

## § 1.1 DIVORCE

Divorce is the most common type of marital termination, followed by annulments (Chapter 3). Both are controlled by the Legislature through statutes, *N.J.S.A. 2A:34-2* and *N.J.S.A. 2A:34-1*, respectively. The basic distinction between the two:

“... lay in the facts which give rise to the cause of action. In an annulment, the facts that justify a declaration of the court of nullity antecede the marriage itself. In the alternative, the facts which give rise to a dissolution of the marriage arise during the marriage.” *Patel v. Navital*, 265 *N.J. Super.* 403, 407-408 (Ch. Div. 1992).

In either case, the person seeking the relief bears the burden of proof. *Id.* at 408.

### § 1.1A Requirements

To obtain a divorce, there first has to be a marriage. For the court to grant any relief, the jurisdictional prerequisites must be met.

#### § 1.1A(1) Marriage Requirement

In order to obtain a divorce, it must be shown that a valid marriage exists at the time of the filing of the complaint. The person asserting a valid marriage has the burden of proving it. *Hansen v. Fredo*, 123 *N.J. Super.* 388 (Ch. Div. 1973).

The courts have held that a marriage obtained by proxy in a foreign country will be recognized as valid by the state of New Jersey where the statutory requirement of solemnization (*N.J.S.A. 37:1-10*) has been met by both a showing of legal process and a showing of commitment. *Torres v. Torres*, 144 *N.J. Super.* 540 (Ch. Div. 1976).

“Common law” marriages entered into after December 1, 1939, are prohibited by statute and court decision. *N.J.S.A. 37:1-10*; *Dacunzo v. Edgye*, 19 *N.J.* 443 (1955); *Lopez v. Lopez*, 102 *N.J. Super.* 253 (Ch. Div. 1968). The statute accomplishes three things: “First, it abolishes common law marriage. Second, it requires that a license to marry be procured before the ceremony. Third, it requires that the marriage be solemnized by an authorized person or entity.” *Yaghoubinejad v. Haghghi*, 384 *N.J. Super.* 339, 341 (App. Div. 2006).

The language of the statute is “broad and sweeping and should not be interpreted narrowly.” *Dacunzo v. Edgye*, *supra*, 19 *N.J.* at 450 (1955); *Yaghoubinejad v. Haghghi*, *supra*, 384 *N.J. Super.* at 341. Thus, all marriages entered into after December 1, 1939, not in conformity with the statute, are *void ab initio*. *Dacunzo v. Edgye*, *supra*, 19 *N.J.* at 451; *Yaghoubinejad v. Haghghi*, *supra*, 384 *N.J. Super.* at 342.

In cases in which such a relationship exists, the attorney should ascertain whether: 1) it predates or postdates the prohibiting statute; and 2) if the parties were aware of the impediment to the bond’s legality. These factors affect whether a legally recognizable marriage exists.

## Dissolution of Marriage

A court determination that a common law relationship exists could have important consequences for the parties. For example, in *Lopez v. Santiago*, 125 N.J. Super. 268 (App. Div. 1973), a passenger who had been involved in an automobile accident sought recovery from the Unsatisfied Claims and Judgment Fund. The fund tried to bar recovery, claiming that the passenger was actually the driver's wife since she used his name, lived with him and bore him four children. However, the court held that she was not the driver's spouse since no ceremonial marriage had been performed. The court asserted that, "[a] spouse is a man or woman joined in wedlock, a *married person*." *Id.* at 270 (emphasis added). Accordingly, the passenger was allowed to recover.

In *Parkinson v. J. & S. Tool Co.*, 64 N.J. 159 (1974), a worker's compensation proceeding, the claimant-wife sought benefits as the dependent of her deceased husband. She had divorced her spouse, but later, having been assured by a priest that "in the eyes of God" they were still married, re-cohabited with him without benefit of a civil ceremony. The court held that the parties had been misled by the clergyman, and while the parties had re-cohabited "in good faith," their relationship was legally meretricious. Nonetheless, the court concluded that the claimant was a *de facto* spouse qualifying as a dependent to receive worker's compensation benefits. It should be emphasized, however, that the court did not legitimize the common law relationship of the decedent and his claimant-wife; rather, it emphasized the claimant's good faith, the fact that "no rival claim had been made," the claimant's dependency on the decedent, and the public policy of New Jersey's Liberal Worker's Compensation Act. *Id.* at 165-168.

