

Void Marriages: Answers to Common Questions

Texas Legal Services Center (<https://texaslawhelp.org/directory/legal-resource/texas-legal-services-center>) [1]

This article provides answers to common questions about void marriages in Texas.

This article was written by the Self-Represented Litigants Project at the **Texas Legal Services Center**. (<http://www.tlsc.org>) [2]

What is a suit to declare a marriage void?

A suit to declare a marriage void is a legal process where a marriage is determined to be void from the very beginning because there are facts that prevent a legal marriage from being created. It is as though the marriage never happened. This is regardless of whether a court rules it so, and the spouses cannot otherwise agree that it is a valid marriage.

Practically, however, a void marriage can have lasting effects on the spouses to the void marriage in the areas of property and children.

The void marriage statutes can be found in **Chapter 6 of the Texas Family Code**. (<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm#6.201>) [3]

What if there are children or property involved?

If there are children adopted by or born to the parents or during the marriage, a Suit Affecting the Parent-Child Relationship must also be included as part of the suit to declare a marriage void petition.

As for property, the court will consider whether the petitioner

1. Married the other party “in good faith” and didn’t know about facts that would make the marriage void and therefore is a **putative spouse** or
2. Married the other party knowing facts that would make the marriage void and therefore the relationship is **meretricious**.

Generally, putative spouses will have similar property rights as a divorcing spouse and are eligible for spousal maintenance. In a meretricious relationship, however, those spouses are treated differently although other legal theories can be used in asking for property. **Meretricious spouses are not eligible for spousal maintenance.**

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If your case involves property or children adopted or born during the marriage, you should strongly consider getting help from **legal aid** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [4] or a **private attorney** (<https://texaslawhelp.org/full-representation-private-lawyer>) [5] (at least through **limited scope representation** (<https://texaslawhelp.org/limited-scope>) [6]).



How does a court figure out if a spouse is a putative spouse?

To be a putative spouse a spouse must have had a **good faith** belief in the validity of the marriage and not have known about facts that would make the marriage void.

To determine if a spouse had this good faith belief, courts in Texas have considered some of the following factors:

- marriage documents,
- purported divorce documents,
- marriage ceremony testimony,
- whether the putative spouse and the other spouse lived together.
- the potential putative spouse's youth or inexperience.
- the potential putative spouse's distance (geographic) from where the false divorce was done.

Consider looking at the void marriage sections of books like **O'Connors** (<https://texaslawhelp.org/article/legal-research-steps-follow>) [7] **Texas Family Law Handbook** (<https://texaslawhelp.org/article/legal-research-steps-follow>) [7] at your **nearest law library** (<https://www.sll.texas.gov/self-help/where-to-go-for-help/law-libraries-of-texas/>) [8] for a larger discussion of how a court determines if a spouse is a putative spouse or not.

How long do I have to have lived in Texas to file a suit to declare a marriage void?

The requirements to file for a divorce in Texas do not apply to suits to declare a

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marriage void.

To be able to file this lawsuit in Texas, either

1. One of the spouses must live in Texas or
2. The spouses were married in Texas.

The petition to declare a marriage void can be filed in the county where all or a large part of the relevant facts or acts leading to the void marriage happened or where the petitioner or the other party lived when the facts, acts, and marriage took place.



Where can I file a suit to declare a marriage void?

For the most part, the courts that can decide divorce cases can also decide suits to declare a marriage void. These lawsuits can also be filed in county courts as well. Call your local district clerk and ask which courts in your county handle void marriage cases.

Is there a waiting period between the filing of the petition for the suit to declare a marriage void and the final decree?

No, there is no waiting period required between the filing and the court granting a suit to declare the marriage void. However, it is not likely that the court will be able to grant it right away due the judge's busy schedule. At the very least, it can be expected to take a few weeks.

What is the difference between a divorce and a suit to declare a marriage void?

A divorce will end a valid marriage. A suit to declare a marriage void will consider the marriage to not be valid from the beginning and therefore to legally never have existed.

Practically, however, a void marriage can have lasting effects on the spouses to the void marriage in the areas of property and children.

What is the difference between an annulment and a suit to declare a marriage void?

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Like an annulment, a suit to declare a marriage void focuses on reasons why it wasn't a valid marriage at the start of the marriage.

However, unlike an annulment, a void marriage is **automatically** not legally a valid marriage from the start whether or not a court decides it so. The parties cannot agree to it being a legally valid marriage. The Texas Family Code lists specific grounds for void marriages and separate ones for annulments.



