

HELPS FOR PARISH SPONSORS

The fact that a marriage failed does not mean it was invalid. *A marriage is presumed to be valid unless proven otherwise* (c. 1060).

A person requesting a determination of the validity of a marriage must submit an *Application for Marriage Investigation*. When you assist a person in completing this form, you should keep in mind the possible grounds for invalidity of a marriage.

The possible grounds for invalidity fall into three general categories: *DEFECTS OF CANONICAL FORM*, *IMPEDIMENTS TO MARRIAGE*, and *DEFECTS OF CONSENT*. The pertinent law is in the 1983 *Code of Canon Law*, canons 1055-1165. You will find a good commentary helpful. The Canon Law Society of America publishes a commentary for the entire code. Ladislav Orsy has written a commentary on marriage law alone (see Resources, *infra*).

The following is a summary of the three categories.

DEFECTS OF CANONICAL FORM (Canons 1108-1123)

The Church has authority to regulate the *form* of marriage insofar as marriage is a contract. Thus, the Church has established certain formalities to ensure the public character of marriage. Canonical form requires that marriages involving Catholics be contracted before an authorized priest or deacon, who asks for the marital consent of the contracting parties and receives it in the name of the Church, in the presence of two witnesses. Observance of canonical form is required for validity, but the parties can be dispensed by diocesan authority.

Lack of Canonical Form:

If a Catholic marries without observing canonical form (e.g., outside the Catholic Church) and without a proper dispensation, the marriage is null. If the attempted marriage is never convalidated, and one the parties later wishes to marry someone else,

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he or she is free to do so once a pre-nuptial investigation has confirmed his or her freedom to marry.

Note: An “annulment” is not required in these cases, provided the pre-nuptial investigation outlined in canons 1066-1067 has established freedom to marry. In the Diocese of Rochester, the determination of freedom to marry in lack-of-form cases has been reserved to the Tribunal. A person requesting such a determination should complete the *Request for a Declaration on Lack of Canonical Form* with the help of the parish sponsor. The Request should be submitted to the Tribunal along with: *recent baptismal record of the Catholic party; transcript of the marriage record that includes the name and title of the officiant; decree of absolute divorce*. Once the lack of canonical form has been verified, a decree of freedom to marry is issued.

Other Defects of Canonical Form:

If a marriage ceremony took place in which some attempt was made to observe canonical form, but the form was defective (e.g., the officiant was not authorized to perform the ceremony by the pastor or local ordinary), a declaration of invalidity will be required before a party is free to marry someone else.

Note: In the latter type of case, the person wishing to be free to marry should submit an *Application for Marriage Investigation* as outlined in “Sponsoring a Marriage Case: How It Works.” Still, most of these cases can be resolved using a *documentary process*, without resort to a formal trial.

IMPEDIMENTS TO MARRIAGE (Canons 1073-1094)

A person seeking a declaration of invalidity based on an “impediment” should submit an *Application for Marriage Investigation*.

An impediment is a circumstance that disqualifies a person from contracting marriage. Impediments are either of DIVINE LAW or of ECCLESIASTICAL LAW. Only the supreme authority of the Church can declare when a divine impediment prohibits or invalidates a marriage, and only that same authority can establish other impediments for those who are baptized (see canon 1075).

The Church has no power to alter the sacramental aspects of marriage. However, since marriage is both a sacrament and a *contract*, the Church has authority to establish ecclesiastical impediments in addition to the divine impediments. All persons are bound by divine impediments. Only Catholics are bound by ecclesiastical impediments, unless otherwise stated in the law. (Ecclesiastical laws often affect those who are not Catholic but wish to marry a Catholic.)

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Impediments are either ABSOLUTE or RELATIVE. They are absolute if they bar a person from marrying anyone at all (e.g., a person who is in Sacred Orders may not marry anyone). They are relative if they bar a person from marrying someone in particular (e.g., a man may not marry his mother, but he may marry his next-door neighbor).

