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### Divorce Residency FAQ's

#### Do I have to live somewhere to obtain a divorce there?

Yes. Almost all states (except Alaska, South Dakota, and Washington) require you to be a resident of that state before you may file your divorce papers there. The required length of time varies per state, but it is at least six months in most states. When you file your divorce papers, you must show proof that you have resided in that state for the required amount of time.

Whatever court handles the initial divorce settlement has jurisdiction over all other residual issues such as child custody, child support, and any amendments to these arrangements. Therefore, it is important for you to file in your home state so that you won't have the hassle and expense of traveling to another state for every court proceeding. This is something to keep in mind if you think your spouse is going to file for divorce in another state. It would be wise to file in your state first.

The following chart gives the required durational period of divorce residency. As long as you meet the durational time period, you should be able to file for divorce in that state.

Alabama	6 Months or 180 Days
Alaska	No state provision
Arizona	90 Days
Arkansas	60 Days
California	6 Months or 180 Days
Colorado	90 Days
Connecticut	6 Months or 1 Year
Delaware	6 Months or 180 Days
District of Columbia	6 Months or 180 Days
Florida	6 Months or 180 Days
Georgia	6 Months or 180 Days
Hawaii	6 Months or 180 Days
Idaho	6 Weeks
Illinois	90 Days
Indiana	6 Months or 180 Days
Iowa	12 Months or 1 Year
Kansas	60 Days
Kentucky	6 Months or 180 Days
Louisiana	6 Months or 180 Days
Maine	6 Months or 180 Days
Married	12 Months or 1 Year
Massachusetts	12 Months or 1 Year
Michigan	6 Months or 180 Days
Minnesota	6 Months or 180 Days
Mississippi	6 Months or 180 Days
Missouri	90 Days

	Montana	90 Days
	Nebraska	180 Days or 1 Year
	Nevada	6 Weeks
	New Hampshire	12 Months or 1 Year
	New Mexico	12 Months or 1 Year
	New York	180 Days or 1 Year
	North Carolina	180 Days
	North Dakota	180 Days
	Ohio	180 Days
	Oklahoma	180 Days
	Oregon	180 Days
	Pennsylvania	180 Days
	Rhode Island	1 Year
	South Carolina	1 Year
	South Dakota	Provision
	Tennessee	180 Days
	Texas	180 Days
	Utah	90 Days
	Vermont	180 Days
	Virginia	180 Days
	Washington	Provision
	West Virginia	1 Year
	Wisconsin	180 Days
	Wyoming	60 Days

### What is the difference between residence and domicile?

When determining divorce residency, a spouse's presence within a state is important. Some states refer to this presence as "residency," while others refer to it as "domicile". Regarding divorce residency, if your state's divorce law states that a spouse must be domiciled in that state, the spouse must have a fixed, permanent home in that state, with the intention of staying. On the other hand, if your state's divorce law requires a spouse be a resident in the state, then the spouse must merely be present. Because of this difference, a person can have several residences, but only one domicile. For example, Fred is a professional golfer and travels a lot for his work. He sometimes stays in Arizona and Florida, where he can be found golfing at any short duration of time. He has a fixed and permanent house in Indiana, however, where his family lives, his bills are sent, and most of his belongings are. It is safe to say that Fred has residences in Arizona, Florida, and Indiana, depending on where he is present; but Fred has one domicile—Indiana.

If your state's residency divorce law requires a spouse to be a resident, then the spouse will have to be present in that state of residence for a specified length of time. Domicile is a tougher standard, because you must establish that the spouse's single true home is located in that state. Courts tend to consider the following factors to determine a spouse's single true home:

- Where the rest of the person's family lives
- Where the person votes
- Where the person participates in community activities
- The person's central place of employment
- Where the person's car is registered and the state on his or her driver's license
- Where the person's children go to school
- Where the person banks
- If there is more than one residence, courts consider the order in which they were acquired, how they were paid for, and how they are used (permanent verses vacation homes).

If the spouse files for divorce in the state in which he or she resides, but the other spouse does not have a presence in that state, courts may have the authority to grant the divorce, but not residual issues, such as property division and child custody.

### **Can a spouse move to another state or country to file for divorce there?**

Yes, as long as that spouse can prove residency in that state or county. Then, all of the other states will recognize this divorce as valid. That state may not have jurisdiction over all other decisions such as child custody, property division, alimony, and support, however, because of other laws. Of course, if the non-resident spouse consents to the jurisdiction, then the court may proceed with these determinations. The non-resident spouse can consent by appearing at court dates, signing affidavits of service, acknowledging receipt of filed legal documents, and generally following rulings of the court (such as paying child support). This is fairly easy and straightforward in an uncontested divorce.

