

## Marriage in the Catholic Church

The Catholic Church teaches that marriage is, by God's plan, an enduring and exclusive partnership between a man and a woman for the giving and receiving of love, and for the procreation and education of children.

For those who have been baptized, marriage is also a sacrament.

The Catholic Church also teaches that every valid, sacramental marriage that has been consummated is indissoluble. This is in accord with the Gospels, the writings of St. Paul, and centuries of Christian tradition. When one of the parties to marriage has not been baptized, the marriage is understood to be "natural" instead of "sacramental." A "natural" marriage or a marriage that has not been consummated can be dissolved by the Church in favor of a new marriage.

Every first marriage, whether sacramental or natural – including marriages between non-Catholics – is presumed by the Catholic Church to be valid. However, this presumption is not always correct.

### How Can a Marriage Be Invalid?

A marriage can be declared invalid if evidence shows that from the very beginning of the marriage (the time of the wedding) that something was present or absent that kept the couple from entering into marriage. Nothing that might arise during the subsequent common life of the parties would turn a valid marriage into an invalid one.

So, only when it can be proven that a marriage was, in fact, never valid in the first place can the Church declare it invalid.

*Importantly, a Declaration of Invalidity does not imply that the marriage was entered into with ill-will or with moral fault or that a relationship did not exist between the parties.*

### Are there any Civil Effects from the Church's Declaration of the Invalidity of a Marriage?

A Declaration of Invalidity by an ecclesiastical Tribunal does not affect the legitimacy of children, property rights, inheritance rights, anyone's name, right of access to children, or any other matter under civil law.

## When is it Possible to Obtain a Declaration of Invalidity?

A petition seeking a Declaration of Invalidity may be filed at any time; however, there must be no hope of reconciliation. This is shown through a civil divorce decree or a civil annulment decree. Before filing a petition, a person should give themselves time to process through the emotional and spiritual trauma of all that led to the couple permanently separating. This normally takes at least a year. Beginning Experience and other programs can assist with processing this trauma.

### How Does the Tribunal Work?

Church law provides that every diocese is to have a Tribunal staffed by specially trained persons – priests, deacons, religious and laity – whose responsibility it is to help those who ask the Church to study a marriage and determine if there is any possibility of its being declared invalid. Following specifically established procedures, the Tribunal investigates the marriage, and, after studying the evidence that it has gathered, determines if the marriage is, in fact, invalid.

### How Does the Process Begin?

The process begins when a person (known as the "Petitioner") completes an application for invalidity, which is sent to the Tribunal. This application is available in every parish of the Diocese of Cheyenne, and at the offices of the Tribunal in Cheyenne. The Petitioner should always be assisted by a pastoral minister from the parish or an official of the Tribunal in completing this application; and the Petitioner has the right to request the assistance of an Advocate who will represent the party and argue the case on the Petitioner's behalf.

The application is then reviewed by a member of the Tribunal staff. The Petitioner is then invited to complete a formal declaration presenting a complete history of the relationship and marriage indicating what factors would be relevant to the union's invalidity. The Petitioner is also asked to provide relevant documentation including a marriage certificate, and a decree of divorce.

## What about the Other Spouse?

Once the formal declaration has been received by the Tribunal, Church law requires that the other spouse (known as the "Other Party" or the "Respondent") be invited to participate in the process. The Other Party has the option of joining in the petition, to give consent (namely, support the investigation and possible determination that the marriage is invalid), to decline to participate in the process leaving the matter to the justice of the Tribunal, or to argue for the validity of the marriage. The Other Party is requested to submit a personal declaration and to provide other evidence.

*The Tribunal needs to know the Other Party's current address; but if this is not known, the address and name of a family member through whom the Other Party may be contacted can be provided. The Petitioner does not have to contact the Respondent directly.*

If the Other Party chooses not to participate, the case will still proceed; however, the Defender of the Bond will be asked to take special notice of the Other Party's absence to insure this person's rights are observed.

