

## **Catholic Marriage and annulments**

### **What is marriage?**

- Marriage is a covenant. The covenant is between a man and a woman. The spouses establish this covenant through their marital consent, by which they intend to establish between themselves a partnership for the whole of life. This means each spouse will assist and support the other in all areas of their common life, the best he or she is able, so long as the other spouse is alive.
- The goal of this covenant, by its nature, is the mutual welfare of the spouses (physically, emotionally, and spiritually) as well as openness to the procreation, welfare, and education of children. The Church commonly refers to the good of the spouses and the good of children as the two elements of marriage. All genuine marriages, whether Christian or non-Christian, must contain these elements. Such a partnership is commonly referred to as a "natural marriage."
- This permanent and exclusive partnership for the giving and receiving of love and the procreation and education of children.
- Canon law defines natural marriage this way: "The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its very nature ordered toward the good of the spouses and the procreation and education of children" (Canon 1055, § 1).
- Those who have been baptized also receive the Sacrament of marriage when they marry validly.
- The church believes that every valid Sacramental marriage that has been consummated is indissoluble.

### **If all the above is true, then how is an annulment possible?**

In every presumption the opposite can be true. If sufficient evidence can be shown that a particular marriage is invalid, the original presumption no longer holds true. Therefore, when it can be proved that a specific marriage is not valid or not a Sacrament or not consummated, there is a possibility that the Church will dissolve it or declare it to be invalid.

A Catholic annulment, also known as a declaration of nullity or invalidity, is a statement of fact by the Catholic Church. After carefully examining the couple's broken relationship, the Church states that a valid marriage, as the Church defines marriage, never existed. It is not "Catholic divorce," as some have called it, since divorce looks at the moment the relationship broke down and says, "A marriage existed, and now we are ending it." The annulment process says, on the other hand, "From the very beginning, something was lacking that was necessary for this relationship to be called a marriage."

Quite often, what is lacking at the time of the civil contract is one of the essential elements or properties of marriage we have noted. The mature consent of the spouses in undertaking the marriage covenant may also be lacking.

Of course, the Church recognizes the couple's initial love for one another. It also realizes that this love led to some form of relationship. In addition, the Church acknowledges that there was a valid civil contract and recognizes that the spouses were lawfully married in the eyes of the state. Therefore, all children born of this valid civil contract are legitimate, according to the Catholic Church. In keeping with canon 1137, they are known as the legitimate children of a "putative marriage."

All these civil and legal realities the Church recognizes. But the annulment process looks at an entirely different realm — the spiritual — which falls within the Catholic Church's domain of competence to judge.

### **Why is an annulment necessary?**

The Church teaches that marriage is permanent. If a sacramental marriage is created, no human power can separate what God has joined together (see Mt 19:6). According to the Church, not even a civil government with the power to end the civil contract (which the state calls "marriage") can terminate a sacramental marriage.

For this reason, once two people stand in front of God and contract a marriage, if they enter into a marriage covenant as defined by the Catholic Church, this covenant cannot be dissolved so long as both parties remain alive. The marriage bond is in place until death. As a result, no new marriage covenant can be created with someone else.

Any person who has entered a genuine marriage remains bound to that spouse. The spiritual bonds of marriage, if formed, cannot be ended by civil divorce. In the eyes of the Church, divorce ends the various civil, financial, and legal bonds previously contracted between spouses, but not the spiritual bonds. For this reason, the Catholic Church investigates, through the annulment process, whether an actual marriage, as defined by the Church, came into being. In carrying out this investigation, the Church examines various facts presented to the marriage tribunal by those seeking the annulment and their witnesses. If the Church then determines that no genuine marriage came into being, these individuals are free to marry someone else if that person is also free to marry.

### **What are the grounds for annulment in the Catholic Church?**

Most annulments are based on canon 1095, psychological reasons. These include a wide range of factors. Some of them may be misrepresentation or fraud (concealing the truth about capacity or desire to have children for example, or about a preexisting marriage, drug addiction, felony convictions, sexual preference or having reached the age of consent)

- Refusal or inability to consummate the marriage (inability or refusal to have sex)
- Bigamy, incest (being married to someone else, or close relatives)
- Duress (being forced or coerced into marriage against one's will or serious external pressure, for example a pregnancy)
- Mental incapacity (considered unable to understand the nature and expectations of marriage)
- Lack of knowledge or understanding of the full implications of marriage as a life-long commitment in faithfulness and love, with priority to spouse and children.
- Psychological inability to live the marriage commitment as described above.
- Illegal "Form of Marriage" (ceremony was not performed according to Catholic canon law)
- One/both partners were under the influence of drugs, or addicted to a chemical substance.

