

VOIDABLE MARRIAGE (ANNULMENT)--ISSUE OF MARRIAGE OF PERSON BETWEEN 16 AND 18.¹

NOTE WELL: Give this instruction only where the alleged underage person was between 16 and 18 at the time of marriage. If the alleged underage person was less than 16, use N.C.P.I.--Civil 815.20.

NOTE WELL: If one of the parties to the marriage has died, also give N.C.P.I.--Civil 815.30.²

The (state number) issue reads:

"Did (name person) marry (name other person) before (name person) reached the age of eighteen and without the consent of

¹N.C.G.S. §51-2(a) sets the legal age of marriage at 18. However, persons between 16 and 18 years of age may marry provided a written consent has been signed by the "appropriate person" and filed with the register of deeds. In the event no consent is given, the ensuing marriage is not void. *Sawyer v. Slack*, 196 N.C. 697, 146 S.E. 864 (1929). A "voidable" marriage is valid for all civil purposes until annulled by a court of competent jurisdiction. *Geitner ex rel First Nat'l Bank v. Townsend*, 67 N.C. App. 159, 312 S.E.2d 236, cert. denied, 310 N.C. 744, 315 S.E.2d 702 (1984). By contrast, a "void" marriage is considered a nullity *ab initio*. *Redfern v. Redfern*, 49 N.C. App. 94, 270 S.E.2d 606 (1980).

In the event the marriage license is procured from the register of deeds by fraud or misrepresentation, the marriage is also voidable, and the underage child's parent or other person *in loco parentis* is a proper party. N.C.G.S. §51-2(c).

Note, however, that where a female between the ages of 12 and 18 is pregnant or has given birth to a child and the putative father has agreed to marry her, their marriage can be validated by the procurement of the consent of one of the persons enumerated at N.C.G.S. §51-2(a)(1)-(4). N.C.G.S. §51-2(b).

²N.C.G.S. §51-3 also provides that "no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties to the marriage for any reason except bigamy." If a party to the marriage has died, an issue (N.C.P.I.--Civil 815.30) should be submitted to establish the lack of cohabitation or the birth of issue.

Also note that another defense to annulment is "ratification." See N.C.P.I.--Civil 815.32.

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16 AND 18. (Continued.)

*(name appropriate parent or guardian)*³?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that *(name person)* married *(name other person)* before *(name person)* reached the age of eighteen and without the consent of *(name appropriate parent or guardian)*.

Finally, as to this *(state number)* issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that *(name person)* married *(name other person)* before *(name person)* reached the age of eighteen and without the consent of *(name appropriate parent or guardian)*, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, it would be your duty to answer this issue "No" in favor of the defendant.

³The appropriate parent or guardian is:

- (1) the father, if the male or female child resides with the father and not the mother;
- (2) the mother, if the male or female child resides with the mother and not the father;
- (3) by the father or mother, without preference, if the male or female child resides with the father and mother;
- (4) by a person, agency or institution having legal custody, standing in loco parentis or serving as guardian of the male or female child.

N.C.G.S. §51-2(a)(1)-(4).