

## Guidelines for Determining When Residency Qualifications for Office Must be Met (v. 08-09)

*This document is provided for reference only. It is not to be construed as giving legal advice or representation. As applied to a particular set of facts or circumstances, interested parties should refer to the Florida Statutes and applicable case law, and/or consult a private attorney before drawing 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</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</i>
<b>Legislators</b>	<i>At the time of assuming office. See section 15, art. III, Fla. Const. (for qualifications)</i>
<b>School Board Member</b>	<i>At the time of qualifying (for residency sections 1001.34, 1001.361, Fla. Stat. -- formerly 230.10, F.S.) (DE 82-2, 94-04 --statute cited is section 230.10, F.S.)</i>
<b>School Superintendent</b>	<i>At the time of assuming office. See DE 94-04</i>  <i>Section 1001.463, Fla. Stat., failure to maintain residency results in vacancy. (this implies residency requirement)</i>  <i>s. 5, art. IX, Fla. Const. (4-yr term); Section 1001.46, Fla. Stat. (elected); Section 1001.461, Fla. Stat. (appointed)</i>
<b>Write-in Candidate</b>	<i>At the time of qualifying. See section 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.
- 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 as required will result in a vacancy in office: School superintendent (section 1001.463, Fla. Stat.); vacancy in office (general; section 3, art. X, Fla. Const., section 114.01(1)(g), Fla. Stat.. Note that in the absence of a statutory or 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.

Any questions regarding residency requirements not otherwise expressly stated in the Florida Election Code should be addressed to the Florida Attorney General's Office.

- Source: [http://election.dos.state.fl.us/opinions/TOC\\_Opinions.shtml](http://election.dos.state.fl.us/opinions/TOC_Opinions.shtml) (Division of Elections' Advisory Opinions); <http://myfloridalegal.com/opinions> (Attorney General Opinions); case law