### **Why do I need an annulment if I'm not Catholic?**

If you're not Catholic, but plan to marry a Catholic, you might be asked to go through the annulment process. This seems odd to most non-Catholics because neither person from the first union is Catholic. Therefore, why should the Catholic Church investigate this marriage?

The Catholic Church presumes the validity of any marriage between two people who are free to marry at the time of their wedding. (They must have no previous marriages.) Basically, if the non-Catholic religious community of either spouse recognized the marriage, so does the Catholic Church. Since marriage, as God created it, is permanent, then the Catholic Church must also investigate these marriages. Because the non-Catholic wishes to marry a Catholic, the Church's law applies to the proposed marriage, since canon law still binds the Catholic whom the non-Catholic wishes to marry.

In short, the Catholic Church believes her teachings concerning the essence and the properties of marriage bind all people, regardless of whether they are Catholic, as part of God's natural law.

### **What is a “Lack of Form” annulment?**

For a person who was either Catholic or married to a Catholic, and did not marry according to the canonical form of marriage (in front of a Catholic priest or deacon with two witnesses), and if the Catholic Church's permission was not obtained for this marriage (called a "dispensation from canonical form"), then the Church could process this case as a "Lack of Form." The Church calls this an administrative process.

### **What’s this about having a marriage “Blessed” in the Church?**

The individual must prove that one of the former spouses was Catholic, that the couple attempted marriage outside of the Catholic form without first obtaining the proper dispensation, and that the marriage is now irreparable. The individual must also establish that this marriage was never subsequently convalidated (commonly, and mistakenly, referred to as "blessed" by the Church.) Most marriage tribunals accept as sufficient proof of these circumstances the Catholic's baptismal record, a copy of the marriage license, and the couple's divorce decree.

### **What is “Ligamen?”**

For a person previously married to someone with a prior marriage, provided the Church had not dealt with the prior marriage, a documentary process exists. This is called “ligamen,” or prior bond. In most cases, one simply documents the prior marriage of the individual with whom one attempted marriage. The local tribunal advises the couple concerning what documents they require and guides them through the process.

### **What is the “Petrine Privilege?”**

If one of the spouses was not baptized during the first marriage, and the lack of baptism can be proven (provided the person applying for this process did not cause the marital breakdown), then a "Privilege of the Faith" case (or "Petrine Privilege" case) can be sent to the Holy See. If the Holy See approves, the non-sacramental marriage may then be dissolved in favor of a new marriage.

### **What is the “Pauline Privilege?”**

If neither of the spouses was baptized during their marriage, and now one of the spouse's wishes to become baptized and marry a Catholic, provided one can prove the non-baptism of each former spouse, a Pauline Privilege is possible. In this situation, the diocesan bishop or his lawful representative, having established the non-baptized status of both parties, allows the non-sacramental partnership to be dissolved in favor of the new marriage. Of course, the spouse desiring baptism and the new marriage must first receive baptism.

### **Why must a divorced Catholic complete a complicated Church annulment process before remarrying?**

Jesus himself had strong words about marriage, declaring - “Whoever divorces his wife and marries another commits adultery against her; and the woman who divorces her husband and marries another commits adultery.”

The complicated process of annulment then is a response to the strength of this teaching. The Church presumes that marriages are binding and lifelong. The annulment process helps to determine if something

essential was missing from the couple—s relationship from the beginning that prevented the sacramental union that the couple promised to each other.

**How can you require an intended spouse who is not a Catholic to endure this annulment process?**

In simplest terms, if a Catholic wishes to marry in the Church when there has been a previous marriage, then either one of the partners in the earlier union must have died or the Church must have issued a declaration of nullity, an annulment of that previous marriage. Why is this so?

The Catholic Church views all marriages with respect. It presumes that they are true or valid. Thus, it considers the marriages, for example, of two Protestant, Jewish or even nonbelieving persons to be binding in the eyes of God, unions covered by the words of Christ about divorce. Consequently, it requires a Church annulment process to establish that an essential ingredient in the relationship was missing from the start of the previous marriage.

