

The Most Frequently Asked Questions about the Marriage Nullity Process Diocese of Wilmington

1. What changes has Pope Francis made to the Tribunal Process?

Most of the modifications made to procedural canons of the Code of Canon law are found in the deliberations of the recent two synods on the Family in 2014 and 2015. The synodal fathers in articles 114 and 115 of their *Instrumentum laboris* emphasizes the need to make the procedure in cases of nullity: (1) more accessible; (2) less time consuming, and if possible (3) at no expense. Among others they also proposed (4) the dispensation of the requirement of second instance for confirming sentences; (5) the possibility of establishing an administrative means under the jurisdiction of the diocesan bishop and (6) a simple process to use used in cases where nullity is clearly evident.

2. What are the Church's teachings about marriage and annulment?

The Catholic Church, like any civil society, has requirements for its recognition of the bond of marriage. The elements for the religious bond of marriage are based on the Gospel and sacred tradition. Simply stated, not every expression of consent uniting the partners gives rise to the sacred bond of marriage as it is understood by the Church.

A decree of nullity, commonly called an annulment, is a decision concerning a specific marital relationship, stating that this union was not a marriage according to the teachings of the Catholic Church. It does not deny that a relationship existed, nor does it imply ill will or place blame on one or both persons.

The Second Vatican Council's document, *The Church in the Modern World*, discusses the teachings on marriage in paragraphs 47-52.

The Council Fathers taught:

“The well-being of the individual person and of both human and Christian society is closely bound up with the healthy state of conjugal and family life. [...] The intimate partnership of life and the love which constitutes the married state has been established by the creator and endowed by Him with its own proper laws: it is rooted in the contract of its partners, that is, in their irrevocable personal consent.”

On November 27, 1983, the New Code of Canon Law became effective. Among the many canons which discuss marriage, the following are worthy of reflection in the annulment process:

CANON 1055

(1) The matrimonial covenant, by which a man and a woman establish between themselves a partnership for the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of children; this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament.

(2) For this reason a matrimonial contract cannot validly exist between baptized persons unless it is also a sacrament by that fact.

CANON 1057

(1) Marriage is brought about through the consent of the parties, legitimately manifested between persons who are capable according to law of giving consent; no human power can replace this consent.

(2) Matrimonial consent is an act of the will by which a man and a woman, through an irrevocable covenant, mutually give and accept each other to establish marriage.

CANON 1060

Marriage enjoys the favor of the law; consequently, when a doubt exists the validity of a marriage is to be upheld until the contrary is proven.

3. Do I have a right to an annulment?

While everyone has the right to petition a competent Tribunal to consider a plea for nullity, no one has a right to an annulment. The decision is based on the evidence which is submitted by one or both parties in relation to recognized reasons of nullity, that is, canonical grounds of nullity. The final decision of the Tribunal is based on three criteria:

1. the ground of nullity agreed upon during the process;
2. the jurisprudence of the Church on this ground;
3. the proofs in the form of statements, declarations, depositions, documents, and reports submitted by the parties or professional counselors.

In January, 1996, Pope John Paul II addressed the issue of the right to an annulment. He explained: It must be remembered that the spouses, who in any case have the right to allege the nullity of their marriage, do not however have either the right to its nullity or the right to its validity. In fact, it is not a question of conducting a process to be definitively resolved in a constitutive sentence, but rather of the juridical ability to submit the question of the nullity of one's marriage to the competent Church authority and to request a decision in the matter. This does not prevent the spouses themselves, since it is a question regarding the determination of their personal status, from having their essential procedural rights recognized and granted: to be heard in court, to submit proofs in the form of documentation, expert opinion and witnesses, to know all the instructional acts and to present their respective defenses. (Address to the Roman Rota, January 22, 1996, paragraph 3)

4. What are some possible grounds for annulment?

Among the signs that might indicate reasons to investigate for an annulment are: marriage that excluded at the time of the wedding the right to children, or to a permanent marriage, or to an exclusive commitment. In addition, there are youthful marriages; marriages of very short duration; marriages marked by serious emotional, physical, or substance abuse; deviant sexual practices; profound and consistent irresponsibility and lack of commitment; conditional consent to a marriage; fraud or deceit to elicit spousal consent; serious mental illness; or a previous bond of marriage. The determination of the ground should be made after extensive consultation with the parish priest or deacons, and based upon the proofs that are available.

5. Who can ask for an annulment?

Either party in a marriage that has ended in divorce has the right to ask the Church to review a former marriage. Although one party makes the request, the other party has the right to participate in the process. The rights of both parties must be respected and protected by the Tribunal. The former spouse will be contacted and informed of his/her rights in the process. To avoid contacting the former spouse could invalidate the entire process because the right of defense has not been protected.

6. Can I go to any Tribunal?

Pope Francis in his very recent *Motu Proprio Mitis Iudex Dominus Iesus* has simplified the issue of competency to accept a petition.

The new canon, 1672*, "In cases regarding the nullity of marriage not reserved to the Apostolic See, the competencies are: (1) the tribunal of the place in which; (2) the tribunal of the place in which either or both parties have a domicile or quasi-domicile; (3) the tribunal of the place in which most of the proofs must be collected."

The former requirement of contacting the Judicial Vicar of the diocese in which the Respondent resides provided that both parties live in the same Episcopal Conference is no longer required.

7. How long does the annulment process take?

Given the new canonical norms in *Mitis Iudex Dominus Iesus*, the annulment process takes approximately six to twelve months. The process is often delayed unnecessarily due to the fact that the person seeking an annulment or their witnesses do not respond promptly.

