
THE ANNULMENT PROCESS

A STEP-BY-STEP GUIDE

This guide is has been developed by the
Metropolitan Tribunal of Omaha

For further information visit

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ARCHDIOCESE *of* OMAHA

The Tribunal

WHAT IS MARRIAGE?

Christians believe that God is the author of marriage and that He has determined its elements and characteristics.

A sacramental marriage is the union of two baptized persons. The Catholic Church teaches that marriage is an enduring and exclusive partnership for the mutual giving and receiving of love and the procreation and education of children. Marriage is much more than a legal contract; it is a sacred bond in which a man and a woman totally commit themselves to the good of each other.

All marriages between two baptized partners are presumed to be valid and a sacrament until the opposite is proved beyond a reasonable doubt (c. 1060). Although not every marriage is a sacrament, (for example, a marriage between a Catholic and a non-baptized person), each and every marriage is presumed by the Church to be valid.

Church law declares that marriage is brought about through: (1) the consent of the bride and groom, (2) being legitimately manifested, and (3) those qualified according to the law.

The Church also recognizes that sometimes marriages are entered into invalidly due to a defect or lack of consent so radical that the sacred covenant was never established, even though by outward appearances it seemed to be a marriage.

Therefore, if the consent was defective — marriage was not brought about.

If the consent was not legitimately manifested — marriage was not brought about.

If one or both of the persons were unqualified according to Church law — the marriage was not brought about.

WHAT IS A DECLARATION OF NULLITY OR ANNULMENT?

A declaration of nullity, or an ecclesiastical annulment, is a formal decision by a Catholic tribunal that a particular union is not a valid marital union. There may have been a common life, possibly blessed by God with children, but some defect in the consent or the ability of one or both partners that did not allow it to become a partnership of life and love as described in Canon 1055 of the 1983 *Code of Canon Law*.

Can. 1055 §1. The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.

§2. For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament.

A declaration of nullity does not occur until after an extensive investigation, which proves that a putative marriage was in fact invalid. What is investigated is whether a valid marriage bond was created at the time of consent. A declaration of nullity is

not a divorce; it is a statement that the bond of marriage, as it is understood by the Church, was never created. The process evaluates and examines the marriage for the necessary elements of a valid union: permanence, fidelity, true companionship and love of the spouses, and openness to bearing and educating children. The tribunal seeks to determine if there was anything which pre-vented those elements from being present from the beginning, or if one or both spouses were unable to enter into a valid union due to physical, psychological or circumstantial causes. A declaration of nullity does not dissolve a bond which already exists, but declares that the bond did not exist. A declaration of nullity addresses a person's status in the Church (e.g., whether one is free to marry). It does not pronounce one party guilty and the other innocent; it does not seek to fix blame on one of the parties.

The entire process leading to a declaration of nullity is regulated by canon law and other ecclesiastical norms, which are universal and govern tribunals in every country.

WHAT IS THE ANNULMENT PROCESS?

The annulment process begins when a party petitions the tribunal for a declaration of nullity by challenging the validity of his/her marriage. The party who initiates the process is referred to as the petitioner; the other party is referred to as the respondent. The tribunal then conducts an investigation into the circumstances surrounding the marriage, especially prior to and at the time the couple exchanged their vows. The investigation seeks to establish whether there was ever a marital bond as understood by the Catholic Church. If not, the marriage is considered invalid. A declaration of nullity does not dissolve a bond which already exists, but declares that the bond did not exist. For this reason, an annulment cannot be considered a Catholic divorce.

DO I NEED TO APPLY FOR AN ANNULMENT?

You should apply for an annulment if you are:

- ◆ A divorced Catholic who is now civilly remarried outside the Catholic Church and wishes to have his/her union validated
- ◆ A divorced Catholic who would like to remarry
- ◆ A divorced non-Catholic who is now civilly married outside the Catholic Church to a Catholic
- ◆ A divorced non-Catholic who would like to marry a Catholic
- ◆ A divorced Catholic who is thinking about dating

STEP 1: TO PETITION FOR AN ANNULMENT, CONTACT YOUR PASTOR, ANNULMENT SPONSOR OR THE MARRIAGE TRIBUNAL

To petition for an annulment, you may contact either your pastor, an Archdiocese annulment sponsor or the Archdiocese Marriage Tribunal. They will assist you in submitting your petition.

