

# DECLARATION OF NULLITY



## What is marriage?

The Catholic Church teaches that marriage is a 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”(Can. 1055 §1). Because the institution of marriage is created by God (Vatican II, *Gaudium et Spes* 48), the Church’s teachings concerning the dignity of marriage apply to all marriages, not merely those of Catholics. Although the Sacrament of Marriage only exists between two baptized persons, even non-Christian marriages are presumed to be valid, until the contrary is proven (can. 1060).

## What is a declaration of nullity?

A declaration of nullity is a judicial decision from the Church stating that, from the beginning, what seemed to be a valid marriage was, in fact, invalid. Despite all appearances, a marital bond was not formed between a couple because something fundamental was lacking.

Resulting from a thorough investigation and judicial process, a declaration of nullity does not deny that a wedding ceremony took place or that a loving, stable relationship may have existed. It does not imply malice or moral fault. Moreover, there are no civil implications in the United States. Therefore, a declaration of nullity does not affect in any manner the legitimacy of children, property rights, inheritance rights, names, etc. Instead, it declares the parties’ freedom from the rights and obligations of marriage and thereby allows a person to contract a new marriage or pursue a vocation to the priesthood or consecrated life.

## How might a marriage be null or invalid?

Consent makes marriage and, without true consent, a marriage cannot be formed. Consequently, a foundational requirement for a valid marriage is that it be entered freely by both parties. In addition, both must understand the nature of marriage and bind themselves to a true marriage, which is faithful,

indissoluble, open to the birth of children, and oriented toward the mutual care and well-being of the spouses. Furthermore, both spouses must possess the necessary psychological capacity at the time of their wedding to weigh, to choose, and to assume the rights and obligations of marriage.

The Church also acknowledges that there may be impediments from natural law (e.g., consanguinity, a prior bond of marriage, etc.) or ecclesiastical law (e.g., priests who have made a promise of celibacy or religious who have made a public perpetual vow of chastity) which would invalidate marriage.

Finally, Catholics and Eastern Orthodox Christians are required by Church laws to observe certain formalities when they marry. Under certain circumstances, omitting these formalities (“Marrying outside the Church”) can invalidate the marriage.

## A declaration of truth

The Church does not “annul” marriages but declares what the facts establish. A declaration of nullity, thus, is not a favor or privilege granted at the Church’s discretion but only a declaration of the truth about a given marriage. Under the authority of the local bishop and sharing in his ministry, the Tribunal exists to investigate the facts and determine whether a marriage was invalid.

## Who needs a declaration of nullity?

Marriage is a lifelong bond dissolved by death, but not divorce. Therefore, any person (regardless of religion, denomination, or baptismal status) who seeks to marry in the Catholic Church but has been married before must be free from any previous bond of marriage. If one’s spouse is still living, the Tribunal needs to establish your freedom to marry or that of the person you wish to marry. In addition, if a person wishes to be baptized or received into the Catholic Church and, currently, is married invalidly (e.g., a second marriage contracted during the life of the first spouse), baptism or reception cannot proceed until the Tribunal establishes your freedom to marry or that of your current spouse.



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Those who are divorced but have not remarried civilly are not required to seek a declaration of nullity, especially if they have no intention to marry again or pursue the priesthood or consecrated life. Some may choose to do so, motivated by a desire to seek peace. Those who seek to heal the wound of a failed marriage may find comfort engaging in the intense introspection that the process demands.

In all cases, it is necessary that a final divorce, civil annulment, or some other proof of definitive separation be evident before the Tribunal's investigation may begin. Indeed, it is the Church's desire that the marriage nullity investigation begin only after the hope of spousal reconciliation has passed. We ask that you seriously and prayerfully discern this, especially with clergy, counselors, family, and friends.

### How does the process begin in the Archdiocese of Denver?

Once you have determined that petitioning for a declaration of nullity is the right step, please seek out an advocate approved to serve in the Archdiocese of Denver. Each parish should be able to assist you in finding an advocate, and the Tribunal website maintains a current list of advocates. You and/or your advocate will submit a preliminary questionnaire (found on the Tribunal's website) which will allow the Tribunal to determine which case type applies to your marriage.

