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DISTRICT OF COLUMBIA OFFICIAL CODE  
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\*\*\* Current through laws effective as of May 19, 2014, and through D.C. Act 20-306 \*\*\*

DIVISION II. JUDICIARY AND JUDICIAL PROCEDURE  
TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS  
CHAPTER 9. DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

**GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY**

*D.C. Code § 16-902 (2014)*

§ 16-902. Residency requirements

(a) Except as provided in subsection (b) of this section, no action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least 6 months next preceding the commencement of the action.

(b) (1) An action for divorce by persons of the same gender, even if neither party to the marriage is a bona fide resident of the District of Columbia at the time the action is commenced, shall be maintainable if the following apply:

(A) The marriage was performed in the District of Columbia; and

(B) Neither party to the marriage resides in a jurisdiction that will maintain an action for divorce.

(2) It shall be a rebuttable presumption that a jurisdiction will not maintain an action for divorce if the jurisdiction does not recognize the marriage.

(3) Any action for divorce as provided by this subsection shall be adjudicated in accordance with the laws of the District of Columbia.

(c) No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action.

(d) The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether the action shall be maintainable.

(e) If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of 6 months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only.

**HISTORY:** Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 560; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 1; Apr. 7, 1977, D.C. Law 1-107, title I, § 101, 23 DCR 8737; May 31, 2012, D.C. Law 19-133, § 2, 59 DCR 2395.

**NOTES: PRIOR CODIFICATIONS.** --1981 Ed., § 16-902.  
1973 Ed., § 16-902.

**EFFECT OF AMENDMENTS.** --D.C. Law 19-133 rewrote the section, which formerly read:

"No action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least six months next preceding the commencement of the action. No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action. The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether such action shall be maintainable. If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of six months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only."

**LEGISLATIVE HISTORY OF LAW 1-107.** --Law 1-107, the "District of Columbia Marriage and Divorce Act," was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976, and September 15, 1976, and second readings on November 22, 1976 and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

**LEGISLATIVE HISTORY OF LAW 19-133.** --Law 19-133, the "Civil Marriage Dissolution Equality Act of 2012", was introduced in Council and assigned Bill No. 19-526, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 20, 2012, it was assigned Act No. 19-330 and transmitted to both Houses of Congress for its review. D.C. Law 19-133 became effective on May 31, 2012.

### **LexisNexis 50 State Surveys, Legislation & Regulations**

Divorce - Residency and Fault (March 2012)

**ANALYSIS** Equity Establishment of domicile Findings In general Motion for enlargement of judgment Place of cause for divorce Pleadings Residence, generally Time of residence Time of separation Void marriages Weight and sufficiency of evidence

#### **EQUITY.**

Where cases adopting view, in other jurisdictions than District of Columbia, that divorce may be granted nonresident of state of forum on cross-petition in divorce action by resident thereof, though statute requires plaintiff in divorce action to be resident of such state for designated time, clearly indicate that plainest principles of equity furnished impulse for such view, it will be adopted by Court of Appeals for District of Columbia in construing District Code prohibiting divorce decree in favor of one who has not been bona fide resident of District for at least one year before application therefor. *D.C. Code 1940, § 16-401. Daniels v. Souders, 195 F.2d 780, 1952 U.S. App. LEXIS 3027 (C.A.D.C. 1952).*

#### **ESTABLISHMENT OF DOMICILE.**

Requirements for establishing domicile, for purposes of District of Columbia bona fide residency requirement for maintaining divorce action, are physical presence and an intent to abandon former domicile and remain in the District of Columbia for an indefinite period of time; a new domicile comes into being when the two elements coexist. *D.C. Code § 16-902. Rzeszotarski v. Rzeszotarski, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).*

Where wife abandons her abode in District of Columbia and establishes a new abode in Virginia, if at any time during her stay in Virginia she forms the intention of remaining there indefinitely, she acquires a domicile in Virginia and is no longer a resident of District of Columbia for purposes of filing divorce complaint, notwithstanding that she may have a floating intention to return to the District at some future time. *D.C. Code 1951, § 16-401. Adams v. Adams, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).*

#### **FINDINGS.**

## D.C. Code § 16-902

In wife's divorce suit, it was proper for trial court at conclusion of wife's case to make finding of fact as to whether wife was bona fide resident of District of Columbia for one year preceding filing of her complaint, as required by statute. *D.C. Code 1951, § 16-401. Adams v. Adams, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).*