Be sure to consult a divorce attorney if you receive documents from a foreign state or country. The laws about which state or foreign court governs can be tricky. There are many factors to consider, such as which country is involved, where the parties lived and for how long, and whether there are children involved. A divorce attorney can help you sort through these tricky divorce residency issues.

### **What state has jurisdiction over child custody?**

The home state of the child has custody jurisdiction, unless one state asserts continuing jurisdiction. The state that rendered the original custody decree can assert jurisdiction in any modification proceeding as long as one of the parties remains a resident and that state has jurisdiction under its own laws. (Alaska, for example, does not have jurisdiction under its own law; it uses the home-state test as the only basis for jurisdiction.)

### **What state has jurisdiction over the division of retirement plans and military pensions?**

Whichever state has personal jurisdiction over the member of the retirement plan may order the plan's division. This usually means that residency or domicile of that member can be proven. If the plan itself has sufficient contacts with another state, courts sometimes rule that the other state has jurisdiction. A state can only establish jurisdiction over a military pension plan based on the military member's domicile, residence, or consent, and NOT based on the member's military assignment. All states differ on their treatment of military pensions, so the state you choose can be critical. Be sure to research your options and aim for the state that will best serve your needs.

### **If my spouse moves out of state, can I still file for divorce in our marital state?**

Yes. As long as you fulfill the divorce residency requirements, you may file in the state in which you live. For your own convenience, try and have your spouse sign the papers before the physical separation. If your spouse moved out of the country, try and get him or her to sign the divorce papers. This is usually not a problem, and if it is established that he or she knew about the proceedings and ignored them or orders to appear, then a default judgment could be filed against him or her.

### **What if I can't find my spouse or don't know his residency?**

If you can't find your spouse then you can file a missing spouse divorce. Don't let the fact that you don't know where your spouse is stop you from getting a divorce. Simply show the court that you made a diligent effort to find your spouse. Then serve your spouse via service by publication. All you have to do is run an ad in the newspaper informing your spouse of the divorce proceedings. More specifically, complete all of your divorce papers, file them in divorce court, run the ad, sign the affidavit stating that you looked diligently for your spouse. If your spouse still does not appear, then the court can issue a default divorce. If you find yourself in this situation, be sure to consult a divorce attorney, as the process may vary by state.

### **Does divorce residency affect child custody?**

When determining child custody, most courts will apply the best interest of the child standard. In doing so, they will consider many factors including the child's present lifestyle, impact of change on the child, impact of separation from one of the parents, ability of the parents to encourage communication with the other parent, and the child's preference. The residence of one of the parents can have an impact on any of these things, and the court can take that into consideration.

For example, Freddy is an eight-year old boy whose parents are unfortunately getting divorced. Freddy and his parents have lived in California his whole life. Now, Freddy's father wants to move to Nevada to open a casino. Freddy has a great relationship with his father, and does not want him to move so far away. Freddy goes to a great public school where he makes decent grades, has a nice group of friends, and participates in school sponsored extra-curricular activities. Freddy is also very spiritual and has a strong relationship with his rabbi. Freddy also enjoys visiting with his grandparents and cousins who live down the street. Both of Freddy's parents want custody. The judge will consider all of these factors, including the fact that the father is moving to Nevada, in determining what is best for Freddy. Most likely, custody will be awarded to Freddy's mother, so that Freddy can continue to maintain the healthy lifestyle that he now appreciates. If Freddy's father can highlight some factors whose benefits greatly outweigh Freddy staying in California, however, the judge could award custody to Freddy's father.

The judge may set up a visitation schedule that the courts have specified for parents who live a great distance apart. These types of visitation schedules take into account travel time and inconvenience and school schedules, and give the non-custodial parent chunks of visitation time, rather than small weekend visits. These schedules also set out who is responsible for the transportation of the child. Often times, courts are very respectful of any arrangements the parents

work out themselves, so long as it is beneficial to the child.

If there has been a custody arrangement ordered, and one of the parents wishes to move a great distance away, he or she must notify the other parent and the court. The court cannot restrict the parent from moving, as this would be unconstitutional; however, the court and the parents may need to revisit the custody and visitation arrangement.

When it comes to divorce residency issues, the laws can be fuzzy, so a do it yourself divorce may not be the best solution. Be sure to check your own state's divorce laws and consult a divorce attorney.

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