

DECLARATION OF INVALIDITY

Declaration of Invalidity of a marriage in Colorado is governed by CRS §14-10-111 (*Declaration of Invalidity*). The terms "declaration of invalidity" and "annulment" mean the same thing.

Many spouses believe they are eligible for a declaration of invalidity because they were only married for a short time or because they do not have any children with their spouse. This is not true. The statute strictly limits who may seek a declaration of invalidity and the times within which they may do so. If a party fails to meet these statutory requirements and specific time limits, the marriage is considered valid, unless the marriage is prohibited. A valid marriage may only be terminated by a divorce. Prohibited marriages involve bigamy, polygamy, incest or marriages between close blood relatives.

A declaration of invalidity action is not a “*no-fault*” action, and whether proper grounds exist is a question of fact to be determined by the judge. In Colorado, the grounds for Declaration of Invalidity are limited to:

- A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances. (*must be filed within six months of learning of the condition*)
- A party lacked the physical capacity to consummate the marriage by sexual intercourse, and the other party did not know of the incapacity at the time the marriage was solemnized. (*must be filed within one year of learning of the condition*)
- A party was under the age as provided by law and did not have the consent of their parents or guardian or judicial approval as provided by law. (*must be filed within 2 years of the marriage*)
- One party entered into the marriage in reliance upon a fraudulent act or representation of the other party, which fraudulent act or representation goes to the essence of the marriage. (*must be filed within six months of learning of the condition*) What constitutes a “*fraud essential to the marriage*” is a question of fact determined by the court on a case-by-case basis.
- One or both parties entered into the marriage under duress exercised by the other party or a third party, whether or not such other party knew of such exercise of duress. (*must be filed within six months of learning of the condition*)
- One or both parties entered into the marriage as a jest or dare. (*must be filed within six months of learning of the condition*)
- The marriage is prohibited by law, including the following: (***Prohibited Marriages***)
 - A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;
 - A marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood;
 - A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages of the established customs of aboriginal cultures;
 - A marriage which was void by the law of the place where such marriage was contracted.

Because of these statutory time limits, potentially invalid marriages tend to be of short duration, except possibly a prohibited marriage. For this reason, few parties to an annulled marriage are likely to be granted maintenance, although it can be awarded for good cause shown pursuant to CRS §14-10-114. It is often likely that one of the parties placed some of their previously separate property into joint tenancy with the spouse, creating the presumption of marital property to be divided equitably under CRS § 14-10-113 (*Disposition of Property*). Temporary Orders may also be issued pursuant to CRS §14-10-108 (*Temporary Orders*).

Children born of a marriage later declared to be invalid are legitimate. All other Colorado laws regarding the support of such children, and the allocation of parental responsibilities with respect to such children are applicable to Decrees of Invalidity of Marriage.