What are the grounds for a suit to declare a marriage void?

In Texas, there are several grounds under which a person can file a suit to declare a marriage void:

1. Incest
2. Bigamy
3. One party is under 18 years of age and has not been legally emancipated.
4. The spouses are current or former stepparent and stepchild.

See **Texas Family Code chapters 6.201**

(<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm#6.201>) [3]
through **6.206** (<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm#6.206>) [9].

What are the requirements for declaring a marriage void on the grounds of incest?

If the parties are related to each other in one of the following ways, either by blood or by adoption, the marriage is void:

1. ancestor or descendant
2. half or whole brother or sister
3. half or whole aunt or uncle, or niece or nephew

It should be noted that while the void marriage section of the Texas Family Code does not explicitly prohibit marriage between whole or half first cousins, either by blood or by adoption, clerks are unable to issue marriage licenses to these individuals.

See **Texas Family Code chapter 6.201** (<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm#6.201>) [3].

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What are the requirements for declaring a marriage void on the grounds of bigamy?

If either spouse was still married when he or she married, then the most recent marriage is void.

The spouse filing the suit to declare the marriage void has to prove that his or her spouse was married before and that the earlier marriage did not end by death, divorce, or annulment. The petitioner would have to show that the other party's first spouse was alive and did not die on the date the petitioner married the other party. Further, the petitioner has to prove that he or she looked for a divorce or annulment in every county that the other party and his or her previous spouse might have filed paperwork.

See **Texas Family Code chapter 6.20 (http://See Texas Family Code chapter 6.202) [10]2 (http://See Texas Family Code chapter 6.202) [10]**.

What happens if my marriage is void on the grounds of bigamy, but I want to be married to my spouse and not file a suit to declare marriage void?

A marriage considered void on the grounds of bigamy can turn into a common-law marriage once the previous marriage has been ended if both spouses continue to live together and hold themselves out as married. The common-law marriage then begins on the day the previous marriage has legally ended.

What are the requirements for declaring a marriage void on the grounds of one party being a minor?

A marriage is void if either party to the marriage is under the age of 18, unless a court order removing the disabilities of minority of the party for general purposes has been obtained.

See **Texas Family Code chapter 6.205 (http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm#6.205) [11]**.

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What are the requirements for declaring a marriage void on the grounds of the spouses being former or current stepparent and stepchild?

If one spouse is a current or former stepparent to the other spouse, the marriage is void.

See **Texas Family Code chapter 2.606 (<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm#6.206>) [9]**.



Is a marriage between two people of the same sex a void marriage?

No. A marriage between two people of the same sex is a valid marriage.

While the Texas Family Code still makes the marriage between two people of the same sex void, the United States Supreme Court in 2015 ruled that same-sex marriages are legal in the case **Obergefell vs. Hodges** (https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf) [12]. The Supreme Court overruled then existing Texas law. This decision applies to everyone in Texas as well as the entire United States. This means that same-sex marriages are *not* automatically void.

What if I don't qualify for a void marriage? What do I do?

If you don't qualify for a void marriage, you will probably qualify for a **divorce** (<https://texaslawhelp.org/family-divorce-children/divorce>) [13] or an **annulment** (<https://texaslawhelp.org/family-divorce-children/annulment-void-marriages/toolkit/void/annul-marriage-i-want-annul-or-void-my-marriage>) [14]. Please read over our divorce and annulment resources for more information.

Do I need legal advice?

Getting legal advice from a lawyer now can save you time and money in the long run. This is true especially if you have children or if you or your spouse has a retirement account, house, or other valuable property. An attorney can review your situation for potential issues that can arise.

The State Bar of Texas Lawyer Referral Information **Service** at (800) 252-9690 can help you find a **private lawyer**. (<https://texaslawhelp.org/full-> [Click here to chat.](#))

representation-private-lawyer) [5] You can ask for a lawyer willing to accept reduced fee arrangements or are willing to provide limited scope representation, also known as unbundling. (https://texaslawhelp.org/limited-scope) [6] This is an arrangement where you just want advice but don't want the attorney to go to court with you.

If you are low income, you may qualify for free help from legal aid. Regardless of income, you may get **free legal advice at walk-in legal clinics (https://texaslawhelp.org/legal-clinic-calendar) [15]**. For more information, please **click here. (https://texaslawhelp.org/legal-advice) [16]**



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- [9] http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm#6.206
- [10] http://See Texas Family Code chapter 6.202
- [11] http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm#6.205
- [12] https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf
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