

Out of State

What you need to consider if you are contemplating a move and filing for divorce.

BY LAURA HAYES AND JORDAN TURK

Moving is inevitable. A spouse gets a new job. One spouse wants to be closer to his or her parents. Families relocate across state lines every day, and usually the last thing that a spouse thinks about is how this move could impact a future divorce proceeding. But, this is something that you can—and should—consider prior to moving. No two states are the same, and some are drastically different in what they offer to divorcing couples. For instance, one state might favor the awarding of alimony, while another makes it very difficult to obtain. One state might force the parent required to pay child support to pay thousands more in monthly payments than a neighboring state. Where you file for divorce matters.

What is jurisdiction?

Jurisdiction is the authority given to courts to hear certain types of cases. In order to obtain jurisdiction over a divorce suit, many states have residency requirements that must be met prior to filing a petition for divorce. This is known as subject-matter jurisdiction.

The requirements for subject-matter jurisdiction vary from state to state. For instance, Texas requires that one spouse must be a resident of the state for at least six months and a resident of a particular county for at least 90 days prior to filing for divorce. In contrast, Washington has no such requirement; you could move there and file for divorce the very next day. Arkansas requires only 60 days.

Now, just because you have proper subject-matter jurisdiction does not mean that the court can divide your property or make orders regarding custody. A lack of personal jurisdiction (e.g., one spouse

has had no presence in the filing state) means that a court will be able to grant you a divorce, but will likely not be able to divide property, allocate debts, or issue custody orders.

What if a spouse moves to a different state?

Let's say the spouses were married in Texas and continued to live in Texas for the next 15 years. The wife starts contemplating filing for divorce. She clearly meets the requirements to file in Texas. But does it benefit her to file in Texas?

Texas does not have traditional alimony, and spousal maintenance is hard to obtain. Frankly, there are other states that could favor the wife in the above scenario more so than Texas. For instance, let's say that the couple travels to Chicago a few times each year to visit family, and the wife tells the husband she is going to spend a few months in Illinois to help out with her parents. The husband agrees, not thinking anything is amiss. The wife files for divorce in Illinois after 90 days, which is the residency requirement for the state. If this occurs, the husband potentially would have to travel to Illinois for divorce proceedings, and the wife might be entitled to alimony that she would otherwise not be able to obtain in Texas.

What if the spouses already live in different states?

When spouses reside in different states, things can get complicated—and costly. If the husband lives in California and the wife lives in Massachusetts, which state has jurisdiction over the divorce? If both have met the residency requirements for their respective states,

either state can hear the case—it simply becomes a race to file and serve the petition for divorce on the other spouse. However, the wife, despite living in Massachusetts, can still file for divorce in California because the husband met the specific residency requirements. In this instance, a spouse should consult with attorneys from both states to determine which one would be more favorable based upon the specific goals and needs of each party.

Is your case guaranteed to stay in the state in which the initial petition was filed?

Just because a spouse files for divorce in a different state does not necessarily mean that your case is stuck there. For instance, if the wife left the husband and kids in Texas and moved to Washington, where she can essentially file for divorce immediately, the husband could ask the Washington court to decline jurisdiction of the wife's suit and let the husband proceed with the divorce in Texas because all of the parties' property is essentially in Texas, as are the relevant witnesses regarding the children and the marriage. However, asking a court to decline jurisdiction is never a guarantee and can be expensive to litigate.

In short, always be suspicious of a spouse who wants to move or make an extended visit to a different state. If you are contemplating a move across state lines, do your research on divorce laws and make sure you are going in with your eyes wide open. **TBJ**



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