

## Guidelines for Determining When Residency Qualifications for Office Must be Met (updated 3-12)

*For reference purposes only: Interested persons or entities should refer to the Florida Statutes and applicable case, and/or consult a private attorney before making any legal conclusions or relying upon the information provided.*

<b>City Commissioner</b>	<i>At the time of assuming office, unless provided otherwise by city charter or ordinance. DE 94-04; DE 92-10; Nichols v. State 177 So.2d 467 (Fla. 1965) &amp; Marina v. Leahy, 578 So.2d 382 (Fla. 3<sup>rd</sup> DCA 1991)(re reasonable durational residency requirements)</i>
<b>County Commissioner</b>	<i>At the time of election. State v. Grassi, 532 So.2d 1055 (Fla. 1988); s. 1(e), art. VIII, Fla. Const.; DE 92-10, DE 94-04; AGO 74-293</i>
<b>Constitutional County Officers (e.g., clerk of court, supervisor of elections, property tax appraiser, sheriff, etc.)</b>	<i>At the time of assuming office. By analogy, refer to <u>Advisory Opinion to Governor</u>, 192 So.2d 757 (Fla. 1966); DE 90-30, DE 92-10, DE 94-04 (no minimum residency requirements set out in Florida Constitution but there may be county charters that mandate some durational residency)</i>
<b>Judicial Officers</b>	<i>At the time of assuming office. By analogy, refer to <u>Advisory Opinion to Governor</u>, 192 So.2d 757 (Fla. 1966); DE 94-04, and DE 78-31; s. 8, Art. V, Fla. Const. (justice/judge must be elector of state and reside in territorial jurisdiction of court)</i>
<b>State Legislators</b>	<i>At the time of election. See s. 15, art. III, Fla. Const. (for qualifications including residency). Legislator must be resident of district 'from which elected' but be a resident in state for two years prior to election.</i>
<b>School Board Member</b>	<i>At the time of qualifying (for residency ss. 1001.34, 1001.361, Fla. Stat. -- formerly 230.10, Fla. Stat.) (DE 82-2, 94-04 --statute cited is s. 230.10, Fla. Stat.)</i>
<b>School Superintendent</b>	<i>At the time of assuming office. See DE 94-04; see s. 1001.463, Fla. Stat., failure to maintain residency results in vacancy (implies residency requirement); s. 5, art. IX, Fla. Const. (4-yr term); s. 1001.46, Fla. Stat. (elected); s. 1001.461, Fla. Stat. (appointed)</i>
<b>Write-in Candidate</b>	<i>At the time of qualifying. See s. 99.0615, Fla. Stat. (residency requirements)</i>

- Rule of thumb: Unless otherwise provided for constitutionally, legislatively or judicially, the residency requirement, if one exists, for an office must be met at the time of assuming office. For example, Governor must have resided in state 7 years by time of election. See s. 5, Art. IV, Fla. Const.
- State law requires that all candidates at the time of qualifying subscribe to an oath that they are qualified electors of their county. In order to be a qualified elector, one must be a resident of Florida and the county wherein he or she registers to vote. Although the completed oath is an affirmation at the time of execution that the candidate meets the requirements for qualifying such as residency, in practice, the candidate is expected to meet the requirements at the time of assuming office unless otherwise provided for constitutionally, legislatively or judicially. See s. 99.021, Fla. Stat.
- A residency requirement, if one exists, for an office is a continuous one. Failure to maintain the residency through term results in vacancy in office. See generally s. 3, art. X, Fla. Const., s. 114.01(1)(g), Fla. Stat. In absence of a statute, constitutional provision or municipal ordinance that establishes a residency requirement, failure to maintain residency alone would not trigger a vacancy in office. See AGO 75-113; AGO 88-11 (exception for redistricting).
- Any questions regarding residency requirements not otherwise expressly stated in the Florida Election Code should be addressed to the Florida Attorney General's Office.
- Questions about residency relating to a U.S. Senator or U.S. Representative should be directed to the respective Congressional chamber with exclusive jurisdiction over the qualifications including the residency of its membership. See ss. 2, 3, & 5, Art. I., U.S. Const. States have no authority to add more residency requirements.

Sources: Advisory opinions for Division of Elections (<http://election.dos.state.fl.us/>); Attorney General (<http://myfloridalegal.com>); case law