

The Invalidity Of Marriage

AS CATHOLICS WE BELIEVE

. . . that Marriage is a covenant by which a man and a woman establish a partnership of the whole of their lives. Catholics believe that marriage is a total, exclusive, faithful, fruitful, life-long bond - even if neither person is baptized.

We believe all marriages have a character about them known as indissolubility - a bond until death. While civil separations and divorces may settle issues such as custody and care of children, division of property, and financial support, civil powers cannot set aside this life-long bond.

When people marry, they must be free and mature enough to begin living a married life; they must be aware of what marriage implies; they should have a reasonable knowledge of who their prospective spouse is; they must carefully deliberate the consequences of their choice to enter marriage; they must be capable of living out the daily obligations of marriage. The Church presumes that all those factors are in place when a couple exchanges consent, that is, their "I do's," during a marriage ceremony. However, people who are free to marry have a natural right to marry, and occasionally people do lack one or more of the previous factors when they marry.

The Church Also Acknowledges . . .

that some marriages do not endure despite a couple's best effort. To the many separated and divorced people the Church must bring the justice, compassion, acceptance and understanding that they need to reconcile their pain and to rebuild their lives. Our Church ministers to divorced persons, providing a source of justice and compassion through the office of the Archdiocesan Tribunal.

A declaration of invalidity from the Church is possible when it can be proved that an element essential for the establishment of the marital bond, while presumed to be present, actually was lacking when the parties married. Such a declaration does not mean a marriage ceremony never took place, that the marriage was not civilly recognized, nor that a common life was never established. Such a declaration is an acknowledgement that, though the couple may have married in good faith, their union did not qualify as a marriage in the eyes of the Church. This declaration would allow the parties rightfully to marry again. For a Catholic, this would mean that they could marry in the Church. The length of a marriage or the number of children born during a marriage does not in and of itself prevent a declaration of invalidity.



WHY WOULD A DECREE OF INVALIDITY BE ISSUED?

According to Church law there are three reasons why a decree of invalidity would be issued:

1. Catholics are required to be married in the presence of a duly authorized priest or deacon and two witnesses. The Catholic rite of marriage must be followed. If any part of these requirements was missing or in some way defective, a decree can be issued.
2. There are specific reasons why a marriage cannot take place. The church calls these reasons “Impediments.” Examples would be not having reached an appropriate age, being too closely related to each other, not being free of a bond to another. If there is proof that an impediment existed at the time of the wedding, a decree can be issued.
3. The consent that one of the parties gave when they married was defective. The Church would consider someone’s consent defective if that person:

- ❖ Lacked the sufficient use of reason
- ❖ Lacked the degree of discretion of judgment that is proportionate to marriage
- ❖ Was psychologically incapable of assuming the essential rights and obligations of marriage
- ❖ Was ignorant about the true nature of marriage
- ❖ Was in error about a quality of the person he or she was to marry
- ❖ Was deceived by fraud in order to get him or her to marry
- ❖ Intended to enter some kind of union, but not a marriage, as the Church understands marriage
- ❖ Did not freely marry due to some force or grave fear inflicted from outside the person

WHAT DOES THE PROCESS INVOLVE?

When all possibilities of saving a marriage are over, and a civil divorce has been obtained, the Tribunal may be approached and asked to determine if the Church still considers the marriage binding or if the Church believes that the former marriage was not binding until death.

HERE ARE THE STEPS:

The Petitioner contacts his/her parish pastoral leadership (Pastor or Pastoral Administrator) who will put him/her in touch with an Advocate. The Advocate will help the Petitioner complete the petition, which contains some background information, and briefly, the reason why there might be grounds for a declaration of invalidity.

The Tribunal will notify both former spouses, whom we refer to as the Petitioner and the Respondent, when the petition is accepted. Both parties will be informed of the suggested

grounds (reason for which a marriage might be declared invalid) and are asked to indicate whether they have any objections to those grounds. Both parties are offered the opportunity to offer testimony and to suggest witnesses who can corroborate his/her testimony. Those witnesses are contacted by mail. The evidence they provide is essential to the completion of a case. Counseling records are sometimes requested. These records are confidential to the Tribunal and are used only for the purpose of the study of the marriage.

When all the evidence is collected, the Defender of the Bond will give an opinion on whether there is sufficient evidence and whether the proper procedures have been followed. The Judge then studies the evidence, makes a decision, and writes up that decision. A Second Instance Court must confirm every affirmative decision. When two affirmative decisions have been issued, the parties are notified, as are the churches of Catholic baptism and the Catholic church of marriage.

If a party plans to remarry, the Church wishes to be certain that those factors that led to the declaration of invalidity are no longer present. Pastoral or professional counseling may be recommended or required in addition to the Church's standard pre-marital preparation.

WHEN CAN A WEDDING DATE BE SET?

Because a person needing a Decree of Invalidity is not free to marry until such a decree is granted, no wedding date may be set until final word is received from the Tribunal. The Tribunal is not responsible for any consequences resulting from a party choosing to set a date prior to the final decision in the case.

HOW LONG DOES IT TAKE TO COMPLETE THIS PROCESS?

The amount of time it takes to process a case depends on many factors, but an average range is 9-12 months at the present time.

WHAT IS THE COST?

The Petitioner is responsible for the fees involved in any type of Tribunal process. Currently the fee for a Petition for Invalidity is \$450. This is only a portion of the cost of processing each case. If a professional evaluation is required, an additional fee is assignable to the party for whom it is required. No person is ever denied the services of the Tribunal for lack of the ability to pay.

ARE THERE ANY CIVIL EFFECTS?

A decree is strictly a religious matter and only determines whether a person is free to enter marriage in the Church. It does not say that a union never existed, nor does it settle any property disputes or affect the legitimacy of children. Church law specifically protects the rights and status of children (Canon 1137 of the Code of Canon Law).