

# ANNULMENT SIMPLIFIED



*The annulment process can be confusing and intimidating. However, with a clear understanding of what to do, an annulment may provide you with a viable alternative to divorce.*

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# What is an Annulment (NULLITY)?

An Annulment is a legal procedure where a marriage is dissolved and completely erased - legally, it declares that the marriage never technically existed and was never valid.

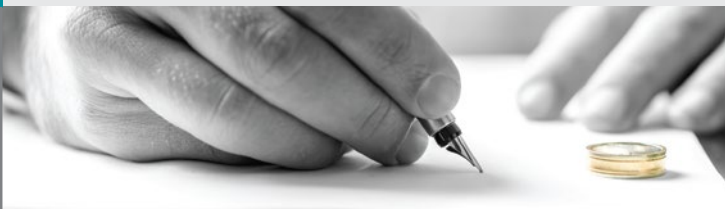
The party initiating the annulment needs to prove that he or she has the grounds to do so and if it can be proven, the marriage will be considered null and void by the family court, returning parties to their single status.

One must bear in mind the qualifying grounds for an annulment of marriage are different than the typical grounds for divorce.

Two categories of marriages qualify for an annulment under the Women's Charter; **Void** and **Voidable**.

## Marriages that are Void

- Marriages between Muslims that are registered/solemnized under civil law [s3(4)]
- Where one party is already married under any law, religion or custom [s5(1) and s11]
- Where one party is below the age of 18 and has not been granted special authorization by the Minister of Social Affairs [s9]
- Where parties married within the prohibited degrees. (certain categories of relatives) [s10]
- Where the marriage was not properly solemnized under the law [s22]
- Same-sex marriages [s12]





## Marriages that are Voidable

- Marriages that have not been consummated owing to either party's incapacity to do so **[s106(a)]**
- Marriages that have not been consummated owing to either party's wilful refusal **[s106(b)]**
- Where the marriage has taken place without either party's valid consent (due to the party consenting under duress, mistake or mental disorder) **[s106(c)]**
- Where parties had validly consented to the marriage however at the time of the marriage, one party was suffering from a mental disorder that left them unfit for marriage **[s106(d)]**
- Where at the time of the marriage, the other party was suffering from a communicable venereal disease **[s106(e)]**
- Where at the time of the marriage the wife, was already pregnant by another man **[s106(f)]**

## The Court Process

An application (just like divorce) has to be filed in to Court and served on the Defendant. The Defendant will then be required to enter an appearance by indicating whether he or she will be contesting the annulment or not.

### Uncontested Annulment Hearing

Should the action not be contested, the plaintiff would set down the case and be given an uncontested court hearing date.

The filing party's attendance in court hearing is compulsory and lasts about 5 to 10 minutes. If all is in order, the Court will grant an interim judgment, which will be made final after 3 months.

Whole process will take approx 4 to 5 months to complete from the time nullity papers are filed in Court, assuming that the Defendant fully cooperates in the proceedings.



# Annulment FAQ`s

## What is the difference between a Divorce and an Annulment?

- 1 In an Annulment, parties will return to “Single” status and the marriage is deemed never to have existed. However, in a Divorce, the marriage would be deemed to have existed from the time it was solemnized to the time when the court grants a final judgment and as such, parties would be **“Divorced” not “Single”**.
- 2 Under normal circumstances, it would not be possible to apply for a divorce within the first 3 years of the marriage. This rule does not apply for annulment proceedings.
- 3 Foreigners living in Singapore may file for an annulment if both parties are resident in Singapore at the time of filing the papers. However, for divorce proceedings, they would have to be habitually resident in Singapore for a period of not less than 3 years at the time of filing the divorce.

## If the Court does not grant the Annulment, what are my options?

- 1 You can consider getting your lawyers to file an application in Court to seek the Court’s permission to file for divorce early. You have to show the Court that:
  - a. you have suffered exceptional hardship during your marriage or
  - b. that your spouse has displayed exceptional depravity towards you (that is, he/ she has behaved in a manner that is unusually bad).

If you are considering this option, it is highly recommended that you obtain a psychiatrist report to support your case.

- 2 In the alternative, you can separate with your spouse until the third year anniversary of your marriage is up. Thereafter, you can file for divorce.

## **Can I still get an annulment if I have been married for more than 3 years?**

You can still get an annulment provided that the marriage has not been consummated due to your spouse's wilful refusal, or incapacity of either party.

## **What will happen to the HDB flat/private property that I hold with my spouse if I get an annulment?**

If one's marriage is declared null and void, so will the HDB contract purchase, resulting in the flat having to be surrendered to HDB. You will thereafter receive a surrender value, subject to HDB's valuation.

If you wish to retain it, you can only do so if HDB allows you to retain the flat under another scheme. You will need to file an appeal to see if you can retain the flat with either of your parents listed in the re-application.

Alternatively, you can wait for the 3 years marriage to materialise and file for dissolution of your marriage as a Divorce, where you can hold the flat under the Single-Scheme (above 35 years) or single with one parent listed as occupier (provided that parent does not own a flat).

If you hold a private property, you have the discretion to buy over the other party's share, sell it or continue to hold it as joint-tenants or tenants-in-common. If parties are unable to agree, then the matter becomes a contested ancillary hearing in court where a judge will make a final order.



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