

**Katharine A. Jensen**

**The Modern-Day Annulment:**

**Obtaining a Declaration of Invalidity of Marriage**

One of the most commonly misunderstood processes in Colorado family law involves the procedure for filing for a declaration of invalidity of marriage, frequently referred to as an “annulment.” Colloquially, we refer to “filing for an annulment” as the procedure one might take to invalidate a short-term marriage. To the contrary, obtaining a declaration of invalidity of marriage has very little to do with the length of the marriage.

A court’s declaration of invalidity of marriage applies retroactively back to the date of the marriage, so that it is as if the marriage never took place. The law regarding declarations of invalidity of marriage can be found in Colorado Revised Statutes, Section 14-10-111. Unlike the standard to obtain a divorce, which only requires that the marriage be irretrievably broken, one seeking a declaration of invalidity of marriage must prove that the marriage meets a specific legal qualification. The criteria outlined in Section 14-10-111 are that:

- 1) One spouse lacked the mental capacity to consent to being married at the time of the marriage, either because of mental incapacity or infirmity or because of the influence of drugs or alcohol;
- 2) One spouse lacked the physical capacity to consummate the marriage *and* the other spouse did not know this at the time of the marriage;
- 3) One spouse was under the age to consent to the marriage (18, or 16 with consent from a parent, guardian, or Colorado family law court);
- 4) One party entered into the marriage in reliance upon a fraudulent act or misrepresentation of the other party which goes to the “essence of the marriage;”
- 5) One or both spouses entered into the marriage under duress;
- 6) One or both spouses entered into the marriage as a jest or dare; or
- 7) The marriage was prohibited by law due to: bigamy/polygamy; incest (ancestor & descendant, siblings, uncle & niece, or aunt & nephew); or any other reason under the laws of the place where the marriage was contracted.

The party seeking a declaration of invalidity of marriage must also be aware of specific time limitations concerning when he or she may bring the action. The statute breaks down the time limitations in accordance with the criteria for invalidity listed above:

- 1) **Lack of mental capacity, fraud duress, jest/dare:** may only be brought by the aggrieved spouse within six months after learning of such conditions;

- 2) **Lack of physical capacity to consummate marriage:** may only be brought by the aggrieved spouse within 12 months after learning of the condition;
- 3) **Under the age of consent:** may only be brought by the underage party or his/her parent or guardian within 24 months of the date of the marriage;
- 4) **Marriage prohibited by law:** may be brought by either spouse, either spouse's children, an appropriate state official or, in the case of bigamy/polygamy, the legal spouse at any time prior to either spouse's death or settlement of either spouse's estate.

If the marriage was entered into in Colorado, a party may petition for a declaration of invalidity of marriage at any time, so long as they are within the time limitations set forth above. If the marriage occurred out-of-state, at least one party must be a Colorado resident for 30 days before filing the petition. Unlike a divorce proceeding, there is no 90-day waiting period; the court may grant the petition for an invalidity of marriage at any time. However, the parties may still have to resolve issues surrounding the division of marital property, allocation of parental rights and responsibilities, child support, and/or maintenance (commonly referred to as alimony, though that term is no longer used in the Colorado Revised Statutes).

Given the intricacies of proving that a marriage is invalid, it is always advisable to seek the assistance of a qualified attorney to assist in the process.

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***For More Information, Contact:***

Katharine A. Jensen

Associate

Foster Graham Milstein and Calisher, LLP

360 S. Garfield, St., Ste. 600

Denver, Colorado 80209

Phone: (303) 333-9810

Fax: (303) 333-9786

Email: [kjensen@fostergraham.com](mailto:kjensen@fostergraham.com)