## IN GENERAL.

Under the statute respecting granting of a divorce, jurisdiction is not conferred to grant a divorce to a nonresident plaintiff, and parties, cannot, even by consent, confer such jurisdiction. *D.C. Code 1940, § 16--401. Clark v. Clark, 79 F. Supp. 722, 1939 U.S. Dist. LEXIS 3225 (D.D.C.1939).*

In District of Columbia, courts usually require that a child be domiciled or temporarily present within the jurisdiction before custody can be determined; an exception to this rule may be found where both parents of the child are parties before the court in divorce litigation; the District of Columbia divorce laws require a certain nexus of the parties to the District of Columbia. *D.C. Code § 16-902. Rzeszotarski v. Rzeszotarski, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).*

## MOTION FOR ENLARGEMENT OF JUDGMENT.

Residential requirement of District of Columbia statute providing that no decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of District of Columbia for at least one year next before application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of the district for at least two years next before "application" therefor for any cause which shall have occurred out of the district and prior to residence therein relates to the beginning of a suit for divorce, and motion for enlargement of judgment for divorce from bed and board to absolute divorce does not require such residence, since word "application" as used in statute dealing with enlargement of divorce from bed and board to absolute divorce, means no more than "motion." *D.C. Code 1951, §§ 16-401, 16-403. Bottomley v. Bottomley, 262 F.2d 23, 1958 U.S. App. LEXIS 3386 (C.A.D.C. 1958).*

## PLACE OF CAUSE FOR DIVORCE.

Statute providing that no divorce shall be granted to person who has not been bona fide resident of District of Columbia for at least two years for any cause occurring out of District and prior to plaintiff's residence therein, does not require two years residence where cause for divorce occurs outside District during period in which plaintiff is bona fide resident of District. *D.C. Code 1951, § 16-401. Orleans v. Orleans, 238 F.2d 31, 1956 U.S. App. LEXIS 3981 (C.A.D.C. 1956).*

## PLEADINGS.

The provision of District of Columbia Code that no divorce shall be granted to anyone who has not been a bona fide resident of District for at least one year before application therefor did not require federal District Court to refuse to entertain wife's amended cross-complaint, charging husband's commission of adultery with one named therein as co-respondent and cross-defendant, in husband's divorce suit, even if cross-complainant lost her District domicile by moving to Maryland before filing amended cross-complaint. *D.C. Code 1940, § 16-401. Daniels v. Souders, 195 F.2d 780, 1952 U.S. App. LEXIS 3027 (C.A.D.C. 1952).*

## RESIDENCE, GENERALLY.

For purposes of statute providing that no divorce shall be decreed in favor of any person who has not been a bona fide resident of the District for at least two years next before the application therefor for any cause which shall have occurred out of District and prior to residence therein, the term "residence" means domicile. *D.C. Code 1951, § 16-401. Heater v. Heater, 155 A.2d 523, 1959 D.C. App. LEXIS 376 (Cr.App. 1959).*

Instruction that "residence" required by divorce statute does not necessarily mean technical legal domicile, but locality where social life is lived and where greatest publicity will be given by litigation concerning party's status, was erroneous. *D.C. Code 1940, § 16-401. McFarland v. United States, 174 F.2d 538, 1949 U.S. App. LEXIS 2244 (C.A.D.C. 1949).*

Under the codal provision forbidding divorce in favor of anyone who has not been a bona fide resident of the District of Columbia for at least one year next before the application therefor, "residence" means "domicile". *D.C. Code 1940, § 16--401. Rogers v. Rogers, 130 F.2d 905, 1942 U.S. App. LEXIS 3241 (1942).*

"Residence" as used in statute concerning granting of a divorce or annulment of a marriage means "domicile". *D.C. Code 1961, § 16-401. Gullo v. Gullo, 192 A.2d 126, 1963 D.C. App. LEXIS 247 (App. 1963).*

## D.C. Code § 16-902

Under statute providing that a party who seeks a decree of nullity of marriage must be a bona fide resident of the District of Columbia for at least one year preceding the application, the term "residence" means domicile. *D.C. Code 1951, § 16-401. Koonin v. Hornsby, 140 A.2d 309, 1958 D.C. App. LEXIS 306 (Cr.App. 1958).*

In statute requiring spouse suing for divorce to have had a bona fide residence in District of Columbia for one year preceding filing of complaint, the word "residence" means domicile. *D.C. Code 1951, § 16-401. Adams v. Adams, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).*

## TIME OF RESIDENCE.

District Court was without jurisdiction of a bill for divorce where plaintiff had not been a bona fide resident of the District of Columbia for at least one year before filing her complaint. *D.C. Code 1940, § 16--401. Clark v. Clark, 79 F. Supp. 722, 1939 U.S. Dist. LEXIS 3225 (D.D.C.1939).*

