

**DECREE OF NULLITY**

## **Decree of Nullity**

The law of Nullity deals with circumstances in which a marriage, seemingly valid, is regarded at law as not being valid. Basically, a Decree of Nullity states that a marriage is not and never was valid, leaving the parties free to marry another person as if he/she was a single person as opposed to a divorced person, when entering the second marriage. The main distinction between a Decree of Nullity and that of Divorce, is that in a Divorce situation, a valid marriage is dissolved, whereas, in a Nullity situation, there never was a valid marriage in the first place. It is important also to note that there is a difference between a Nullity granted by the Church and that granted by the Courts. They are two different remedies and the granting of one, does not automatically entitle a spouse to the granting of the other. The following paragraphs deal solely with Decrees of Nullity granted by the Courts.

The effect of a Decree of Nullity is that spouses cease to be legally married to one another and so lose their rights as spouses under various legislation. For instance, a person who has successfully sought a Decree of Nullity through the Courts will not be entitled to receive any maintenance in respect of him/herself, as he/she was not a spouse at any time of the other. Also, the various succession rights of spouses will be affected by the Decree, as the parties are no longer considered spouses of each other.

Similarly to Judicial Separations and Decrees of Divorce, both the High Court and the Circuit Court have jurisdiction to hear applications for Decrees of Nullity, depending on the extent of the family property. Persons can not enter a Deed to effect a Nullity as it is only the Courts that have valid jurisdiction to grant such Decrees.

In deciding whether or not to grant a Decree of Nullity, the Courts make a distinction between two types of marriages, namely, those void and those violable. A void marriage is one which never existed and no matter what the parties to the marriage do, there never can be a valid marriage. On the other hand, a violable marriage is one which is considered valid until such time as the marriage is set aside on the application of one of the parties to the marriage.

In order to obtain a Decree of Nullity for a violable marriage, the Applicant spouse must rely on one of the following two grounds.

1. There is an inability on the part of either spouse to consummate the marriage.
2. There is an inability on the part of either spouse to enter in to and sustain a normal marital relationship by virtue of being unable to understand the nature of the marriage relationship.

This inability to enter in to and sustain a marital relationship generally relates to an illness of a psychological, emotional or psychiatric condition and must be of a serious nature before it will lead to the granting of a Decree of Nullity.

In order to obtain a Decree of Nullity for a void marriage, the Applicant spouse must establish:

1. One party was lawfully married to another at the time of the marriage.
2. The parties are within a prohibited degree of relationship.
3. The parties are of the same sex gender.
4. Either party lacks capacity by reasons of age. Parties to a marriage must now be over eighteen years of age to have the necessary capacity.
5. There is a non-observance of certain formalities, for instance, a flawed ceremony.
6. There is an absence of full and free consent on the part of either party.

This absence of free and full consent may be due to reasons of insanity, intoxication or undue pressure either from the other party to the marriage or from a third party.

In order to satisfy the Court that a person's situation warrants the granting of a Decree of Nullity, the Applicant must prove the grounds to the Court, with a high degree of probability. There is a presumption at law that the marriage is valid until proven otherwise. In addition, it is important to remember that the grounds relied upon in an Application for a Decree of Nullity must have existed at the date of the marriage.