

# D17 LEGAL BULLETIN

*Advice for Guardians of the Last Frontier*



Seventeenth District Legal Assistance  
P.O. Box 195005  
Kodiak, AK 99615  
(907) 487-5474



## Residency Series

### Number 1: Alaska Permanent Fund Dividend

#### **Almost Everything You Need to Know About Alaska Residency and the Alaska Permanent Fund Dividend**

Orders to Alaska? Congratulations!

Don't they pay you to live there?

As Lee Corso would say on Saturday morning college football broadcasts, “Not so fast.” Alaska does pay an annual Permanent Fund Dividend (“PFD”) to Alaska residents who intend to remain indefinitely: The Coast Guard moved you to Alaska, you like it here, you want to make it home. Then yes, you might be able to share in the state’s wealth. There even are rules that allow Alaska residents to receive a dividend even if they are not present in the state, as long as they demonstrate the objective intent to return to the state as their home.

This article will discuss the concept of residency in general, also known as “domicile;” the qualifications and eligibility for receiving the PFD; obtaining Alaska residence; maintaining Alaska residence when living outside the state; and the potential ramifications of fraudulently claiming the PFD. It will not present a “checklist” of actions to be taken to establish or maintain Alaska residence (because there is none), but the information will enable the reader to know and understand the procedure for obtaining his or her portion of Alaska’s wealth paid to its citizens and to begin that process.

#### Residency in General<sup>1</sup>

A person’s domicile is “the place at which a person is physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.”<sup>2</sup> Most people establish their domiciles when they establish a home in a state for non-temporary purposes, with the intent to remain indefinitely. For service members and their spouses, domicile is not so easy to ascertain.

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<sup>1</sup> This article provides only the very basic explanation of domicile needed to understand the concept as it relates to Alaska residency. For a broader look, please see number 2 in the D17 Legal Assistance residency series, “State of Legal Residency: Can they Tax That?”

<sup>2</sup> Black’s Law Dictionary (Seventh Edition, 1999, West Group).

Domicile for service members and their spouses is governed by the federal Servicemembers Civil Relief Act (“SCRA”).<sup>3</sup> In simple terms, SCRA provides that a service member or the service member’s spouse does not gain or lose a domicile “for purposes of taxation with respect to the person, personal property, or income of the servicemember simply by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.”<sup>4</sup> It amounts to permitting the service members to select a “domicile of choice.” A service member and the service member’s spouse may retain or abandon a domicile, at the member’s and the spouse’s option, as long as the person demonstrates an objective intent to remain in the state indefinitely and make a home in the state.

### The Alaska Permanent Fund

Members stationed outside Alaska often choose their domicile based either on loyalty to the home state or on state taxation: Many members claim residence in Texas upon being assigned there pursuant to their military orders. That is not necessarily because of a love for or loyalty to Texas, but because Texas has no state income tax. Texas has become the member’s domicile of choice. While the absence of a state income tax in Alaska provides a similar incentive for those stationed in Alaska, Alaska adds another consideration: the Permanent Fund Dividend.

In 1976, Alaska voters passed an amendment to the Alaska Constitution, setting aside at least 25% of all “mineral lease rentals, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State” in a Permanent Fund, whose use is constitutionally restricted.<sup>5</sup> In 1980, the state legislature passed the first dividend legislation, sharing the wealth of the fund with qualified residents of Alaska. Since then, all eligible Alaska residents have received annually a share of the income from the state’s resources—the dividend, or PFD.

### Eligibility for the Permanent Fund Dividend

An individual is eligible to receive one permanent fund dividend each year if the individual:

- (1) applies to the state Department of Revenue’s PFD division during the application period (January-March);
- (2) is a state resident on the date of application;
- (3) was a state resident during the entire qualifying year;
- (4) has been physically present in the state at least 72 hours during the prior two years before the current dividend year;

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<sup>3</sup> 50 U.S.C. §§ 3901-4043

<sup>4</sup> 50 U.S.C. § 4001. 50 U.S.C. § 4025 applies the same domicile protection for voting.

<sup>5</sup> Alaska Constitution, Article IX, Section 15.

- (5) is a citizen of the United States or a lawfully admitted permanent resident, refugee, or person granted asylum;
- (6) was physically present in the state at all times during the qualifying year, or if absent, was absent from the state for no more than 180 days or except for absences allowed by law; and
- (7) is in compliance with selective service law.<sup>6</sup>

### Establishing Residency in Alaska

“The most fundamental eligibility requirement for eligibility for a PFD is that the applicant be ‘a state resident during the *entire* qualifying year.’”<sup>7</sup> A person who was not a resident at the time of application and during the entire dividend year will be ineligible to receive a PFD. The first step toward establishing residency always is physical presence in the state. “It is not possible for an adult to establish residency without being ‘physically present in the state.’ Although a person can maintain residency while living outside the state in some circumstances, an adult cannot establish or reestablish Alaska residency while living outside Alaska.”<sup>8</sup>

However, physical presence alone is not sufficient to establish residency in any state. SCRA establishes that physical presence in the state under military orders does not qualify a person for the dividend. Physical presence must be accompanied by an objective intent to remain indefinitely and to make a home in the state. PCS orders are for a limited duration and therefore cannot be used to show intent to remain in any location indefinitely.

A service member can declare his or her legal residence using Form DD-2058. But even that, standing alone, does not necessarily make the service member a resident of the declared state. The person must demonstrate customary ties indicative of being a resident of Alaska and provide before December 31 of the year preceding the dividend year other proof of intent to establish Alaska residency.

