

# RESIDENCY IS REQUIRED FOR A DIVORCE

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In a petition for dissolution of a marriage, a trial court must follow the residency requirements set forth in Florida Statute §61.021, which provides that “to obtain a dissolution of marriage, one of the parties to the marriage must reside six months in the state before the filing of the petition.” If the six-month residency requirement is not met and proved, the court will lack jurisdiction, and cannot enter a final judgment of dissolution. *Mikulec v. Mikulec*, 47 So. 3d 851, 852 (Fla. 4th DCA 2010).

Furthermore, pursuant to Florida Statute § 61.052 (2), residency must be corroborated. Corroboration of the residency requirement may include a valid Florida driver’s license, a Florida registration card, or the testimony or affidavit of a third party. In most family law cases regarding a petition for dissolution, a party will meet the residency requirement by providing the court with a valid driver’s license. However, an issue may arise if the driver’s license presented to the court was issued less than six months of the filing of the petition for dissolution. In this circumstance, the party must prove the residency requirement by either a Florida registration card, or the testimony or affidavit of a third party.

In 2018, the Fifth District Court of Appeal of Florida found that the residency

requirement may not be established by the uncorroborated testimony of one party. *McNeil v. Jenkins-McNeil*, 252 So. 3d 354 (Fla. 5th DCA 2018). In *McNeil v. Jenkins-McNeil*, the former wife alleged in her counter-petition that the former husband had been a Florida resident for at least six months prior to filing his petition for dissolution of marriage but did not separately allege that she was a resident of Florida. Thus, the former wife had the burden at trial of proving former husband’s residency in Florida. The former husband did not attend trial, and the former wife failed to establish the husband’s residency in Florida with any of the necessary corroborative evidence such as a valid Florida driver’s license, a Florida registration card, or the testimony or affidavit of a third party. Thus, the lower court lacked jurisdiction to enter the final judgment of dissolution of marriage.

The residency requirement is essential to all dissolution of marriage cases, and attorneys can overlook the resident requirement. One suggestion to help identify if there is a residency requirement issue in the early stages of a case is to make a photo copy of the client’s driver’s license. If the driver’s license does not meet the six-month residency requirement, the attorney should be aware of a potential residency issue and take the appropriate steps to try and establish the residency requirement by either a Florida registration card, or the testimony or affidavit of a third party. ■■■

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