Such a requirement often represents an unpleasant challenge to Protestant, Jewish or nonbelieving persons who wish to marry a Catholic after the civil termination of a previous marriage. They may have no difficulty with remarriage after divorce and even feel resentful about the prospects of a Roman Catholic formal annulment procedure.

**Who else besides the couple seeking a declaration of nullity will be questioned during the annulment process?**

The ex-spouse or respondent will need to be contacted, but not necessarily by the spouse or petitioner seeking the annulment. The diocesan tribunal office will make that written contact with the ex-spouse, with the name and address provided by the petitioner.

The respondent—s cooperation is welcome, but not essential. Simple justice, however, requires that an ex-spouse at least be made aware that the petitioner is seeking an annulment and that the respondent may be part of the procedure. It is only fair that both persons have an opportunity to present their sides of the marriage.

In formal cases the petitioner needs to supply the names and addresses of several people who are familiar with the petitioner’s earlier marriage. They must be able and willing to complete a brief questionnaire about the petitioner’s earlier marriage.

**Does an annulment make the children illegitimate?**

No. The parents, now divorced, presumably once obtained a civil license and entered upon a legal marriage. Children from that union are, therefore, their legitimate offspring. Legitimate means —legal. The civil divorce and the Church annulment do not alter this situation. Nor do they change the parents—responsibility toward the children. In fact, during annulment procedures the Church reminds petitioners of their moral obligation to provide for the proper upbringing of their children.

Nevertheless, persons pondering the Catholic annulment process do often express this concern about the legitimacy of the children after that procedure.

**Is money involved in the annulment process?**

No and yes. Money does not affect the speed of the procedure or its successful completion. Nor does the inability of a petitioner to share part of the costs of the process interfere with the possibility of obtaining

an annulment. Costs factored into the annulment process include: rental space, salaries, office, equipment, office supplies. Income from annulment fees covers most but not all of these expenses. Diocesan tribunals make special arrangements for people.

### **What are the benefits of annulments?**

The first benefit, of course, is that the petitioners may now celebrate a marriage in the Catholic Church or have an existing marriage —blessed— or recognized with the Church. There can, however, be a deeper and much more spiritual benefit.

Divorce is a kind of death experience, with the grieving that normally accompanies life's end. Thus a divorced person may know the typical grief feelings or conditions of denial, anger, bargaining, sadness and acceptance. But divorce in some ways is worse than death. It can involve rejection and self-doubts. The divorced person may ponder questions like, —Why me? or What did I do wrong? or How did I fail? There also may be resentment toward the ex-spouse.

### **When should I apply for the annulment?**

You can only apply after your divorce is final. Go to a parish near you and ask for the application form. A priest, deacon or pastoral staff person will assist you with the process. You do not need to be a member of the parish in order to apply for an annulment. However, you should apply within the diocese where you live, or where you were married.

### **Can I still attend Mass & receive communion if I'm divorced or wasn't remarried in the church?**

Every baptized Catholic —no matter what their situation or standing—is always free to attend Mass. Please don't let questions of divorce or marital validity interfere with your regular attendance. If you are divorced and have not remarried, you may receive the Eucharist (if you are not burdened by a grave sin that requires sacramental Confession). The same applies for other sacraments. If you have remarried, you would need to have your current marriage convalidated before receiving Communion, which may involve having your first marriage declared null. If you are still in your first marriage but it took place outside the Church, should have it convalidated. Your pastor or another parish staff member can help you begin this process; please contact your parish office for more information.

### **Can I still be a part of the Church if I am remarried without a declaration of nullity?**

You are still a member of the Catholic faith community. You can register in your parish and raise your children Catholic. However, the choice to remarry without having received a declaration of nullity concerning one's prior marital bond sets a person apart from the Church with regard to full sacramental participation. One cannot receive Holy Communion when one's lifestyle is not in communion with the teachings of the Catholic faith. Still, there is grace to be gained through participation in Sunday worship, particularly in the nourishment that comes from God's Word, the Homily.

### **I am planning on re-marrying my ex, we were married in a Catholic Church, how do we go about having a Christian remarriage?**

We assume from your question that you did not receive an annulment in the Church, but only sought a civil divorce. Since the Church does not recognize the effect of civil divorce, you are still sacramentally married in the eyes of the Church. Therefore, you do not need to do anything with the Church, though civilly you must be remarried; the Church would view this period merely as a separation. However, you may want to discuss the matter with your parish priest and consider having a renewal of your vows within the Church after the civil ceremony.