8. What is the divorced person's status with the Church while seeking an annulment?

Those who are divorced but who have not entered into another marriage outside the Church are free to and are encouraged to receive the sacraments. Being divorced does not alter one's status in the Church. Catholics who are divorced and remarried outside the Church are not thereby excommunicated, but they are not free to receive the sacraments. They are expected and encouraged to fulfill their other duties in practicing their faith pending a finding of their freedom to remarry before the Church.

9. Do previous marriages of non-Catholics and unbaptized persons to each other need to be annulled before these persons can be married in the Catholic Church?

The essential aspects of a Christian marriage apply to all marriages of the baptized, whether those being married are Catholic or Protestant. Whenever a person wishes to marry in the Catholic Church and there has been a previous marriage, that bond of marriage must be examined to clarify the status of persons and their freedom to marry. Such an examination may also be necessary in cases where one or both marriage partners were never baptized. The marriages of one or both parties being unbaptized may be resolved under special norms for Privilege cases. Such cases are requests made to the Holy Father in Rome, who is asked to dissolve the bond of marriage due to the non-baptized status of a party before and during the married life. These cases are also begun at the parish level with the assistance of a priest or deacon.

10. If a marriage is annulled, what is the status of the children?

An annulment has no effect on the legitimacy of children who were born of the union following the wedding day, since the child's mother and father were presumed to be married at the time the child was born. Parental obligations remain after a marriage may be declared null.

11. How much does an annulment cost?

The processing of a formal case generally generates costs of approximately \$1200. It is expected that the person seeking an annulment will assist the Tribunal in partially meeting its administrative costs through a fee of \$750. The fee is usually paid in installments during the process, but other arrangements can be made. One's inability to pay, however, does not affect the acceptance or final decision; the fee can be waived or reduced as need be.

12. What is the Diocesan Tribunal, and what is its role in the annulment process?

The Diocesan Tribunal is an office of the Church that considers matters that pertain to Church legislation or Canon Law. Essentially, the Tribunal considers the status of persons who were married. For a marriage to be annulled, it must be proven that an essential quality or element of the marriage was lacking. The Tribunal is the Church office which will help gather the evidence to ensure there is a just and expeditious consideration given to the petition.

13. How is the annulment process begun?

The person who wishes to have a marriage annulled seeks the assistance of a parish priest or deacon to explain the former marriage. After the priest or deacon has been contacted, you call the Tribunal office, 302-573-3107 and you will be provided an advocate, who in many cases will be a trained lay person by the Tribunal staff and who will assist you in the completion of the application. In some cases, an interview in person or by phone will be arranged according to your availability.

14. If I seek an annulment, does my previous spouse have to be contacted?

Church law requires that the previous spouse be contacted and informed of the grounds, given the opportunity to give testimony, and asked to name witnesses. While the former spouse does not always exercise this right, the law requires that this person be informed. In the event the address of the spouse is unknown, this should be explained to your advocate at the time the application is completed. The formal application should provide the former spouse's address or that of a relative or friend, who can ensure the non-petitioning party will receive our mailings.

15. What preliminary application and documents do I need?

During your meeting with the Advocate, he or she will assist in the completion of the preliminary questionnaire and a brief bibliographical sketch which includes a short history of the courtship, marriage, and separation. The above items and all pertinent documents (baptismal certificates for Catholic parties, marriage certificate, and the final divorce decree) are given to your Advocate. A brief petition essay will also be part of the preparation of your application. It should list the two names and addresses of the witnesses. After the completed application with the documents and two essays are sent to the Tribunal for review, you will be notified of the date set for an interview.

16. Do the parties have the right to inspect the evidence which has been submitted to the Tribunal for a decision?

The Code of Canon Law gives each party of the former union the right to review the case file in the Tribunal office during regular business hours. After all of the evidence has been gathered, the judge assigned to the case will notify parties of their right to review individually the case file. Each party has the right to review the evidence gathered to date and respond to it. The Church recognizes that parties cannot defend themselves if there is no opportunity to review the material gathered in support of the ground of nullity.

17. After I submit a case to the Tribunal, can I set a date for a future wedding?

A future date for a Catholic wedding cannot be set, or the validation by the Church of a current union, cannot be done until there is a final and definitive resolution by the Tribunal. Despite the fact that an application has been submitted to the Tribunal, there is no certainty that the marriage will be found invalid.

18. How does the Tribunal reach a decision to grant an annulment or support the presumption of validity?

Following the submission of the application, the Tribunal waits for the two witness forms to be returned. Next, the parties and the advocates are given the opportunity to review the evidence. The case is then submitted to the Defender of the Bond. The defender's role is to present to the Tribunal all the evidence that supports the validity of the sacred bond of marriage. After her/his observations are submitted, the Judge studies the case and composes a document which acknowledges the marriage is valid or invalid. The final decision is based on the facts of the case and the law.

19. Can the Church's decision to grant or not grant an annulment be appealed?

If the annulment is granted, the parties are given the right to appeal. If the decision is appealed, the entire case is reviewed by an appellate court in our country or by the Tribunal of the Roman Rota in Rome. The appeal must be based on the conviction that a procedural act or the decision does not accurately reflect the facts.

20. Once an annulment is granted, am I free to marry?

Generally, yes. However sometimes considering the nature of the case a request for counseling may be imposed before permission for another marriage can be given. Also there is a marriage preparation program in the church before a future wedding can take place.