District of Columbia Court of General Sessions did not have jurisdiction of suit for annulment of marriage brought by husband who became a resident only about three months before the complaint was filed. *D.C. Code 1961, § 16-401. Gullo v. Gullo, 192 A.2d 126, 1963 D.C. App. LEXIS 247 (App. 1963).*

Exclusionary provisions of statute are in the conjunctive and cause of action for divorce must have occurred both outside of district and prior to residency in district before longer period of residence is required. *D.C. Code 1951, § 16-401. Oatley v. Oatley, 161 A.2d 834, 1960 D.C. App. LEXIS 214 (Cr.App. 1960).*

Plaintiff may maintain an action for divorce even though Superior Court has no personal jurisdiction over the defendant where the plaintiff is entitled to bring such an action by being a District of Columbia resident for at least six months before filing his complaint. *Oler v. Oler, 118 WLR 541 (Super. Ct. 1990).*

## TIME OF SEPARATION.

In view of trial court's findings that parties had lived separate and apart without cohabitation for period of one year next preceding commencement of wife's divorce action brought in January, 1977 and that husband had been resident of District of Columbia for at least six months preceding commencement of the action, decree of divorce should be granted under the District of Columbia Marriage and Divorce Act of 1977 enacted in April, 1977. *D.C. Code §§ 16-902, 16-904(a)(2). Moore v. Moore, 398 A.2d 32, 1979 D.C. App. LEXIS 342 (1979), writ of certiorari denied by 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49, 1979 U.S. LEXIS 2696 (1979).*

Where, at time of trial, person seeking divorce on ground of voluntary separation was required to prove such separation for one year prior to filing of complaint and court did not find that separation was voluntary at its inception, it became incumbent upon court to find when separation became voluntary and, in absence of such finding, there was no support for determination that jurisdictional prerequisite had been satisfied and proceeding must be remanded. *D.C. Code §§ 16-902, 16-904, 16-917. Williams v. Williams, 378 A.2d 668, 1977 D.C. App. LEXIS 397 (1977).*

For purposes of statute requiring two years' residence within district as prerequisite to divorce for cause which occurred out of district and prior to residence therein, voluntary separation or desertion as basis for divorce occurs when time element required by statute lapses rather than when parties initially separate. *D.C. Code 1951, § 16-401. Oatley v. Oatley, 161 A.2d 834, 1960 D.C. App. LEXIS 214 (Cr.App. 1960).*

## VOID MARRIAGES.

Even though a marriage is void ab initio without being so decreed for reason that husband had a previous undissolved marriage, where a judicial decree of nullity is sought in District of Columbia, the petitioning party is required to establish that she has been a bona fide resident of District for at least one year preceding the petition for annulment. *D.C. Code 1951, § 16-401. Koonin v. Hornsby, 140 A.2d 309, 1958 D.C. App. LEXIS 306 (Cr.App. 1958).*

## WEIGHT AND SUFFICIENCY OF EVIDENCE.

Evidence supported finding that wife, suing for divorce, was a resident of New York and not of the District of Columbia, and justified decree dismissing suit. *D.C. Code 1940, § 16-401. Metcalf v. Metcalf, 142 F.2d 102, 1944 U.S. App. LEXIS 3267 (1944).*

Where wife, suing for divorce, had been absent from her former home in District of Columbia since 1923, in meantime she had been in China, Massachusetts, and New York, and had recently voted in New York and had continued to reside in New York City, but she testified that she had never abandoned her domicile in the District of Columbia, in deciding the issue of fact with regard to her intention, the court properly gave substantial weight to all of the facts. *D.C. Code 1940, § 16-401. Metcalf v. Metcalf, 142 F.2d 102, 1944 U.S. App. LEXIS 3267 (1944).*

In wife's action for divorce where proof showed that parties were married in the District of Columbia in October, 1939, and had obtained license upon representation that both resided there, and husband had lived in the District contin-

uously since 1935, and testified that he meant to remain in District so long as he could work and make a living, and there was no evidence that husband had a fixed and definite intent to return to state of his former residence, proof showed that plaintiff was a "bona fide resident" of the District for the year preceding the filing suit for divorce. *D.C. Code 1940, § 16-401. Rogers v. Rogers, 130 F.2d 905, 1942 U.S. App. LEXIS 3241 (1942).*

Where evidence showed that plaintiff within a month before filing of her bill for divorce on September 10, 1935 in District of Columbia registered as a legal voter in the State of New York, bill for divorce for desertion in New York would be dismissed because of lack of satisfactory proof that plaintiff had been a bona fide resident of the district for at least two years before the application therefor. *D.C. Code 1940, § 16-401. Moritz v. Moritz, 80 F. Supp. 267, 1936 U.S. Dist. LEXIS 2187 (D.C. Sup. 1936).*

