

## **The Service Member's Domicile Is the Place where he or she Lived Before Entering or Re-Entering Active Duty**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

- 4.2—Right to terminate a lease upon entering active duty
- 4.5—Protection from state/local tax authorities
- 7.2—Service member or military spouse voting and domicile

**Q: I am a Major in the Marine Corps Reserve and a member of the Reserve Officers Association (ROA). I have read with great interest several of your “Law Review” articles about military voting rights, reemployment rights, etc.**

**I am on active duty for two years, from 10/1/2017 until 9/30/2019. I am serving at Twenty-Nine Palms, California. I was living in an apartment in a small town in Arizona just before I entered active duty a year ago. I exercised my right under the Servicemembers Civil Relief Act**

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

**(SCRA) to terminate my apartment lease, which had seven months left before expiration.<sup>3</sup> I have no place in that county where I can receive mail.**

**I grew up in Arizona, but in another county 100 miles away from the apartment where I was living before I reentered active duty a year ago. My parents still live in the same house where they have lived since I was in elementary school, and I consider that house to be my “permanent home” although I have not actually lived there since I graduated from high school 15 years ago.**

**When my current orders end a year from now I will likely return to the civilian job I left to go on active duty, and I will find another apartment in that community. But it is possible that my military orders will be extended or that I will find another job elsewhere.**

**I want to vote in the 2018 mid-term election, and I completed an on-line absentee ballot request form (the Federal Post Card Application) and sent it to the local election official of the county where my parents live. The election official sent the application back to me, along with a letter telling me that I am not eligible to vote in her county because I am not “domiciled” there. What does that mean? Where am I eligible to vote?**

**A:** Your domicile is your legal residence, and your domicile is at the address of the apartment that you gave up a year ago to go on active duty. You should complete a new absentee ballot application and send it to the election official of that county.

**Q: But I am not paying rent there any more, and I cannot receive mail at that address. How do I claim residence at that address?**

**A:** That address is your domicile, and it does not matter that you have not slept there for more than a year, that you no longer lease that apartment, and that you cannot receive mail at that address. On the Federal Post Card Application (FPCA), you must provide two addresses. The first is your “permanent home address” and the second is your “mail my ballot to” address. The election official will send your ballot to the second address, and it does not matter that you cannot receive mail at the first address.

The “permanent home address” must be a complete address, including the street name, street number, and apartment number. The election official needs to send you an absentee ballot that is correct for that address, just as if you were still living there and you showed up at the polling place on Election Day. The ballot will include the candidates for the U.S. House of Representatives, the Arizona Senate, the Arizona House of Representatives, and county offices that are appropriate for the apartment that you left a year ago. The candidates for your

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<sup>3</sup>Under the Servicemembers Civil Relief Act (SCRA), a person entering active duty voluntarily or involuntarily, for a short period or a career-long period, is entitled to terminate a residential lease. See 50 U.S.C. § 3955. See *also* Law Review 17059 (June 2017).

parents' home 100 miles away will be very different, and only the statewide candidates will be the same.

The career active duty service member can maintain his or her domicile at the place where he or she lived before going on active duty, even for an entire career of 20 years or more. The same legal principles apply to your situation although your expected absence from your home county is only two years.

Federal law (the SCRA) provides that you do not lose your domicile, or the right to vote, because of absence from a place due to military service.<sup>4</sup> You have only a temporary residence in California, on or near the Twenty-Nine Palms base, because you cannot commute from Arizona to your military duty station in California.

**Q: Absentee voting is difficult and complicated. I am thinking about registering to vote in California, using as my address the apartment that I rent near the military base where I currently serve. Then, I can vote in person on Tuesday, November 6, like most other people. What do you think of that idea?**

**A:** That would probably be a bad idea. If you register to vote or vote in California, you thereby give up your SCRA protection from taxation by California and by the county in California where you temporarily reside.

So long as you can say that you live in California only because your military duties require your presence there, California and the specific California county are prohibited from taxing your military income or your personal (moveable) property.<sup>5</sup> If you register to vote or vote in California, you thereby become a Californian and waive your protection against California taxing your military income and your personal property.<sup>6</sup>

The underlying legal principle is that you have one and only one domicile for all legal purposes. You cannot be a California domiciliary for voting purposes and an Arizona domiciliary for tax purposes. Determining your domicile is not a matter of "pick a state, any state."

Moreover, I think that you are not eligible to vote in California because you are not domiciled there. You do not have a good-faith claim that you plan to reside there indefinitely, because it is overwhelming likely that you will be leaving active duty and returning home to Arizona just ten months after Election Day 2018.

**Please join or support ROA**

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<sup>4</sup>See 50 U.S.C. §4025. See also Law Review 18020 (February 2018).

<sup>5</sup>See 50 U.S.C. § 4001. See also Law Review 16076 (August 2016).

<sup>6</sup>See *Comptroller of the Treasury v. Lenderking*, 268 Md. 613, 619, 303 A.2d 402, 405 (1973). See also Law Review 11112 (December 2011).

This article is one of 1800-plus “Law Review” articles available at <https://www.roa.org/page/lawcenter>. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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