Divine Law Impediments:

1. **Lack of Age.** A person must have reached puberty to be capable of marrying.
2. **Impotence.** The inability to engage in sexual intercourse in a human manner disqualifies a person from marrying *if* the inability is permanent and *if* it is present before the exchange of matrimonial vows. Impotence may be either absolute (inability to have sex with any potential spouse) or relative (inability to have sex with the particular person one wants to marry).
3. **Prior Bond (Ligamen).** A valid marriage impedes any subsequent marriage as long as both parties live. (The Church presumes the prior marriage is valid unless proven otherwise.)
4. **Consanguinity in the Direct Line.** This refers to blood relationship, father-daughter, grandfather-granddaughter, mother-son, etc.

Ecclesiastical Law Impediments:

1. **Lack of Age.** A man must be sixteen years old to marry; a woman fourteen.
2. **Disparity of Cult.** A Catholic is disqualified from marrying a non-baptized person, and *vice versa*.
3. **Sacred Orders.** A Catholic priest, deacon, or bishop is disqualified from marrying anyone.
4. **Public Perpetual Vow of Chastity in a Religious Institute.** Every word in this impediment is important. A private vow may morally oblige a person to remain celibate, but it does not invalidate a marriage.
5. **Abduction.** A man who abducts a woman with the intention of marrying her is disqualified from marrying her
6. **Crime (Crimen).** One who brings about the death of his/her spouse in order to marry a certain person is disqualified from marrying that person. One who brings about the death of another person in order to marry that person's spouse, is disqualified from marrying that person's spouse.
7. **Kinship.** This includes the following relationships:
 - a. Consanguinity in the collateral line up to and including the fourth degree (first cousins)
 - b. Affinity in the direct line (e.g., to a deceased spouse's parent or child)
 - c. Adoption in the direct line, or in the collateral line to the second degree (e.g., brother-stepsister.)

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- d. **Public Propriety.** This nullifies marriage in the first degree of the direct line with the blood relatives of a person of the opposite sex with whom one has cohabited outside marriage.

A person with an ecclesiastical impediment may seek a *dispensation* to marry from the competent ecclesiastical authority. A dispensation is a relaxation of ecclesiastical law in a particular instance. Diocesan authority can dispense from all ecclesiastical impediments except those arising from sacred orders, certain religious vows, crime, and consanguinity in the direct line or in the second degree of the collateral line.

Thus, a marriage cannot be declared invalid based on an impediment that was properly dispensed with by competent authority.

DEFECTS OF CONSENT (Canons 1095-1107)

The majority of marriage cases brought before the Diocesan Tribunal are premised on grounds pertaining to consent.

Remember: *Consent makes a marriage.*

As long as two people are not prohibited by law from marrying each other, their matrimonial consent—i.e., their consent to a partnership of the whole of life, ordered to the good of the spouses and the procreation and education of offspring—establishes a matrimonial covenant between them. Once a valid consent has been exchanged, the fact that the marriage later proves troublesome to one or both of the parties has no bearing on the marriage's validity. However, certain causes can prevent a valid exchange of consent in the first place.

Now, even though difficulties after the fact do not necessarily mean the exchange of consent was invalid, such difficulties may be indicators of areas you should pursue further with the person applying for a marriage investigation. In other words, you should inquire whether the *underlying reason* for the difficulties in the marriage point to some critical flaw in the parties' exchange of consent on their wedding day.

Defects of consent fall into three categories: *incapacity*, *defects of knowledge*, and *defects of the will*.

Incapacity:

1. ***Lack of Reason.*** This is comparable to the concept of “insanity” in civil law. Lack of reason can be either a permanent or a transitory condition, but it must be present at the moment of attempted consent to render the consent invalid.
2. ***Grave Defect of Discretion of Judgment.*** This involves psychological abnormalities that seriously impair a person's judgment regarding the essential rights and

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obligations of marriage. Like lack of reason, a defect of discretion of judgment can be either permanent or transitory. It does not affect the validity of consent, however, unless it is grave, is present at the moment of consent, and seriously impairs the person's critical and elective faculty for making serious decisions, particularly in freely choosing a state in life.