Trial court's finding that wife was bona fide resident of District of Columbia for at least six months, as required to maintain an action for divorce, was not clearly erroneous, despite facially incongruent statement in order that husband and wife had moved with children to Sudan with intent to remain there permanently; wife testified that she had been reluctant to move to Sudan and only moved there out of duty to follow her husband, and that her concerns were validated when she arrived in Sudan and immediately returned to her home in District of Columbia, parties' furniture and belongings had remained in their home in District of Columbia, parties maintained checking account in District of Columbia, and husband testified that he took family to Sudan as "trip" or "trial period" to explore possible business opportunity. *Abulqasim v. Mahmoud, 2012 WL 3242986 (2012).*

Evidence supported finding that plaintiff wife had been resident of District of Columbia for requisite period of time when she filed complaint for divorce. *D.C. Code § 16-902. Williams v. Williams, 378 A.2d 668, 1977 D.C. App. LEXIS 397 (1977).*

Notwithstanding wife's claim that it was impossible for husband, who, along with wife, was born and reared in Poland, to form an intent to be domiciled in the District of Columbia because he was in the United States under cultural-scientific exchange program and could not remain for an indefinite future time, and even though husband's intent might be described as a floating intent or even contingent upon being allowed to stay in the United States, under facts, husband met District of Columbia bona fide residency requirement for maintaining a divorce action. *D.C. Code § 16-902. Rzeszotarski v. Rzeszotarski, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).*

Trial court's finding in husband's divorce action that husband intended to and did take up residence in the District of Columbia was supported by substantial evidence. *D.C. Code § 16-904(a). Seabrook v. Seabrook, 264 A.2d 311, 1970 D.C. App. LEXIS 265 (App. 1970).*

Under evidence that British citizen had severed all ties with Great Britain other than maintaining British citizenship, had renewed his visa several times previous to institution of divorce action, was employed and lived within District of Columbia and intended to remain there indefinitely, British citizen was a bona fide resident of the District of Columbia for purposes of divorce action even though he had not applied for permanent residence in the United States and had entered United States on a nonimmigrant visa. *D.C. Code § 16-902; Immigration and Nationality Act, §§ 101 et seq., 101(a)(3), (15)(G)(iv), 245, 8 U.S.C. §§ 1101 et seq., 1101(a)(3), (15)(G)(iv), 1255; 42 U.S.C. § 1981. Alves v. Alves, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).*

Where parties were married in Virginia on June 27, 1953, in October, 1956 while they were living in West Virginia they separated, wife remained there until November 1, 1956 when she came to District of Columbia having obtained employment there, she had been working and living there continuously ever since and paid taxes in the District as her home, wife was resident of District for more than two years prior to filing of her suit for divorce on grounds of desertion notwithstanding that for a while wife was willing to resume marital relations with husband out of District if and when he provided a satisfactory home for her, which he never did, since the law did not require that wife when she moved to District intended to remain in District permanently. *D.C. Code 1951, § 16-401. Heater v. Heater, 155 A.2d 523, 1959 D.C. App. LEXIS 376 (Cr.App. 1959).*

In divorce suit by wife who lived in District of Columbia at time of her marriage and for a year thereafter when she moved to Arlington, Virginia, where she lived for nearly two years prior to bringing suit against husband who was in armed services and who had remained in District only a few days after the marriage, evidence sustained trial court's finding of fact that wife was not bona fide resident of District for one year preceding filing of her complaint as required by statute. *D.C. Code 1951, § 16-401. Adams v. Adams, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).*

In action by husband for divorce on ground of wife's desertion in Virginia where husband had formerly lived with wife, testimony of husband, who had moved to District of Columbia more than two years prior to commencement of action, that husband did not intend to make his home permanently in District because his employer was transferring him back to Virginia in near future did not, by itself, deprive trial court of jurisdiction and trial court erred in dismissing complaint for lack of jurisdiction. *D.C. Code 1951, § 16-401. Adams v. Adams, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).*

In divorce action instituted by wife of North Carolina serviceman one year after she and her husband began living in Washington, D.C., but only a month and a half after date of their separation, evidence sustained finding that there was no intent on part of husband to abandon his former domicile and establish one in Washington, and therefore court did not have jurisdiction of suit. *D.C. Code 1951, § 16-401. Stephenson v. Stephenson, 134 A.2d 105, 1957 D.C. App. LEXIS 257 (Cr.App. 1957).*