In the case of *In re Estate of Edward Widenmeyer*, 134 N.J. Super. 307 (App. Div. 1975), the executrix knew of an impediment that existed in the form of her prior undissolved marriage, while she and the decedent lived together. She did obtain a divorce from that marriage, but not until after the enactment of the statute abolishing common law marriage. The court determined that the parties could not have validly intended or undertaken a common law marriage, and that although the executrix was subsequently divorced, no common law marriage was possible. The court held that the Inheritance Tax Bureau had, therefore, properly classified the executrix as a "Class B" beneficiary and not as a "Class A" beneficiary, requiring her to pay higher taxes. However, the court indicated it would have made a contrary finding if the parties had removed the impediment before the abolition of the common law marriage statute, or if the parties had been unaware of the impediment. The court also distinguished *Widenmeyer* from *Parkinson*, stating that *Parkinson* was based on the broad protective policies of the Workers' Compensation Act, and that the element of good faith was lacking in *Widenmeyer*.

In the case of *Allstate Ins. Co. v. Skolny*, 86 N.J. 112 (1981), the defendant's wife had filed for divorce, and, after the defendant's default in the divorce case but prior to final adjudication, the plaintiff-wife had died. The plaintiff-insurance company in the case before the court thereafter filed an interpleader action seeking for the court to decide whether the defendant (husband) or the estate of the former wife should receive benefits under the New Jersey No-Fault Insurance Law and, in particular, N.J.S.A. 39:6A-10 and, minimally, N.J.S.A. 39:6A-4. In holding that the defendant (husband) was entitled to the personal injury protection (PIP) coverage, the court reiterated and relied upon:

"The long-standing, clear, and commonly accepted definition of a spouse that recognizes that once a person is legally married, that person remains a spouse until the marriage is legally terminated by a conclusive judicial determination that a party is entitled to a divorce. *See, Parker v. Parker*, 128 N.J. Super. 230, 232-233 (App. Div.

1974); *Olen v. Olen*, 124 N.J. Super. 373, 377 (App. Div. 1973), cert. den. 63 N.J. 570 (1973).” *Allstate Ins. Co. v. Skolny*, supra, 86 N.J. at 116.

One should note the aberrant decision to the contrary in *Jacobson v. Jacobson*, 146 N.J. Super. 491 (Ch. Div. 1976), rev’d on other grounds, 151 N.J. Super. 62 (App. Div. 1977). See, comp § 6K, infra.

In *Sykes v. Zook Enterprises, Inc.*, 215 N.J. Super. 461 (Law Div. 1987), the court held that a claim for consortium must be founded upon a marriage relationship and that there was no right to recover absent a formal marriage. Further, a “wife-in-fact” was not an “heir” of the decedent.

While a ceremony might appear to create a valid marriage, a valid marriage may not exist because of impediments pre-existing the form of ceremony (comp §§ 4A through E), or because of fraudulent intentions predating the ceremony but not learned by the other party until afterward (comp §4F).

### § 1.1A(2) Subject-Matter Jurisdiction, Residency, and Domicile

The concepts and their subtle differences under this subsection need to be clearly understood.

#### § 1.1A(2)(a) Subject-Matter Jurisdiction Requirement

The following discussion is limited to subject-matter jurisdiction, that is, covering the dissolution itself – not all of the other ancillary (financial and custody) relief. For an in-depth discussion of *in personam* jurisdiction, see, comp § 2C(2). Note that the burden of establishing jurisdiction lies with the party so asserting that jurisdiction. *Tatham v. Tatham*, 429 N.J. Super. 502, 506, n. 2 (App. Div. 2013).

The superior court has jurisdiction over all causes for absolute divorce, divorce from bed and board and nullity, when either party is a *bona fide* resident of this state. *N.J.S.A.* 2A:34-8; *Innes v. Carrascosa*, 391 N.J. Super. 453, 481 (App. Div. 2007), certif. denied, 192 N.J. 73 (2007). The statute is based on the constitutional concept that *in rem* jurisdiction is sufficient when the relief sought involves the defendant’s status or interest in a *res* (the status or *res* being the marriage), and where that party has established a *bona fide* domicile. *Williams v. North Carolina*, 325 U.S. 226, 278 (1945); *Drobney v. Drobney*, 146 N.J. Super. 317, 322-323 (App. Div. 1977); *Squitieri v. Squitieri*, 196 N.J. Super. 76, 81 (Ch. Div. 1984). Where one party has resided in the state for the requisite period of time, the *res* (being the marriage) is present in the jurisdiction, and the court has power to terminate its status (*e.g.*, grant a divorce or annulment). Only one party's residency is needed in order for the court to have subject matter jurisdiction. *Meeker v. Meeker*, 52 N.J. 59, 68 (1968); *Tatham v. Tatham*, supra, 429 N.J. Super. at 509, n. 6. *In personam* jurisdiction is generally required for most other forms of ancillary relief. See, comp §§ 2C(2) and 2C(2)(b).

The residency of either party is all that is necessary to vest the court with jurisdiction. *N.J.S.A.* 2A:34-10. Once the residency requirement has been met and the action commenced, a change of residency to another jurisdiction prior to the disposition of the case does not cause the court to lose jurisdiction. *Grange v. Grange*, 160 N.J. Super. 153, 154 (App. Div. 1978). Note that in *Thieme v.*