These are the items you will need:

- ◆ A copy of the marriage license ◆ A copy of the divorce decree
- ◆ Baptismal certificates for both parties in the marriage (if Catholic, it must have been issued within the last six months from the parish of baptism)

You will also need to submit a petition. The tribunal will provide an outline for you to follow when writing your petition. The petition will determine on what grounds (see Step 2) your case will be submitted. Grounds for an annulment are the reason(s) why you believe the marriage is invalid.

STEP 2: PETITION IS FORWARDED TO TRIBUNAL

Once the petitioner has gathered the paperwork required in Step 1, he/she will submit it with the petition to the tribunal. The tribunal will then decide if it has competency to hear the case. In canon law, competency refers to jurisdiction, and the consequent ability to hear the case.

Once the tribunal determines competency, the petition is accepted or rejected. If accepted, it is accepted either to the formal process or to the shorter process, depending on the details of the case. In both processes, a judge and an assessor are assigned to the case. In the shorter process, an assessor may also be assigned. You will know the name of the judge assigned your case, as well as the name of the assessor.

The ecclesiastical judge is qualified through his training and practice in canon law and is appointed by the Archbishop. The judge, who is a priest or deacon, has the final decision whether a declaration of nullity is granted or not.

The assessor assists the Church in finding the truth. The auditor is available to answer any questions that may arise and solicit further evidence in the trial. Assessors are tribunal personnel that are appointed by the judge.

The judge will set the ground(s) or the reason(s) why the validity of the marriage is being challenged; that is, what ground or grounds will be decided during the course of the trial.

It is not possible to go into length here and adequately explain all the possible grounds for nullity under Church law. Grounds may be set based on your answers to the following questions:

- 1) Were both parties free to marry — e.g., no outside pressure, no prior bond of marriage?
- 2) Did each party intend from the beginning to accept and fulfill God's plan for marriage as taught by the Church — e.g., intending fidelity, permanence, openness to children?
- 3) Did each party have the physical, emotional and/or psychological ability to live out the consent given to marriage — e.g., was either an alcoholic, drug dependent or experiencing emotional difficulties at the time of the wedding?

Other symptoms or characteristics of a problematic marriage which can pose a possible case for a declaration of nullity include:

- ◆ Broken marriage of the very young
- ◆ Marriage of short duration
- ◆ Consistent violent behavior
- ◆ Deviant sexual behavior
- ◆ Profound irresponsibility
- ◆ Serious mental illness
- ◆ Contrary views about the permanence of marriage
- ◆ Criminal orientation

STEP 3:

THE RESPONDENT IS CONTACTED

At this stage of the annulment process, the respondent (your former spouse) must be cited. As a party to the marriage, he/she must be contacted about the investigation of the marriage. However, the respondent does not have to participate for a decision to be made.

If the respondent chooses to participate, he/she has a right to:

- ◆ Read testimony
- ◆ Provide testimony
- ◆ Provide witnesses

At the outset of the investigation, the respondent must be cited so that he/she might provide input. Thus he/she will receive a copy of your petition. If possible, please notify your former spouse of your intention to begin this ecclesiastical process. Even if you have had no contact with your former spouse for a long time, you must use every reasonable means to determine his/her current address. If unable to locate your former spouse, you will need to provide documentation of your efforts to obtain this information.

At this stage you will receive a questionnaire to complete. Since this process is an investigation, it is important to be as detailed as possible, avoiding “yes” or “no” answers. The more detailed your testimony, the stronger your case will be. As you prepare your testimony, you may find parts of the petition inquire about very intimate details regarding you and your former spouse. Though this process may cause you to recall some painful memories, petitioners often express a final sense of relief in sharing their story to a caring Church body who wants to assist in every way possible toward a favorable resolution of their plight. The tribunal does not attempt to place blame on either you or your former spouse. Rather, it attempts to gather sufficient factual information so that an enlightened and just decision can be rendered.

STEP 4:

EVIDENCE GATHERING

After the petition is accepted and the grounds are established, the case is moved to the evidence gathering phase. This is when questions are sent to the named witnesses. Cases are sometimes delayed at this stage because witnesses often do not respond in a timely manner.

Generally speaking, the more witnesses you have, the easier it is for the court to come to a decision in your case. Furthermore, these witnesses should be people who know you well and can give testimony regarding your courtship, the situation at

the time of the wedding, and the life of the marriage. Please tell your witnesses that you have submitted their names to the tribunal. Encourage them to be thorough in their answers.

