

Annulment of Marriages in North Carolina

There is no shortage of people coming to the legal assistance office requesting an end to their marriage as quickly as possible. However, the only grounds for divorce in North Carolina require that the parties live in separate residences for over a year. Faced with this distressing year long waiting period, some of our clients ask whether they can obtain an annulment. Many mistakenly believe that an annulment can be obtained because the parties were married only for a short period of time or because the parties never had post marital sexual relations.

In fact, annulment has nothing to do with the length of the marriage and very little to do with sexual relations. An annulment is a court order declaring that the marriage never really existed in the first place due to some defect. Marriages can be declared invalidated only in very limited circumstances, as indicated at section 3 Chapter 51 of the North Carolina General Statutes, section 3 (NCGS 51-3). That section provides that a marriage may be declared void only if:

- The marriage was between any two persons nearer of kin than first cousins, or between double first cousins, OR
- Either of the parties is under the age of 16 [Exception: Female over 14 who has given birth or who is pregnant may marry child's father after obtaining consent of the court. Male over 14 may marry his child's mother with consent of the court. NCGS 51-2.1] OR
- One or both of the parties to the marriage was already married to another living person at the time of such marriage, OR
- One or both of the parties was physically impotent at the time of the marriage; OR
- At the time of the marriage, one or both of the parties was "incapable of contracting from want of will or understanding." [The test for determining mental capacity to enter into a marriage contract the ability to understand the nature of a marriage contract and the duties and responsibilities it entails. *Ivery v Ivery* 258

NC 721 (1963) For example, a person might be so intoxicated or so mentally retarded as to be incapable of such understanding.] OR

- The marriage was contracted under the representation that the female is pregnant, the parties separate within 45 days of marriage, and no child is born to the female within ten months of the date of separation. Note that other sorts of fraudulent misrepresentations, which may be grounds for annulment in other states, is not grounds for annulment in North Carolina.

Even when grounds for annulment exist, those grounds may be lost by action (or in some cases inaction) of the parties that ratifies the marriage.

For example, if the marriage defect is young age of one of the parties, the marriage is ratified if that party fails to sue for annulment by the time he/she reaches the age of 18.

Only a bigamous marriage can not be ratified by the parties. However, even in those cases, a party who is somehow seen to be acting in bad faith may be prevented from attacking the validity of a bigamous marriage. Example: W marries H1. They have their differences and separate; H1 agrees to make support payments. While still married to H1, W marries H2. H1 sues for cessation of support payments based on W's second marriage. W is estopped from the defense that the second marriage is invalid. Taylor v Taylor 321 NC 244 (1987)

As a practical matter, what does all this mean? It means that there are very few occasions in which a North Carolina court will be authorized to annul a marriage. Consequently, in the vast majority of cases, the parties will not be able to end the marriage in this state until they have lived separate and apart for over a year and thereby have grounds for divorce.

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