



ANNULMENTS FACT SHEET



An annulment is a court procedure that dissolves a marriage. Although similar to a divorce, a key difference is that, in a divorce, there is still a legal recognition that two persons were married. In an annulment, the union is treated as if it never occurred. Two types of annulments are possible, civil and religious annulments. The state of Georgia can only grant a civil annulment; if one is sought for religious reasons, the parties must seek action by the church they seek an annulment from. A civil annulment bears no effect on a religious annulment and the same is true in the alternative.

Marriages may be annulled on grounds of it being void or voidable. If a marriage is void, it was not legally enforceable at its inception. Void marriages are typically annulled on grounds prohibited by law, such as age (in Georgia it is under the age of sixteen (16) or under the age of eighteen (18) without consent from the minor's parent) or bigamy (a valid marriage already in existence with another person). Alternatively, marriages might be voidable meaning the union violates a less stringent requirement to marriage, such as mental capacity to consent to marriage. The key difference in void versus voidable annulments is that voidable annulments have the potential to be valid through later action rectifying the mistake. An example of ratification might be obtaining a marriage license when both parties possess mental capacity following the ceremony where one, or both, parties lacked the capacity to consent to marriage. Alternatively, a void marriage cannot be rectified and lacks the potential to be valid because of its interference with established law.

Unique to Georgia law - if you and your spouse seek an annulment but already have, or are expecting, any children, an annulment is not permissible. The appropriate recourse is divorce and divorce only.

Typical reasons for annulment, and permissible grounds for the action, are one or both spouses' lack of mental competence, one or both spouses are underage and there was no parental consent, or either spouse consenting to the marriage through fraud or coercion. Not so typical, yet equally permissible, grounds for annulment include bigamy and incestuous marriages (marriage to familial relatives). Although a party might argue that fraud induced a marriage and they consequently seek an annulment on those grounds, the fraud must be to the essentials of the marriage. What is essential may vary and may be up to the discretion of the court. This means that a person misrepresenting their status, such as wealth or income, may be, and usually is, insufficient to annul a marriage.

To get an annulment you must first establish that one of the aforementioned grounds exist. If a ground exists, you, or your spouse, may petition for, or request, an

annulment; if the ground is age without parental consent, the parent of the underage person involved in the voidable union may file for an annulment on their child's behalf. Georgia statute provides that the procedures for obtaining an annulment mimic those for obtaining a divorce; drafting the required documents, serving the appropriate party with the required documents, and filing the required documents in a timely manner in the appropriate court house. As such, it is recommended that you seek an attorney's help to comply with all matters of service, jurisdiction, procedure, residence, pleading and practice normally required in a court of law. However, it is important to note that if the marriage is voidable and has been ratified (some correction to a defect that could be grounds to an annulment), a divorce is the appropriate recourse because the defect has been corrected. The annulment may be granted or ordered at any time; it may be granted in open court, at the judge's discretion in his chambers, after thirty (30) days following notice of the petition for annulment and no answer (response) from the partner, or, where there is an answer and contest by the partner, through trial by jury.

Once an annulment is granted, it carries the same effect of a total divorce between the parties; each person is returned to their status before the union. This means both persons are permitted to remarry immediately following the court's decision to grant the annulment. Usually, an annulment does not entitle either party to a portion of a marital estate or spousal support that is commonly observed in divorce. There was no valid marriage and as such there was never a marital estate to be divided or support to be owed. The state of Georgia operates a little differently in that the court may equitably (as evenly as justice might require) divide involved parties' joint property, and debts, in granting an annulment. Furthermore, alimony, or spousal support, may be granted in the short term but is forbidden by law to be granted on a permanent basis.

Uncontested divorces are usually less expensive than annulments. Should cost be an option, rather than religious concerns, please consult with one of our attorney on which option is best for you.



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