As in any investigation, there must be corroboration of the assertions of the parties. The goal of an annulment is to discover the truth about the motives and intentions of the parties at the time of their wedding. Therefore, the testimony of witnesses who knew the parties at the time of the wedding is almost always necessary in order to come to a decision in the case.

STEP 5:

PUBLICATION OF THE ACTS

When all of the testimony has been collected, the acts or evidence, are published. This does not mean that they are open to the public domain. Rather, only the petitioner and the respondent have the right to read the acts. If there is a question of confidentiality, the person’s name on the testimony may be removed. The judge may decide to withhold certain testimony from publication for a serious reason.

STEP 6:

AFFIRMATIVE OR NEGATIVE DECISION

The judge then examines the evidence to determine whether the marriage was invalid. In every petition for an annulment, the marriage is presumed valid until proven otherwise (c.1060). The judge must reach moral certitude (a high burden of proof) to justify that the marriage was, in fact, invalid. The case can receive an affirmative or negative decision. An affirmative means it was determined the marriage was invalid; a negative decision means the marriage is valid.

SECOND COURT AND APPEALS

If a negative decision is issued by the judge, the decision may be appealed. At the decision of the parties, an appeal may go to the Metropolitan Tribunal in the Archdiocese of St. Louis or to the Roman Rota at the Vatican. In the case of a negative decision, the Church still considers these parties to be married; they are not free to marry another party.

If an affirmative decision is issued by the judge, the parties are notified and they are, upon notification of the decision, free to marry. With sufficient reason, the decision may be appealed, as in the previous paragraph.

TIMELINE

Due to the great number of cases considered and the requirements of canon law, an exact length of time cannot be specified. The process often takes about 18 months. However, no church official is free to promise a specific date for a subsequent marriage until the tribunal gives final notification of an affirmative decision. The parties are always free to contact the tribunal regarding the status of their case.

In certain cases a judge may attach a *vetitum* (prohibition) or a *monitum* (warning) to a decree of nullity, indicating that he has a pastoral concern about one or both parties in an annulment case attempting marriage again.

A *vetitum* prohibits another marriage until certain conditions are fulfilled. If a *vetitum* has been placed upon the petitioner or respondent, then the person will have to receive an assessment from a certified counselor or psychologist recommended by the tribunal. The psychologist or counselor will recommend to the tribunal whether or not to lift the *vetitum*.

A *monitum* is not considered as serious as a *vetitum*. Nonetheless, the issue raised by the *monitum* must be addressed by the priest or deacon during the premarital preparation process. It is imposed by the judge due to the problematic circumstances and events of a previously attempted marriage.

FEES

The tribunal is entirely subsidized by the Archdiocese of Omaha through the generous contributions of the Catholic faithful of the Archdiocese. Thus there are no tribunal fees.

LEGITIMACY OF CHILDREN

A Church declaration of nullity is strictly a religious matter and does not affect the civil facts of the marriage. A declaration of nullity is an evaluation of the spousal relationship exclusively and does not involve the legal standing of any children. The Church protects the legitimacy of any children born of a marriage entered lawfully and sincerely (by at least one of the spouses), but which unfortunately did not meet the Church requirements.

CONFIDENTIALITY

Church law dictates that any testimony not protected by confidentiality is open to inspection by the petitioner and the respondent just prior to the final decision on the marriage case. Professional or expert testimony is always confidential and will be seen only by the tribunal. Also, the judge on his own authority may declare any sensitive material confidential. These provisions adequately protect everyone's desire for privacy.

REMARRIAGE/STATUS OF DIVORCED PERSON

Contrary to popular myth, the Church has never indicated that divorce alone was sufficient grounds for not receiving the sacraments. Catholics who are divorced but who have not entered another civil marriage are encouraged to practice their faith fully. This may include participation in the sacraments, presuming one is being faithful to his/her natural obligations and seeking to lead a moral life. Merely being separated or divorced does not change one's status in the Church. Divorced Catholics are full members of the Church with all of the same rights and obligations as any other member. Catholics who are divorced and have remarried without a declaration of nullity are not free to receive the sacraments, but are encouraged to practice their faith (eg., attending Mass, personal prayer, seeking pastoral assistance from a parish priest, practicing devotions, corporal works of mercy, etc.) pending a decision by the tribunal regarding their former marriage and subsequent validation of their union.

NOTES:

Lined area for notes.