3. ***Inability to Assume the Essential Obligations of Marriage for Causes of a Psychic Nature.*** If a person has a psychological condition that prevents him or her from taking on the essential obligations of marriage, the person is incapable of contracting marriage. A person cannot consent to something that he or she is not able to fulfill. Note, however, that this condition must make the assumption of marital obligations truly impossible, and not merely difficult. Again, the condition must be present at the moment of the attempted consent.

Defects of Knowledge:

1. ***Ignorance.*** Matrimonial consent is invalid if a person is truly ignorant that marriage is:
 - a. a permanent relationship
 - b. between a man and a woman
 - c. ordered to the procreation of offspring by means of some sexual cooperation.However, a person is presumed to know these things upon reaching puberty.
Note: Error concerning the unity, indissolubility, or sacramental dignity of marriage DOES NOT invalidate matrimonial consent unless such error determines the will (see Defects of the Will, *infra*).
2. ***Error about the Other Person.*** Matrimonial consent is invalid if a person
 - a. mistakenly marries the wrong person (e.g., his fiancée's twin).
 - b. directly and principally intends that the other party have a certain quality, which the other party in fact does not have (e.g., a man marries a woman solely because he mistakenly believes her to be the mother of his child).
3. ***Fraud.*** Matrimonial consent is invalid if a person enters into a marriage deceived by trickery.
 - a. The deception must be perpetrated either by the other party or some third party.
 - b. The deception must be perpetrated for the purpose of gaining the person's consent to the marriage.
 - c. The deception must be about some quality of the other party which by its very nature can gravely disturb the partnership of conjugal life (e.g., AIDS, homosexuality, sterility, membership in a criminal gang, etc.).

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Defects of the Will:

Canon 1057 states that matrimonial consent is an *act of the will* by which a man and a woman mutually give and accept each other through the irrevocable marital covenant. Thus, for consent to be valid, the parties must *will* to enter marriage. Note, however, that the internal consent of the mind is presumed to conform to the outward words and signs used in the marriage ceremony (c. 1101.1). An alleged defect of will, therefore, must always be proven.

1. **Simulation.** Matrimonial consent is invalid if either party, by a *positive act of the will*, excludes marriage itself (e.g., a person only pretends to marry another in order to gain admittance to a country) or some essential element or property of marriage (e.g.,
 - a person intends to never have children in the marriage).
 - a. Essential elements of marriage: offspring, fidelity, perpetuity.
 - b. Essential properties of marriage: unity and indissolubility.
2. **Force or Grave Fear** invalidates matrimonial consent if:
 - a. it is external —i.e., imposed from a source outside of the person himself (e.g., “shotgun” weddings, fear of the other party, fear of one’s parents); and
 - b. the person is compelled to choose marriage in order to be free from the particular threat. In other words, the person judges there is no escape other than to enter the marriage.

One thing to look for in such a situation is the actual aversion the person has to the marriage. If this aversion is strong and the person still goes ahead with the marriage, there may be reason to suspect force or fear. However, the mere fact that someone has a motive for marrying other than love—e.g., to resolve a sudden, unexpected pregnancy—does not make the marriage invalid.

3. **Conditional Consent.** Validity or invalidity depends on the nature of the condition.
 - a. Marriage subject to a condition about the future is invalid (“I marry you provided you make a million dollars within the next five years”).
 - b. Marriage subject to a condition about the past or present is invalid only if the condition is unfulfilled (e.g., “I marry you on condition that I am the father of your child” is valid if, in fact, I am the father of your child). To be licit, however, such a condition requires the written permission of the local ordinary.

DISSOLUTION OF A VALID NON-SACRAMENTAL MARRIAGE

Every valid marriage between baptized persons is sacramental (c. 1055). A marriage between two non-baptized persons, or between a baptized person and a non-baptized person, though valid, is non-sacramental. A sacramental marriage, once consummated,

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cannot be dissolved by any human power. A non-sacramental marriage can be dissolved under certain circumstances.

