

930.5 Means Of Termination

A ceremonial or common-law marriage can be terminated by:

- A. Divorce - A final divorce is one which irrevocably ends the marriage relationship. A final divorce may also be referred to as an "absolute divorce" or a "divorce a vinculo matrimonii." A marriage is not dissolved or terminated by a "preliminary decree," an "interlocutory decree" or a "decree nisi." In some jurisdictions, the court may grant a legal separation, sometimes called a "divorce from bed and board," a "divorce a mensa et thoro" or a "limited divorce." Such a divorce does not terminate the marital relationship. State law will be applied in determining whether a divorce is final, limited or preliminary.

Do not assume that a marriage was legally terminated if the applicant alleges merely that the termination resulted from the separation of the parties, abandonment of one spouse by the other or a limited divorce.

Refer to FOM-I-930.15 if a divorce was obtained outside the United States. The validity of a foreign divorce, particularly a divorce obtained in Mexico, may be questionable.

- B. Annulment - A decree of annulment may constitute a judicial declaration that a purported marriage was always void.
- C. Death of either spouse.

930.10 Prior Marriage

The field office is responsible for securing the marital history of the employee and spouse applicants. The FO will review this history, and in the instance of multiple marriages of either the employee or spouse, make the initial determination as to whether the prior marriage(s) affects the spouse's entitlement to benefits.

The field office determines the validity of the current marriage. If review by RBD personnel is needed, it is indicated on APPLE in the remarks section (see FOM-I-1581.14). In addition to making a comment on the remarks screen, there is a field Summary screen for RASI Review. A "P" is entered in this field to indicate that a review of prior marriages is needed. Completing this field will create a manual op code for RASI.

The determination is based on the criteria for a valid marriage as outlined in FOM-I-925 and the termination of marriage as described in the following sections.

930.10.1 Termination

In determining whether the last marriage is valid, the first question to resolve is whether a prior marriage has been terminated. If there is any question as to the dissolution of a

prior marriage, the case should be referred to Headquarters for review and final determination after the requested development is completed.

- A. Separation or abandonment - If an applicant states that a prior marriage was terminated by divorce, but does not appear to understand the difference between a divorce and a mere separation, find out what (s)he really means. The fact that the parties to the marriage separated or that one party abandoned the other does not necessarily mean that a divorce followed such action and terminated the marriage.
- B. Prior marriage terminated after later marriage - If the prior marriage terminated after the later marriage, a valid marriage may come into being under applicable state law (see FOM-I-930.10.4).
- C. Prior marital status unknown - If the applicant does not know whether the employee was previously married, and there is no evidence to the contrary, assume that there was no prior marriage.
- D. Termination of prior marriage uncertain - If the applicant alleges a prior marriage but does not know whether it was terminated, inform the applicant that he/she needs to secure information from other sources such as relatives or friends. The applicant has the burden of securing the evidence necessary to establish the claim. However, it is to the employee's advantage to cooperate in providing information about his/her marriages. There are instances in which overpayments to spouses and even divorced spouses can be recovered from the employee. If the evidence shows that the prior marriage was terminated but not all the details are known, handle as follows:
- If the claimant knows the present whereabouts of the prior spouse, secure a signed statement from such spouse showing whether there was an attempt to end the marriage to the employee by divorce or annulment, whether it was granted, and, if so, the place and date.
 - If the applicant does not know the whereabouts of the prior spouse, secure the names and addresses of any of the missing spouse's relatives and friends.
 - If the prior spouse can be located through relatives or friends, secure a signed statement furnishing all information regarding the circumstances and manner of the termination of the prior marriage.
 - If the relatives or friends do not know the whereabouts of the missing prior spouse, obtain any available information as to possible locations, employers, etc. Review PUPS to confirm that the person is not confined. (See RCM [19.2.15](#))

If the prior spouse (including the employee) is uncooperative or there is conflicting information or reasonable doubt as to whether or not a divorce took place, use the following forms when applicable:

- G-237 (Statement/Regarding Marital Status);
- G-238 (Statement of Residence);
- G-238a (Statement Regarding Divorce or Annulment).

It is not always necessary to secure each of these forms; their usefulness depends on how much information is in file and how much additional information is needed.

Form G-238 is used to obtain information as to where both spouses lived at the time of the alleged divorce, or from the time of separation to the time of the annuity application. Using this information, a request for a records search (G-238a) should be submitted to the records custodian, usually a county court clerk, for the locations where the parties lived.

The statement G-238a from the court clerk as to the search of the records should be signed by such clerk and show:

- The name of the court and county where the court is located; and
- The records searched (i.e., both divorce and annulment records) and whether a record of a divorce or annulment is shown; and
- The dates for which these records were searched.

Occasionally, a custodian of the public records will not search his records or will not furnish such a report. In these cases, if a F/O employee makes the search he should submit a statement covering the above items. He should also indicate his title, F/O name, and show that he made the search.

NOTE: A request for a search of public records by a F/O employee should only be made upon the authorization of the section supervisor.

930.10.2 When to Accept Allegation That Marriage Was Terminated

Accept a statement that a marriage was terminated by death of a spouse, divorce or annulment when at least the year and state of termination are provided and when there is no evidence to the contrary creating a reasonable doubt. Accept such a statement even though complete information is not furnished as to the exact date, place of termination, or the identity of the other party and even though a common-law marriage is claimed in the present or in a former marriage.

When the year or state of termination is not provided or when there is a reasonable doubt that the prior marriage was not terminated, secure proof of death, divorce or annulment. If preferred proofs cannot be secured, obtain any available secondary evidence such as a statement from the other spouse of the prior marriage, correspondence referring to the terminating event, statements from friends or relatives of both parties to the prior marriage, newspaper accounts or other evidence of probative value. Also, secure a statement giving the reason a preferred proof cannot be furnished. When development is completed refer the case to Headquarters for review and final determination.