### What are the different case types?

The majority of cases follow the Ordinary (Formal) Marriage Nullity Process; in other words, the marriage, externally, appears to have been valid but it is alleged that the consent was defective internally. Another common case type is Lack of Form, which is a brief investigation into whether Catholics married according to the canonical form (external celebration of the marriage). In far less cases, nullity may be apparent through documentary proof. Finally, an abbreviated process can be used when nullity of the marriage is manifest at the outset of the process and both spouses agree on the reasons for the nullity.

### How long does the process take?

Due to the great number of cases considered, the various case types/processes, and the requirements of canon law, an exact time cannot be specified. Each case is unique, and a complicated case normally will require more time/attention than a case where nullity is easily manifest.

# Steps in the Ordinary (Formal) Process for **DECLARATION OF NULLITY**

## **1. Libellus (Formal Petition)**

If the Tribunal determines that a formal process is required, you will receive a detailed questionnaire to complete. Set a time with your Advocate to review the responses to this questionnaire and draft the formal petition (*libellus*). In the *libellus*, you will propose the grounds, the reasons why the marriage might be invalid. In addition, you should present your advocate with the required documentation of the marriage (marriage record, civil dissolution, etc.) This may require two meetings. The advocate will answer your questions and help you throughout the entirety of the process. He/she is encouraged to accompany you to any appointments at the Tribunal and will strive to promote your interests in conformity with the truth.

## **2. Case Acceptance and Citation**

When the required forms are received with your *libellus*, a member of the Tribunal will review the grounds proposed in your *libellus* to determine if it is possible that the nullity might be proven at the end of the process. Rarely, there will be a case where there does not appear to be any likelihood that a declaration of nullity could be granted, and the Court cannot proceed. Should that occur, the Court will explain its rationale and your options. In most cases, however, the Court finds sufficient basis to proceed and accepts the case. You and your Advocate will be notified by mail and have an opportunity to review the grounds and present any objections. The other party to the marriage, the Respondent, will be notified (the "Citation") and invited to participate.

## **3. Joinder of the Issue ("Litis Contestatio")**

After the time for responses to the proposed grounds has passed, the *Ponens*, one of the three judges assigned to your case, will review any responses in order to formally establish the grounds that the Court will investigate. .

## **4. Instruction**

In canon law, the instruction is the investigative phase of the process. At this time, we will gather your witness testimonies and, in most cases, will invite you to visit the Tribunal for a deposition to provide additional information and/or clarify information

already provided. The Respondent will also be asked to participate. Depending on the circumstances, a psychological expert, appointed by the Court, may offer an opinion on the case.

## **5. Publication**

Once the *Ponens* concludes that there is sufficient information to make a judgment on the case, he will afford parties and their advocates the opportunity to review the testimony and other evidence at the Tribunal. Each party may offer to submit additional information, if necessary.

## **6. Conclusion**

Following the Publication, the *Ponens* closes the case to any further testimony and evidence. At this time, the parties and/or their advocates may provide a brief summarizing their arguments, and the Defender of the Bond, a member of the Tribunal, will offer observations and objections in favor of the validity of the marriage.

## **7. Definitive Sentence**

Once the Defender of the Bond has completed his or her brief, a case summary is provided to the *Ponens* along with the entire case file. The *Ponens* will draft the decision (the "definitive sentence"), for the other judges to review and sign. If a majority of the judges is able to reach moral certitude of the nullity of the marriage, an affirmative decision is issued. On the other hand, if the majority finds that reasonable doubts remain, a negative decision is issued.

## **8. Appeal**

The parties and the Defender of the Bond have the right to appeal the definitive sentence to the Court of Second Instance in Philadelphia or to the Tribunal of the Roman Rota in Rome. If no appeals are lodged within fifteen days, the definitive sentence is "executive", which means that the parties are considered free from the previous union.

