

What Is The Difference Between A Divorce And An Annulment?

February 6, 2014 | by

Dear Ask the Attorney:

What's the difference between a divorce and annulment? My ex wants to get a divorce but I was told that I would be unable to remarry in my church if I don't get an annulment.

J.M.

*Our guest blogger today is **James M. DeStefano, Esq.**, an associate in our **Family Law and Matrimonial Law** departments. Mr. DeStefano concentrates his practice solely on issues of divorce, alimony, child support, visitations rights and all other aspects of family law.*

Dear J.M.

Thank you for your question. An annulment and a divorce are very different and distinct mechanisms that are used to dissolve a marriage in the State of New Jersey. A divorce terminates or ends a marriage relationship, while an annulment renders the marriage “void” and the “contract of marriage” is treated as if it never happened.

To obtain an annulment, you must meet the specific requirements as set forth in New Jersey's annulment statute, [N.J.S.A 2A:34-1](#). Pursuant to this statute, a Judgment of Nullity may be rendered in

cases of bigamy, fraud, duress, or if either of the parties lacked the capacity to marry due to age or mental condition. The burden is on the party seeking an annulment to prove that grounds exist for the Court to enter a Judgment of Nullity.

Obtaining an annulment versus obtaining a divorce will impact a party's rights and ability to make certain legal claims. For example, when a marriage is annulled by a Judgment of Nullity and declared void, an award of alimony or spousal support is typically not permitted. However, the Family Court is a Court of Equity and, thus, New Jersey courts have awarded alimony in nullity actions. Similar to a divorce, in an annulment proceeding, a court may consider each party's need and ability to pay support, the duration of the marriage and other relevant factors to decide whether spousal support is appropriate. Similarly, an annulment proceeding typically does not allow for the equitable distribution of "marital assets" since an annulment declares a marriage void. However, Courts will provide for the division of joint assets under contract law and equitable principles.

It is not uncommon for people to prefer to have their marriage annulled for religious reasons since obtaining an annulment may allow a person to remarry religiously. Obtaining a Judgment of Nullity does not automatically mean you can remarry in your church, temple, etc. Every religion has different procedures and requirements that must be fulfilled before a party can remarry. I would suggest speaking with your religious leader to determine what procedures and requirements must be fulfilled before you can remarry in your church.

There are numerous critical distinctions between an annulment and a divorce, many of which impact certain legal rights and claims that one party may raise against another. It is important to discuss the facts of your case with an experienced matrimonial attorney so that you can determine whether you have a cause of action for an annulment and whether, and how, your rights will be impacted by

obtaining an annulment rather than a divorce.

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