Pauline Privilege:

Recognized by St. Paul in I Corinthians 7:12-16. It is available when:

- a. both spouses were non-baptized at the time they married;
- b. one spouse has subsequently been baptized;
- c. the other party remains non-baptized;
- d. the non-baptized party no longer wishes to remain in the marriage peacefully or without affront to the Creator;
- e. the baptized party, after baptism, did not give the non-baptized party just cause for leaving the marriage; and
- f. diocesan authority (in Rochester, the Tribunal) has verified the above facts through a process called “the interpellations.”

The Pauline Privilege permits the baptized party to enter a new marriage after the interpellations have been completed. The new marriage automatically dissolves the previous one. If you are assisting a person eligible for the Pauline Privilege, please call the Tribunal Office for an application form.

Petrine Privilege (Dissolution “in Favor of the Faith”):

With limited exceptions (see cc. 1148 and 1149), the dissolution of other types of non-sacramental marriage is reserved to the pope (see Congregation for the Doctrine of the Faith, “Norms to Complete the Process for the Dissolution of the Matrimonial Bond in Favor of the Faith,” April 30, 2001). A person may petition the pope for a dissolution if:

- a. at least one of the spouses was non-baptized at the time of the wedding;
- b. if, at some point after the wedding, both spouses became baptized, there must have been no sexual relations between them after they both became baptized;
- c. the spouses are now separated, and there exists no possibility of restoring the partnership of conjugal life between them;
- d. the petitioner now wishes to marry a particular person;
- e. the petitioner and intended future spouse were not culpably responsible for the breakup of the previous marriage; and
- f. if either the petitioner or intended future spouse is non-Catholic, they must promise, in writing, to raise their children in the Catholic faith.

Note: A dissolution in favor of the faith is only granted for one marriage. Should the new marriage end in divorce, the petitioner will not be able to obtain another one.

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If the previous marriage had a dispensation from the impediment of disparity of cult, a dissolution will only be granted if the Catholic party's intended future spouse is a baptized person or is willing to receive baptism.

If you are assisting a person eligible for a dissolution in favor of the faith, please call the Tribunal Office for an application form.

OTHER CASES

There are other possibilities such as the PRESUMED DEATH OF A SPOUSE and a NON-CONSUMMATED MARRIAGE. If you think that a person has special circumstances that might not be addressed in this paper, please call the Tribunal and someone will discuss the situation with you.

SUMMARY

When a person approaches a member of the parish staff to resolve their marital status:

1. Discuss what options are possible for the resolution:

LACK OF CANONICAL FORM

INVALIDITY (based on impediments, defects of consent, etc.)

PAULINE PRIVILEGE

PETRINE PRIVILEGE

2. Assist the person in completing the appropriate forms.

In the case of an *Application for Marriage Investigation*:

a. Clarify any questions about the APPLICATION FORM.

b. Provide the explanation sheet: WHAT TO EXPECT AS A PETITIONER.
(Make sure

you have read this - it has information about fees, etc.)

c. Provide the SAUNDERS article: *Annulment: A Catholic Divorce?*

d. Review and sign the completed application.

e. Make sure the required documents are included.

f. Complete and return OBSERVATIONS OF CASE SPONSOR.

3. Provide support and assistance to the applicant.

4. DO NOT set a wedding date.

5. Call the Tribunal when you need advice or information.

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SOME HELPFUL RESOURCES

BEAL, John P., et al., eds. *New Commentary on the Code of Canon Law*. New York/Mahwah, NJ: Paulist Press, 2000.

McKENNA, Kevin E. *A Concise Guide to Canon Law: A Practical Handbook for Pastoral Ministers*. Notre Dame, IN: Ave Maria Press, 2000.

ORSY, Ladislav. *Marriage in Canon Law: Texts and Comments, Reflections and Questions*. Wilmington, DE: Michael Glazier, Inc., 1986.

ROBINSON, Geoffrey. *Marriage, Divorce & Nullity. A Guide to the Annulment Process in the Catholic Church*. Collegeville, MN: The Liturgical Press, 1993.

WRENN, Lawrence G. *Law Sections*. Washington, DC: The Canon Law Society of America, 1994.

_____. *The Invalid Marriage*. Washington, DC: The Canon Law Society of America, 1998.