This is when the request for a “checklist” usually comes. Unfortunately, one does not exist. However, there are indicators of intent beyond physical presence to establish residence in the state:

- Make sure your LES reflects you pay taxes in your desired state of domicile
- Register to vote in the state
- Purchase property
- Register your vehicles

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<sup>6</sup> AS 43.23.005

<sup>7</sup> *Harrod v. State, Division of Revenue* (Alaska Administrative Hearings 2007), page 4 (internal citations omitted).

<sup>8</sup> *Id.*

- Apply for and obtain a drivers license
- Move your household goods to Alaska
- Obtain and maintain an address in the state
- Consider obtaining a phone with a (907) area code
- Execute your Last Will and Testament to be probated in Alaska

### Maintaining Alaska Residency

Okay, now you're confident you've established legal residence in Alaska and meet the requirements for the dividend—just in time for your PCS orders out of state. Good news! In certain cases, an “otherwise eligible individual who is absent from the state during the qualifying year remains eligible” for the dividend if the individual was absent for an allowable reason.<sup>9</sup> “Serving on active duty as a member of the armed forces of the United States or accompanying [the service member], as that individual’s spouse, minor dependent, or disabled dependent,” is an allowable absence.<sup>10</sup>

A service member who has established her intent to become an Alaska resident and to remain indefinitely can receive the dividend even after her PCS out of Alaska, provided she takes no action that would indicate an objective intent to establish residency in the new state. In addition, even those persons claiming allowable absences must meet the qualifications of the 72-hour rule, the five-year rule, and the ten-year rule. The 72-hour rule requires that all persons be physically present in Alaska for at least 72 *consecutive hours* at some time during the two years prior to the current dividend year to be eligible for a dividend.<sup>11</sup> The five-year rule and the ten-year rule extend beyond eligibility to continuing residency. After a person has claimed allowable absences for five consecutive years, the law presumes that individual no longer has the requisite intent to return to Alaska.<sup>12</sup> The applicant may overcome that presumption by presenting evidence of intent to return to Alaska to remain indefinitely. The ten-year rule removes the presumption, so that the individual will not be eligible for the dividend until she has returned to Alaska and reestablished her residency in the state.

Keep in mind, though, that all of those rules apply only if the individual is otherwise eligible for the dividend. Be careful at your new duty station not to take any actions that might indicate an intent to make assume residency in that state. For example, unless the state requires you to obtain a driver’s license, it would be a good idea to maintain your Alaska driver’s license, even while stationed out of state.

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<sup>9</sup> AS 43.23.008. Any person may be absent from the state for up to 180 days for any reason “consistent with the individual’s intent to remain a state resident” and still be eligible for the dividend. AS 43.23.008(a)(17). The allowable absence rules apply to those who are absent in excess of 180 days.

<sup>10</sup> AS 43.23.008(a)(3).

<sup>11</sup> AS 43.23.005(a)(4).

<sup>12</sup> AS 43.23.008(d).

A Word of Caution:Why “domicile of choice” is a more dangerous proposition in Alaska than in other states

In most states, an incorrect assertion of domicile could result in an unwanted income tax liability, plus penalties and interest. If the state you improperly assert as your domicile is Alaska, those liabilities can be compounded. For example, if a state finds you were a resident of that state for a particular year and should have paid income tax in that state, but you had claimed Alaska residency and received the PFD, Alaska probably will use the other state’s determination as evidence you were not domiciled in Alaska when you applied for the dividend. In that case, if it also finds you had misrepresented any facts in your certification, you may:

- Lose the current dividend and the next five dividends
- Be required to pay back any dividends received as a result of the misrepresentation, plus the costs of collection activity incurred by the Department of Revenue
- Have to pay a civil penalty of \$3,000.00 for each dividend received.
- Face potential criminal charges ranging from a Class A misdemeanor punishable by up to one year in jail and/or a fine up to \$10,000 to a Class B felony punishable by up to ten years in prison, with a presumptive range of one to three years for the first conviction.

But note: It is not a crime just to apply for the PFD if not eligible, as long as all questions are answered truthfully. The only consequence would be not receiving the dividend. If you truthfully answer all the questions that should be answered no, no, and all the questions that should be answered yes, yes, you will be eligible. But even if your answer to one of the questions that should be answered yes is no, you have done nothing wrong in applying. Lying is what creates the problem

Conclusion:

Yes, the State of Alaska does share its wealth with its residents who intend to remain indefinitely. No, it does not pay you to live there. The Alaska Permanent Fund Dividend provides a nice bonus for those who qualify—who arrive in the state and demonstrate their intent to remain indefinitely. If you like Alaska enough to call it home and you intend to stay a while, apply. If you hate the place and just want easy money, save yourself some trouble down the road and give it a pass. It’s not worth a court battle in the future or the consequences if you lose.

**Legal Assistance is a free benefit available to active duty service members and their dependents and retirees and their dependents. If you have questions about the Alaska PFD, or about residence in general, or about any other legal assistance matter, call the Legal Assistance office at (907) 487-5474. For more information regarding the PFD, go to [www.pfd.state.ak.us](http://www.pfd.state.ak.us).**

**Need a D17 Legal Assistance Form? Visit our D17 Website at:**

**<https://www.pacificarea.uscg.mil/Our-Organization/District-17/Offices/Legal-office/Legal-assistance/>**