominant and principal home.

\_\_\_\_\_ 5) I currently maintain residences at: \_\_\_\_\_, which I declare as my predominant or principal home. *[If this does not apply, initial here: \_\_\_\_\_]*

\_\_\_\_\_  
*Print name:* \_\_\_\_\_ *Date*

Subscribed to and sworn or affirmed  
by \_\_\_\_\_  
on this . \_\_\_\_ day of \_\_\_\_\_. 2022

\_\_\_\_\_  
NOTARY PUBLIC

File: Clerk of the Court  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

Fee: \$5.00, Original and Two (2) Copies



# LEGAL BRIEF

## MILITARY SPOUSES RESIDENCY RELIEF ACT

MARCH 2020

PREPARED BY:

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On 11 November 2009, an amendment to the Servicemembers Civil Relief Act was signed into law to protect 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. However, to qualify for protection, *the spouse must have the same domicile as the military member*.

If you are a qualifying spouse and you are absent from your state of residency and/or domicile ONLY because you have decided to accompany your spouse while he or 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 he or she has a "true, fixed, permanent establishment" to which he or she intends to return if absent. *See 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:

- Where do I pay taxes?
- Where do I own property?
- Where am I registered to vote?
- Where is my vehicle registered?
- From what state was my driver's license issued?
- Where is my bank located?
- What state does my military spouse declare on his or her LES?
- Where were we married?
- Where was I born?
- 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 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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# LEGAL BRIEF

## VEHICLE REGISTRATION AND DRIVER'S LICENSE

June 2021

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702-652-2479

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### REGISTRATION AND DRIVER'S LICENSE REQUIREMENTS IN NEVADA

Section I of this handout addresses when and if a non-resident military member and his or her spouse (or other dependents), must register a vehicle in Nevada. Section II addresses when and if a non-resident military member and his or her spouse (or other dependent) must have a Nevada driver's license. Section III addresses some car insurance issues.

#### **Section I – Registration Requirements**

##### **1.1 I'm a military member and I want to change my permanent state of residence (domicile) to Nevada. Do I have to register my vehicle in Nevada?**

Yes, if you are a military member who claims Nevada as your state of residence for pay purposes, then you must register your vehicle in Nevada within 30 days of becoming a resident, at the time you obtain a Nevada driver's license, or before your out-of-state registration expires.

##### **1.2 I'm a military member and I do not claim Nevada as my permanent state of residence (domicile) for pay or any other purposes. Do I have to register my vehicle in Nevada?**

No, if you are a military member who claims a state other than Nevada as your domicile for pay purposes, then you do not have to register your vehicle in Nevada. However, you should be prepared to present identification showing your out-of-state residency along with your military identification, if questioned. You still must have a valid vehicle registration, driver license, and insurance from your home state in order to operate vehicles in Nevada.

##### **1.3 Can I remain a nonresident and still register my vehicle in Nevada?**

Yes, you can register your vehicle in Nevada and you will qualify for a tax exception. You can get a tax exemption form from the DMV website. Remember, if you want to claim Nevada as your permanent state of residence, then you do not qualify for the tax exemption. This exemption is for nonresident military members only.

**1.4 I'm a military member and neither I nor my spouse claim Nevada as our permanent state of residence and I am here with my spouse and/or other dependents. Do we have to register our vehicle in Nevada?**

If the vehicle is held in the name of the nonresident military member and the spouse (or other dependent), but the spouse, (or other dependent) does not have a Nevada driver's license, then under the statute you do not have to register your vehicle in Nevada.

**1.5 I am a retiree or have left the service and I now reside in Nevada. Do I have to register my vehicle in Nevada?**

All retirees or other dependents must register their vehicles in Nevada within **30 days** of obtaining residency or when obtaining a Nevada driver's license, or before your out of state vehicle expires.

If you are a war veteran, a widow/er of a war vet, or are a blind or disabled vet, you can get an annual tax exemption which you may use towards your vehicle privilege tax or real property tax. To qualify, you must present proof of war service (such as your DD214 or other discharge papers) to the office of the county assessor. Clark County's county assessor's number is (702) 455-3882 for further information.

**Section II – Driver's License**

**2.1 I am a military member and I have a valid out of state driver's license. I do not claim Nevada as my permanent state of residence (domicile). Do I have to get a Nevada driver's license?**

No. If you are a military member, who claims another state as your domicile for pay purposes, then you are not required to obtain a Nevada driver's license.

**2.2 I am a military member and I claim Nevada as my permanent state of residence (domicile), do I have to get a Nevada driver's license?**

Yes. Nevada law allows military members to use their out-of-state driver's license while on active duty and not a resident of the state. However, that only applies if you are considered a nonresident. If you are considered a new resident then you must get a Nevada driver's license within 30 days of becoming one. If you claim a Nevada privilege, such as being a resident for tax purposes, it is arguable that you are obtaining a privilege not available to nonresidents and are, therefore, considered a resident for the purpose of obtaining a driver's license. In any event, if you are claiming Nevada as your permanent state of residence, obtaining a driver's license is one of many factors that will support your assertion of Nevada as your domicile, if you later move out of the state.

**2.3 I am the spouse and/or dependent of a military member on active duty. I currently hold an out of state license. Do I have to get a Nevada driver's license?**

Maybe. For the spouse or dependent of a military member, who claims another state as his or her domicile, as long as you have a valid license, you are not required to obtain a Nevada driver's

License so long as you are considered a “nonresident” under Nevada law. If you have done any of these things and are considered a resident, then you have 30 days from the day you become a resident to get a Nevada driver’s license.

**2.4 I am a retiree or have left the service and I have an out of state driver’s license, but I live in Nevada. Do I have to get a Nevada driver’s license?**

Yes. You have 30 days from when you become a Nevada resident to get a Nevada driver’s license.

**Section III – Car Insurance**

**3.1 I am military member and am a new resident of Nevada. Can I use my old out-of-state address for my car insurance?**

No. If you are new to Nevada, you must notify your insurance company that you have moved here. Your policy must be written for Nevada. Out-of-state insurance is not accepted. Finally, since minimum coverage requirements vary from state to state, if you claim you live in another state, you may not be carrying the statutory amount required by the state of Nevada.

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