930.10.3 When Date of Termination of Prior Marriage Is Material

In determining the validity of a later marriage, the date the prior marriage terminated is material when the length of time between the marriages is short. In some states, when a prior marriage was ended by divorce, there is a restriction on the remarriage of one or both parties within a certain period of time. Remarriage within this period may be invalid. As a general rule, if the remarriage occurred at least 1 year after the date of divorce, assume that the subsequent marriage is valid. If less than 1 year, refer to [Appendix M](#) to determine if the validity of remarriage should be questioned. If it appears from [Appendix M](#) that the remarriage may be invalid, refer the decree to Headquarters for a final determination. Accept a statement of the approximate time the prior marriage was terminated only if there is no evidence that creates a reasonable doubt as to the correctness of the statement.

930.10.4 Presumption of Validity of Last Marriage

Most states follow a presumption in favor of the validity of the last of several conflicting marriages. However, this does not mean that the applicant need only submit proof of such last marriage and thereby qualify as the legal spouse of the insured individual. Even though there is no adverse applicant, the C/R should develop and the claimant must submit all pertinent proofs of marriage and the dissolution of marriage. In addition, a statement describing the history of events and other relevant information would be beneficial to Headquarters personnel in their review and determination. If necessary, RBD or the Office of General Counsel will request additional specific development.

Georgia applies a presumption of validity of a subsequent ceremonial marriage until evidence is provided that the spouse of the first marriage is living. Ohio and Nebraska do not apply a presumption of validity of the last marriage. Ohio applies a presumption that the first marriage continues in the absence of conclusive proof that it has terminated. Under Nebraska law, the presumption in favor of each of two successive marriages is equal. Louisiana does not apply a presumption of validity of the last marriage with respect to a party who was in bad faith; in such cases, the burden is upon such party to show the dissolution of a prior marriage. With respect to a party who was in good faith, Louisiana does apply a presumption of validity of the last marriage.

930.15 Validity Of Divorce And Foreign Divorce

A divorce is valid if it was granted by the court in whose jurisdiction at least one of the parties was domiciled at the time of the divorce. Assume a divorce is valid, unless it is questionable according to the following section.

930.15.1 When a Divorce May Not Be Valid

The validity of a divorce is questionable if:

- A. Evidence indicates that, at the time of the divorce, neither party was a resident of the state or country in which the divorce was granted.

A divorce granted by a state that did not have jurisdiction will be held invalid if it is found not valid according to the law of the employee's domicile at the time a spouse annuity application is filed or at the time of the employee's death.

A divorce granted in a jurisdiction in which neither party is domiciled, such as a mail-order divorce, is not valid. Also, when the plaintiff in a divorce action goes to another jurisdiction solely for the purpose of obtaining a divorce, and did not intend to make his home there, the validity of the divorce is questionable. This is common to divorces obtained in foreign countries, especially Mexico. However, do not question the validity of the divorce if either party had some connection with that country, for example, prior residence in that country; or

- B. The divorce allegedly was granted in a country whose laws do not permit an absolute divorce. Those countries are:

Argentina

Brazil

Chile

Columbia

Dominican Republic (for Catholic ceremonies performed after 8-5-54)

Ireland

Italy (prior to 1-1-71)

Liechtenstein (when either party is a Catholic)

Philippines (before 1917 and after 8-29-50)

Portugal (for Catholic ceremonies performed after August 1940)

Spain (except from 3-2-32 through 3-4-38).

Such a divorce will be held invalid. Therefore, no additional development is required; or

- C. There is a technical defect in the proceedings, e.g., the decree was not recorded properly or the court costs were not paid. In this case, the following evidence is required:
1. A copy of the divorce decree;
 2. A statement from the clerk of the court as to whether the records substantiate the allegation of the defect; and
 3. Certifications of the pertinent court record entries.

Whenever an applicant may qualify as the de facto (deemed) spouse or widow(er), develop according to FOM-I-925.15.3.

930.15.2 When Field Offices Should Initiate Development

Field offices should initiate development only if the most recent divorce of the employee or applicant may be questionable because:

- A. An applicant, potential applicant or other party questions the validity of the divorce; or
- B. It is obvious that there was a technical defect in the proceedings; for example, the divorce decree is not certified by a court. Develop according to the preceding section; or
- C. It is obvious that neither party was a resident of the state in which the divorce was granted. For example, an employee and spouse annuitant living in Ohio obtained a divorce in Nevada; or
- D. A divorce was obtained in a foreign country (especially Mexico) that is not listed in FOM-I-930.15.1. Ask the applicant if either party in the divorce was ever a resident of that country. Record that information on the application or the application checklist. If the response was "no," also develop the information in FOM-I- 930.15.3.

930.15.3 Development of Questionable Divorce

Obtain the following when a divorce is questionable:

- A. A certified copy of the divorce decree; and
- B. A statement from the applicant with the following information:
 1. The identity of the plaintiff in the divorce proceeding;

2. The domicile of the parties before the divorce;
3. How long each party lived in the state or foreign country where the divorce was obtained;
4. The reason for establishing residence in that place;
5. Whether the defendant was given notice of the divorce proceeding, and how;
6. Whether the defendant filed an answer in the proceeding or appeared in court;
7. Whether there was any property settlement;
8. Whether either party remarried; and
9. If the applicant may qualify as the de facto (deemed) spouse or widow(er), a statement to determine good faith (see FOM-I- 925.15.3).