### **Does the length of the marriage count in annulments?**

The length of the marriage does not influence the decision in any way. The only facts considered are factors that were present at the time when the vows were exchanged.

### **Do ex-spouses have to be contacted?**

Ex-spouses are contacted to protect their rights, but they do not need to consent. They are given the opportunity for input during the process. The final decision however is always based on an objective evaluation of the facts at the time of the vows. Later events merely illustrate behavior patterns that were already present in a person at the time of the marriage vows. The Tribunal understands that the very fact that an ex-spouse tries to prevent an annulment may spring from the same negative behavior patterns that destroyed the marriage, therefore no attempts need to be made by the applicant to get the ex-spouse to consent. Since an annulment also gives the ex-spouse the right to remarry in a Catholic Church, he or she will receive a copy of the annulment decree.

### **What steps are involved in an Annulment?**

Four steps are involved in the annulment process. They are:

- The Preliminary Investigation and Formal Testimony of the Petitioner.  
This involves the first interview by the Advocate with the person applying for an Annulment. This interview provides basic information about the meaning of an Annulment and its process. During this meeting, the Petitioner is given a Form called the "Preliminary Investigation Form" that needs to be completed at home. This Form asks basic questions about the family background of both parties, their dating and the marriage. The Petitioner is also asked to provide names of witnesses such as family member, relatives and/or friends who have personal knowledge of the Petitioner, the Respondent and their marriage. In most cases, the names of the children cannot be used as witnesses because they were not born when the parents were married. Once the Form is completed, the Petitioner returns it to the Advocate along with a copy of both, the Civil Marriage License and the Civil Divorce.
- The Formal Investigation of the case.  
Within a short period of time, the priest-judge assigned to the case will contact the Respondent. The Respondent (the other party in the marriage) will be provided with the right to give Formal Testimony regarding the marriage. This testimony could be in writing or verbally. Even if the Respondent refuses to cooperate, the annulment still proceeds because the Respondent cannot prevent the case from being heard.  
The Tribunal will then contact the Petitioner's witnesses by mail, they having already given their consent to being witnesses. While the testimony of the witnesses is usually sent by mail, they may request to give it verbally. Sometimes during the formal investigation, the priest-judge may feel that he needs to talk to the Petitioner in person. In such cases the Petitioner will be asked to attend a meeting of the Tribunal.  
At this time, documentation may be sought to help clarify the grounds for an annulment. Under certain circumstances, the Tribunal may appoint an expert, such as a psychologist or a psychiatrist for an evaluation.

- The Decision Phase.

The tribunal Advocate studies all the testimony in the case. He/she then presents the reasons why the annulment should be granted. The "Defender of the Bond" (This is an official, who usually has a degree in Canon Law, and it is his/her duty to defend the marriage-bond in the procedure prescribed for the hearing of matrimonial causes which involve the validity or nullity of a marriage already contracted.) will take the position that the marriage is valid and sacramental until the opposite is proven. His responsibility is to protect the rights of the parties involved and the sacredness and indissolubility of the marriage.

Once the legal briefs of the Advocate and the Defender of the Bond have been presented, the priest-judge makes his determination as to the validity or invalidity of the marriage.

He then issues his formal sentence or decision. In his sentence, restrictions may be placed on one or both parties. Pre-marriage preparation is one restriction, but in the case where more serious problems arise (such as alcohol abuse, domestic abuse, infidelity, etc...) professional counseling may be ordered prior to any remarriage in the Church. The presiding cleric working with the Petitioner or the Respondent consults the Tribunal concerning the restrictions.

- The Appeal/Ratification Process.

If the Tribunal issues an affirmative sentence (meaning being in favor of nullity), the matter is referred to the Tribunal of another diocese for a review. This review is mandated by Canon Law. Once this review (appeal/ratification process) is completed, the presiding judge of the Tribunal will notify the parties of the final decision.

### **How long does it take to process an Annulment?**

The complete process of an Annulment, without the involvement of an appeal, can easily take two years.

### **Should a person start planning their next marriage during the process of an Annulment?**

The Petitioner is asked not to plan a date for his/her future marriage in the Catholic Church until such time as the Annulment process is completed. There are two reasons for this. First of all, the length of the Annulment process is unknown until it is completed. Secondly, if the Petitioner does not receive a favorable answer, he/she will not be able to remarry in the Catholic Church.