### What about Witnesses?

Both the Petitioner and the Other Party are asked to name witnesses who knew the husband and wife and who would be familiar with the reasons that would call into question the validity of the marriage. Normally, these are persons who knew the parties before they met, during their courtship, when they celebrated their marriage and during their common life together. The party who names a witness is responsible to verify that the person will participate in the process and to inform the person that the Tribunal will be contacting them for the purpose of giving testimony. The Tribunal will make arrangements to obtain a witness' testimony.

### What about Confidentiality?

All of the evidence that is gathered is basically confidential. If the Other Party does choose to participate in the case, then this party is informed of the "grounds," that is, the basis upon which the invalidity of the marriage is being argued. Both the Petitioner and the Other Party also have the right to view personally all of the evidence that is gathered.

## How is the Case Decided?

There are two possible processes, the Ordinary Process and the Special Process for the Bishop (*Processus Brevior*). The Judicial Vicar decides which process to use.

In order to use the Special Process, 1) either both parties have to petition or the Other Party has to give consent to the process; and, 2) the invalidity of the marriage must be manifest. A hearing will be held with the parties, their Advocates, their witnesses, the Defender of the Bond, an Instructor and an Ecclesiastical Notary. The Advocates and the Defender of the Bond are then asked to submit written arguments. The Bishop then meets with the Instructor and an Assessor. He may decide that the marriage is invalid or he may refer it to the Ordinary Process.

Most cases will be done through the Ordinary Process. A Judge or panel of Judges is assigned, and the evidence is gathered. Once the evidence is collected, the parties and the Defender of the Bond are able to review it. This is called publication. If no new evidence is collected, the case is closed. The Defender of the Bond prepares Observations defending the validity of the marriage. The Advocates representing the Petitioner or Other Party are also requested to prepare arguments on behalf of their client. The Judge or panel of Judges then examines the proofs and the submitted arguments, and renders a decision. Both the Petitioner and the Other Party are then informed of the decision and have the right to examine the sentence that has been rendered.

## Is the Decision Final?

If the Tribunal or the Bishop has rendered an Affirmative decision finding for the invalidity of the marriage, this decision will become effective in fifteen (15) days if it is not appeal. If the Tribunal has rendered a Negative decision against the invalidity of the marriage, this decision may also be appealed.

In every case, the Petitioner, the Other Party and the Defender of the Bond have the right to appeal the decision that is rendered by the Tribunal or the Bishop. Normally, an appeal from the Tribunal would be examined by the Tribunal of the Archdiocese of Denver, though a party does have the right to appeal to the Apostolic Tribunal of the Roman Rota, which is the Church's highest appellate court at the Vatican. An appeal of the decision of the Bishop is to either the Archbishop of Denver or the Dean of the Roman Rota.

## Is Remarriage in the Catholic Church Allowed?

If a party's first marriage has been declared invalid, and this decision has not been appealed within the fifteen (15) day time limit, and if there are no restrictions concerning remarriage, both the Petitioner and the Other Party can enter a subsequent marriage in the Catholic Church. If the case has been appealed, no marriage can be celebrated until the appeal has been resolved.

Likewise, if a "non-sacramental" marriage or a "non-consummated" marriage has been dissolved by the Church, both the Petitioner and the Other Party are free to enter a subsequent marriage in the Catholic Church.

## Is There a Fee?

No fee is charged for the processing a case before the Tribunal of the Diocese of Cheyenne. The expense of the Tribunal is covered by the donations received from the annual Living and Giving in Christ Appeal. Individuals with cases before the Tribunal are requested to remember these donors in their prayers.

If, however, the Petitioner or Other Party appeals the decision, then the party placing the appeal pays the appellate tribunal's fee. The normal appellant tribunal is the Metropolitan Tribunal of the Archdiocese of Denver; but a party may also appeal to the Roman Rota. The Denver Tribunal has a fee of \$100.00; and the Rota has a fee of \$850.00.

*An appeal will never be rejected solely on the basis of a party's inability to pay the requested fee.*

For additional information on invalidity and marriage, please consult *Annulment: The Wedding That Was*, by Michael Smith Foster (New York: Paulist Press, 1999).

# Reconciling Your Marriage in the Catholic Church

If you are considering presenting a petition to the Tribunal of the Diocese of Cheyenne for the purpose of determining whether your former marriage can be declared invalid or dissolved, the information contained in this brochure will be helpful.



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